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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

ROMANIA

4 April 2014

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LIST OF ACRONYMS USED

ACPO	Appellate Court Prosecutor's Office
AFIS	Antifraud Information System
AML	Anti-Money Laundering
AML/CFT Law	Law 656/2002
ANI	National Integrity Agency
Art.	Article
CAFR	Chamber of Financial Auditors of Romania
CC	Criminal Code
CCOA	Center of Anti-terrorist Operative Coordination
CCP/CPC	Code of Criminal Procedure
CCR	Cash Control Regulation
CDA	Central Depositary Agency
CDD	Customer Due Diligence
CECCAR	Body of Accounting Experts and Licenced Accountants in Romania
CETS	Council of Europe Treaty Series
CFAR	Chamber of Financial Auditors of Romania
CFT	Combating the financing of terrorism
CML	Capital Market Law
COMGAM	Commission for Authorization of Gambling in Romania
CPC	Criminal Procedure Code
CSA/ISC	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
DCCOA	Directorate for Combatting Terrorism Financing and Money Laundering
DIOCT	Directorate for Investigating Organised Crime and Terrorism
DNFBPS	Designated Non-Financial Businesses and Professions
EAW	European Arrest Warrant
EC	European Community
EEA	European Economic Area
EO	Executive Order
ESW	Egmont Secure Web
ETR	External Transaction Report

ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FG	Financial Guard
FID	Fraud Investigation Directorate
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GD	Governmental Decision
GEO	Governmental Emergency Ordinance
GO	Governmental Ordinance
GOD	General Operative Directorate
GPO	General Prosecutor's Office
GPOHCCJ	General Prosecutor's Office by the High Court of Cassation and Justice
GRECO	Group of States against Corruption
LEA	Law Enforcement Agency
LC	Largely compliant
IBUs	International Banking Units
IN	Interpretative Note
ISIC	International Standard Industrial Classification
IT	Information technologies
IWG	Inter-institutional working group
KYC	Know your customer
MJCL	Ministry of Justice and Citizenship's Liberties
ML	Money Laundering
MLA	Mutual legal assistance
MLCO	Money Laundering Compliance Officer
MoAI	Ministry of Internal Affairs
MoU	Memorandum of Understanding
MPF	Ministry of Public Finances
MS	Member State
MVT	Money Value Transfer
N/A	Non applicable
NACE	Classification of Economic Activities in the European Union
NAD	National Anticorruption Directorate

NAFA	National Agency for Fiscal Administration
NATO	Northern-Atlantic Treaty Organisation
NC	Non-compliant
NCA	National Customs Authority
NBR	National Bank of Romania
NCCT	Non-cooperative countries and territories
NFI/NBFI	Non-banking Financial Institution
NIM	National Institute of Magistracy
NOCPARC	National Office for Crime Prevention and Asset Recovery Cooperation
NOG	National Office of Gambling
NSPCT	National System for Preventing and Countering Terrorism
ONPCSB /Office	National Office for the Prevention and Control of Money Laundering (FIU)
NOTR	National Office of Trade Register
NPO	Non-Profit Organisation
NSC	National Securities Commission
NURE	National Union of Real Estate Agencies
OECD	Organisation for Economic Co-operation and Development
OFAC	Office of Foreign Assets Control (US Department of the Treasury)
OGBS	Offshore Group of Banking Supervisors
ONPSCB	Office for Prevention and Control of Money Laundering
PAD	Preliminary Analysis Department
Para.	Paragraph
PC	Partially compliant
PEP	Politically Exposed Persons
PPS	Public Prosecution Service
RBA	Risk-Based Approach
RIS	Romanian Intelligence Service
RON/Lei	Romanian currency
SAR	Suspicious Activity Report
SCM	Superior Council of Magistracy
SNA	National Anti-corruption Strategy
SR	Special recommendation
SRB	Self-Regulatory Body
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SUP	Sectia de Urmarire Penala (Crime Investigation Section with GPO)

SWIFT	Society for Worldwide Interbank Financial Telecommunication
TCSP	Trust and company service providers
TPO	Tribunal Prosecutor's Office
UCD	European Union Cash Declaration
UCITS	Undertakings for Collective Investment in Transferable Securities
UN	United Nations
UNBR	National Union of Bar Associations of Romania
UNNPR	Union of Public Notaries of Romania
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
UTR	Unusual Transaction Report

I. PREFACE

1. This is the twenty first report in MONEYVAL's fourth round of mutual evaluations, following up the recommendations made in the third round. This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 35, 36 and 40, and SRI, SRII, SRIII, SRIV and SRV), whatever the rating achieved in the 3rd round.

