SELECT COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES (PC-R-EV)

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Romania

1st Compliance Report

4 December 2018

Romania is a member of MONEYVAL. This Report from Romania under step 1 of the Compliance Enhancing Procedures was adopted at MONEYVAL's 56th Plenary Meeting (Strasbourg, 3-7 December 2018). For further information, please refer to MONEYVAL website: http://www.coe.int/moneyval .

LIST OF ACRONYMS

ACPO	Appellate Court Prosecutor's Office
AFIS	Antifraud Information System
AML/CFT	Anti-money laundering and combating financing of terrorism
ANI	National Integrity Agency
AMLTF Law	Anti-Money Laundering and Terrorist Financing Law
CC	Criminal Code
CCP (CPC)	Code of Criminal Procedure
CCR	Cash Control Regulation
CDD	Customer Due Diligence
CECCAR	Body of Accounting Experts and Licenced Accountants in Romania
CFAR	Chamber of Financial Auditors of Romania
CML	Capital Market Law
CPC	Criminal Procedure Code
CSA	Insurance Supervisory Commission
CSAT	Supreme Council for National Defence
CSSPP	Private Pension Supervision Commission
CTR	Cash transaction report
DAPI	Analysis and Processing of Information Directorate
DIOCT	Directorate for Investigating Organised Crime and Terrorism
DNFBP	Designated Non-Financial Businesses and Professions
EC	European Commission
EEA	European Economic Area
EO	Executive Order
ESW	Egmont Secure Web
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FI	Financial Institution
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GD	Governmental Decision
GEO	Governmental Emergency Ordinance
GO	Governmental Ordinance
LEA	Law Enforcement Agency
MER	Mutual Evaluation Report

MFIN	Ministry of Finance
ML	Money Laundering
MLA	Mutual legal assistance
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
NAD	National Anticorruption Directorate
NAFA	National Agency for Fiscal Administration
NATO	Northern-Atlantic Treaty Organisation
NBR	National Bank of Romania
NoG	National Office of Gambling
NPO	Non-Profit Organisation
NSPCT	National System for Preventing and Countering Terrorism
PEP	Politically Exposed Persons
RE	Reporting Entities
SAR	Suspicious Activity Report
SNA	National Anti-corruption Strategy
SR	Special recommendation
STR	Suspicious transaction report
UN	United Nations
UNSCR	United Nations Security Council resolution

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1st Compliance Report submitted by Romania

Note by the Secretariat

Introduction

1. The purpose of this paper is to introduce Romania's 1st Compliance Report to the Plenary concerning the progress that it has made to remedy the deficiencies identified in the mutual evaluation report on the 4th round assessment visit (MER).

2. Romania has submitted its 1st Compliance Report to the MONEYVAL Secretariat. According to the 4th Round Rules of Procedure[1], countries must have implemented those FATF Recommendations that are considered to be Core[2] and Key[3] at a level essentially equivalent to a "compliant" (C) or "largely compliant" (LC). The Plenary may retain some limited flexibility with regard to Key Recommendations if substantial progress has been made on the overall set of recommendations that were rated "partially compliant" (PC) or "non-compliant" (NC).

Background information

3. The onsite visit to Romania took place from 27 May to 1 June 2013. MONEYVAL adopted the 4th round MER of Romania at its 44th Plenary meeting in April 2014. As a result of the evaluation, Romania was rated PC on 16 Recommendations[4], including three Core and five Key Recommendations, as indicated in the table below:

Core Recommendations rated PC (no Core Recommendations were rated NC)
Recommendation 5 (Customer due diligence) Recommendation 13 (Suspicious transaction reporting) Special Recommendation IV (Suspicious transaction reporting related to terrorism)
Key Recommendations rated PC (no Key Recommendations were rated NC)
Recommendation 23 (Regulation, supervision and monitoring) Recommendation 26 (The FIU) Special Recommendation I (Implementation of United Nations instruments) Special Recommendation II (Criminalisation of terrorist financing) Special Recommendation III (Freeze and confiscate terrorist assets)

4. Upon adoption of the report, Romania was placed under the regular follow-up procedure and was requested to provide information on the actions taken to address the deficiencies identified under the 40+9 Recommendations rated PC, no later than two years after the adoption of the report (April 2016). Romania was encouraged to seek removal from the follow-up process within three years after the adoption of the 4th round MER or very soon thereafter.

5. As a result, Romania submitted a regular follow-up report at the 50th Plenary in April 2016. The Plenary concluded that limited progress had been made, whilst the most substantial reforms were still underway. Hence, the Committee requested Romania to report back at its 53rd plenary meeting (May – June 2017).

6. Given the continued limited progress achieved at that point, the country was invited to report back at the 56th Plenary, with a view to apply for exit from follow-up on that occasion. Under Rule 13 of the 4th round Rules of Procedure, as amended, States or territories which are subject to regular follow-up

[1] MONEYVAL, *Rules of Procedure for the Fourth Round of Mutual Evaluations and for Follow-up as a Result of the Third Evaluation Round*, Rule 13, as revised in April 2016, p.13, available at https://rm.coe.int/committee-of-experts-on-the-evaluation-of-anti-money-laundering-measur/16807150e2

[2] The core Recommendations, as defined in the FATF procedures, are R.1, R.5, R.10, R.13, SR.II and SR.IV

[3] The key Recommendations, as defined in the FATF procedures, are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III and SR.V

[4] It should be pointed out that the FATF Recommendations were revised in 2012 and that there have been various changes, including their numbering. Therefore, all references to the FATF Recommendations in the present report concern the version of these standards before their revision in 2012.

will remain in a streamlined follow-up process and are expected to seek removal within four years after the adoption of the 4th round MER at the latest (i.e. July 2018 in the case of Romania).

7. At the 56th Plenary in July 2018, the Committee found that the country was not in a position to exit the regular follow-up procedure, given that the majority of deficiencies remained. Taking into account the severity of the outstanding deficiencies on a number of core and key recommendations, the Plenary applied Step 1 of the Compliance Enhancing Procedures (CEPs), Rule 13(6) of its 4th round Rules of Procedure. The Committee encouraged Romania to complete the on-going AML/CFT legislative reform and invited the country to report back on all outstanding core and key deficiencies (R.5, 13, 23, 26, and SRI, III, IV) at its 57th Plenary in December 2018.

PROGRESS MADE SINCE THE 56TH PLENARY (July 2018)

8. In its first compliance report, the Romanian delegation informed the Plenary about the progress made since the 56th Plenary in July 2018. This relates primarily to the fact that the new AML/CFT Law (hereinafter: the new Law) was adopted by the Romanian Parliament on 24 October 2018. The secretariat estimates that the new Law, once it has entered into force, will rectify a large number of outstanding deficiencies identified in the 4th round MER and bring the level of compliance with R.13, 23, 26, and SR.IV to "largely compliant". However, the new Law is not yet in force, as an application in relation to its unconstitutionality has meanwhile been submitted to the Constitutional Court. The authorities informed that the said application is to be examined by the Constitutional Court on 5 December 2018.

9. In addition, some deficiencies are left outside the scope of the new Law. Such deficiencies are notably: CDD measures when carrying out transactions that are wire transfers do not cover the requirements (d and e) of the criterion 5.2, in relation to R.5; and the post office licensing, in relation to R.23.

10. As regards the Government Emergency Ordinance in relation to the implementation of international sanctions, the Romanian authorities informed that the General Secretariat of the Romanian Government is currently discussing its adoption.

11. It should be recalled that Romania had already achieved substantial progress with regard to SR.II (thus it did not form part of CEPs). In particular, the amendments made to the CC and the FT offence definition (Art.36 of the Law on Terrorism) are largely in line with the standards. The Plenary had already welcomed this in July 2018. Although certain minor gaps still remain, the secretariat analysis concluded at the time that it appeared that the technical compliance with SR.II had already been brought up to a level of "largely compliant".

