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Anti-Money Laundering and Combating the Financing of Terrorism

ROMANIA

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LIST OF ACRONYMS USED

AML	Anti-Money Laundering
AML/CFT Law	Law 656/2002
Art.	Article
CC	Criminal Code
CCP/CPC	Code of Criminal Procedure
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CPC	Criminal Procedure Code
CSA/ISC	Insurance Supervisory Commission
CSSPP	Private Pension Supervision Commission
DNFBPs	Designated Non-Financial Businesses and Professions
EC	European Community
EEA	European Economic Area
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GO	Governmental Ordinance
GPO	General Prosecutor's Office
GPOHCCJ	General Prosecutor's Office by the High Court of Cassation and Justice
IN	Interpretative Note
IT	Information technologies
ML	Money Laundering
MLA	Mutual legal assistance
NBR	National Bank of Romania
NC	Non-compliant
NFI/NBFI	Non-banking Financial Institution
NOG	National Office of Gambling
NPO	Non-Profit Organisation
NSC	National Securities Commission
OECD	Organisation for Economic Co-operation and Development

PAD	Preliminary Analysis Department
Para.	Paragraph
PC	Partially compliant
PEP	Politically Exposed Persons
RIS	Romanian Intelligence Service
RON/Lei	Romanian currency
SR	Special recommendation
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
UN	United Nations

4th Round Mutual Evaluation of Romania

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 Romania at the time of the 4th on-site visit (27 May to 1 June 2013) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of assessments is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which Romania received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round 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 Romania.

2. Key findings

2. **Romania has taken several important steps to improve compliance with the FATF Recommendations and has registered progress in several areas since the 3rd round evaluation.** Several pieces of legislation were amended and new acts, ordinances and government decisions were issued to address deficiencies identified in the 3rd round evaluation, to implement the requirements of international legal instruments, and notably to transpose the relevant European Union legislation.

3. **Many indicators suggest that Romania 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 at the eastern border of the European Union, as it is both part of the Balkan route and of the Euro-Asiatic route. Romania's economy remains to a large extent cash based and the size of the shadow economy ranges approximately 30% of the GDP. Proceeds of crime generated in Romania are estimated to be a high percentage of the GDP, primarily derived from tax evasion and smuggling. Though Romania is not a major financial hub and its exposure to foreign proceeds of crime may be limited, there are nevertheless indicators suggesting that organized criminal groups from the neighboring countries and Italy invest in Romanian assets. Romanian organised criminal groups in Romania participate in a wide range of criminal activities in Europe ranging from prostitution and extortion to drug trade and have collaborated to establish international criminal networks for internet fraud activities and related money laundering schemes. Romania has not yet conducted a money laundering (ML)/financing of terrorism (FT) risk assessment.

4. The core elements of Romania's anti-money laundering and countering the financing of terrorism (AML/CFT) regime are established in the provisions of several specialized pieces of legislation, including notably the AML/CFT Law 656/2002 as updated and supplemented by several secondary legislative implementing acts, the Law on the Prevention and Repression of Terrorism 535/2004 as amended¹, as complemented by the Criminal and Criminal Procedure Codes², and sectoral regulations, orders and decisions on AML/CFT requirements issued by the supervisory authorities. Numerous positive changes have occurred since the third round as regards the institutional set up of the authorities responsible for the registration, licensing and supervision of several financial and non-financial institutions, with new structures/institutions established for the banking sector, casinos, currency exchange offices and the investment, insurance and pension sectors.

5. **Despite the changes made since the last evaluation, the AML/CFT framework is not yet fully in line with the FATF Recommendations.** The legal framework and its implementation fall short of the international standards, regarding inter alia certain customer due diligence requirements, the framework related to suspicious transactions, internal controls, compliance and audit,

¹ A new FT offence is in force (Law no. 187 from 24 October 2012, in force from 1st of February 2014).

² Since the 1st of February 2014, a new Criminal Code and Criminal Procedure Code are in force, representing a substantial modernisation of the Romanian legal framework.

requirements to give special attention to higher risk countries. Romania should as a priority clarify and consolidate its AML/CFT legislation, notably by making necessary amendments to the AML/CFT Law and implementing acts as recommended in the report.

6. **Furthermore there remain a number of concerns about the level of implementation, including in respect of the AML/CFT supervisory action by the various supervisory authorities and the sanctioning for non-compliance with the requirements.** Overall, banks and, to a certain extent, non-bank financial institutions appear to have an appropriate understanding of the applicable requirements under the national AML/CFT framework. Implementation of the AML/CFT requirements by designated non-financial businesses and professions (DNFBPs) was not sufficiently demonstrated. Resources of all authorities need to be increased and supervisory action be strengthened to ensure that both financial and non-financial institutions are adequately implementing the AML/CFT requirements

7. **Whilst investigations, indictments and convictions of money laundering offences are taking place and overall results have positively increased, there is evidence that the implementation of the ML offence could be further strengthened.** This would involve taking additional measures to address the structural and capacity deficiencies in the law enforcement and judicial process and setting out clear priorities in criminal policy instruments in respect of the necessity to adequately investigate and prosecute ML offences, with a focus on serious, organised and transnational crime and major proceed-generated offences.

8. **Romania has improved its ability to freeze, seize and confiscate property, and the introduction of provisions on extended confiscation and related implementing measures, if consistently implemented, will undoubtedly reinforce the confiscation regime.** The system has clearly started to achieve effective outcomes, notably as regards the application of provisional measures and the amounts of assets frozen and seized.

9. The institutional arrangements of the **National Office for the Prevention and Countering of Money Laundering, the Romanian financial intelligence unit (FIU), clearly need revising** and several additional efforts and changes are required to ensure that the FIU can fully and effectively perform its core functions.

10. **As regards requirements related to the physical cross border transportation of currency, the effectiveness of the whole system raises serious concerns which should be addressed as a matter of priority.** There have been no changes, though previously recommended, to the legal framework in respect of the powers of competent authorities in this field, and the limited results achieved by authorities, both in terms of detection and sanctioning are surprising.

11. **Further efforts are also required to ensure that the general AML/CFT coordination mechanism in place is effectively reviewing the Romanian AML/CFT system and its effectiveness on a regular basis,** that the changes to be made to the legal and institutional framework, the AML/CFT strategy and related policies are adequately identified and address the risks and vulnerabilities of the system, and that co-operation or coordination mechanisms at the operational level are being used effectively.

3. Legal Systems and Related Institutional Measures

12. Romania has made substantial progress in bringing the money laundering offence in line with relevant international standards and in strengthening its application. The High Court of Cassation and Justice has addressed in several judgments two important legal questions which were dividing practitioners and clarified that there is no need to require a prior or simultaneous conviction for a predicate offence in order to obtain a conviction for money laundering and respectively the issue of self-laundering. This should impact positively on a more uniform interpretation and application by court. The number of investigations, indictments and convictions achieved show a clear increasing trend compared with the situation at the time of the previous evaluation. Despite various measures taken, there remain important backlogs in the judicial system, coupled with human resources insufficiencies which impact on the implementation of the ML offence.