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

3. The evaluation was based on the laws, regulations and other materials supplied by Romania, and information obtained by the evaluation team during its on-site visit to Romania from 27 May to 1 June 2013, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Romania. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues and comprised: Ms Andreja Lang (Secretary, Ministry of Justice, Slovenia) who participated as legal evaluator (during the onsite-visit only), Mr Arakel Meliksetyan (Deputy Head, Financial Monitoring Centre, Central Bank of Armenia) and Richard Walker (Director, Guernsey Financial Services Commission, UK Crown Dependency of Guernsey) who participated as financial evaluators, Mr Daniel Gatt (Senior Financial Analyst, Financial Intelligence Analysis Unit, Malta) and Ms Sylvie Jaubert (Senior Policy officer, TRACFIN, France – FATF evaluator) who participated as a law enforcement evaluators, accompanied by Ms Livia Stoica Becht and Mr Michael Stellini, members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

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

    1. General information
    2. Legal system and related institutional measures
    3. Preventive measures - financial institutions
    4. Preventive measures – designated non-financial businesses and professions
    5. Legal persons and arrangements and non-profit organisations

6. National and international cooperation
7. Statistics and resources

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

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 27th Plenary meeting – 7 – 11 July 2008), which is published on MONEYVAL's website[1]. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the 3rd round report continues to apply.

7. Where there have been no material changes from the position as described in the 3rd round report, the text of the 3rd round report remains appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2013 or shortly thereafter.

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

II. EXECUTIVE SUMMARY

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.

Key findings

2. **Romania has taken several important steps to improve compliance with the FATF Recommendations and has registered progress in several a reas 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 organised 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 amended[2], as complemented by the Criminal and Criminal Procedure Codes[3], 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

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

[3] 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.

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, 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.

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 deficiencies[4]. 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

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

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 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.

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 Euroepan 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).

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.

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.

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 created 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.

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.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Romania and its economy

1. This section updates the detailed information in the 3rd round mutual evaluation, including general information on the country, the economy, the system of government, the legal system and its hierarchy of norms, transparency, good governance, ethics and measures to deal with corruption.[5] As such, pre-2008 information will not be repeated; however, where appropriate, basic information will be provided to ensure basic understanding of the country's political, legal and judicial system.

a. Geography and population

2. Romania is a country situated in the South-Eastern part of Central Europe. The Romanian borders run along 3,149.9 km, of which two thirds (2,064.4 km) are represented by the Danube, Prut and Tisa rivers and the Black Sea, and one third (1,085.5 km) by a terrestrial border. The surface of its territory is 238.391 km^2, which positions Romania 83rd worldwide, 9th in the EU and 13th in Europe in terms of size. Romania shares its borders with five states: the Republic of Moldova and Ukraine (to the North and East), Bulgaria (to the South), Serbia (to the South and West) and Hungary (to the West). The territory is subdivided into 41 counties each representing a separate administrative division.

3. The population count, in October 2011, was approximately 20,121,641 inhabitants, placing it 7th in the EU. The population consists of the following nationalities/ethnicities: Romanian 88.6%, Hungarian (including Sequi) 6.5%, Roma 3.3%, Ukrainian 0.3%, German 0.2%, others 1.1%. The density of the population is 88.4 inhabitants/ km^2. The capital of Romania is Bucharest, the 6th largest city in the EU with 1,883,425 inhabitants, according to the October 2011 census.

b. Economy

4. According to the World Fact Book[6], the estimated 2012 GDP was $277.9 billion (PPP, 48th in the world), meaning a $13,000 GDP per capita (101st in the world). After record-high levels of growth (8.0% in 2007), the crisis hit hard and the economy receded by 7.1% in 2009. The situation improved slowly, reaching a growth of 2.2% in 2011 before slowing down to 0.7% in 2012. In that same year, inflation was estimated at around 3.4%[7] and the unemployment rate was 7.1% in September 2012 (11.6% for the Euro Area)[8].

