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Anti-Money Laundering and Combating the Financing of Terrorism

BULGARIA

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LIST OF ACRONYMS USED

AFFSUAA	Act on Forfeiture in Favour of the State of Unlawfully Acquired Assets
AML/CFT	Anti-money laundering and counter-terrorist financing
BGN	Bulgarian Leva
BNB	Bulgarian National Bank
CC	Criminal Code
CDD	Customer Due Diligence
CPC	Criminal Procedure Code
DNFBP	Designated Non-Financial Businesses and Professions
EU	European Union
FATF	Financial Action Task Force
FI	Financial institutions
FIA	Financial Intelligence Agency
FID	Financial Intelligence Directorate
FID-SANS	Financial Intelligence Directorate of the State Agency for National Security
FIU	Financial Intelligence Unit
FSC	Financial Supervision Commission
GL	Gambling Law
LDFSIA	Law of Divestment in Favour of the State of Property Acquired from Criminal Activity
LEA	Law Enforcement Agency
LMFT	Law on Measures against Financing of Terrorism
LMML	Law on Measures against Money Laundering
LSANS	Law on State Agency for National Security
MoU	Memorandum of Understanding
NPO	Non-Profit Organisation
NRA	National Revenue Agency
PEP	Politically Exposed Person
RILSANS	Rules of Implementation of the Law on SANS
SANS	State Agency for National Security
SR	Special recommendation
SSD	Special Supervision Directorate
STRs	Suspicious transaction reports
TF	Terrorism Financing
UNSCR	United Nations Security Council resolution

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 Bulgaria at the time of the 4th on-site visit (30 September to 6 October 2012) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of 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 Bulgaria 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 Bulgaria.

2. Key findings

2. In 2010 a risk analysis was carried out by various competent authorities in Bulgaria on the major sectors of the economy. The main vulnerabilities to money laundering were examined in the financial and public sectors, as well as in the construction, gambling, trade (including real estate), tourism and sport sectors; incoming and outgoing money flows in the economy were also included in the review. According to the Bulgarian authorities, no information on terrorism and terrorism financing threats has been identified. Nevertheless, the Bulgarian institutions (including the FIU) authorised with competences in this area, continue to perform monitoring and observation of the ongoing situation.
3. As far as the criminalisation of money laundering is concerned, the examiners note the developments in AML practice achieved by the Bulgarian authorities since the 3rd round evaluation. However, the Bulgarian legislation still needs to extend the list of predicate offences, to include all categories of piracy, market manipulation and insider trading, as well as to cover all the aspects of terrorism financing. Turning to effectiveness, the competent authorities established that it is possible to prosecute all forms of money laundering and actual convictions have been achieved in practice.
4. The offence of financing of terrorism is incriminated in the Bulgarian Criminal Code (CC), although it does not fully encompass the requirements of the TF Convention and Special Recommendation II. Some deficiencies still remain in respect of the criminalisation of all the offences listed in the Annex to the TF Convention. Furthermore, the purposive element required by Article 108a of the CC unduly restricts the application of this provision to the act which constitutes an offence within the scope of and as defined in the treaties listed in the annex to the Terrorist Financing Convention in the sense that it requires an additional mental element.
5. The provisional measures and confiscation regime in Bulgaria is mainly provided by the Criminal Procedure Code (CPC), the Law of Divestment in Favour of the State of Property Acquired from Criminal Activity (LDFSIAP) and the Act on Forfeiture in Favour of the State of Unlawfully Acquired Assets (AFFSUAA), which entered in force since on 19 November 2012, after the on-site visit. While the Bulgarian legal framework for the confiscation regime is convincing, in that it provides for a wide range of forfeiture, seizure and provisional measures with regard to property laundered, proceedings from and instrumentalities used in and intended for use in ML and TF or other predicate offences. However, compared with the estimated economic loss from criminal offences of an economic nature, the total value of confiscated assets remains low and the authorities are encouraged to place greater emphasis on confiscating criminally-derived funds.
6. The Bulgarian authorities have undertaken the relevant measures for ensuring the freezing of terrorist related assets. As an EU member state Bulgaria implements the EU Decisions but has equally an internal listing mechanism. The web link to the list of designated persons was made available for financial institutions and designated non-financial business and professions. So far, there have not been any cases of blocking of such assets.