13. As regards the financing of terrorism offence, at the date of the 4th round evaluation the legal situation had remained unchanged comparatively with the 3rd evaluation round, and as such the FT offence continued to suffer from several technical deficiencies³. All FT investigations since 2008 resulted from disseminations of cases from the Financial Intelligence Unit, with provisional measures being applied in one case. There have been no prosecutions or convictions for terrorism financing. It remained unclear whether the results achieved reflect adequately the level of FT risk in Romania. In cases where indictments could not be secured, Romania has opted to apply preventively the administrative procedures under the Terrorism Law to expel “undesirable” foreign persons from its territory, and has done so successfully in several cases.

14. The legal framework governing provisional and confiscation measures is comprehensive and has been strengthened since the third round. It includes powerful tools, to deprive criminals of proceeds of crime, if they are effectively used. The recent introduction of the extended confiscation regime is undoubtedly to be commended and further legal and institutional measures shall be required to establish relevant mechanisms and norms for the adequate asset management of seized property. The results of the confiscation regime must be underscored, with high figures in respect of seizures ordered and confiscations achieved. These results could be certainly increased if the law enforcement authorities continue their efforts to proactively “follow the money” and if adequate resources are made available, notably by increasing the number of financial investigators to support investigations.

15. The legal framework for implementing the United Nations (UN) Security Council Resolutions, as set out in the AML/CFT legislation, the Government Emergency Ordinance and the sectoral secondary legislation, appears to be generally sound and was subject to various developments to improve the mechanisms in place. Additional improvements are required, particularly to ensure that EU residents are subject to freezing requirements, and that the freezing powers of the National Agency for Fiscal Administration are broad enough to freeze all categories of funds, assets or resources. Implementation of the requirements is uneven among obliged entities and additional awareness raising measures should be taken, including by providing further guidance on the practical implementation of the freezing requirements.

16. Since the third evaluation round, the FIU has implemented a number of measures to improve the effectiveness and efficiency of its analytical function, to address the significant backlog of suspicious transaction records (STRs) previously identified and to manage the substantial volume of STRs received. Given the increasing number of STRs received, a Preliminary Analysis Department (PAD) was created in 2010, to complement the work of the existing (three) departments of financial analysis. A risk matrix has been developed, and subsequently refined, and it assists the selection process of cases, in particular higher risk cases requiring in-depth financial analysis. This development has facilitated and enhanced the management of the significant number of reports received by the FIU and has also impacted positively on the quality of analytical reports disseminated to the law enforcement authorities. The large majority of cases analysed by the FIU relate to ML connected to tax evasion and tax fraud, suggesting that the focus on the analysis of ML cases related to predicate offences involving organised crime may perhaps not be sufficiently developed. There remain concerns regarding the performance of its analytical function, the number of cases disseminated which have resulted in an indictment, the lack of analytical tools and the negative impact of limited human resources. The time limit set in legislation does not meet the criterion requiring the FIU to have access to financial information on a timely basis.

17. Following the analysis of a case, the Director of the Analysis and Processing Information Directorate transmits the case to the Board of the FIU which is composed of representatives of a number of government authorities, including the Ministry of Internal Affairs, the Ministry of Public Finances, the Ministry of Justice, the General Prosecutor’s Office, the National Bank of Romania, the Court of Auditors, as well as a representative of the Romanian Bankers Association. The Board is the decision-making organ of the FIU. It plays a key role in the analysis and dissemination functions of

³ Romania has enhanced its CFT requirements through changes to the FT offence which entered into force after the evaluation (1st of February 2014).

the FIU. Since the last evaluation, a government decision was issued on the functioning and organisation of the FIU and several FIU orders detail the operational procedures for the recruitment of staff of the FIU, the organisation and proceedings of the meetings of the Board of the FIU and the operational procedures to be followed by all departments of the FIU. The members of the Board are subject to confidentiality requirements and some provisions cover aspects related to potential conflicts of interest and situations where a member would be suspended from the decision-making processes. Nonetheless, the current institutional arrangements raise several concerns regarding the FIU's operational independence and autonomy, and the report recommends several important changes to be made in order to ensure that Romania meets adequately the requirements set out in Recommendation 26.

18. Several law enforcement authorities have competence to investigate ML/FT offences, including the National Anticorruption Directorate, the Directorate for the Investigation of Organised Crime and Terrorism, and the Prosecutor's Offices attached to the Appellate Court and Tribunals and the Fraud Investigation Department of the Judicial Police. ML/FT investigations are initiated either following the receipt of a notification by the FIU or at the initiative of each investigating body. It appears that, although the figures of investigations and prosecutions have increased comparatively with the situation under the third evaluation round, investigative efforts to tackle ML appear to be fragmented and have led to modest results. The effectiveness of ML investigations appears to be impacted also by the system in place for the attribution of competences between law enforcement authorities, in the absence of a mechanism to ensure prompt verification of competence at the initial stage of the investigation.

19. The Romanian Customs Authority applies Regulation (EC) No. 1889/2005 on control of cash entering or leaving the Community which applies at the external border of the EU. The national legislation does not appear to adequately empower the Customs Authority to stop or restrain currency or bearer negotiable instruments upon discovery of a false declaration or failure to disclose, in order to ascertain whether the funds are related to ML/FT. The Customs Authority does not conduct any administrative investigations to determine the origin and destination of cash which is physically transported at the external borders of the European Union. Additionally, the penalties for such infringements do not appear to be proportionate, dissuasive and effective. Although the Customs Authority is required to submit a report to the FIU in all cases where a suspicion of ML/FT is identified, only a few such reports were submitted to the FIU in the last five years. The statistics provided by the Customs Authority show that a very small number (35 cases) of undeclared cash or false declaration were detected in the period between the end of 2008 and the end of 2012. Considering these results, there are serious concerns about the ability of the Customs Authority to detect the transport of cash through the external borders and any related action undertaken in this context. A lack of progress since the third evaluation round calls into question the authorities' commitment to develop appropriate mechanisms to implement the requirements related to the physical cross-border transportation of currency and bearer negotiable instruments, especially in light of the significant vulnerability of the Romanian financial system to cash based money laundering.

4. Preventive Measures – Financial Institutions

20. Romania has achieved progress in many areas on issues raised in the 3rd round evaluation report in respect of the preventive requirements, by adopting several changes to its AML/CFT legal framework and issuing several implementing norms applicable to all subject entities. In addition, competent regulatory or supervisory authorities have also issued sectoral regulations, orders, decisions or norms to clarify further the AML/CFT provisions. The list of entities subject to AML/CFT requirements is broader than the FATF requirements.