5. Agriculture is responsible for 7.5% of GDP (occupying 31.6% of the labour force). The industrial sector brings in 33% of GDP (21.1% of labour force) and was marked by a growth rate

[5] Readers should refer to the information in this section of the 3rd round mutual evaluation report on Romania (MONEYVAL(2008)06), which is based on the legislation and other relevant documents supplied by Romania and information gathered by the evaluation team during and after its on-site visit from 6-12 May 2007. The report was adopted by MONEYVAL at its 27th plenary meeting (7-11 July 2008).

[6] https://www.cia.gov/library/publications/the-world-factbook/geos/ro.html

[7] http://epp.eurostat.ec.europa.eu/tgm/table.do?tab=table&language=en&pcode=tec00118&tableSelection=1&footnotes=yes&labeling=labels&plugin=1

[8] http://epp.eurostat.ec.europa.eu/cache/ITY_PUBLIC/3-31102012-BP/EN/3-31102012-BP-EN.PDF

of -0.8% in 2012. Services account for 59.5% of GDP (47.3% of labour force). The service sector in Romania is vast and multifaceted, employing some three quarters of Romanians and accounting for two thirds of GDP. The largest employer is the retail sector, employing almost 12% of Romanians. The second largest portion of the service sector is business services, employing only a slightly smaller percentage than the retail sector. This includes the financial services, real estate, and communications industries. This portion of the economy has been rapidly growing in recent years.

6. The national currency is the Leu (exchange rate at the time of the onsite visit: 1 Euro: approx. 4 lei). The euro's expected adoption date was firstly announced to be on January 1, 2015, however, in April 2013 the authorities submitted their annual Convergence Programme to the European Commission, which for the first time did not specify a target date for euro adoption. The current Prime Minister declared in 2013 that the Eurozone entry remains a fundamental objective for Romania, and that 2020 was a more realistic target.

c. Government and politics

7. Romania is a semi-presidential unitary state. No major changes are reported, thus the reader is referred to this section of the third round mutual evaluation report.

d. Legal System and hierarchy of norms

8. The Romanian legal framework includes the following legal instruments:

- The Constitution is Romania's supreme law. It regulates the structure of Romania as a national, unitary and indivisible State, the relations between legislative, governmental and judicial bodies and between State bodies, citizens, and legal persons. The Romanian Constitution is at the top of the hierarchy of norms. All other pieces of legislation and norms must comply with it;
- Organic laws regulate areas of high importance for the State, such as property, security, organisation of Governmental bodies and political parties. Organic laws occupy a second position in the legal hierarchy. Parliament adopts organic laws by qualified majority;
- Ordinary laws regulate all other areas which are not covered by organic laws. Ordinary laws cannot amend or modify a higher norm, such as an organic law or the Constitution. Ordinary laws follow organic laws in the legal hierarchy. Parliament adopts ordinary laws by a simplified majority;
- In special cases, such as Parliamentary recesses, certain areas, as determined by the Parliament, can be regulated by government ordinances. In emergency situations, the Government can issue emergency ordinances in any area, if considered necessary. Government ordinances are the forth type of norms. An ordinance has the same legal power as an ordinary law. An ordinance cannot amend or modify organic laws or the Constitution. An emergency ordinance however can amend or modify an organic law or the Constitution. Parliament approves or rejects both types of government ordinances. However, in practice the Government adopts many laws through emergency ordinances, bypassing the parliamentary process.
- Government decisions determine how laws are to be effectively implemented or other various organisational aspects of their implementation;
- Ministers' norms (orders and instructions) regulate areas of ministers' respective competences;
- Acts issued by local government administrative bodies (County Council, Local Council, Town Council) regulate areas of the competence of local governments' administrative bodies and hold the last position in the hierarchy of norms.

9. The legal framework also recognizes the following external sources of law:

- European Court of Human Rights case-law and EU courts' case-law;
- Whilst national case-law is not a source of law, decisions by the Constitutional Courts and the High Court of Cassation of Justice to ensure the uniform interpretation of certain law provisions are valuable sources of law;
- Custom is a source of law, provided that the legal instrument expressively refers to it in the legal text.

10. There have been no major changes in the legal system since the previous report.

e. Judicial System

11. There have been no major changes in the judicial system since the previous report.

12. The justice system is made up of a hierarchical system of courts. The 1992 law on organisation of the judiciary, replaced by Law no. 304/2004, established a four-tier legal system, including the reestablishment of appellate courts, which existed prior to Communist rule in 1952. The system consists of the following:

- Courts of law
- Tribunals, including specialised tribunals
- Courts of appeal
- High Court of Cassation and Justice.