12. On a general note concerning all fourth-round follow-up and compliance reports: the procedure is a paper desk-based review, and thus by nature less detailed and thorough than a MER. Effectiveness aspects can be taken into account only through consideration of data and information provided by the authorities. It is also important to note that the conclusions in this analysis do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in all cases, as comprehensive as it would have been during a mutual evaluation.

I. Detailed review of measures taken in relation to the Key areas of Concern

Recommendation 5 (Customer due diligence)

Recommended action (1): *Amend the definition of linked transactions to consider common factors, such as the parties to the transactions (including the beneficial owners), the nature of the transactions and the sums involved.*

13. Art.7(4) of the new Law addresses this recommended action (RA). In particular, it stipulates the following:

> "*the term of transaction includes also the operations whose value is divided into parts smaller than the equivalent in RON of 15,000 EUR, which have common elements such as: parties to the transactions, including beneficial owners, the nature or the category of the transactions and the amounts involved. The reporting entities (REs) shall establish into the internal policies and*

procedures mentioned in the art. 24 para (1), accordingly to their exposure to the risks of money laundering and terrorism financing, the term in which the commune elements are relevant, as well as any other scenario which could rise some connected transactions".

Recommended action (2): *Establish a requirement for REs to apply CDD measures when carrying out transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII and remove the exemption from identification in some circumstances in the Office (FIU) Norms.*

14. This recommended action remains outstanding. In fact, the new Law creates a significant gap in relation to the application of CDD measures by REs when carrying out transactions that are wire transfers, since it does not provide for the requirements (d) and (e) under criterion 5.2:

5.2* Financial institutions should be required to undertake customer due diligence (CDD) measures when:

d) there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations; or

e) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

"*Art.13 - (1) Reporting entities are required to apply standard customer due diligence measures in the following cases:*

a) when establishing a business relationship;

b) when performing occasional transactions:

c) in the case of the natural persons who trade goods, to the extent that they perform occasional cash transaction for at least the equivalent in RON of 15,000 EUR, regardless of whether the transaction is executed through a single operation or through several operations which seems to be connected between them.

1. in value of at least the equivalent in lei of 15,000 EUR, regardless of whether the transaction is made through a single operation or through several operations that seem to have a connection between them;

2. which constitutes a funds transfer as defined by art. 3 point 9 of Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) No 1781/2006 in value of over 1,000 EUR."

15. In addition, the Office (FIU) Norms, which were subject of analysis and subsequent recommended actions in the 2014 MER are under the revision at the moment.

Recommended action (3): *Clarify the obligation with respect to the verification of beneficial ownership to bring it in line with the FATF standard, which requires that reasonable measures be taken to verify such ownership in all cases, including low risk.*

16. Art.11(par.1 (a) and (b) and par.2 and 8) of the new Law addresses this RA. In particular Art.11 stipulates the following:

"*(1) The REs shall apply standard customer due diligence measures which will allow:*

a) identifying the customer and verifying his identity based on the documents, data or information obtained from credible and independent sources, including through the means of electronic identification provided for in Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC;

(b) identifying the beneficial owner and adopting reasonable measures to verify his identity, so that the reporting entity have the certainty that it knows who is the beneficial owner, including in respect to legal entities, trusts, companies, associates, foundations and the entities without legal personality, as well as for understanding the structure of propriety and control of the customer;

(2) By derogation of provisions of par.1 the REs may apply simplified customer due diligence measures, adequate to the associated risk of money laundering and terrorism financing.

(8) The REs have the obligation to verify the identity of the customer and of the beneficial owner before establishing a business relationship or before conducting an occasional transaction".

Recommended action (4): *For sectors other than those under NBR's supervision, revise the AML/CTF requirements so as to more fully meet verification requirements for persons acting on behalf of customers and on the legal status of legal persons/arrangements, to require financial institutions to determine whether the customer is acting on behalf of another person and take reasonable steps with regard to verification, and cover provisions regulating the power to bind the legal persons and arrangements.*

17. Art.11(4) of the of the new Law broadly implements this recommended action. The new Law provides for cases where a person is acting on behalf of customer who is an individual (e.g. under a power of attorney).

"Art. 11 – (1) The REs shall apply standard customer due diligence measures which will allow:

a) identifying the customer and verifying his identity based on the documents, data or information obtained from credible and independent sources, including through the means of electronic identification provided for in Regulation (EU) No. 910/2014 of the European Parliament and of the Council of 23 July 2014 on electronic identification and trust services for electronic transactions in the internal market and repealing Directive 1999/93/EC;

(b) identifying the real beneficiary and adopting reasonable measures to verify his identity, so that the reporting entity have the certainty that it knows who the beneficial owner is, including in respect to legal entities, trusts, companies, associations, foundations and similar entities without legal personality, as well as for understanding the ownership structure and control of the customer;

(4) In applying the measures referred to in par.(1) points (a) and (b), the REs verify, also, whether a person who claims to act on behalf of the customer is authorised to do so, in which case it identifies and verifies the identity of that person.

Art.2(r) customer/customers means any natural or legal person, or legal arrangement without legal personality with which the REs carry out business relationships or for which they perform other operations with permanent of occasional elements. It is considered to be a customer of a reporting entity, any person with whom in the performing of its activities, the reporting entity has negotiated a transaction, even if that transaction has not been completed, as well as any person who benefits or has benefited in the past by the services of a reporting entity;"

Recommended action (5): *Include a requirement that financial institutions should be required to ensure that documents, data or information collected under the CDD process is kept up to date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.*

18. This recommended action is addressed by Art.11(1 d.) of the new Law which stipulates that all REs shall apply standard CDD measures which will allow "*continuous monitoring of the business relationship, including by examining the transactions completed during the entire relationship, so that the reporting entity can ensure that the transactions made are consistent with the information held, related to the client, the profile of the activity and the risk profile, including, where appropriate, to the origin of the funds, and that the documents, data or information held are up to date and relevant*;".

19. In addition, the authorities advised that the Financial Supervisory Authority (FSA) through its supervisory and control actions, verifies whether REs implement the obligation to include in their AML/CFT internal regulations business relationship monitoring and updating of identification data; and keeping and enabling access to records. The FSA also checks how the monitoring of the business relationship impacts on the client's risk assessment, especially when there is an increase in the risk-level.

Recommended action (6): *Remove the mandatory language in providing for application of simplified CDD where the customer is a credit or financial institutions from a Member State or from an equivalent third country, unless justified by a comprehensive risk assessment and introduce provisions on measuring third country compliance with AML/CTF requirements against the FATF requirements (for allowing simplified CDD or for requiring enhanced CDD).Take measures to build-up awareness among non-bank*

financial institutions and payment institutions (which are subject to supervision by the NBR) concerning CDD and related requirements.

20. Art.16(1) of the new Law addresses the first part of this recommended action. In particular, the new Law does not include a mandatory language for the discretionary character of CDD. The new Law provides for REs to apply simplified CDD measures to customers with a low risk. In addition, Art.16(2) of the Law provides that the risk level should be determined through a global assessment of all identified risks, in conjunction with Art.11(6) and the following factors: a) Customer risk factors; b) Risk factors for products, services, transactions, or distribution channels; c). Geographical risk factors.

> "*Art.11(6) The REs shall consider at least the following variables in assessing the risk of money laundering and terrorism financing:*
>
> *a) the purpose of initiating a relationship or performing an occasional transaction;*
>
> *b) the level of assets to be traded by a customer or the size of the transactions already performed;*
>
> *c) regularity or duration of the business relationship;*
>
> d) *sectorial regulations or norms issued by the competent authorities in appliance of Art.1(4)*.
>
> *Art.16 – (1) Reporting entities may apply simplified customer due diligence measures exclusively for its customers with a low risk.*
>
> *(2) Framing into a low degree of risk shall be achieved through a global assessment of all identified risks, according to the provisions of art. 11 para. (6) and taking into account at least the following characteristic factors:*"

21. As regards the measures taken to build-up awareness on CDD requirements among non-bank FIs and payment institutions (which are subject to NBR supervision), the authorities informed that during their meetings with compliance officers of REs, they communicate to them REs obligation to comply with "*The Risk Factors Guidelines - Joint Guidelines" of Directive (EU) 2015/849* on simplified and enhanced CDD. The authorities also informed that during these meetings they advise REs to align their systems and procedures with the new requirements. However, the authorities did not inform whether the said practice covers both FIs and payment institutions. Also, the extent of this initiative is not known, while the authorities did not report other awareness raising measures than legal provisions of the new Law (Art.17 on Enhanced CDD Measures).