7. The Bulgarian Financial Intelligence Agency (FIA) was initially established as an administrative-type FIU within the Minister of Finance. In 2008, the FIU was transformed into the Financial Intelligence Directorate (FID) within the State Agency for National Security (SANS) pursuant to the Law on State Agency for National Security (LSANS). The specialised administrative Financial Intelligence Directorate of SANS (FID-SANS) continues to function as an administrative-type financial intelligence unit.
8. The financial sector demonstrated a high level of understanding of their customer due diligence (CDD) obligations. The Law on Measures against Money Laundering (LMML) is generally in line with the international standards; however some difficulties still remain, mostly related to the concept of beneficial owner which does not fully cover the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. Nevertheless, all the financial institutions were aware of the concept of beneficial owner in the case of legal entities, as provided in article 3 (2) of the Rules on the implementation of the LMML.
9. Supervision and monitoring over the implementation of the AML/CFT requirements is executed twofold: by the general supervisory bodies, which appear to have sufficient resources for fulfilling their obligations and a package of enforcement tools to address breaches, and by the FID-SANS. The primary responsibility for the supervision of AML/CFT measures for all obliged persons rests with FID-SANS. However, all supervisory bodies are required to include inspections for the compliance of obliged persons with the requirements of the LMML and the Law on Measures against Financing of Terrorism (LMFT) when they conduct examinations.
10. Administrative sanctions for non-compliance with the LMML are imposed by the FID-SANS and there has been an increase in the number of off-site and on-site supervision actions and sanctions applied. The maximum sanction for AML/CFT non-compliance is the equivalent of €25,000, which appears not to be dissuasive enough when compared with other sanctions prescribed for the financial sector.
11. According to the LMML, the list of designated non-financial businesses and professions (DNFBP) subject to AML/CFT requirements goes beyond the international standards. External accountants and private enforcement agents (bailiffs) have recently been included as obligors. The DNFBP demonstrated that they are generally aware of their obligations on AML/CFT issues, which is a welcome improvement since the last evaluation report. However, not all the sector was fully aware of the enhanced measures that should be applied with regard to politically exposed person (PEPs).
12. The Bulgarian legal framework establishes the Ministry of Justice (for judicial requests), and the Supreme Prosecutor's Office of Cassation as well as the Prosecutor's Office (for pre-judicial investigation requests) as the central agencies responsible for international mutual legal assistance. The representatives of the prosecutor's office and the judiciary authorities indicated that all requests are executed in a reasonable timeframe, although the legislation does not prescribe any timeframes for the execution of mutual legal assistance requests.
13. A comprehensive network of mutual bilateral and multilateral agreements gives the Bulgarian authorities a sound basis for effective cooperation. In order to ensure the review of the effectiveness of the AML/CFT systems on a regular basis, the Bulgarian authorities should, as quickly as possible, create a framework for policy makers to review the effectiveness of the system and bring it into operation.
14. International cooperation by the FID-SANS and law enforcement agencies is effective, efficient and in many cases more advanced than the minimum standards required by the FATF Recommendations. The Bulgarian National Bank (BNB) and the Financial Supervision Commission (FSC) also appear to have broad powers to exchange information with foreign counterparts based on domestic law, international treaties and MoUs.

3. Legal Systems and Related Institutional Measures

15. The physical and material elements of the ML offence are broadly in line with the provisions of Art. 3 (1) (b) and (c) of the Vienna Convention and Article 6 (1) of the Palermo Convention, although some of the wording of the Bulgarian CC does not ensure full compliance with the relevant international requirements. Criminal liability applies to those who acquire, receive, hold, use, transform or assist, in any way whatsoever, in the transformation of property, which is known or assumed, as of its receipt, to have been acquired through crime or another act that is dangerous for the public. The Bulgarian CC provides that there must be knowledge or suspicion of the criminal or socially dangerous origin of the proceeds.
16. On a less positive side, the Bulgarian legislation still needs to extend the list of predicate offences, to include all categories of piracy, market manipulation and insider trading, and to cover all the aspects of terrorism financing.
17. The evaluation team was advised that in practice, the ML investigations and prosecutions involve three key elements: the unknown source of money, the possible illegal origin, and the financial analysis describing the laundering process. Stand-alone ML cases were presented by various law enforcement officers and third party ML convictions were confirmed by the prosecutors and judges.
18. The terrorism financing offence is criminalised under paragraph 2 of the Art. 108a of the CC. The Bulgarian CC does not include a number of the conducts prescribed in the nine Conventions and Protocols listed in the Annex to the TF Convention. Hence, their support could not be qualified as terrorist financing. The CC does not define the scope of application for the TF offence, but Art.108a does not differentiate as to whether the persons committing the offence are located in Bulgaria or other countries, as to where the terrorists/terrorist organisations are located or the terrorist act will occur. However, a difficulty arises in relation to the additional mental element, (*...for the purpose of causing disturbance...*), required by the Bulgarian CC in relation to all the acts that can be qualified as terrorism. This is not in line with Article 2 (1)(a) of the TF Convention.
19. Article 44 of the CC defines the confiscation as the compulsory appropriation without compensation in favour of the state, of property belonging to the convict or of part thereof, of specified pieces of property of the culprit, or of parts of such pieces of property. Forfeiture provisions for the ML offence are stipulated in Art. 253, Part 6 of the Special part of the CC, which reads that the object of crime or the property into which it has been transformed shall be forfeited to the benefit of the state, and where absent or alienated, its equivalent shall be adjudged. In the context of terrorist financing, Art. 108a, Part 4 prescribes that the object of terrorist financing offence shall be expropriated to the benefit of the State, and where absent or alienated, its equivalent shall be adjudged.
20. The aforementioned provisions are completed by the Law of Divestment in Favour of the State of Property Acquired from Criminal Activity (LDFSIA), which in Art. 1 (2) states that property, acquired directly or indirectly from criminal activity, which has not been restored to the aggrieved or has not been divested in favour of the State, or confiscated under other laws, shall be subject to divestment. A newly adopted Act on Forfeiture in Favour of the State of Unlawfully Acquired Assets (AFFCUAA) (in force since 19.11.2012) replaced LDFSIA, shortly after the on-site visit.
21. The new AFFCUAA prescribes that any assets for the acquisition of which a legitimate source has not been identified shall be treated as unlawfully acquired assets. The prosecutors met on-site explained that in practice, a "*financial profile*" of the defendant is made and any unjustified property is susceptible to forfeiture, which would include profits and any other benefits derived from the proceeds of crime. Due to the fact that the AFFCUAA was adopted after the on-site visit, the evaluation team could not assess the effective application of this provision.
22. The statistics on confiscated assets are evidence to the rising effectiveness of the confiscation regime, especially for years 2009 and 2010. However, the data shows that if compared with the number of instigated ML cases and convictions, the provisional measures are applied only in

limited number of instances. If compared with the approximate economic loss of criminal offences of economic nature, the total value of confiscated assets (not only in ML cases), remains low.