13. The constitution vests authority for selection and promotion of judges in the Superior Council of Magistracy (SCM), which is independent from the Ministry of Justice. Judges are appointed for life by the president upon recommendation from the SCM. The president and the vice-president of the High Court of Cassation and Justice are appointed for a term of 3 years and may serve only one additional mandate. Judges (except for trainee judges) are independent and cannot be removed. In Romania, with the exception of trainee judges, the appointment is made by the President of Romania, upon the proposal of the SCM, while the promotion, transfer and sanctioning of the judges appointed according to the aforementioned procedure may only be performed by the SCM.

14. Further information on the independence of the judiciary in Romania is provided below.

f. Transparency, Good Governance, ethics and measures against corruption

15. Romania ranks 66th out of 176 countries on the 2012 Transparency International Corruption Perceptions Index[9] (up from 69th in 2007). According to the Eurobarometer, Romania is also one of the EU countries where corruption is felt as the most widespread and as affecting people's lives the most[10]. Transparency International recommends two pillars for action: the complete openness of the legislative process and the adoption, implementation and miniaturisation of the National Anticorruption Strategy.

16. Romania has adopted a *National Anticorruption Strategy for the period 2012-2015*[11] to ensure the implementation of European Commission recommendations – published in a July 2011 report on *Progress under the Cooperation and Verification Mechanism* and incorporating

[9] http://transparency.org/country#ROU_DataResearch, http://www.transparency.org.ro/index_en.html

[10] http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf

[11] http://www.anticorruption-romania.org/strategy

recommendations from the *Independent assessment on the implementation of the National Anticorruption Strategy 2005-20007* and the *National Anticorruption Strategy on Vulnerable Sectors and Local Public Administration 2008-2010 in Romania*.

17. In its 3rd round compliance report adopted in December 2012[12], Group of States against Corruption (GRECO) noted that Romania has been able to demonstrate that substantial reforms with the potential of achieving compliance with the pending recommendations were underway. It added that the new Criminal Code would enter into force on 1 February 2014 and that this was an important factor for the implementation of recommendations of Theme I (Incriminations). Concerning incriminations, Romania has gone through a very comprehensive and commendable legislative reform process regarding its criminal law. Insofar as the transparency of political funding (Theme II) is concerned, GRECO notes with satisfaction the process engaged to amend the legislation on the financing of political parties and election campaigns, and the support expressed by the Parliament to this process. GRECO therefore concluded that the current low level of compliance with the recommendations was not globally unsatisfactory.

18. It is also to be noted that the latest report[13] of the European Commission under the Cooperation and Verification Mechanism raised concerns as regards Romania's implementation of the commitments regarding the independence of the judiciary and regarding the response to integrity rulings. A major source of concerns was " the clear evidence of pressure on judicial institutions and lack of respect for the independence of the judiciary" based on reports received by the Commission of intimidation or harassment against individuals working in key judicial and anti-corruption institutions, including personal threats against judges and their families, and media campaigns amounting to harassment.

1.2 General Situation of Money Laundering and Financing of Terrorism

19. The table below sets out a general picture of recorded criminal offences in Romania. As shown below, the majority of recorded crimes consist primarily of theft, business fraud, tax evaluation, abuse of authority, production and trafficking with drugs and corruption.

Table 1: Recorded criminal offences in Romania

	2008	2009	2010	2011	2012
CRIMINAL OFFENCES AGAINST PROPERTY					
Theft	186.974	220.603	262.338	267.871	273.962
Burglary	7.259	7.385	7.783	8.000	7.886
Other criminal offences against property	67.359	72.577	62.700	69.567	73.667
TOTAL OF OFFENCES AGAINST PATRIMONY	**261.592**	**300.565**	**332.821**	**345.438**	**355.515**
CRIMINAL OFFENCES of ECONOMIC NATURE					
Business fraud	34.730	45.724	43.008	39.124	41.820
Tax evasion	12.579	15.785	23.425	29.077	25.586
Use of False/Forgery	14.979	13.538	13.092	13.680	13.829
Abuse of authority or rights	17.658	17.462	16.411	17.801	17.683
Abuse of Financial Instruments Market	14	17	26	22	8

[12] http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282012%2918_Romania_EN.pdf