Recommended action (7): *Take additional measures to ensure that there are time-limits applied for conducting CDD to existing customers and requirements on conducting due diligence at appropriate times*.

22. Art.14 of the new Law provides for CDD at appropriate times. In particular, it stipulates the following:

> "*The REs shall apply customer due diligence measures, not only to all new customers, but also to the existing customers, depending on the risk, at appropriate times, including when relevant customer circumstances change*."

Recommended action (8): *Issue guidance in addition to the current text of the manual on the risk based approach (RBA) and suspicious transactions indicators in order to demonstrably address the risks perceived by the supervisors and responses from industry*.

23. The authorities reported that they have been proactive in issuing RBA guidelines and suspicious transactions indicators. However, most of the said documents have been issued by the EU, FATF and the Egmont Group (e.g. emerging FT risks; ML and FT vulnerabilities of the legal professionals; ML/FT risks vulnerabilities associated with gold; ML through transportation of cash; Risk of terrorist abuse in non-profit organisations, etc.). The authorities also reported that awareness raising events held has enabled different agencies and professionals to acquire knowledge on how to implement such tools in practice.

24. The risks perceived by the FSA have been discussed with the private sector in numerous training-seminars, which required the presence of compliance officers. These seminars also resulted in the development of the P034 project (AS), which included specific elements in evaluating sectoral risk. The

project's actions targeted SSIFs and SAIs (capital market) and included analyses and assessments of risks. Prudential aspects (compliance and internal control) were also considered. The programme results and related findings formed the basis of sectoral risk assessments.

25. Two guides based on the IV EU Directive were also issued:

- Guide on the supervision on the basis of risk (RBS) - Risk Based Supervision; and
- Guide on the risk factors and the CDD/EDD measures (not yet published).

26. Both guides provide for consultation between the FSA and the supervised entities with a view to set up a common interpretation of risk factors and indicators of suspicious transactions. Overall, such tools, including other FATF guidelines, typologies, and training programmes, are regularly published on the FIU website.

27. It is important to note that the training programmes include "Presentation of Suspicious Transaction Guidelines" (Manual on RBA and suspicious transactions indicators) as a necessary tool to support REs in identifying suspicious transactions related to ML/FT and understand the difference between cash transaction reports and suspicious transaction reports.

28. Actions were undertaken also by the National Bank of Romania (NBR) in order to implement this RA. In particular, the NBR continuously provides AML/CFT guidelines to the supervised entities, including information on relevant risk indicators in detecting FT.

29. In addition, SRBs such as the Chamber of Financial Auditors, the Chamber of Tax Consultants and the Bar Association have undertaken numerous activities to discuss the risk and relevant ML/FT indicators of the sector.

30. Last but not least, earlier in 2018, the FIU adopted a comprehensive training programme for the REs on this issue.

Conclusion:

31. Bearing in mind that the new Law is not in force, it will implement most of recommended actions under R.5, However, some deficiencies remain outstanding. In particular, the requirements (d and e) of under criterion 5.2 of the 2004 FATF methodology are not covered by the new law, while the Office Norms have not been amended. Also, though some measures have been taken to build-up awareness on CDD and related requirements among non-bank FIs and payment institutions (which are subject to NBR supervision), these are not sufficient to fully implement recommended action 6. Overall, R.5 remains partially compliant.

Recommendation 13 (Suspicious transaction reporting)

Recommended action (1): *Revise the reporting requirement to ensure that it eliminates the identified inconsistencies and explicitly requires reporting suspicions that funds are the proceeds of criminal activity.*

32. Art.6(1) of the new Law explicitly requires all REs listed under Art.5 to submit a STR to the FIU in case they know, suspect or have reasonable grounds to suspect that:

> *"a) the goods originate from committing offenses or are related to terrorism financing; or*
>
> *b) person or its proxy/representative/settler is not who they claim to be; or*
>
> *c) the information that the reporting entity owns may be relevant to the investigation of an offense or may be used to enforce the provisions of this law; or*
>
> *d) in any other situations or with regard to the elements which are likely to rise suspicious regarding the character, economic purpose or justification of transaction, such as the existence of some abnormalities to the customer's profile, as well as there are some grounds that the data hold regarding the customer or regarding the beneficial owner are not real or actual, and the customer refuse to update the data or to offer justifications which are not credible.*"

33. In addition, in relation to other inconsistencies and minor deficiencies identified concerning the manner in which the reporting requirement is articulated in the AML/CFT Law, Art.8(1) of the new Law rectifies the deficiency related to the time of suspension.

> "*Art.8(1) The REs mentioned in art. 5 shall immediately transmit to the Office the suspicious transaction report referred to in art. 6, before performing any transaction, related to the customer, which are connected with the reported suspicious.*"

34. As regards the ambiguity created by the wording in ex-ante and ex-post reporting, found under the previous AML/CFT law, it has been addressed the new Law.

> "*Art.6(1) REs, mentioned in Art.5, are required to submit a suspicious transaction report only to the Office if they know, suspect or have reasonable grounds to suspect that:*
>
> *a) the goods originate from committing offenses or are related to terrorism financing; or*
>
> *b) person or its proxy/representative/settler is not who they claim to be; or*
>
> *c) the information that the reporting entity owns may be relevant to the investigation of an offense or may be used to enforce the provisions of this law; or*
>
> *d) in any other situations or with regard to the elements which are likely to rise suspicious regarding the character, economic purpose or justification of transaction, such as the existence of some abnormalities to the customer's profile, as well as there are some grounds that the data hold regarding the customer or regarding the beneficial owner are not real or actual, and the customer refuse to update the data or to offer justifications which are not credible*."
>
> While Art.9(2) stipulates:
>
> "*The REs shall immediately sent a report of suspicious transaction, exclusively to the Office when it finds that a transaction or more transactions that have been and are related to the customer activity has suspicious of money laundering or terrorism financing*."

35. Last but not least, the ambiguity identified in relation to the definition of suspicious transaction and suspicious operation under the previous AML/CFT law, it does not appear to be an issue under the new Law.

Recommended action (2): *Ensure that the reporting requirement includes all the circumstances referred to in criterion 13.2 under the FT reporting requirement*.

36. The FT reporting requirement is also implemented through Art.6(1) and Art.8(15(2)), which is in line with the 2013 FATF standards.

> "*Art.6(1) REs, mentioned in Art.5, are required to submit a suspicious transaction report only to the Office if they know, suspect or have reasonable grounds to suspect that:*
>
> *a) the goods originate from committing offenses or are related to terrorism financing;*"

Recommended action (3): *The FIU should undertake further efforts to increase REs' understanding of ML/FT reporting requirements and ensure that suspicious transactions are reported promptly to the FIU.*

37. This recommended action has been fully implemented. In particular, under the 2013-2016 Strategy of the National Office for Prevention and Control of Money Laundering (NOPCML) and its strategic objective to increase the transparency and the level of resistance of the Romanian financial and non-financial sector against various forms of criminality, a number of bilateral meetings, training sessions and information exchanges took place. The authorities reported that these events enabled proper transposition of various analyses, recommendations, guidelines and typologies to all REs, in order to promote awareness of risks, current trends and challenges concerning the reporting of suspicious transactions. More than 3000 representatives of REs attended these training events. Such activities have also been included in the scope of the 2017-2020 Operational Strategy of the NOPCML (2017-2020), http://www.onpcsb.ro/pdf/STRATEGIA%20OPERATIONALA%20A%20ONPCSB%202017-2020%20ENG.pdf. The authorities reported that in the period between 2016 and 2017 approximately 70 training sessions were held (over 4000 participants were trained). Also, in the period between January and October 2018, 3 training sessions took place (250 participants from credit institutions and non-banking FIs).