23. Formal implementation of requirements under UNSCRs 1267 and 1373 appears to be largely in place in Bulgaria. However, the mechanism provided for adopting, supplementing and modifying the lists of designated persons, both under the EU and internal procedures, seem complicated and may result in delays in publication of relevant lists published under UNSCRs. The legal framework should be amended to clarify to what extent the freezing mechanism will include funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. Additional efforts are necessary in order to raise awareness of all the national authorities about the freezing of terrorist fund obligations.
24. The FIU has completely changed its position in the Bulgarian AML/CFT system since the last evaluation (from the supervision of the Ministry of Finance to the State Agency for National Security). According to the Bulgarian authorities, the main reasons for this change were to increase the FIU's capability of liaising and sharing information with other law enforcement agencies, as well as better coordinating the whole AML/CFT national structure. In addition, SANS has among its functions the protection of the economic and financial security of the State, including money laundering threats and the prevention and fight against international terrorism and extremism, as well as their financing.
25. According to the LMML and LMFT the SANS may request information from state and municipal authorities, which information cannot be denied. The information requested shall be provided within the time period set by the Directorate. The evaluators were informed on-site that the FID-SANS has direct access to a large number of databases providing a wide spectrum of information for the adequate performance of the analytical function.
26. The Rules of Implementation of the Law on SANS (RILSANS) provides that the Director of FID-SANS shall coordinate the interaction of the FIU with the Prosecutors' Office and the respective security and public order agencies for matters under the LMML, thus, the Director of FID-SANS has the final decision on the recipient of the FIU's disseminations. There are no provisions involving other persons in the SANS hierarchy in the decision to disseminate FIU cases to LEA. The only exception is the Chairman of SANS who endorses the decisions to postpone operations, together with the Minister of Finance.
27. FID-SANS has three main departments and one additional administrative unit. The first department (Department for preliminary analysis), is in charge of the preliminary analysis of the suspicious transaction reports (STRs) and employs 8 officials, the majority of which hold university degrees in law or economics. The third department (Department for in-depth analysis and International Cooperation) has a staff of 10 officials with a background in economics, law and international relations (for the analysis of foreign requests, international exchange and exchange with law enforcement agencies). This department is responsible for the further analysis of cases and additional information gathering, as well as for the disclosures of the cases to law enforcement.
28. The financial analysis performed by FID-SANS is based on a two-step procedure, according to specific Methodologies. The evaluation team is of the opinion that this system is effective as it is flexible in combining a semi-automatised risk based scoring criteria with the personal judgment of the financial analyst in charge.
29. The requirements related to the declaration of cash at the frontier, the maintenance of relevant information about the sums transported and the large majority of the essential criteria under SR.IX are in place in Bulgaria. Some deficiencies have been identified in relation to the ability of the Customs Authority to restrain assets in case of ML or TF suspicions when the respective sum was dully declared or when the amount transported is under the legal threshold. Equally,

effectiveness issues have been identified in relation to the application of the international standards on freezing of terrorist funds.

4. Preventive Measures – financial institutions

30. Since the 3rd round mutual evaluation Bulgaria 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. All the financial institutions, as defined by the FATF Glossary, are covered by the Bulgarian legislation as having AML/CFT obligations.
31. The LMML establishes the obligation to apply customer due diligence measures when establishing business relations and when carrying out occasional transactions above BGN 30,000 (€15,000) or in case of any cash transaction exceeding BGN 10,000 (€5,000) or its equivalent in foreign currency. All obliged persons are always required to identify their clients where a suspicion of money laundering arises.
32. The definition of the beneficial owner is provided by the RILMML but does not specifically refer to the natural person(s) who ultimately owns or controls a natural person –as required in the FATF Glossary- although it refers to the person on whose behalf a transaction is being conducted. This was also revealed during the on-site visit as all representatives stated that in their understanding the concept of beneficial owner can be applied only to legal entities.
33. The ongoing monitoring of all established commercial or professional relations as well as the verification of all transactions, including clarification of the funds' origin is provided by the LMML. The financial institutions shall maintain up-to-date information on their clients and on the operations and transactions carried out by them, while periodically checking and updating the existing databases. In the case of higher-risk customers, databases must be checked and updated at shorter intervals.
34. Turning to effectiveness, the on-site interviews demonstrated that all financial institutions appeared to be generally conscious of the identification obligations. They were well aware of their obligation to retain the relevant documentation and the importance of their role in the preventive ML/FT regime. In some cases (related to foreign customers), difficulties in accessing sources of verification of data were detected.
35. The FATF standard related to PEPs is largely in place in Bulgaria. The financial institutions are obliged to elaborate effective internal systems to determine if a client (potential customer, existing customer or the beneficial owner of a customer-legal person) is a PEP or a related person to a PEP. Such systems can be based on different sources of information: information gathered through the application of enhanced due diligence measures; written declaration required from the customer with the purpose of determining whether the person falls within the categories of PEPs and information received through the use of internal and external databases. The Bulgarian legislation obliges the financial institutions to obtain the approval of an official at managerial position when starting or continuing a relationship with a PEP, but does not specify *senior managerial position*, as required in the FATF Standard.
36. The conditions for reliance on a third party to conduct “*identification*” of a customer are set out in the LMML. The Law allows the BNB, credit institutions and certain other financial institutions to rely on the “*previous identification of a client*” in subject to certain defined conditions. Although the provisions refer to “*identification*” they do require that all the information stipulated under the LMML must be available. This requires both identification and verification of the client and the identification and verification of the client’s ultimate beneficial owner. It would therefore appear that the full range of data for identification and verification is in place.
37. The LMML regulates the FID-SANS’ access to information subject to banking and secrecy laws. Also, it clearly provides that reporting entities, even advocates, may not refuse or restrict information requested by FID-SANS due to considerations of official, banking or commercial secrecy. The evaluation team was not informed about any practical impediments to obtaining

information from financial institutions or any other reporting entity. Similarly, no issues were detected for the exchange of information between competent authorities.