[13] See the full report (dated January 2013), at: http://ec.europa.eu/cvm/docs/com_2013_47_en.pdf

TOTAL OF OFFENCES OF ECONOMIC NATURE	**79.960**	**92.526**	**95.962**	**99.704**	**98.926**
OTHER CRIMINAL OFFENCES					
Production and trafficking with drugs	3.030	3.033	4.023	4.226	5.916
Production and trafficking with arms	1.597	1.485	1.264	1.146	1.162
Falsification of money	2.651	3.602	3.834	5.217	3.618
Corruption	4.891	5.702	5.934	6.136	6.390
Extortion	832	1.088	1.210	1.627	1.706
Smuggling	436	397	1.685	2.624	2.714
Prohibited Crossing of State Border or Territory, Trafficking in Human Beings	1.024	784	859	927	884
Violation of Material Copyright	5.781	6.316	5.630	5.158	4.566
Kidnapping, False Imprisonment	1.107	1.329	1.201	1.348	1.374
Burdening and Destruction of Environment	22	32	47	39	99
Unlawful Acquisition or Use of Radioactive or Other Dangerous Substances	10	6	5	6	6
Offences regarding the Romanian state border	1.927	1.453	1.387	1.734	2.304
OTHER CRIMINAL OFFENCES (NOT INCLUDED ABOVE) against life and limb, human rights, honour, sexual integrity, public health, etc.	3.011	3.220	4.599	4.379	3.665
TOTAL OF OTHER OFFENCES	**26.319**	**28.447**	**31.678**	**34.567**	**34.404**
TOTAL OF OFFENCES (AGAINST PATRIMONY, OF ECONOMIC NATURE AND OTHER OFFENCES)	**367.871**	**421.538**	**460.461**	**479.709**	**488.845**
OTHER OFFENCES (NOT INCLUDED ABOVE)	**295.348**	**316.862**	**295.583**	**289.054**	**301.807**
THE TOTAL NUMBER OF CASES REGISTERED DURING THE REFERENCE PERIOD	**663.219**	**738.400**	**756.044**	**768.763**	**790.652**

Money Laundering

20. According to the General Prosecutor's Office (GPO) the risk of ML is high since the level of proceeds of crime generated in Romania is significant, amounting to a high percentage of GDP. Approximately 80% of criminal proceeds are estimated to be generated by organised groups, which increases the likelihood of having some form of laundering attempted in a qualified, systematic way. The on-going economic crisis contributed to an increased number of economic crimes being committed, with most of the proceeds being generated by tax evasion and smuggling.

21. According to an estimate of the European Commission[14], the size of the shadow economy in 2011 was approx. 30% of GDP (2013 estimate decreased at 28,4%), the second largest in the EU,

[14] Communication from the Commission to the European Parliament and the Council on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries, COM(2012) 351 final, 27.06.2012.

corresponding to approx. 40 billion euro in damages generated by tax fraud and tax evasion. The number of indicted persons for tax evasion crimes in 2012 has increased by more than 50% since 2007, to 1.620, though most of this trend is determined by the increased detection and prosecution rate, rather than a shift in crime patterns. The threat is aggravated by the fact that Romania is placed at the eastern border of EU and has a long terrestrial, fluvial and maritime border with 3 non EU countries, as well as one of the largest European ports. The large difference in prices between EU and non EU countries for excised products makes it very profitable to smuggle such goods and represents a significant incentive for criminals. The estimated damage produced each year by the smuggling of cigarettes alone is estimated at approximately 400 million euro. The number of indicted persons in 2012 for smuggling crimes has increased by 184% since 2007, to 879. Some of the trend is also explained by an increase in the detection rate. The judicial statistical indicators also show significant criminal activity in other areas generating high volumes of proceeds. The number of persons indicted for corruption crimes in 2012 was 926, while the number of persons indicted for organised criminal activity was 3,906.

22. The foreign proceeds of crime brought into Romania to be laundered represent another significant threat. Available information shows that members of organised groups from the neighbouring former Soviet countries and Italy are investing in Romanian assets. Though Romania is not a major financial hub and its exposure to foreign proceeds of crime is limited, this is an area of interest for the Romanian authorities. The risk related to foreign proceeds of crime is determined by the fact that Romania has a high value of banks' assets of foreign branches and subsidiaries, a high number of cross-border high-risk customer types are served by firms in the banking and securities sectors, there is a high level of inward cross-border wire transfer business, there is a high degree of capital account openness.