38. In addition, the FIU has issued and communicated to REs a number of analyses and strategic reports on ML/FT risks. Such risks are regularly reviewed and updated by the FIU (http://www.onpcsb.ro/prezentare-onpcsb/raport-activitate).

39. Last but not least, in the period between January and October 2018, a number of trainings were organised by the FSA and the Chamber of Financial Auditors in cooperation with the NOPCML.

Conclusion:

40. Bearing in mind that the new Law is not in force, it will address most of the issues noted in the 2014 MER. Therefore, the technical compliance level with R.13 can be considered to be equivalent to largely compliant.

Recommendation 23 (Regulation, supervision and monitoring)

Recommended action (1): *Consider conducting a comprehensive national/sectorial risk assessment so as to understand and appropriately respond to the threats and vulnerabilities in the system*.

41. This RA has been implemented. The Romanian authorities have given consideration to conduct a comprehensive NRA. In particular, on 19 June 2018 an agreement was concluded between the governments of Norway and Romania to finance the Romanian NRA. The authorities reported that currently the General Inspectorate of the Romanian Police, which is in charge of the NRA project, holds negotiations with two Norwegian institutions.

Recommended action (2): *Review the role of the Office in legislation in relation to currency exchange offices and remedy lack of clarity in legislation.*

42. Art.30 of the new Law addresses this RA. In particular:

> "*(1) The authorisation or registration of the entities that perform activities of foreign currency exchange in Romania, other than those subject to supervision of the National Bank of Romania according to this law, is performed by the Ministry of Public Finance, through the Commission for Authorisation of Foreign Currency Exchange Business, hereinafter called the Commission.*
>
> *(4) The procedure for approval and / or registration shall be established by the Government Decision, draw up by the Ministry of Public Finance, together with the Ministry of Internal Affairs, and endorsed by the Office, within 90 days from date of the entry into force of this law*;"

Recommended action (3): *Complete the authorisation of currency exchange offices supervised by the Commission and reinforce programme of on-site inspection based on risk*.

43. The authorisation and registration of the entities which carry out currency exchange activities, other than those supervised by the National Bank, is performed by the Commission for authorisation of the currency exchange activities.

44. The authorities advised that by 01 October 2018, there were 420 entities performing currency exchange activities in 2.728 currency exchange points. 305 out of the 420 entities mentioned had the authorisation issued by the NBR.

45. In the period between April and October 2018, 15 currency exchange offices were licensed, while 3 ceased their activities. As regards, currency exchange points 142 were licensed, while 97 ceased their activity on request, and 1 license was not granted.

46. In the same period, the Commission disposed some verifications of authorities with control prerogatives. On-site controls were performed on 5 legal entities which were found non-compliant with the Order of Minster of Public Finances No.664/2012. 1 currency exchange license was revoked, while 1 statistic code and 4 currency exchange points were suspended, for a period of 1 to 6 months.

47. In addition, in 2017 the FIU supervised 113 foreign exchange offices (off-site supervision) using a RBA. In the period between January 2017 and March 2018, on-site controls were carried out in 33 foreign exchange offices, rated as high risk following off-site supervision. These controls resulted in 21 sanctions, i.e. 13 warnings and 8 fines totalling RON 115.000.

48. Last but not least, in the period between April and October 2018, 15 on-site controls took place in foreign exchange offices, rated as high risk following off-site supervision. The controls resulted in 29 contravention sanctions, i.e. 19 warnings and 10 fines totalling RON 150,000.

Recommended action (4): *Introduce licensing/registration and regulation of activities of the Post Office.*

49. The authorities advised that Art.2(g.1), Art.5(1.b), Art.29(1 – 3) and Art.31(1) of the new Law implement this recommended action. In particular, Art.2 includes 'postal service providers' in the definition of FIs, which is further embedded in the Art.5. In addition, Art.29(1.b) states that the NOPCML is designated authority responsible for supervision and control of compliance with regard to the provision on information accompanying the transfers of funds. However, the law does not provide any explicit requirement concerning the licensing of the post office activities (see Art.31(1)).

> "*Art. 31 – (1) It is forbidden to perform the following activities, without authorisation or registration of the following entities: currency exchange offices, and collection of travel check offices, the service providers referred to in Art. 2 lit. l) as well as providers of gambling services*.
>
> *Art.2 g) financial institution means:*
>
> *1. the enterprise other than a credit institution which carries out one or more activities listed in art. 18 para. (1) b – 1) n and cn[1] of the Emergency Government Ordinance no. 99/2006, approved with amendments by Law no. 227/2007, as amended and supplemented, including postal service providers providing payment services and specialized entities performing foreign exchange;*"

Recommended action (5): *Revise/improve NBR inspection manuals to provide for checking obliged entities' compliance with all essential requirements of the national framework for combating ML/FT.*

50. In October 2017, the NBR approved the Procedure on Risk-based Supervision and Assessment of Credit Institutions, Non-banking FIs, Payment and Electronic Money Institutions, which governs the processes, mechanisms and practicalities in exercising AML/CFT supervision commensurate to the ML/FT risks identified (hereinafter 2017 Supervision Department's Procedure) .

51. In addition, in the 3rd follow-up report the authorities informed that a new inspection manual had been issued and, following the consultation with relevant departments, it had been submitted for approval to the NBR management. Although, this is a positive development, the authorities have not provided any update in relation to the current status of manual.

Recommended action (6): *Revise, systematise, and improve inspection planning practices by the NBR (including the risk-based definition/implementation of the supervisory cycle).*

52. In January 2017, the Program and objectives for the evaluation and verification of the entities supervised by the National Bank was amended. As a result, a broader range of institutional aspects that may impact the efficiency of the prevention systems (i.e. internal controls, IT systems, internal governance, business model, risks concerning the application of AML/CFT regulations and application of international sanctions etc.) are included in the inspection.

53. The 2017 Supervision Department's Procedure provides tools and mechanisms which enable the NBR to exercise its supervisory powers in a manner proportionate to the ML/FT risks identified in supervised institutions. This procedure is also the design basis for the 2018 supervisory program.

Recommended action (7): *The NBR should review the current level of scrutiny and depth of the AML/CTF inspections by the NBR to ensure that it is adequate and that it enables the NBR to be satisfied that financial institutions are effectively implementing the AML/CTF requirements*.

54. Please see recommended action 6 above.

55. The 2018 NBR on-site supervisory plan for FIs took into account the need to ensure an adequate balance between the off-site and on-site supervision, based on the risk profile of the subjects under review. More precisely, the supervisory plan was informed by:

- the Procedure on the process of risk-based supervision and assessment of credit institutions, non-banking FIs, payment institutions and electronic money institutions, depending on their exposure to the ML/FT risks;

- the fact that objectives of on-site supervision may be personalised for each subject. Depending on the identified risk factors, the on-site supervision can cover the whole supervisory area or focus on assessing the risks associated with particular products or services, certain categories of customers or specific elements of AML/CTF processes (such as customer identification, risk assessment, on-going monitoring and reporting activities), or on certain internal governance elements;

- the fact that the intensity and complexity of the verifications/analyses and compliance tests may be personalised for each on-site supervision and are commensurate with the subject of assessment's risk profile;

- that the institutions whose overall rating is 3 or above (medium and high risk) are subject to on-site supervision at least once per year;

- the fact that the institutions which have low risk, but have a vulnerable business model are subject to on-site inspections.

56. The authorities informed that plan may be amended to include new entities or topics whenever the new risk factors are identified. The amendments on the AML/CFT legislation will also include new categories of entities under the NBR supervision, primarily the providers of electronic money and payment institutions from other EU member states operating in Romania.

Recommended action (8): *Provide for reasonable and even application of supervisory measures (including fines as a supervisory measure with dissuading effect) by the NBR, as appropriate*.