38. On record keeping requirements, the financial institutions are only specifically obliged to keep the documents related to the identification data and business correspondence. The components of transaction records that are specified through Regulation of the BNB only covers bank transfers and money remittance payments and does not apply to other financial institutions.
39. Through amendments brought to the LMML a requirement was introduced for the obliged persons to place under special monitoring the commercial or professional relations, and transactions involving persons from countries, which do not apply or do not fully apply the international standards against money laundering. In addition, when the transaction has no economic explanation or readily visible logical grounds, the obliged persons are also required to collect additional information, where possible, on any circumstances related to the transaction, as well as its purpose. The on-site interviews indicated that the financial institutions are aware of the requirements and are regularly advised of concerns about the weakness in the AML/CFT systems of other countries and have procedures in place to apply the enhanced CDD measures. However, not all of them seemed fully aware of the counter-measures they need to apply in case of countries that do not apply or insufficiently apply the FATF Recommendations.
40. At the time of the 3rd round report, the reporting obligations continued to be provided by the same Art. 11 of the LMML. This article requires reporting entities, where money laundering has been suspected, to notify the FID-SANS immediately prior to the completion of the transaction or deal, while delaying its execution within the allowable time as per the regulations dealing with the respective type of activity. Thus the requirement is limited to suspicion of money laundering, not funds that are proceeds from criminal activity, as required by criterion 13.1 of the FATF Methodology.
41. In cases when the delay of a transaction or deal is objectively impossible, the reporting entity shall notify the FID-SANS immediately after its execution. In practice, the majority of reports come after the execution of the transaction. This is logical bearing in mind that compliance officers should monitor and analyse their clients' business more broadly than on a single transaction or deal, in order to identify STRs as a consequence. The Bulgarian FIU, which holds a supervisory function as well, uses the fact that STRs are reported a long time after the execution of transaction, as a trigger element for an on-site inspection.
42. The obligation to report suspicious transactions extends to transactions that are linked to terrorism financing. According to the LMFT, should suspicion arise about the financing of terrorism, the reporting entities listed in LMML, shall: identify the relevant customers and verify their evidence of identity used in the suspicious operation or transaction; gather information on the transaction or operation and immediately notify the FID-SANS before the operation or transaction is performed, while delaying its implementation within the admissible period laid down by the legislative regulations on the relevant type of activity. The reporting entities are obliged to notify, SANS immediately after execution, when there is some objective impossibility of delaying the operation or transaction.
43. During the on-site interviews the evaluation team noted that the knowledge of the reporting obligation among banks was satisfactory, while other reporting entities showed varying degrees of knowledge, given that most of the reports seem to be submitted by a limited number of entities which are more aware of their AML/CFT obligations.
44. The supervisory regime is organised in accordance with the requirements of the LMML, LMFT, Law on Credit Institutions, the Law on Payment Services and Payment Systems, the Insurance Code as well as the relevant bylaws. The FID-SANS has primary responsibility for the supervision of AML/CFT measures in all obliged persons. The LMML does require other supervisory authorities to cooperate with FID-SANS and, where necessary, to exchange classified information for the purpose of their legally established functions.

45. The LMML provides that the supervisory bodies within FID-SANS may inspect on-site the obligated persons on the application of measures for the prevention of the use of the financial system for the purpose of money laundering. The obligated persons, the state authorities, the local government bodies and their employees shall be obliged to cooperate with FID-SANS in performing their supervisory functions. When performing on-site inspections, bodies of supervision shall have the right to free access in the office premises of the obligated persons, as well as the right to require documents and gather evidence.
46. The regulation and supervision over the reporting entities is also ensured by the authorities for supervision of the obligated persons, which, when carrying out examinations, shall include a check for the compliance with the AML/CFT requirements. Where a violation is established, the supervision authorities shall inform the FID-SANS, by sending it an abstract from the relevant part of the memorandum of findings. Similarly, the powers to supervise for CFT purposes are provided by the LMFTF.
47. The practical collaboration and cooperation between the FID-SANS and the general supervisors is regulated through *Instructions for cooperation and information exchange* which are agreements between institutions. The evaluation team welcomes the creation of the Special Supervision Directorate (SSD) within the BNB. During the on-site interviews, the National Revenue Agency (NRA), in its capacity of supervisory authority for exchange offices, demonstrated a marginal awareness and involvement for AML/CFT issues. The FSC has integrated its AML/CFT responsibilities into its overall supervisory framework. As such, there is no dedicated resource or pool of expertise available.
48. The range of sanctions for infringements of provisions of the LMML that are available to FID-SANS include: fines applicable for Administrative breaches for non-compliance up to a maximum fine of 50,000 BGN (€25,000); the power to compel the undertaking of concrete steps by the obligated persons in case of infringements; the power to issue written warnings and recommendations; the power (part of off-site inspections) to refuse endorsement of the internal rules of the reporting entities. Although the maximum level of fine does not appear sufficiently dissuasive, the Bulgarian authorities informed the evaluators that in practice every violation of the LMML or LMFTF carries a separate sanction and that the total level of fines might be much higher in case of multiple breaches, which would ensure both effectiveness and proportionality.
49. The licensing and registration process employed by the BNB and FSC are based on EU Directives and on best practices that takes into consideration the FATF Recommendations. Fitness and properness of both senior staff and capital providers is considered. There have been a number of instances whereby licences have been refused due to concerns over fitness and propriety and/or lack of transparency of capital.