21. The legislation, particularly the AML/CFT Law, the AML/CFT Regulation (Government Decision 594/2008) and, with varying level of comprehensiveness, the sectorial regulations provide the framework for implementation of customer due diligence (CDD) and related requirements. There are certain gaps, such as the limitation of the definition of linked transactions to those carried out during the same day, the requirements related to the identification and verification of the beneficial

owner being treated differently in the various pieces of legislation, the mandatory language in providing for application of simplified CDD where the customer is from a Member State or from an equivalent third country, etc.

22. A general issue having nexus not only to Recommendation 5, but also to other recommendations (such as R.9, R.21, R.22) is that in cases when obliged entities are required to satisfy themselves that third countries (states) and counterparties situated therein are: a) subject to AML/CFT requirements consistent with the FATF recommendations and/ or home country requirements, and b) supervised for compliance with those requirements, the Romanian legislation is not specific enough to provide for an explicit framework of equivalence standards (e.g. FATF Recommendations and/or Romanian AML/CFT legislation, as applicable), criteria (e.g. a comprehensive set of AML/CFT requirements as opposed to CDD and record keeping only), and verification (e.g. availability of supervision to check compliance with all applicable AML/CFT requirements).

23. Overall, banks and, to a certain extent, non-bank financial institutions appear to have an appropriate understanding of the applicable requirements under the national AML/CFT framework. This is however not the situation with some payment institutions. Also, during discussions with credit and financial institutions it was clear that the implementation of the beneficial owner requirements remains challenging.

24. Requirements related to politically exposed persons (PEPs) also include gaps in respect to the categories of persons defined. PEP requirements do not provide for application of enhanced CDD measures to foreign PEPs which are resident in Romania. On the other hand, although the legislation requires application of enhanced CDD measures for foreign PEPs only, the usual practice for many of the financial institutions met on-site is that both foreign and domestic PEPs are subject to comprehensive scrutiny at the establishment and in the course of business relationships.

25. Requirements under Recommendation 7 do not apply to financial institutions in/from EU member states or within the European Economic Area (EEA). The measures required for establishment of cross-border correspondent relationships do not explicitly set out that these measures should include determining whether the respondent institution has been subject to a ML/FT investigation or regulatory actions, and ascertaining that the respondent institution's AML/CFT controls are adequate and effective. In practice Romanian banks do not open or operate payable-through accounts for credit institutions from third countries.

26. Record keeping requirements are comprehensive and are generally observed. However there is no explicit requirement for credit and financial institutions to maintain business correspondence for at least five years following the termination of an account or business relationship. Moreover, the requirement to ensure that all customer and transaction records are available on a timely basis to domestic authorities upon proper authority is somewhat limited. Secrecy provisions do not inhibit implementation of FATF standards.

27. The definition of acceptable third parties to be relied upon for CDD purposes refers to credit and financial institutions "subject to mandatory professional registration for performing of the activity recognized by law", which does not appear to amount to requiring that Romanian obliged entities satisfy themselves that the third party is regulated and supervised in accordance with applicable FATF Recommendations. Nonetheless, on the effectiveness side, there are positive factors certainly mitigating the risks related to third parties, e.g. third party decisions are usually based on the 'white list' under the Common Understanding, the use of third parties other than those from EU/EEA is not a usual practice, and there is certain practice in place for competent authorities in determining in which countries the third party that meets the conditions can be based.

28. The legislation in force does not explicitly require credit and financial institutions to give special attention to business relationships and transactions with persons in/from countries which do not or insufficiently apply the FATF Recommendations. It is furthermore limiting on CDD, record keeping and supervision aspects. Moreover, there is no explicit requirement that financial institutions

examine, as far as possible, the background and purpose of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations. Nonetheless, Romania has the ability to apply countermeasures and does so with regard to countries not sufficiently applying FATF Recommendations on a regular basis.

29. The reporting obligation as set out in the AML/CFT suffers from a number of inconsistencies and deficiencies. In particular, there is no explicit requirement to report suspicions that funds are the proceeds of a criminal activity and suspicions that funds are linked or related to terrorism, terrorist acts or by terrorist organisations. Suspicious Transaction Reports (STRs) are to a very large extent reported by banks. This may potentially be the result of a combination of factors including a lack of awareness by reporting entities in the non banking and DNFBP sectors of AML/CFT issues and the manner in which the reporting requirement is in legislation. The low number of reported attempted transactions compared to the overall number of STRs seems to indicate that in a majority of cases STRs are reported only after the transaction has been carried out. There remained also questions as to the quality of reports submitted by the reporting entities and their understanding of the reporting requirements. The FT reporting seems to be widely understood by reporting entities as referring only to the implementation of the international sanctions regime.

30. Both in case of ex ante and ex post reporting, submission of suspicious transaction reports is explicitly and directly predicated on the availability of suspicions whether a transaction “has the purpose of money laundering or terrorism financing”. Strictly speaking, this could be interpreted in a way that the protection of reporting entities and their staff would not be available if they report suspicions unrelated to money laundering or terrorist financing (e.g. to an offence other than ML/FT, or to an unusual conduct without knowing precisely what the underlying criminal activity was). Moreover, the language of the provision providing direct prohibition from warning the customers about STRs filed with the FIU, does not appear to fully convey the idea of the prohibition to disclose (“tip off”) either by directly warning the customers or by informing them about other actions (such as responding to FIU requests for STR-related information), which might eventually make the customers aware of the fact that an STR or related information is being reported to the FIU.

31. Requirements for internal AML/CFT controls do not include for all financial institutions the obligation to maintain an adequately resourced and independent audit function to test compliance, and training requirements are not sufficiently comprehensive.

32. Branches of credit and financial institutions in EU member states or within EEA are not covered by the requirements of the AML/CFT Law and the AML/CFT Regulation (Government Decision 594/2008) providing for compliance with Recommendation 22. Moreover, the legislation in force does not explicitly require credit and financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit.

33. Verification and control of reporting entities’ compliance with the provisions of AML/CFT legislation is designated to: a) prudential supervisory authorities, b) the Financial Guard (for the entities performing foreign exchange), c) Self Regulating Authorities (SROs) (for public notaries and lawyers), and d) the FIU (for all reporting entities except for those supervised by the prudential supervision authorities. From among the basic principles for implementing the risk-based approach in AML/CFT supervision, the authorities of Romania have not conducted a comprehensive national risk assessment so as to understand and appropriately respond to the threats and vulnerabilities in the system.