57. The authorities reported that in 2017 they imposed 66 administrative sanctions against 21 supervised entities (14 credit institutions, 3 branches of the credit institutions from other member states, 1 electronic money institutions, 2 non-bank FIs (one being also payment institution) and 1 payment institution). In addition, 36 warnings and 30 fines totalling up to 565000 lei were imposed. Also, a sanction was imposed against a compliance officer of a bank (15000 lei). In 2016, 19 fines were imposed, amounting up to RON 335.000.

58. Nonetheless, it is difficult to assess the dissuasiveness of the measures taken from a desk-based review.

Recommended action (9): *The NSC, CSA and the CSSPP should move to a systematic and demonstrable risk-based approach to on-site and off-site supervision, including (a) the preparation of documents for on-site and off-site supervision and (b) allowing the scope and complexity of on-site inspections to be demonstrated. The Office is more advanced in terms of risk-based supervision but the generality of the point applies*.

59. In 2013, the FSA took over and reorganised all duties and powers of the National Securities Commission (NSC), the Insurance Supervisory Commission (CSA) and the Private Pension System Supervisory Commission (CSSPP), under the Government Emergency Ordinance No.93/2012 approved by the Law No.113/2013.

60. The authorities provided an extensive explanation of different reforms that were or are still underway with regard to the FSA's and FIU's supervisory role. In addition, several projects (such as e.g. the strengthening of the Capital Market Surveillance Function implemented in cooperation with the World Bank) dealt with the supervision of the insurance and securities sectors and discussed the modalities, best practices and application of RBA.

61. The authorities, also, informed about the transposition of the ESMA-EBA Common Guide on Assessing the Suitability of Members of the Governing Body and Key Persons, the Guidelines on the Managing Authority of Market Operators and Data Service Providers, and ESMA-EBA Common Guide on the assessment of the suitability of members of the management body and of the persons exercising key functions.

62. Nonetheless, it is difficult to conclude that the FSA applies a systematic and demonstrable RBA to on-site and off-site supervision from a desk-based review.

Recommended action (10): *The NSC should provide better feedback to the Bucharest Stock Exchange (BSE) and analysis should be undertaken to ensure opportunities are not being missed in relation to combating money laundering arising from market abuse and insider dealing*.

63. Information was provided on the project developed in 2017 in relation to the *order book replay solution which is* a modern surveillance tool in detecting the cases of potential of market abuse. This tool was developed by the FSA in cooperation with the Bucharest Stock Exchange.

64. The authorities has also reported that in July the law No. 126/2018 on Markets in Financial Instruments has entered in force, which transposes MIFID II provisions, at national level.

65. At the level of market operators (including the BSE), new conditions/governance requirements applicable to the market operator's management body, persons exercising significant influence on the management of the regulated market, as well as conditions related to system resilience, trading interruptions and electronic trading were established. All market operators, shall inform the FSA on serious infringements of the rules for the regulated markets, trading conditions liable to affect the orderly functioning of the market, conduct which may suggest behaviour which is prohibited under Regulation (EU) No. 596/2014, the malfunctions of the system in connection with financial instruments.

66. The authorities added that at the FSA's level of electronic surveillance structure, there is a permanent communication channel with the BSE representatives, while feedback/support is being provided in the implementation of the BSE reporting requirements.

Recommended action (11): *Take measures to ensure that supervisory activities of the NBR provide for fully ascertaining efficient implementation of applicable AML/CTF requirements by obliged parties.*

67. This recommended action has been implemented. In particular, the NBR's Supervisory Department's Procedure on Risk-based Supervision and Assessment, provides for the assessment of the following:

- How institutions define, identify and manage politically exposed persons (PEPs);

- How institutions define and ensure the identification of the beneficial owner;

- Assessment of procedures and processes for applying standard, simplified or additional CDD measures;

- How institutions evaluate and classify clients and transactions according to the associated ML/FT risk;

- How institutions manage the risk associated with customers and transactions presenting a higher potential risk;

- Evaluating the procedures and processes for identifying, managing and reporting operations susceptible to ML/FT;

- Evaluating the procedures and processes applied for the identification and reporting of transactions in cash, in lei or in foreign currency, and of foreign transactions whose minimum limit is equivalent to EUR 15,000;

- How institutions update and manage the documents used to identify customers, as well as secondary records and records of customer financial operations.

- Adequacy of the systems and instruments used; deadlines for analyses of IT alerts and traceability of decisions;

- Controls and allocation of responsibilities, in order to verify how the monitoring is performed.

- Whether the approach from ex-post reporting to reporting of transactions before being processed is done in all cases were indicators could be detected ex-ante.

- Distribution channels and the way they are reflected in the risk rating allocated to the customers/products.

Conclusion:

68. Bearing in mind that the new Law is not in force, it will rectify most of the outstanding deficiencies. Although, some minor deficiencies exist, i.e. post-office licensing, the technical compliance level with R.23 can be considered to be equivalent to largely compliant.

Recommendation 26 (The FIU)

Recommended action (1): *Romania should seriously consider whether the Board with its current functions and set up is necessary within the overall framework of the FIU. Should a decision to maintain the Board be reached, the Board should not be involved in the core operational functions of the FIU. This includes the receipt, analysis, dissemination functions and domestic and international requests for information. It is particularly important that the resources dedicated to the Board do not detract from the resources made available to the operational units of the FIU.*

69. The authorities have given appropriate consideration to this RA. Under the new Law, the structure of the NOPCML has changed and the Board has ceased to exist.

70. Art.40 of the new Law provides for the exercise of the NOPCML attributions.

> "*Art.40 - (1) In the exercise of its attributions, the Office has established its own structure formed by contractual employees, at central level, whose chart is established by the Regulation of Organisation and Functioning of the Office, approved by Government Decision and has adequate financial, human and technical resources.*
>
> *(2) The Office is headed by a President appointed by the Government, who has the capacity of the principal authorising officer, assisted by a Vice-President, appointed by Government Decision. The President of the Office is an official with secretary of state rank. The Vice-President is an official with the rank of sub-secretary of the state.*
>
> *(3) The President and the Vice-President of the Office are appointed for a 4-years mandate and can be re-invested once for another 4 years.*
>
> *(4) The President and the Vice-President must cumulatively fulfil the following conditions at the date of appointment:*
>
> *a) to be licensed and have at least 10 years of seniority in an economic or legal position;*
>
> *b) to have Romanian citizenship and residence in Romania;*
>
> *c) to have full exercise capacity;*
>
> *d) to enjoy a high professional reputation;*
>
> *e) to have management experience of at least 3 years in management positions;*
>
> *f) not to have been disciplinary sanctioned in the past 5 years.*
>
> *(5) In the event of the President being absent or unavailable, his duties shall be taken over by the Vice-President of the Office for the absence or unavailability period.*"

Recommended action (2): *If the authorities determine that the Board is to be retained, it should assume higher-level responsibilities with a broader co-ordination and oversight role, possibly in the context of the national AML/CTF strategy of Romania. This could be achieved by setting up of a structure or mechanism which brings together representatives from institutions involved in the AML/CTF sphere (such as some of the authorities represented on the current Board but possibly other relevant institutions).*

71. See recommended action 1 above. The new Law does not provide on the responsibilities and role of the Board. In fact, it appears that the structure of the NOPCML has significantly changed while functions assigned to the Board, under the previous law, are now subject of the NOPCML President powers.

> "*Art.8(11) The form and content of the reports referred to in art. 6 and 7 for the financial and non-financial reporting entities, as well as the methodology for their submission, will be established by Order of the President of the Office, with the consultation of the supervisory authorities and self-regulatory bodies.*"

Recommended action (3): *The Board should ideally not be situated within the FIU. However, should a decision be taken otherwise, the composition of the Board and the appointment and removal of Board members should be reviewed carefully to ensure that the FIU has sufficient operational independence and*

that no conflicts of interest arise. The Board should be composed of only those representatives who have a significant role in the cooperation and coordination of AML/CTF issues.