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

50. In Bulgaria, 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.
51. All representatives met from the DNFBP sector showed a good awareness of the customer due diligence obligations, especially those concerning identification of customer, keeping of documents for a period of five years and high risk operations. Concerns remain about effectiveness in some instances, such as the verification of the incorporation documents. Although the requirement of enhanced due diligence measures was understood, the effective implementation of this obligation could not be demonstrated.
52. The number of STRs received from DNFBP is low and therefore more emphasis is needed to increase their awareness of AML/CFT matters.
53. Casinos are subject to the AML/CFT measures pursuant to the LMML. At the time of the on-site visit, 26 casinos were operating in Bulgaria. It should be noted that the opening of accounts is not permitted in Bulgarian casinos and the financial activities (exchange or remittance) would require

the licensing (or registration depending on the nature of activities) in accordance with the Law on Credit Institutions or the Law on Payment Services and Payment Systems.

54. The interviews with the private sector lead to the conclusion that more training and awareness regarding PEPs is required, especially for casinos and real estate agents. Some sectors had no cognisance about the enhanced due diligence obligations, while in other cases, approval from the management was not required.
55. Casinos are licensed and supervised under the Gambling Law (GL). In terms of market entry, the GL has several criteria to prevent the infiltration of criminals and their associates in shareholding or management of a casino, which are similar to those provided for the financial institutions. According to the Law, a license for organising a gambling game, shall not be issued if the owner, partner, shareholder with qualified interest, manager, member of a management or controlling body of a company or non-profit legal entity, who has been found guilty in intentional crime of general nature, has been declared bankrupt and any creditor has remained unsatisfied etc..
56. The DNFBP are subject to FID-SANS' supervision and inspection, which has a wide range of powers under the LMML and LMFT. The staff of the FID-SANS is well-trained and dedicated.
57. In order to determine the entities to be inspected, risk analyses are carried out by the FID-SANS, which are based on checks performed on the whole sector (e.g. changes in the number of the entities and the volumes of transactions). The adequacy of the internal AML/CFT rules that have been filed with the FIU, according to the LMML, is one aspect that is also taken into consideration when determining the entities to be visited on-site. By adopting a risk-based approach, the authorities focus on acknowledged risks and an effective allocation of resources.
58. However, due to the extension of the entities supervised by the FID-SANS, a full and sole outreach by it is virtually impossible, and the FIU may not have sufficient resources to fully supervise all subject entities. Therefore, the active support of the general supervisors appears to be necessary in the process.

6. Legal Persons and Arrangements & Non-Profit Organisations (NPOs)

59. NPOs in Bulgaria can be established as associations or foundations. The Law on NPOs governs the establishment, registration, structure, activities and dissolution of non-profit legal persons. The Law defines that the legal personality of the NPO shall originate as from its registration in the register of non-profit legal persons within the jurisdiction of the district court at the seat of the legal person. All NPOs are registered in the local register. In addition, the NPOs for public benefit are registered in a consolidated, national database.
60. In 2012 a Working group was established at the Ministry of Justice with the task of considering the necessity for amendment of the Law on NPOs, as well as elaborating concrete proposals for draft provisions in order to address the relevant recommendations of the 3rd round MONEYYVAL report. The risk analysis concerning the NPOs was conducted by FID-SANS and the identification of threats for TF abuse is a part of that assessment.
61. A number of indicators have been primarily considered as risky according to the Methodological Guidelines for Conducting Risk Analysis of Non-profit legal entities in Bulgaria (in connection with the geopolitical indicators and bearing in mind the international practice in the field). The so-called radical religious sects and movements are perceived as potentially risky when coupled with socio-economic factors.
62. NPOs conducting activities to the private benefit are obliged to draw up annual activity reports and annual financial reports under the Law on Statistics and the Law on Accountancy. By 31 March each year both NPOs for public and for private benefit, regardless of whether they carry out economic activity or not, are obliged to present to the National Statistical Institute an annual activity report containing statistical summaries and accounting documents. Information on persons who own, control or direct the activities, is not fully maintained and made publicly available for any of the types of the NPOs.

63. The FIU supervises off-site and on-site the NPOs' compliance in AML/CFT area, even if the supervisory powers are provided only in the LMML and not in LMFT. According to data provided by the authorities, there were 1,023 off-site evaluations of NPOs between 2008 and 2012 and 8 on-site visits in the same interval. Fines and written warnings were the main sanctions imposed upon the NPOs following the supervisory activity.

7. National and International Co-operation

64. Cooperation and coordination between the FIU, law enforcement authorities and supervision authorities are carried out pursuant to the LMML and LMFT as well as through the various permanent and ad hoc groups pursuant to the instructions for cooperation between the institutions involved in the prevention and fight against money laundering and terrorist financing.

65. Instructions for cooperation have been signed by almost all stakeholders with their respective counterparts, thus creating a very dense network of mutual relationships which are strictly legally defined. According to the documents provided to the evaluation team SANS, organisation part of which is the FIU has issued seven signed instructions and the Ministry of Interior has issued 11 eleven signed instructions. Following the interviews held on-site, the evaluators considered that these rules or instructions were widely used by competent authorities. Every interlocutor met on-site had a copy of Instructions signed by his/her institution to refer to when asked about national cooperation.

66. The newly established specialised prosecutor's office for organised crime has established cooperation with FID-SANS. It has started with three cases in 2012 that helped to discover predicate offences of organised criminals which were the basis for money laundering offences.

67. The LMML empowers FID-SANS to exchange information internationally with its counterparts, as well as with other organisations. The RILSANS further stipulates the competence of FID-SANS to exchange information on cases of suspicion of money laundering and financing of terrorism with the financial intelligence units and with other state bodies with relevant competence, under the terms and order established under the LMML. According to the authorities, the Bulgarian FIU is able to provide the requested assistance in a rapid, constructive and effective manner. This statement has been endorsed by the feedback received from FIUs from other countries.