34. The banking sector and non-bank financial institutions such as non-bank lending companies and leasing companies are supervised by the National Bank of Romania (NBR). The Financial Services Authority (FSA), which only came into being shortly before the on-site visit, is responsible for the supervision of the investment, insurance and pensions sectors. The FSA comprises the former National Securities Commission (NSC), the Insurance Supervisory Commission (CSA) and the Private Pension System Supervisory System (CSSPP). The effectiveness of the new authority could not be

assessed although the three authorities constituting the FSA continue to exist operationally, working from their premises.

35. The supervisory authorities appear to have adequate powers to conduct AML/CFT inspections, and there are only minor deficiencies in respect of their legal authority to seek remediation of AML/CFT breaches. On-site inspections are undertaken by all five supervisory authorities although the FIU has not undertaken any inspection in 2013. Within the Supervision Directorate of the NBR, both the specialized department supervising banks for AML/CFT compliance and the department for prudential and AML/CFT supervision of non-banking financial institutions (NBFIs), payment and e-money institutions have not fully implemented risk-based policies and procedures for the planning, implementation, and follow-up of the supervision function. In this respect, the authorities explained that currently the policy of the NBR is to assess every bank on a yearly basis rather than on a risk-sensitive basis. The NBR needs to formally decide on its supervisory approach, whether risk-based or rule-based, and correspondingly revise, systematize, and improve inspection planning practices and inspection. It should subsequently modify the current level of scrutiny and depth of the AML/CFT inspections. The FIU has a comprehensive approach to risk based supervision, but while the NSC and the CSA are moving towards risk based supervision, there is some way to go.

36. There remain a number of important concerns about the level of implementation, including in respect of the AML/CFT supervisory action by the various supervisory authorities and the sanctioning for non-compliance with the requirements. Supervisory practices need to be improved as far as controlling compliance of obliged entities with applicable AML/CFT requirements is concerned. The number of ascertained irregularities remains modest. The sanctioning regime has a number of deficiencies in that it does not provide for sanctions for the failure to meet some important AML/CFT requirements, lacks proportionality depending on the gravity of violation, establishes sanctions which are inapplicable due to their definition, and lacks consistent and dissuasive application of established sanctions. In practice, fines have been rarely applied to banks and never applied to non-bank financial institutions, while other supervisory measures have never been applied. When comparing the sanctions imposed by prudential supervisors on financial institutions (banks, insurance, and securities) and those imposed by the FIU on exchange bureaus and DNFBPs within the same period of time, also considering the differences in the size of these subjects, it is clear that prudential supervisors are much less effective in applying sanctions as a dissuasive supervisory measure.

37. There is no licensing/registration and supervision framework for the Post Office and its branches in relation to money and value transfer services. In fact, the Post Office has been vested – by virtue of a protocol signed with the FIU – the function of acting as a SRO, although it is not appropriate for an obliged entity to be appointed as a SRO in relation to its own AML/CFT compliance. Moreover, there is no requirement of agent registration for the Post Office (in the absence of a clear legal language prohibiting involvement of agents by the Post Office).

5. Preventive Measures – DNFBPs

38. The main preventive measures for DNFBPs are set out in the AML/CFT Law 656/2002 as amended and the AML/CFT Regulation.

39. The scope of businesses and professions subject to AML/CFT requirements generally follow the FATF requirements. Entities outside the FATF's list of DNFBPs covered by the Romanian AML/CFT framework include auditors, pawnshops and wholesale traders. Registration and an AML/CFT oversight framework still remain to be introduced for trust and company service providers.

40. With minor variations, the preventive measures are the same for DNFBPs and financial institutions and that findings in respect of the strengths and weaknesses of apply equally to DNFBPs, with few exceptions or specificities. Notably, there are no requirements covering R. 21 applicable to DNFBPs.

41. The level of reporting by DNFBPs is very low, particularly as regards auditors, legal persons providing fiscal and accountant consultancy and real estate services. STRs reported by notaries, lawyers are quite important though it has followed a decreasing trend.

42. The main AML/CFT supervisor is the FIU, although the leading structures of the independent legal professions are also responsible for the verification and control of the implementation of the AML/CFT law. The Union of Notaries Public of Romania, the National Union of Bar Associations of Romania, the Body of Accounting Experts and Licensed Accountants in Romania, the Tax Consultants Chamber and the Chamber of Financial Auditors of Romania are also.

43. In addition, there is a separate supervisory authority for entities undertaking gambling, the National Office for Gambling (NOG), which commenced operations at the time of the evaluation team's visit to Romania. As new legislation on the supervision of the gambling sector, including casinos, came into force during the evaluation, the effectiveness of its implementation could not be assessed. The legislation does not cover e-casinos although revisions are planned. Overall AML/CFT measures were applied by casinos, although these were not comprehensive. The legal framework and the regulatory measures of the NOG will need to be strengthened. The skills necessary to supervise such DNFBPs should not be underestimated and additional efforts will be required in this area.

44. The FIU undertakes AML/CFT off-site and on-site supervision in connection with a wide range of institutions and businesses. It has developed a comprehensive approach to off-site supervision, which it uses to understand ML/TF risks and to set priorities for on-site supervision. The Office has focused on particular sectors at different periods during the last few years. On-site inspections appear to cover all aspects of AML/CFT requirements and sanctions have been applied for AML/CFT failures. In addition, the Office has invested significant resources in training initiatives. These initiatives comprise a manual on the risk based approach and indicators of suspicious transactions as well as seminars.

45. The Union of Public Notaries, the Chamber of Financial Auditors of Romania and the Body of Accounting Experts and Licensed Accountants in Romania undertake AML/CFT supervision. There is a significant gap in connection with the AML/CFT activities of legal professionals in that, despite having responsibilities under Law 656/2002, the National Union of Bar Associations of Romania does not consider itself as having any such responsibilities. In addition, there is very limited evidence demonstrating the effective implementation by these professionals of the AML/CFT requirements.

6. Non-Profit Organisations

46. Progress in respect of the implementation of Special Recommendation VIII has been fairly limited. Romania has not yet reviewed the adequacy of its legal framework covering associations and foundations. A formal review on the vulnerabilities of the sector for TF purposes has been conducted in 2011 and has not been updated since, though the Ministry of Justice, the Romanian Intelligence Service and the Office have held meetings on this issue. The authorities consider that the risk of abuse of non-profit organisations (NPOs) for terrorist financing in Romania is minimal. Some improvements were noted particularly regarding the availability of data in the consolidated national register of all NPOs, as well as regarding supervisory action (offsite and onsite) by the Office. A few outreach activities involved certain associations and foundations, and a few STRs have been filed, as the NPO sector is subject to reporting requirements under the AML/CFT Law. There remain concerns regarding the up to datedness of the registry in the absence of clear time limits for the registration of changes to constitutive and statutory documents, and of the limited measures in place to adequately supervise the NPOs sector and apply sanctions for violations of oversight rules. There is no regular outreach to the NPO sector and further measures are required to address potential vulnerabilities and protect the NPO sector from terrorist financing through increase of transparency, outreach and effective oversight.