72. The new Law does not provide for the structure and the functions of the Board. Instead, Art.58(3) provides for termination of its members mandate. The authorities confirmed that the Board has ceased to exist.

> "*Art. 58 - (1) Within 60 days after the date of coming into force of the present law, the Office shall present to the Government, for approval, the Regulation of organisation and functioning of the Office.*
>
> *(2) By the moment of adopting the Regulation of organization and functioning referred to in par.(1), the Office shall operate according to Regulation of organisation and functioning of the National Office for Prevention and Control of Money Laundering existent on the date of entry into force of this law, insofar as it does not contravene to it.*
>
> *(3) By the moment of entering into force of this law, the mandate of the members of the Board of the Office shall cease. The end of mandate shall be established by Government Decision within 10 days from the entry into force of this law. The President of the Office, in office at the date of entry into force of this law, exercises his mandate until the appointment of a new president under the terms of this law*."

Recommended action (4): *The current operational and analytical functions of the Board could be assigned to, for instance, an analysis committee, which could include the Head of DAPI, the heads of departments of the financial analysis departments, and, if appropriate, the FIU head, which are specialist staff with the appropriate expertise required to perform these functions*.

73. The new Law does not provide for the operational and analytical functions of the Board. Instead, both Art.39 and 40 provide for the structure and functions of the NOPCML. See Art.40 above.

74. Also, the authorities reported that the FIU Order No.332, on Mechanism for Analyses and Processing of Information, simplifies the approval of STRs and other analysis of the Directorate by excluding the Board from this process.

> "*Art. 39 - (1) The National Office for Prevention and Control of Money Laundering is the Financial Intelligence Unit of Romania, administrative type, established in Bucharest, it operates as unique, independent and autonomous structure from an operational and functional point of view, subordinated to the Government and coordinated by Prim-Ministry.*
>
> *(2) The Office's scope of activity is to receive, analyse, process and disseminate financial information, to supervise and control the reporting entities for the purpose of preventing and combating money laundering and terrorism financing.*
>
> *(3) In order to accomplish its object of activity, the Office has the following main attributions:*
>
> *a) receives the reports provided by this law, as well as other information from the reporting entities, public authorities and institutions in connection with money laundering, criminal offences generating goods subject to money laundering and terrorism financing;*
>
> *b) collects information received, and creates its own databases;*
>
> *c) submits requests to reporting entities, public authorities or institutions or private, for data and information necessary to perform the duties established by law, including classified information;*
>
> *d) evaluates, processes and analyses information received;*
>
> *e) in accordance with the law, suspends transactions relating to a suspicious activity of money laundering or terrorism financing, and may order the revocation of the suspension measure, according to the provisions of this law;*
>
> *f) disseminates the results of the analyses carried out to the competent authorities, in accordance with the present law;*
>
> *g) keeps records of the information if there is no evidence of money laundering, suspicious of terrorism financing or suspicious offenses other than money laundering or terrorism financing;*

h) informs other public authorities about developments, threats, vulnerabilities, risks of money laundering and/or terrorism financing;

i) cooperates with the self-regulatory bodies on how to implement their obligations under this law and secondary legislation in the field;

j) issues instructions, recommendations and point of views to reporting entities to ensure the effective implementation of their obligations under this law, including indicating as suspicious of an activity and/or suspending a transaction, based on the transmission of identification data of a person or of specific indicators or typologies;

k) adopts, by order of the President, at least the following regulations/guides in the field of prevention and combating money laundering and terrorism financing: the Regulation on the transmission of information to the Office, the Regulation providing feedback to reporting entities on the information submitted to the Office, the guide on the suspicion indicators and typologies, the regulation on the registration of the reporting entity in the Office's records, the guide on the criteria and norms for the recognition of high or low risk of money laundering and/or terrorism financing;

l) receives the notifications, receives and solves the requests for authorization to conduct financial transactions in the case of restrictions on certain transfers of funds and financial services, for preventing nuclear proliferation;

m) supervises and controls the reporting entities on the implementation of international sanctions under the legislation in the field;

n) supervises and controls the reporting entities in its field of competence, on how to implement their obligations under this law and secondary legislation in the field;

o) finds the contraventions and applies the sanctions to the reporting entities in its own area of competence provided by the present law, through their own control agents, by minutes of finding and sanctioning the contravention;

p) organizes training sessions in preventing the use of the financial system for money laundering and terrorism financing;

q) performs exchange of information, on its own initiative or on request, on the basis of reciprocity, with institutions that have similar functions or with other competent authorities in other Member States, or third countries that have the obligation to keep the secrecy of the information under similar conditions, in accordance with the law;

r) *performs exchange of information at national level with competent authorities in accordance with the provisions of this law;*

s) publishes the annual activity report.

(4) The analysis function shall cover at least the operational analysis that focuses on individual cases and specific objectives ,or on appropriate information depending on the type and volume of information received and on the intended use of the information after its communication, and the strategic analysis to address recurring trends and practices of money laundering and terrorism financing.

(5) In order to accomplish its object of activity, the Office shall have access, directly, in a timely manner, to financial, tax, administrative, as well as any other information from the law enforcement authorities and from prosecution authorities, for performing properly its tasks.

(6) The Office represents Romania in its own field of activity and promotes exchange of experience in relation with international organizations and international institutions, cooperates with foreign Financial Intelligence Units, can participate in the activities of international bodies and may be a member of them.

(7) The Office may conclude protocols and/or cooperation agreements with the national competent authorities, as well as with other national or international institutions with similar responsibilities, and with the obligation of secrecy under similar conditions.

(8) The Office shall communicate in writing, to the Commission the information referred to in paragraph 1."

Recommended action (5): *The appointment of the President of the FIU should be subject to a clearly-defined and transparent procedure which should also guarantee that the person selected is independent and displays high professional standards, probity and integrity*.

75. Art.40 of the new Law provides a number of criteria for the appointment of the FIU president (please see recommended action 1).

Recommended action (6): *The procedure for the appointment of Board members should be strengthened to ensure that when a vacancy within the Board arises it is filled within the stipulated time envisaged in the law*.

76. This recommended action is not relevant any more. The new Law does not provide for Board members (See Art.58 above).

Recommended action (7): *The requirement to establish solid grounds of ML/FT in order to disseminate financial information to competent authorities should be removed*.

77. Art.34(1) of the new Law implements this recommended action.

"*Art. 34 - (1) The Office analyses and processes the information and when it finds that there are grounds of money laundering or terrorism financing, informs immediately the Prosecutor's Office attached by the High Court of Cassation and Justice*."

Recommended action (8): *The 30 day period for the submission of additional information by REs should be reduced*.

78. Art.33(2) of the new Law implements this recommended action.

"*(2) The reporting persons, the public authorities, the public and private institutions are required to submit directly to the Office the requested data and information, in the format specified by the Office, no later than 15 days from the receipt of the request, and for the requests submitted as a matter of urgency, marked as such, within the period specified by the Office, even if they do not have submitted a report of suspicious transaction in accordance with Art.6(1*)."

Recommended action (9): *The obligation to maintain FIU information confidential by FIU staff after they cease to be employed by the FIU should apply indefinitely*.

79. Art.41(2and 3) of the new Law provides that FIU information should be maintained confidential for an indefinite period by FIU staff after they cease to be employed by the FIU.

"*(2) The Office employees shall not transmit the confidential information received during the activity, except under the law. The obligation is maintained indefinitely.*

(3) It is forbidden for the Office employees to use confidential information received and processed within the Office, both during the time of their employment and after its termination."

Recommended action (10): *Measures should be taken as a matter of priority to introduce adequate analytical tools and to ensure that reporting of STRs is carried out electronically by REs, especially banks*.

80. Art.8(12) of the new Law implements this recommended action.

"*(12) The reporting entities are required to submit exclusively to the Office the reports established in Art.6, Art.7 and Art.9(1), in electronic format only, through the channels made available by the Office, in the form and content established according to par.11*."

81. In addition, to this end a memorandum between the NOPCML and the UNODC implementing the goAML software has been approved by the Secretariat General of the Government of Romania. The authorities informed that the project has recently been submitted for approval to the Ministry of Justice.