68. Similar powers of information exchange are valid for the BNB, FSC and the law enforcement authorities. There are no legal provisions in Bulgaria that would prevent or unduly restrict exchange of information by the Supervisory authorities. However, making inquiries on behalf of foreign counterparts is not always specifically provided. The Supervisory authorities shall use the received information only for the purposes for which it has been provided and shall not disclose or provide it to third parties, unless the obligation is provided by the law.

69. There are no provisions enabling FSC and BNB to perform enquiries on behalf of foreign counterparts. In practice, such inquiries are done through the FIU, but there is no provision in law or regulations in this regard. One request was made by a foreign authority for the BNB via FID-SANS. The practical application of such an option could not be demonstrated in the case of the FSC. The Bulgarian authorities are encouraged to take measures to permit BNB and FSC to make direct inquiries on behalf of foreign counterparts, or at a minimum, to provide for such enquiries to be performed through the FIU.

8. Resources and statistics

70. The total number of the staff of FID-SANS is 38 officials as per the internal structure but currently only 29 officials are employed. In 2011 there were 3 new officials appointed and in 2012 there were another 3 newly appointed officials. This shows a steady increase in the workforce of the FID-SANS during past couple of years, which is appreciated by the evaluators. The FIU employees appeared to the evaluation team professional and motivated.

71. Although the premises of the FIU are separated and protected within the whole structure of SANS, the evaluation team is of the opinion that the space allocated to FID-SANS is insufficient,

even for the existing number of employees. All employees of the FIU, including heads of departments work in overcrowded offices.

72. The BNB has established the SSD for the supervision of banks for compliance with the LMML and the LMFT. This directorate is separate from the directorate performing on-site prudential supervision, the Directorate performing off-site prudential supervision and the Directorate involved in drafting the methodology for prudential supervision. One additional inspector was recruited to the Special Supervision Directorate in 2011. The SSD staff involved in the AML/CFT supervision has relevant expertise to supervise the banks and relevant financial institutions for compliance with the AML/CFT regulations.
73. The FSC has integrated its AML/CFT responsibilities into its overall supervisory framework. As such, there is no dedicated resource or pool of expertise available. During the on-site interviews, the NRA, in its capacity of supervisory authority for exchange offices, demonstrated a marginal awareness and involvement for AML/CFT issues.
74. FID-SANS collects and keeps various statistics on all aspects of its work. These statistics are provided for in the respective parts of this report. They are comprehensive and informative. These statistics are also published in the annual report.

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 Bulgaria. <i>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.</i>		
Forty Recommendations	Rating	Summary of factors underlying rating ¹
Legal systems		
1. Money laundering offence	Largely Compliant	<ul style="list-style-type: none"> • The definition of “<i>property</i>” does not include indirect proceeds; • Not all the designated categories of predicate offences are covered by the CC (piracy, insider trading and market manipulation) and some aspects of terrorist financing; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • The results with regard to number of investigations, versus cases resulted in convictions does not seem proportionate; low number of ML investigations compared with the number of investigations instigated for the predicate offences; • Uneven understanding of “<i>property</i>” among the various authorities
2. <i>Money laundering offence Mental element and corporate liability</i>	Largely Compliant	<ul style="list-style-type: none"> • <i>Liability of the legal persons remains limited to administrative liability.</i> • <i>Almost half of the final convictions on money laundering were dealt with suspended sentences of imprisonment, fact which raises questions with respect to the compliance with the requirements of “effective and dissuasive sanctions”.</i> • <i>Difficulties of proof of intention need further addressing in guidance or legislation to address effectiveness issues.</i>
3. Confiscation and provisional measures	Partially Compliant	<ul style="list-style-type: none"> • The deficiencies in criminalisation of ML, predicate offences to ML, as well as TF may limit the ability to seize and to confiscate; • Confiscation of property held or owned by third

¹ These factors are only required to be set out when the rating is less than Compliant.

		<p>parties is restrictive (in case of instrumentalities and object of crime);</p> <ul style="list-style-type: none"> • Property subject to security measures is not explicitly defined under the relevant legislation; • The rights of bona fide third parties are not protected in all circumstances; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Limited effectiveness of the general confiscation regime.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	Compliant	
5. Customer due diligence	Largely Compliant	<ul style="list-style-type: none"> • The definition of beneficial owner does not clearly comprise <u>ultimate ownership</u> although it covers indirect control; • In certain cases, the LMML requires no identification instead simplified due diligence measures; • No explicit prohibition for not applying simplified due diligence when suspicious of ML and FT arises; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Understanding of the BO in case of natural persons not fully demonstrated; • Information regarding profession only to be collected upon risk assessment may impact effectiveness of c.5.7; • Lack of sources for the verification of data of foreign customers and beneficial owners; • Concerns about implementation of enhanced customer due diligence, particularly in the non-banking financial sector.
6. Politically exposed persons	Largely Compliant	<ul style="list-style-type: none"> • Approval of an official at a senior managerial position before establishing, business relations with PEP's or related persons is not required; • Approval of an official at senior managerial position before continuing business relations of a client that has become a PEP is not required; • The concept of "clients" that are considered

		PEPs should also include beneficial owners of natural persons.
7. Correspondent banking	Largely Compliant	<ul style="list-style-type: none"> • The requirement to gather sufficient information about the respondent institution is not extended to all financial institutions to cover the similar to the correspondent banking relationships; • The special measures apply only to non-EU correspondent relationships; • Approval of an official at a senior managerial position before establishing a corresponding banking relationship is not required.
8. New technologies and non face-to-face business	Compliant	
9. Third parties and introducers	Compliant	
10. Record keeping	Partially Compliant	<ul style="list-style-type: none"> • The requirement to keep records of all the components of transaction records covers only banks transfers and money remittance payments and does not apply to other financial institutions; • No provision to ensure that transaction records should be sufficient to permit reconstruction of individual transactions; • There is no obligation to keep the documents for more than five years if requested by a competent authority for all FI.
11. Unusual transactions	Partially Compliant	<ul style="list-style-type: none"> • There is no specific requirement for financial institutions to pay special attention to all complex, unusual large transactions, or unusual pattern of transactions, that have no apparent or visible economic or lawful purpose; • There is no specific obligation to set forth the findings in writing and to keep them available for five years.
12. DNFBPS – R.5, 6, 8-11	Partially Compliant	<p><i>Applying Recommendation 5</i></p> <ul style="list-style-type: none"> • Technical deficiencies detected under R.5 are applicable to DNFBPS; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Lack of full awareness regarding the obligations of verification of identification and of the source of funds, except accountants and auditors; • Concerns remain in regards ECDD;