7. National and International Co-operation

47. The framework for domestic coordination and cooperation in AML/CFT matters has been strengthened, and several measures have been taken under the National Strategy on Preventing and Combating Money Laundering and Terrorism Financing and its Action Plan in this respect. However, the general AML/CFT coordination mechanism in place is not effectively reviewing the Romanian AML/CFT system and its effectiveness on a regular basis. Though bilateral cooperation between some authorities appeared to be on a satisfactory level, further efforts are required to achieve overall co-

operation, co-ordination and consultation regarding the implementation of the AML/CFT strategy and policies between all relevant actors. Coordination between the activities of the various law enforcement authorities needs to be strengthened. In addition, bilateral co-operation between the FIU and the National Bank of Romania should be strengthened to ensure that both authorities are in a position to form an adequate understanding of the AML/CFT risks and vulnerabilities in the banking and non-bank financial institutions sectors and the sectors' implementation of the AML/CFT framework in practice. The same point applies to the coordination and cooperation between the relevant authorities in respect of casinos.

48. Romania has signed and ratified the United Nations Convention against Transnational Organised Crime (Palermo Convention), the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the United Nations Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention). There remain some implementation issues in respect of the Conventions. As noted above, there are also shortcomings in respect of the implementation of the S/RES/1373.

49. Romania can provide a wide range of mutual legal assistance in investigations, prosecutions and related proceedings concerning money laundering and the financing of terrorism, in application of the multilateral and bilateral agreements to which it is a Party or otherwise based on the national framework provisions, and without restrictive conditions. Romania appears to respond to requests for assistance generally in an efficient and effective manner, despite a clear shortage in the human and technical resources available for this task. The deficiencies in the terrorist financing offence did not apparently create problems in the execution of mutual legal assistance requests. Further efforts appear necessary to ensure that the legal framework regarding non-MLA related assistance, in particular as regards international co-operation with foreign supervisory authorities, is adequate and that co-operation mechanisms in this area are effective.

8. Resources and statistics

50. The human, financial and technical resources allocated to competent authorities regarding AML/CFT matters are not satisfactory on the whole. The skills of law enforcement and judiciary need further enhancement through training, in particular on financial investigation, handling of complex criminal investigations of financial and banking offences, techniques for tracing proceeds and evidence gathering etc.

51. The extent of information provided by the supervisory authorities regarding staffing issues (records qualifications and experience, number of positions, vacancies and turnover of staff for the period 2009-2013, procedures for hiring personnel, any mandatory integrity requirements of the staff etc.) did not enable the evaluation team to draw firm conclusions that the criteria on adequacy of resources and professional standards/ integrity are fully met in respect of all supervisory authorities. Resources of all supervisory authorities need to be increased and supervisory action be strengthened to ensure that both financial and non-financial institutions are adequately implementing the AML/CFT requirements.

52. The competent AML/CFT authorities have taken measures to maintain more detailed data on AML/CFT aspects. Unfortunately, the statistics collected are not sufficiently comprehensive to enable Romania to assess the effectiveness and efficiency of the AML/CFT system as a whole.

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

Forty Recommendations	Rating	Summary of factors underlying rating ⁴
Legal systems		
1. Money laundering offence	LC	<ul style="list-style-type: none"> Shortcomings remain in the definition of the FT offence⁵ as a predicate offence to ML; <p>Effectiveness</p> <ul style="list-style-type: none"> The level of investigations, prosecutions and convictions raise questions on the investigative and prosecutorial practices as regards the application of the ML offence and results achieved; Underutilisation of FIU generated reports; Continuing resource and capacity problems affect ML investigations, prosecutions and convictions.
2. <i>Money laundering offence / Mental element and corporate liability</i>	LC	<ul style="list-style-type: none"> <i>Autonomous money laundering still need to be successfully prosecuted in the case of a domestic predicate offence;</i> <i>The procedure for ensuring final convictions needs urgent reconsideration. The evaluators are seriously concerned that the timeframe between indictment and final conviction appears unreasonably long. (Effectiveness issue)</i> <p>Effectiveness</p> <ul style="list-style-type: none"> <i>The number of convictions is low.</i>
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> Deficiencies⁶ in the legal framework previously identified in the third round remain valid⁷; <p>Effectiveness</p> <ul style="list-style-type: none"> Imbalance between the total amounts of assets seized and final confiscations which may in part be explained by the backlogs of the system; Limited resources, particularly of financial investigators, and lack of expertise impact negatively on the application of provisional measures and confiscation.

⁴ These factors are only required to be set out when the rating is less than Compliant.

⁵ See developments after the evaluation period regarding the FT offence, as a result of the entry into force of the new criminal legislation on the 1st of February 2014 (see SR.II).

⁶ This assessment has not taken into account the provisions of the new CC and CPC, given that at the time of the onsite visit, they were not in force and in effect.

⁷ The reader is referred to the summary of 2008 factors underlying the rating for further details.

Preventive measures		
4.	Secrecy laws consistent with the Recommendations	C
5.	Customer due diligence	PC
		<ul style="list-style-type: none"> • The definition of “linked transactions” is not accurate; • Legislation contains mandatory language in providing for application of simplified CDD in certain cases; • No verification requirements for persons acting on behalf of customers for institutions other than those supervised by the NBR; • No requirements to determine whether the customer is acting on behalf of another person (and no requirement to verify such person) for institutions other than those supervised by the NBR; • Requirements in law or regulation to identify the beneficial owner and to take reasonable measures to verify the identity are open to interpretation; • Third country compliance with AML/CFT requirements is not measured against the FATF requirements (for allowing simplified CDD or for requiring enhanced CDD); <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Limited knowledge and understanding of CDD and related requirements by non-bank financial institutions and payment institutions; • Uneven understanding and implementation of certain CDD concepts, in particular the beneficial owner and the risk based approach, in respect of R.5.
6.	Politically exposed persons	PC
		<ul style="list-style-type: none"> • The definition of PEPs does not include “important political party officials”; • PEP enhanced CDD requirements do not extend to foreign PEPs resident in Romania; • No requirement to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Insufficient awareness of PEP requirements by payment institutions; • Over reliance on one data source to ascertain PEPs by some institutions and potential delays in ascertaining change of status of individuals to PEPs.
7.	Correspondent banking	LC
		<ul style="list-style-type: none"> • Enhanced due diligence does not apply to correspondent relationships involving credit institutions in/from EU member states or within EEA; • Measures required for establishment of cross-border correspondent relationships do not