Recommended action (11): *The FIU should identify issues which may have an impact on the quality of analytical reports and continue in its efforts to clear the backlog of cases pending analysis. It should*

consider conducting an assessment to determine the reasons for the low number of investigations, prosecutions and convictions on the basis of disseminated analytical reports.

82. This recommended action has been addressed. In particular, the authorities reported numerous meetings which included discussions with the State Prosecutor's Office on matters related to the content and quality of the FIU's disseminations, and ways to improve their cooperation and information exchange.

83. Relevant statistical data were also provided – i.e. in 2017, the FIU received 12.863 STRs/notifications, recording an increase of 50% compared to the number of STRs received in 2016. 326 of these reports relate to attempted transactions, while a freezing order was imposed in 232 of them. It is noteworthy that only 52 were imposed in 2016. The NOPCML considers the application of this measure as a proof of its proactive approach.

84. In 2017, under the Order of the Prosecutor General, a targeted control of the prosecutor's offices was carried out aiming at "*verifying the lawfulness of not initiating an indictment in the period between 2016 and 2017 in cases dealing with ML, as set out by Art.29 of the Law No. 656/2002*". A report was filed by the NOPCML which was sent to all prosecution units with the following recommendations:

- an operative control of the case before deciding whether or not to file an indictment should be carried out by the most senior prosecutor in the office.

- periodical (semi-annual) verifications should be carried out by the most senior prosecutor in the office on how the prosecutors supervise investigation in old cases;

- periodic workshops (or when deemed necessary) shall be organised between the heads of prosecution units and those of police units, for taking appropriate measures (if necessary, working on a specific case file) that will lead to completion of the criminal investigation activities ordered by the prosecutor within the time limit set by the prosecutor;

- the prosecutor shall supervise, in an effective and efficient manner and in accordance with the Art.300-303 of the Criminal Procedure Code, the activity of the criminal investigation bodies of the judicial police, by drawing up written directives, setting deadlines for the completion of the investigations and following up the fulfilment of these directives by the criminal investigation bodies.

85. Prosecutor's Office also carried out an analysis of the indictments from 2016 to the first semester of 2017 on ML cases, which was completed in January 2018. The purpose of this analysis was to present the aspects relevant to indictments, identify issues relating to non-unitary practice and disseminate best practices in the matter of ML and confiscation of the proceeds of crime. The analysis highlighted a significant increase in number of ML related cases/indictments. Prosecutors were also recommended to take into consideration the binding provisions established by:

- Decision No.16 (08.06.2016), delivered by the High Court of Cassation and Justice, which refers to:

"*1. The actions enumerated in Art.29(1) a), b) and c) of the AML/CFT Law (no. 656/2002) namely the exchange or transfer, concealment or dissemination, acquisition, possession or use are alternative means of the material element of the single offense of ML.*

2. The perpetrator of the predicate offence may be the same person as the perpetrator of the ML offence.

3. ML is an autonomous offense and it is not conditioned by the existence of a conviction decision for the offense the goods originate from;" and

- Decision No.23 (19.09.2017) delivered by the High Court of Cassation and which states that:

"*In the interpretation of the provisions of Art.33 of the law No.656/2002 on the prevention and sanctioning of money laundering and Art.9 of the law No.241/2005 on the prevention of and fight against tax evasion, in the event of concurrence of offenses between tax evasion and money laundering, it is not necessary to take the safety measure of special confiscation of the amounts of money making the object of the offense of money laundering and arising from the offense of tax*

evasion while imposing on the defendants the payment of the amounts equalling to the tax liabilities owed to the State as a result of the offense of tax evasion."

Conclusion:

86. Bearing in mind that the new Law is not in force, it will address all recommended actions to a large extent. Therefore, the technical compliance level with R.26 can be considered to be equivalent to largely compliant.

Special Recommendation I (Implementation of United Nations instruments)

Recommended action (1): *Romania should take additional measures, as relevant, to implement fully the Vienna and Palermo Convention.*

87. This RECOMMENDED ACTION remains outstanding. Please see the analysis under SR.III below.

Recommended action (2): *Romania should take additional measures to implement fully the CTF Convention, in particular by addressing the shortcomings identified in SR.II*.

88. Most of the deficiencies identified under SR.II have been rectified. The FT offence definition is largely in line with the Standards (Art.36 of the Law on Terrorism), and the country has provided examples proving that FT activities are investigated and prosecuted effectively (see analysis of the 3rd follow-up report, under SR.II).

"*Article 36*

(1) Financing of terrorism offence means collecting or making available, directly or indirectly, of licit or illicit funds, knowing that these will be used, in total or in part, for committing terrorist acts or for supporting a terrorist entity, and shall be punished with imprisonment form 5 to 12 years and interdiction of certain rights.

(2) Committing of an offence, in awareness that they will be used, in total or partly, for committing terrorist acts or for supporting a terrorist entity, shall be punished with the penalty provided by the law for that specific offence, but the maximum limit will be supplemented with 3 years of imprisonment.

(3) If the funds acquired in conditions provided by par.2 were given to the terrorist entity, the rules regarding concurrence of offences shall be applied.

(4) Attempt of the offence provided in par.1 shall be punished."

89. According to Art.4 of the Law on terrorism the term "terrorist entity" covers the following:

"*a person, group, structured group or organisation which (a) commits or participates in terrorist acts; (b) is preparing to commit terrorist acts; (c) promotes or encourages terrorism; (d) supports terrorism in any form*".

Recommended action (3): *Romania should address the shortcomings identified in relation to the implementation of UNSCR.*

90. Progress has been made with regard to issues related to guidance and supervision in relation to the implementation of the UNSCR 1373. However, some issues in relation to EU internals and the freezing powers of the National Fiscal Authority (NAFA) remain outstanding (please see SR.III below).

Conclusion:

91. Although some progress has been made in relation to SR.II, there are still outstanding issues in relation to SR.III. The authorities are strongly encouraged to take all the necessary measures to adopt the amendments to the Emergency Ordinance of the Government by the 58th Plenary (July 2019). SR.I remains partially compliant.

Special Recommendation III (Freeze and confiscate terrorist assets)

Recommended action (1): *The authorities should issue regulations to designate persons, groups and entities formerly known as EU internals in a national list and adopt measures to freeze their funds, assets and resources.*

92. Should an EU internal be identified as having links to terrorist activities threatening international peace and security (and this person is not linked to Al-Qaeda, ISIL or the Taliban), the EU Council shall designate that person under the EU instruments implementing UNSCR 1373, based on Art.215 of the Treaty on the functioning of the EU (Council decision 2018/475 and Council Implementing Regulation 2018/468).

93. For UNSCR 1373, the obligation under EU Regulation 2580/2001 to freeze all funds/assets of designated persons/entities applies to all EU Member States without delay and without prior notice to those designated persons/entities. However, these measures do not extend to individuals or entities listed under Council Common Position 931/2001/CFSP that are EU internals (i.e. persons who have their roots, main activities, and objectives within the EU) although they are subject to increased police and judicial cooperation among Member States: CP 2001/931/CFSP footnote 1 of Annex 1. This leaves a gap in the implementation of USCR 1373 which the criminal justice framework does not fill.

Recommended action (2): *The authorities should clarify that the freezing powers of NAFA are broad enough to ensure that all categories of funds, assets or resources envisaged under UNSCR 1373 are effectively frozen.*

94. A process to amend the Emergency Ordinance of the Government (No.202, December 2008) concerning the implementation of international sanctions is underway. The authorities provided information that the amendments will allow NAFA *to* block the funds or economic resources "that are held, owned by or under the control of natural or legal persons directly or indirectly owned or controlled by designated persons or entities or acting on their behalf or under their direction". The amendments also introduce the possibility for NAFA to block the funds or economic resources "which derived or were generated from property owned or controlled directly or indirectly by a designated natural or legal person. Although the positive developments, the bill concerning the amendment of GEO No.202/2008 remains in draft form.