		<p><i>Applying Recommendation 6</i></p> <ul style="list-style-type: none"> • Technical deficiencies identified under R.6 are applicable; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • In practice, no managerial approval is required; • Some sectors have insufficient knowledge regarding PEPs and respective enhanced due diligence measures; <p><i>Applying Recommendation 9</i></p> <ul style="list-style-type: none"> • N/A <p><i>Applying Recommendation 10</i></p> <ul style="list-style-type: none"> • Deficiencies underlined under R.10 apply equally to DNFBPs; <p><i>Applying Recommendation 11</i></p> <ul style="list-style-type: none"> • Lack of requirement to pay special attention to complex and unusually large transactions, as well as to unusual patterns of transactions, which have no apparent or visible economic or lawful purpose.
13. Suspicious transaction reporting	Largely Compliant	<ul style="list-style-type: none"> • Shortcomings identified in criminalisation of ML impact on reporting obligations; • Reporting obligation is restricted to proceeds from crime that are used only in order to conceal their unlawful origin; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Effectiveness of the reporting regime in case of the non-banking financial sector not fully demonstrated.
14. Protection and no tipping-off	Largely Compliant	<ul style="list-style-type: none"> • <i>Complete protection from all civil liability is missing for reporting entities.</i>
15. Internal controls, compliance and audit	Largely Compliant	<ul style="list-style-type: none"> • <i>There is an obligation to develop CFT internal procedures, policies and control programmes, however, these programmes were not fully understood by some of the financial institutions. Further development and refining of these programmes are recommended (effectiveness).</i> • <i>For non-bank financial institutions there is no enforceable requirement to screen all employees.</i> • <i>The AML/CFT audit function should be further developed and elaborated to include controls and testing.</i>

16. DNFBPS – R.13-15 & 21 ²	Partially Compliant	<p><i>Applying Recommendation 13</i></p> <ul style="list-style-type: none"> Weaknesses that applied to the financial sector regarding reporting obligation also apply to DNFBPs; Effectiveness not demonstrated; <p><i>Applying Recommendation 21</i></p> <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> Low level of awareness across DNFBP sector concerning the jurisdictions that do not or insufficiently apply FATF Recommendations; Not all of them seemed fully aware of the counter-measures they need to apply in case of countries that do not apply or insufficiently apply the FATF Recommendations.
17. Sanctions	Largely Compliant	<ul style="list-style-type: none"> Maximum fine of BGN 50,000 not dissuasive enough.
18. <i>Shell banks</i>	<i>Compliant</i>	
19. <i>Other forms of reporting</i>	<i>Compliant</i>	
20. <i>Other DNFBP and secure transaction techniques</i>	<i>Compliant</i>	
21. Special attention for higher risk countries	Largely Compliant	<p><u>Effectiveness</u></p> <ul style="list-style-type: none"> The FI were not fully clear what counter-measures applicable in case of countries that do not of not fully apply the FATF Recommendations.
22. Foreign branches and subsidiaries	Largely Compliant	<ul style="list-style-type: none"> <i>Provision should be made that where minimum AML/CFT requirements of the home and host country differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.</i>
23. Regulation, supervision and monitoring	Largely Compliant	<ul style="list-style-type: none"> The National Revenue Agency does not maintain adequate market entry procedures for the exchange bureau; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> The National Revenue Agency, in its capacity of supervisory authority for exchange bureaux, demonstrated a marginal awareness and involvement

² The review of Recommendation 16 has taken into account the findings from the 3rd round report on Recommendations 14 and 15.

		<p>in AML/CFT issues;</p> <ul style="list-style-type: none"> • Effective supervision on Post Offices not fully demonstrated.
24. DNFBPS - Regulation, supervision and monitoring	Partially Compliant	<ul style="list-style-type: none"> • Lack of requirement to verify the source of funds and the veracity of the declarations given when licensing a casino; • The threshold concerning the legal requirement to prevent criminals from holding a significant or controlling interest in a casino seems high; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • The requirements to verify the source of funds and the veracity of the declarations given when licensing a casino could not be assessed due to late adoption of the respective Ordinance; • Low awareness on AML/CFT matters of most of the general supervisors, negatively impact their ability to support the FID-SANS in their supervisory activity; • no monitoring of “<i>fit and proper</i>” criteria on managers or casino owners after the incorporation; • Advocates remain unsupervised in practice due to lack of involvement of the SROs.
25. Guidelines and Feedback	Largely Compliant	<ul style="list-style-type: none"> • <i>In some industries there seem to be a lack of awareness of the methodological guidelines available (efficiency issue).</i> • <i>Although useful, many of the guidelines appear to be generic and not tailored to the particular sector (efficiency issue).</i> • <i>Consideration should be given to more specific feedback outside the banking sector.</i> • <i>For DNFBP ongoing guidance on trends and typologies of AML//CFT should be considered</i> • <i>Further feedback should be considered for DNFBP – especially on a case-by-case basis for STRs filed</i>
Institutional and other measures		
26. The FIU	C	
27. Law enforcement authorities	Largely Compliant	<ul style="list-style-type: none"> • <i>The overall effectiveness of the law enforcement response to ML investigation is questionable.</i>
28. Powers of competent authorities	Compliant	