		explicitly require determining whether the respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory actions, and ascertaining that the respondent institution's AML/CFT controls are adequate and effective.
8. <i>New technologies and non face-to-face business</i>	C	
9. Third parties and introducers	PC	<ul style="list-style-type: none"> • No explicit requirement for credit and financial institutions to: <ul style="list-style-type: none"> ○ Satisfy themselves that the third party: a) is regulated and supervised in accordance with Recommendations 23, 24 and 29, and b) has measures in place to comply with the CDD requirements set out in R. 5 and R. 10; ○ Immediately obtain from the third party the necessary information concerning certain elements of the CDD process; ○ Satisfy themselves that copies of identification data and other relevant documentation relating to CDD requirements (such as the information on the purpose and intended nature of the business relationship) will be made available without delay; • No legally defined requirement for competent authorities, in determining in which countries the third party that meets the conditions can be based, to take into account information available on whether those countries adequately apply the FATF Recommendations; <p><u>Effectiveness (positive aspects)</u></p> <ul style="list-style-type: none"> • Third party decisions are usually based on the 'white list' under the Common Understanding; • Use of third parties other than those from EU/EEA is not a usual practice; • There is certain practice in place for competent authorities in determining in which countries the third party that meets the conditions can be based.
10. Record keeping	LC	<ul style="list-style-type: none"> • No explicit requirement for credit and financial institutions to maintain business correspondence for at least five years following the termination of an account or business relationship; • Limited requirement to ensure that all customer and transaction records are available on a timely basis to domestic authorities upon proper authority.
11. <i>Unusual transactions</i>	LC	<ul style="list-style-type: none"> • <i>Criterion 11.1 only partially addressed by the insurance and capital market sectors on paying special attention to all complex, unusual large; transactions or unusual patterns of transactions;</i> • <i>No explicit enforceable provisions for the non-banking financial institutions registered in the Evidence and General Register and the insurance and capital market sectors to examine the</i>

		<p><i>backgrounds of such transactions and setting forth their findings in writing;</i></p> <ul style="list-style-type: none"> • <i>No explicit requirement to keep the findings available for competent authorities and auditors for at least five years.</i>
12. DNFBPS – R.5, 6, 8-11	PC⁸	<ul style="list-style-type: none"> • No explicit provision to prohibit anonymous accounts for DNFBPs; • Deficiencies identified in regard to Recommendations 5, 6, 9, 10 apply equally to the non-financial professions; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Casinos do not apply the full range of R.5 measures; • PEP provisions not met by casinos; • Potential delays in ascertaining change of status of individuals to PEPs; • Concerns about the adequacy of implementation of AML/CFT requirements by other DNFBPs.
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> • No explicit requirement to report suspicions that funds are the proceeds of a criminal activity, though reporting occurs in practice; • The FT reporting requirement does not include all the circumstances set out under criterion 13.2; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Low number of STRs by financial institutions other than banks; • Uneven understanding of the reporting requirement in all sectors; • Inconsistencies in articulation of reporting requirement may have an impact on its effective implementation.
14. Protection and no tipping-off	PC	<ul style="list-style-type: none"> • Protection of reporting entities and their staff is not available, if they report suspicions unrelated to money laundering or terrorist financing; • Prohibition of tipping off is limited to non-warning of customers about filing of STRs.
15. Internal controls, compliance and audit	PC	<ul style="list-style-type: none"> • No explicit requirement for financial institutions, other than banks, to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with applicable AML/CFT procedures, policies and controls; • Training requirements for entities subject to supervision by the CSSPP and the Office are more general than criterion 15.3 and for all supervised entities do not cover new developments and (except for entities supervised by the Office) on-going training;

⁸ Review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 8 and 11.

		<ul style="list-style-type: none"> • Entities subject to supervision by the CSSPP and the Office are not required to have screening procedures. <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Lack of appropriate internal training arrangements in non-bank financial institutions under NBR's supervision, payment institutions and electronic money institutions and in one investment institution.
16. DNFBPS – R.13-15 & 21	PC	<p><i>Applying Recommendation 13</i></p> <ul style="list-style-type: none"> • No requirement to report suspicions that funds are the proceeds of a criminal activity; • The FT reporting requirement does not include all the circumstances set out under criterion 13.2 (and IV.1); <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Low number of STRs by DNFBPs; • Low level of understanding of reporting requirement by some DNFBPs; • Inconsistencies in articulation of reporting requirement may have an impact on its effective implementation; • Combination of UNBR not meeting responsibilities in Law 656/2002, UNBR and the Office have differing views on reporting and confidentiality provisions and low number of reports means lack of effectiveness in relation to lawyers; <p><i>Applying Recommendation 14</i></p> <ul style="list-style-type: none"> • Protection of reporting entities and their staff is not available, if they report suspicions unrelated to money laundering or terrorist financing; • Prohibition of tipping off is limited to non-warning of customers about filing of STRs; <p><i>Applying Recommendation 15</i></p> <ul style="list-style-type: none"> • Detection of unusual and suspicious transactions and reporting obligation not wholly covered as a requirement for policies, procedures and controls; • No specific reference for compliance officer at management level to be appointed; • No explicit requirement for DNFBPs to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with applicable AML/CFT procedures, policies and controls; • No explicit requirement for DNFBPs to have on-going training and training requirements do not cover new developments or all aspects of AML/CFT laws and obligations (including no specific reference to CDD); • No staff screening requirement;

		<p>Applying Recommendation 21</p> <ul style="list-style-type: none"> • No provisions implementing Recommendation 21.
17. Sanctions	PC	<ul style="list-style-type: none"> • Sanctions available do not cover all relevant requirements while others, due to their nature and coverage, are not practicable to the intended subjects; • Sanctions set out in the AML/CFT legal framework cannot be considered proportionate nor dissuasive; <p>Effectiveness</p> <ul style="list-style-type: none"> • Fines as a supervisory measure are very rarely applied to banks and never applied to NBFIs, thus undermining their dissuading effect; • Sanctions not applied in relation to the Office Norms; • Other supervisory measures have never been applied and appear to be impracticable for AML/CFT purposes.
18. Shell banks	C	
19. Other forms of reporting	C	
20. Other DNFBP and secure transaction techniques	LC	
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • No overall explicit requirement to: <ul style="list-style-type: none"> ○ Give special attention to business relationships and transactions with persons in/from countries which do not or insufficiently apply the FATF Recommendations; ○ Examine, as far as possible, the background and purpose of transactions, which have no apparent economic or visible lawful purpose; • No legally defined mechanism, but certain practical measures for application of appropriate counter-measures to the countries, which continue not to apply or insufficiently apply the FATF Recommendations; <p>Effectiveness</p> <ul style="list-style-type: none"> • No measures taken for advising non-bank financial institutions and payment institutions about countries which do not or insufficiently apply the FATF Recommendations.
22. Foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> • Branches of credit and financial institutions are covered by some but not all the requirements under Recommendation 22; • No explicit requirement for credit and financial institutions to: <ul style="list-style-type: none"> ○ Ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit;