Recommended action (3): *Supervisory authorities, including and the associations supervising professionals, should provide more guidance to the private sector on their obligations in taking actions under freezing mechanisms and practical implementation aspects*.

95. A number of actions have been taken place since the 4th Round MER. The FIU adopted an internal act (Order of the President of the Office No.44/2014 on the approval of the Methodological Norms for performance of notifications and solving the requests for authorisation of certain financial transactions). Also, the FIU issued the Order of the President of the Office No.81/2015 so as to implement the EU Regulation No.1861/2015, the Council Regulation No.1862/2015 and the PESC Decision No.1863/2015. Follow-up trainings were also organised with supervisors and professional associations, examining good practice deriving from the EU and FATF in applying restrictive measures and freezing of funds.

96. In 2018 the FSA updated the section of its website in relation to the international sanctions regime to include alerts https://asfromania.ro/international/sanctiuni-internationale so that all financial entities has access to these information. In addition, the FSA initiated awareness raising activities among compliance officers through information sharing and trainings, while it updated its website. The Chamber of Financial Auditors of Romania also organised training courses and issued recommendations and guidance papers to financial auditors and reporting entities. The National Union of Civil Law Notaries in Romania (UNNPR) together with the FIU held a working meeting with the aim to identify and clarify problems encountered in the field of notarial activities, after which a report was drafted and circulated among all notaries. Last but not least, the National Association of the Romanian Bars (UNBR) and the National Institute for the Training and the Improvement of Lawyers (INPPA) together with the FIU organised two training sessions for reporting entities on topics related to, inter alia, reporting requirements and CDD. These trainings, however, did not focus specifically on freezing mechanisms.

Recommended action (4): *Access to information on designated persons, groups and entities on the websites of the NAFA, the prudential supervisory authorities and the Ministry of Foreign Affairs should be simplified*.

97. Certain progress has been made with regard to access to information on designated persons, groups and entities, in particular through the FIU and FSA websites. The FSA website includes both sectorial regulation and a link to the MFA website dedicated to the international sanctions regime. Also, subsections for each sanctioning regime were introduced in the FIU website, as well as the search engines for sanctioning regimes adopted at UN and EU level.

98. The NAFA website contains 4 sections regarding international sanctions, including various information and useful data on access to information on designated persons, groups and entities. The main categories of data included are:

> i) Legal regulations on international sanctions; ii) Sanctioning regime with consolidated sanctions lists of the EU, iii) Freezing/de-freezing Orders, and iv) other useful information.

Recommended action (5): *The relevant authorities should take additional measures to enhance awareness among non-bank financial institutions, payment institutions and electronic money institutions concerning their obligations under SR III*.

99. Training seminars and coordination meetings were organised for non-bank financial institutions, payment and electronic money institutions concerning their obligations under SR III. The activities held aimed at strengthening the supervisory framework for the effective monitoring of compliance with the SR.III requirements and ensuring that sanctions are effectively applied.

100. In addition, a training programme was implemented in 2016 and 2017 (more than 4000 private sector participants). Nonetheless, these trainings focused on general AML/CFT matters and not particularly on obligations deriving from SR.III.

101. The FSA also undertook actions to inform all insurance companies about international sanctions imposed on the Democratic People's Republic of Korea (DPRK), in particular the ban on the insurance and reinsurance of ships owned, controlled or operated, including by the illicit means, by the DPRK, and on public and private financial support for trade with the DPRK (as per UNSCR 2397 (2017)). The FSA asked the management of insurance companies to take measures to inform their staff and the UNSCR 2397 (2017), and to apply additional customer and business knowledge with entities from the DPRK, in particular to verify whether any of the 16 persons and the listed entity have funds or economic resources in the territory of Romania.

102. Last but not least, the authorities reported that in relation to the UNSCR 2402 (2018), the FSA took measures to inform about the international financial sanctions on Yemen and requested the management of all insurance companies to take measures to inform its staff and require it to apply additional customer diligence and business knowledge to entities within this jurisdiction.

Recommended action (6): *The supervisory authorities should take measures to strengthen the supervisory framework for effective monitoring of compliance with the requirements under SR. III and ensure that sanctions are effectively applied*.

103. This recommended action has been implemented. In particular, the FIU adopted RBA supervision for both on-site and off-site inspections. In particular, the FIU harmonised its operational procedures with the provisions of the Governmental Decision No. 603/2011 on implementation of international sanctions. Also, in relation to on-site visits, the FIU issued additional guidelines on RBA and suspicious transactions indicators to numerous REs, aiming at improving the effectiveness and efficiency of supervision.

104. The authorities reported that in 2017, 3.695 REs were subject of off-site supervision while 3.787 REs were subject of off-site supervision during the 1st quarter of 2018. The authorities also reported that in the period between 2017 and the 1st quarter of 2018 361 on-site inspections took place and 51 sanctions were applied to RES for non-compliance with Art.6 of the Norms for Supervision of the FIU, on the implementation of international sanctions.

105. As regards sanctions imposed in 2016, out of 374 REs subject of off-site supervision by the FIU, 331 REs were sanctioned. The breakup of the figures shows 229 warnings and 102 fines (totalling

1.358.000 lei.). The sum of fines represents an increase for 219,53% compared to 2015, when the sanctions imposed totalled 425.000 lei.

106. In period 2016 – 2017, 11 on-site controls were performed, resulting in fines and warnings for 2 REs.

Conclusion:

107. Although some actions have been taken to implement the recommended actions, some deficiencies remain outstanding. In particular, the bill concerning the amendment of GEO No.202/2008 remains in draft form. SR.III remains partially compliant.

SR.IV – Suspicious transaction reporting

Recommended action (1): *Revise the reporting requirement to ensure that it eliminates the identified inconsistencies and explicitly requires to report suspicions that funds are the proceeds of criminal activity*.

108. This recommended action has been implemented (Art.6 of the new Law). Please see the analysis under R.13.

Recommended action (2): *Ensure that the reporting requirement includes all the circumstances referred to in criterion 13.2 under the FT reporting requirement*.

109. This recommended action has been implemented. Please see the analysis under R.13 (recommended action 2).

Recommended action (3): *The FIU should undertake further efforts to increase REs' understanding of ML/FT reporting requirements and ensure that suspicious transactions are reported promptly to the FIU*.

110. This recommended action has been implemented. Please see the analysis under R.13 (recommended action 3).

Conclusion:

111. Bearing in mind that the new Law is not in force, it will address all recommended actions to a large extent. Therefore, the technical compliance level with SR.IV can be considered to be equivalent to largely compliant.

II. Overall conclusions:

112. In light of Romania's first compliance report, the country has undertaken some important steps to remedy identified deficiencies under core and key recommendations rated PC in the 2014 MER. Even though the authorities did not report any significant developments on SR.I and SR.III (which thus remain at the level of "partially compliant"), the new AML/CFT Law has been adopted since the 56th Plenary in June 2018. Once it enters into force, the new Law will rectify a large number of outstanding deficiencies and bring the level of compliance with R.13, 23, 26, and SR.IV to "largely compliant". The secretariat notes in this regard that the entry into force of the new Law is currently suspended by a complaint to the constitutional court (which however falls outside the sphere of influence of the domestic authorities) and that the constitutional court has scheduled a timely hearing on 5 December 2018. The secretariat does not consider that the application of Step 2 of CEPs could have any influence on the further process with regard to the new Law. However, Romania should be invited to inform the Plenary (through the secretariat) of any developments with regard to the entry into force of the new Law. For the time being, the secretariat suggests that Romania remains in Step 1 of CEPs but is invited to report back to the 58th Plenary (15-19 July 2019). Bearing in mind that that the MER was adopted in April 2014, i.e. more than 4 years prior to the present compliance report, Romania should be urged to adopt the legal acts under review and address the outstanding deficiencies by the 58th Plenary in July 2019. In light of further progress achieved at that time, the 58th Plenary should then consider whether any additional steps of CEPs are required.

The MONEYVAL Secretariat