29. Supervisors	Compliant	
30. Resources, integrity and training ³	Largely Compliant <i>(composite rating)</i>	<ul style="list-style-type: none"> • FID-SANS (in its capacity as FIU) material resources insufficient; • Not all the positions of the FID-SANS are competed with employees; • The supervisory resources of the Financial Supervision Commission (FSC) appear to be more focused on prudential issues. There are no targeted inspections on AML/CFT issues. • Resources provided to the FIU, as currently the main policy coordinator, are not sufficient.
31. National co-operation	Largely Compliant	<ul style="list-style-type: none"> • Interagency council for monitoring National Strategy, review the system, and coordination of the system as a whole not yet created.
32. Statistics ⁴	Largely Compliant <i>(composite rating)</i>	<ul style="list-style-type: none"> • Interagency council for monitoring National Strategy, review the system, and coordination of the system as a whole not yet created • The review of results and outputs of the AML/CFT systems (and the effectiveness of the systems as a whole) is not a regular and systematic process • FSC is encouraged to keep statistics on the scope of international requests to identify AML/CFT requests
33. <i>Legal persons – beneficial owners</i>	Largely Compliant	<ul style="list-style-type: none"> • <i>Ownership of the bearer shares not verifiable at the Commercial Register or any other register.</i>
34. Legal arrangements – beneficial owners	N/A	
International Co-operation		
35. Conventions	Largely Compliant	<ul style="list-style-type: none"> • The implementation of Vienna and Palermo Conventions are not fully observed; • The TF offence is not fully compliant with the TF Convention; • Limitations for application of confiscation do exist.

³ 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.

⁴ The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 27, 37, 38 and 39.

36. Mutual legal assistance (MLA)	Largely Compliant	<ul style="list-style-type: none"> • The shortcomings identified with respect to the provisional and confiscation measures may have a negative impact on MLA requests; • The application of dual criminality may limit Bulgaria's ability to provide assistance due to the shortcomings identified with respect of R1.
37. Dual criminality	Compliant	
38. MLA on confiscation and freezing	Largely Compliant	<ul style="list-style-type: none"> • Reservations remain with respect to enforcing foreign confiscation orders related to insider trading and market manipulation, as these offences are not properly criminalised in the national legislation. • Another issue is the lack of a special assets forfeiture fund.
39. Extradition	Compliant	
40. Other forms of co-operation	Largely Compliant	<ul style="list-style-type: none"> • BNB cannot exchange information with non-EU counter-parts in the absence of an MoU; • FSC cannot exchange information with foreign counter-parts in the absence of an MoU; • No provisions enabling BNB and FSC to perform direct enquiries on behalf of foreign counter-parts; <p><i>Effectiveness</i></p> <ul style="list-style-type: none"> • FSC ability to exchange information with foreign counter-parts not demonstrated.
Nine Special Recommendations		
SR.I Implement UN instruments	Partially Compliant	<ul style="list-style-type: none"> • The FT offence is not fully in line with FT Convention; • UNSCR 1267 and 1373 are not fully implemented.
SR.II Criminalise terrorist financing	Partially Compliant	<ul style="list-style-type: none"> • Not all Acts defined in the treaties listed in the Annex to the Convention are criminalised; • Art. 108a para 1 of the CC prescribes the purposive element for the TF offence, for all the offences, including the ones specified under the Conventions and Protocols listed in the Annex to the TF Convention; • TF offence does not cover threatening/forcing a competent authority, a member of the public or a foreign state or international organisation to perform or omit from doing <i>any act</i>;

		<ul style="list-style-type: none"> • The term “fund” is not defined under the criminal legislation and here is still no explicit coverage of funds, which are to be used in full or in part; • No criminalisation of the act of providing or collecting funds for any purpose; • Criminal liability is not applied with regard to legal persons.
SR.III Freeze and confiscate terrorist assets	Partially Compliant	<ul style="list-style-type: none"> • The procedures for amending the lists of designated entities may impede timeliness; • The freezing do not extend to funds controlled, directly or indirectly by designated persons; • Deadlines for claiming the listing by third parties acting in good faith may impact the rights of bona fide third parties; • No specific guidance on freezing requirements available for the private sector; • Deficiencies identified under R3 cascade on c.III.11; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Communication to the private sector is deficient.
SR.IV Suspicious transaction reporting	Largely Compliant	<p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • The effectiveness of the reporting regime has not been proven.
SR.V International co-operation	Largely Compliant <i>(composite rating)</i>	<ul style="list-style-type: none"> • The shortcomings identified with respect to the provisional and confiscation measures may have a negative impact on MLA requests; • The practical application of dual criminality may limit Bulgaria’s ability to provide assistance due to the shortcomings identified with respect to the TF offence; • No timeframes which would enable to determine whether the requests are being dealt in a timely manner; • Shortcomings in the terrorist financing offense described in SR.II may affect the implementation in terrorist financing cases; • Technical shortcomings under R40 apply.
SR.VI	Compliant	
SR.VII	Largely Compliant	<ul style="list-style-type: none"> • The implementation and effectiveness of the EU Regulation could not be assessed.

SR.VIII Non-profit organisations	Largely Compliant	<ul style="list-style-type: none"> • No obligation for keeping information on persons who own, control or direct the activities of NPOs.
SR.IX Cross Border declaration and disclosure	Largely Compliant	<ul style="list-style-type: none"> • No power to restrain assets in case of ML or TF suspicions; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Issues on the effective application of SRIII requirements; • Signs alerting travellers on obligation to declare cash on borders not visible enough negatively impact effectiveness of the declaration system.