		<ul style="list-style-type: none"> ○ Pay particular attention that the principle of institution-wide applicability of AML/CFT measures is observed with respect to their branches and subsidiaries in countries which do not or insufficiently apply the FATF Recommendations; ○ Ensure that, where the minimum AML/CFT requirements of Romania and the host countries differ, branches and subsidiaries in host countries apply the higher standard, to the extent that local (i.e. host country) laws and regulations permit.
23. Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • No licensing/ registration and regulation of activities of the Post Office; • Not all exchange offices were reauthorized by the Commission's/Office's registration framework at the time of the evaluation, and lack of clarity in legislation on identity of the authority undertaking day to day AML/CFT activity; • NBR approach to supervision (whether risk-based or rule-based) is not explicitly defined and consistently implemented; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Small results of inspections for some supervisory authorities raise questions about ; the quality and depth of inspections; • Coverage ratio of on-site inspections (supervisory cycle) significantly varies from a type of obliged entity to another and does not appear to be based on previously defined and consistently implemented managerial decisions; • No on-site inspections of exchange offices in 2013 by the Office while the decrease in the number of inspections by the CSA raises questions; • NBR inspection manuals do not provide for checking obliged entities' compliance with all essential requirements of the national AML/CFT framework; • NBR inspection planning practices fail to stem from a consistently implemented annual on-site inspection program; • Thoroughness of planning practices by other supervisory authorities not demonstrated through documentation.
24. DNFBPs - Regulation, supervision and monitoring	PC	<ul style="list-style-type: none"> • Internet casinos and other types of casino gambling are not subject to licensing or to the AML/CFT framework; • Measures to prevent criminals from holding a significant interest in casinos are not comprehensive; • The gambling legislation does not capture beneficial owners and managers explicitly and does not cover changes to these persons after a

		<p>casino has been licensed;</p> <ul style="list-style-type: none"> • Lack of a registration and AML/CFT oversight framework for trust and company service providers; • The UNBR is not fulfilling its statutory responsibilities and the legal profession is not engaged; • Sanctions issues as identified in Recommendation 17; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Approach to sanctions by SRBs not robust when compared to the Office; • Limited numbers of off-site and on-site supervision of DNFBPs raise serious concerns about the effectiveness of the supervisory action; • Adequacy of resources not demonstrated and this impacts on the supervisory function.
25. Guidelines and Feedback	LC	<ul style="list-style-type: none"> • Lack of practical guidance for NBFIs, payment institutions and electronic money institutions; • Guidance issued, other than training, is rather general and there is a need for more detailed guidance, notably on the nature of AML/CFT risks in Romania; • The limited information available as regards the norms and guidance (other than that of the Office) does not enable to form a view on the adequacy of guidance provided; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Feedback not regarded as sufficient by the private sector, in particular as regards specific feedback.
Institutional and other measures		
26. The FIU	PC	<ul style="list-style-type: none"> • The 30 day period for the provision of additional information by reporting entities is too lengthy; • The law provides that the FIU may only disseminate information to law enforcement authorities when it ascertains the existence of solid grounds of ML/FT; • The composition and functions of the Board may give rise to concerns regarding potential undue influence or interference; • Absence of clear confidentiality obligations applicable to Board members; • The confidentiality obligations of FIU personnel do not extend beyond five years after termination of employment; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • The presence on the Board of the FIU of the representative of the Banking Association gives rise to potential conflicts of interest; • Limited technical resources available to the analysis department has an impact on the

		effectiveness of the analysis function of the FIU.
27. Law enforcement authorities	LC	<p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Modest number of ML investigations compared with the volume of proceeds-generating crime; • Diverging interpretation as to whether the existence of a predicate offence is required to obtain a ML conviction deters the investigation of autonomous ML cases; • The system for the attribution of competences between LEA , in the absence of a mechanism to ensure prompt verification of competence in the initial stage of the investigations, has had an impact on the effectiveness of ML investigations; • The limited human resources available to LE authorities do not permit them to effectively pursue ML investigations.
28. Powers of competent authorities	C	
29. Supervisors	LC	<ul style="list-style-type: none"> • Minor concern that some supervisory authorities do not have legal authority to seek remediation of AML/CFT breaches; • Powers of sanction in relation to the Office Norms unclear.
30. Resources, integrity and training	PC	<p><u>FIU</u></p> <ul style="list-style-type: none"> • Limited FIU technical resources; • The premises of the FIU are inadequate; • Code of conduct is not applicable to the members of the Board; • Insufficient training provided to analysts on financial analysis; • Issues regarding sufficient independence and autonomy; <p><u>Law enforcement authorities</u></p> <ul style="list-style-type: none"> • Limited human resources available to LE authorities; • Insufficient specialised training in the field of financial investigations; • Integrity of prosecution authorities not demonstrated; <p><u>Customs</u></p> <ul style="list-style-type: none"> • The information provided during the evaluation and results achieved raise questions about the adequacy of training received by competent authorities (NCA and Border Police); • The information received does not enable to draw a comprehensive picture of the structures, funding, staffing of the NCA and Border Police; • The NCA and Border Police appear to continue to be affected by integrity issues;

		<p><u>Supervisory authorities – Financial Institutions</u></p> <ul style="list-style-type: none"> • Training at the NSC, the CSA and the CSSPP is insufficient; • Staff resources at the CSA and, particularly, the Office are low; • CSSPP IT systems need to be enhanced; • There are doubts as regards the confidentiality framework applying to CSSPP; the adequacy of the scope of integrity requirements applicable for supervisory authorities and their implementation; • Adequacy of resources not demonstrated (high turnover and number of vacant positions, insufficient training) for supervisory authorities to ensure that they are in a position to adequately implement their supervisory functions; <p><u>Supervisory authorities – DNFBPs</u></p> <ul style="list-style-type: none"> • NOG’s resources are insufficient for casino supervision; • The Office’s resources are insufficient for routine supervision of all DNFBP sectors; • The limited information provided with respect to resources of SRBs does not demonstrate that the requirements of R.30 are met; <p><u>Policy makers</u></p> <ul style="list-style-type: none"> • It was not demonstrated that the requirements under R.30 are met with respect to policy makers.
31. National co-operation	LC	<p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Co-operation mechanisms in place do not appear to be fully effective; • Inadequate coordination between the various law enforcement authorities responsible for the investigation and prosecution of ML/FT; • Cooperation between supervisory authorities and FIU needs improving.
32. Statistics	PC ⁹	<ul style="list-style-type: none"> • Statistics kept in respect of ML investigations, prosecutions and convictions are not comprehensive enough and sufficiency detailed; • Customs – statistics not detailed enough; • Statistics kept by supervisory authorities by sector and by year, on onsite examinations relating to or including AML/CFT, on the use of the inspection and enforcement powers with respect to AML/CFT aspects and the nature of breaches identified, and sanctions applied are not sufficiently comprehensive and detailed; • No statistics are maintained by the supervisory authorities, except for the NSC, on international

⁹ 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 20, 38 and 39.

		<p>cooperation;</p> <ul style="list-style-type: none"> The mechanism in place does not review comprehensively the AML/CFT system in Romania on a regular basis and its effectiveness.
33. <i>Legal persons – beneficial owners</i>	<i>LC</i>	<ul style="list-style-type: none"> <i>No possibility to fully assess the operation of bearer shares.</i>
34. <i>Legal arrangements – beneficial owners</i>	<i>N/A</i>	
International Co-operation		
35. Conventions	LC	<ul style="list-style-type: none"> Romania has ratified and implemented the majority of provisions of the Vienna and Palermo Conventions; Romania has ratified but not fully implemented the CFT Convention as outlined in the report.
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> The application of dual criminality may limit Romania's ability to provide assistance due to shortcomings identified in respect to the scope of the FT offence; <p>Effectiveness</p> <ul style="list-style-type: none"> Effectiveness cannot be fully demonstrated
37. <i>Dual criminality</i>	<i>C</i>	
38. <i>MLA on confiscation and freezing</i>	<i>LC</i>	<ul style="list-style-type: none"> <i>No considerations have been given to establishing an asset forfeiture fund.</i>
39. <i>Extradition</i>	<i>C</i>	
40. Other forms of co-operation	LC	<ul style="list-style-type: none"> Issues relating to confidentiality obligations applicable to FIU staff may prejudice the protection of information provided by foreign FIUs; Certain technical aspects required for international cooperation are not in place for some supervisory authorities; Effectiveness not demonstrated by several supervisory authorities.
Nine Special Recommendations		
SR.I Implement UN instruments	PC	<ul style="list-style-type: none"> Shortcomings remain in the implementation of the FT Convention; Shortcomings remain in the implementation of UNSCR.
SR.II Criminalise terrorist financing	PC	<ul style="list-style-type: none"> The FT offence¹⁰: <ul style="list-style-type: none"> does not cover collection of funds with the knowledge that the funds are to be used by a terrorist organisation or by an individual terrorist; has an additional purposive element for the FT of a terrorist organisation or of an individual terrorist (i.e. to be used for committing a terrorist act);

¹⁰ The majority of these deficiencies appear to have been addressed by the new FT offence, which is in force as of February 2014.

		<ul style="list-style-type: none"> ○ partly applies to “funds” as defined under criterion II.1(b); ○ Financing of the legitimate activities of terrorist organisations and individual terrorist is however not covered; ● In the absence of judicial practice, it remains unclear whether the financing of acts which constitute an offence within the scope of and as defined in one the treaties listed in the annex to the Convention, is in practice required to meet one additional condition as set out in Article 2 of the Law on Terrorism; ● The attempt to commit a FT offence and partially the conduct set out in Article 2(5) of the FT Convention are not criminalised; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> ● Investigations and prosecutions of FT offences appear to be hampered by the limitations of the FT incrimination, though alternative measures have been applied.
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> ● No domestic lists have been issued with respect to persons formerly known as EU internals; ● It is unclear that the powers of NAFA are broad enough to ensure that all categories of funds, assets or resources envisaged under UNSCR 1373 are effectively frozen; ● The deficiencies identified under R.3 have an impact on compliance with Criterion III.11; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> ● Limited knowledge and understanding of freezing measures by non-bank financial institutions, payment institutions and electronic money institutions; ● It is not demonstrated that the relevant sectors are effectively supervised for compliance with the international sanctions regime and that sanctions are applied.
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> ● The FT reporting requirement does not include all the circumstances set out under criterion 13.2 and IV.1; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> ● Low level of awareness among some reporting entities met on-site on FT reporting translated by an understanding of this reporting obligation as referring to the implementation of the international sanctions regime.
SR.V International co-operation	LC¹¹	<ul style="list-style-type: none"> ● The application of dual criminality may limit Romania’s ability to provide assistance due to

¹¹ The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 37, 38 and 39.

		<p>shortcomings identified in respect to the scope of the FT offence;</p> <ul style="list-style-type: none"> • Issues relating to confidentiality obligations applicable to FIU staff may prejudice the protection of information provided by foreign FIUs; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Effectiveness cannot be demonstrated.
SR.VI AML requirements for money/value transfer services	PC	<ul style="list-style-type: none"> • Post Office inappropriately appointed as SRB (also without legal backing) with no licensing/registration requirements for the Post Office and of agent registration for the Post Office; • It has not been demonstrated that the Post Office is subject to the applicable AML/CFT requirements and that there is a system in place for monitoring AML/CFT compliance by the Post Office; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Insufficient awareness of agent registration/licensing requirements by payment institutions; lack of information on their compliance with the requirements of SR VI.
<i>SR. VII Wire transfer rules</i>	<i>LC</i>	<ul style="list-style-type: none"> • <i>The implementation and effectiveness of the EU Regulation could not be assessed.</i>
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> • The review of the adequacy of domestic laws and regulations, as set out in the action plan does not appear to have been completed; • Domestic reviews are not reassessed periodically; • It is unclear whether measures set out in the legal framework contain adequate measures to ensure accountability and transparency; • Limited outreach program with the NPO sector on TF risks, which is not regular and does not cover comprehensively the scope and methods of abuse of NPOs, typologies and emerging trends; • It is not demonstrated that NPOs which control significant portions of the financial resources of the sector and substantial shares of the sector's international activities have been identified, and are adequately supervised or monitored; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Effectiveness of implementation not established in all cases, and partial oversight by supervisory authorities regarding this sector.
SR.IX Cross Border declaration and disclosure	PC	<ul style="list-style-type: none"> • No power to stop and restrain currency or bearer negotiable instruments when there is a suspicion of ML or TF; • The NCA has no power to stop or restrain cash for situations where there is a false declaration (or incomplete or incorrect information is provided);

		<ul style="list-style-type: none"> • It remains unclear whether the systems for reporting cross border transactions are subject to strict safeguards to ensure proper use of the information or data that is reported or recorded regarding the custom data base; • Sanctions are not proportionate and dissuasive; • No procedures implemented to ensure that the public is aware that the cross-border transportation of cash exceeding the threshold is to be declared; <p><u>Effectiveness</u></p> <ul style="list-style-type: none"> • Low number of cases detected related to false declarations or failure to declare; • Low number of cases transmitted to the FIU for investigation; • No confiscation of cash pursuant to UNSCRs; • No freezing, seizure and confiscation of cash related to ML cases; • Sanctions imposed are not considered to be effective as no sanctions have been applied to persons carrying out physical cross-border transportation of currency or bearer negotiable instruments related to ML or FT; • It is not demonstrated that international cooperation by the NCA in this area is effective, this being linked to its inability to detect false declarations.
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