23. By its strategic position, Romania represents a segment of the "Balkan Route" and the "Euro Asiatic Route" in trafficking in drugs and human beings outside Europe, thus creating conditions for the organised crime groups to launder the money obtained from the committing of offences.

24. There is also a significant risk that money laundering is not detected and perpetrators are not prosecuted. A large percentage of these proceeds are generated in cash, which makes it difficult for the law enforcement to detect it, as Romania's economy is to a large extent cash based, so it is fairly easy for the perpetrators to place the proceeds in an undetectable way. For example, one of the prevalent patterns of tax fraud concerns companies that conduct commercial activities involving the payment of high volumes of cash, such as those that make acquisitions of cattle or grain from small farmers.

25. Another threat reported by Europol[15] in 2011 relates to a trend whereby organised crime groups in Romania have collaborated to establish international criminal networks performing internet fraud activities and related money laundering schemes, using highly sophisticated means such as Fast Flux (a method for concealing command and control of botnets) to hide their identities.

26. The existing limitations of law enforcement resources and specific training limit their efficiency in prosecuting money laundering crimes. For many years, the criminal investigations were focused on persons, not on assets, so there is some reluctance to a significant change in approach toward a financial focused investigation. Until recently, there was a legal controversy whether Romanian legislation allowed money laundering as a stand-alone crime, which also limited the efficiency of the investigations. The new approach of the Romanian authorities led to a

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http://ec.europa.eu/taxation_customs/resources/documents/common/publications/com_reports/taxation/com%282012%29351_en.pdf

[15] https://www.europol.europa.eu/sites/default/files/publications/octa_2011_1.pdf

sharp increase in the number of successful investigations in the last couple of years. Thus, 240 natural persons and 24 legal persons have been indicted in 2012 for money laundering crimes, a 500% increase compared to 2008, with estimated proceeds of almost 200 million euro. The actions taken by the authorities in the last couple of years also aimed at mitigating the risk of perpetrators not being deprived of their assets. The value of seized assets in 2012 for ML crimes was more than 100 million euro, while the value of seized assets for all crimes was more than 400 million euro.

27. The authorities have also provided statistics on the number of investigations and convictions for the FATF designated categories of offences:

Table 2: Number of investigations and convictions for the FATF designated categories of offences

FATF designated categories of offences	2008		2009		2010		2011		2012		Jan. – Apr. 2013	
	Inves-tigations*	Convic-tions	Inves-tigations*	Convic-tions	Investi-gations *	Convic-tions	Inves-tigations*	Convic-tions	Inves-tigations*	Convic-tions	Inves-tigations *	Convic-tions
Participation in organised criminal group and racketeering												
▪ *Law no. 39/2003 on preventing and countering organised crime*	457	27	135	41	575	62	695	378	440	541	187	108
Terrorism and terrorist financing												
▪ *Law no. 535/2004 on preventing and countering terrorism*	87	2	36	0	33	0	17	0	3	0	7	0
Trafficking in human beings and migrant smuggling (including sexual exploitation)												
▪ *Law no. 678/2001 on preventing and countering human trafficking*	728	187	184	141	665	185	707	264	540	416	185	45
▪ *Art. 2 and 3 from GEO no. 112/2001 on sanctioning the activities committed abroad by Romanian citizens and by stateless persons residing in Romania*	N/A	21	N/A	8	N/A	0	N/A	5	N/A	65	N/A	0
Illicit trafficking in narcotic drugs and psychotropic substances												
▪ *ART. 2-7 from Law no. 143/2000 preventing and countering the illicit consumption of drugs*	2989	454	560	569	3806	719	4336	851	5561	1085	1029	199
Illicit arms trafficking												
▪ *Art. 279 from the CC*	1647	31	1254	18	1198	40	1126	56	961	51	358	4
Illicit trafficking in stolen and other goods												
▪ *Data available only for concealment, art. 221 from the CC*	N/A	91	N/A	50	N/A	63	N/A	120	N/A	80	N/A	3
Corruption and bribery												

▪ *Law no. 78/2000 on preventing, discovering and sanctioning corruption*	N/A	41	N/A	47	N/A	67	N/A	186	N/A	170	N/A	32
▪ *Art. 254 – 258 from the CC*	N/A	172	N/A	117	N/A	175	N/A	252	N/A	280	N/A	51
▪ *Art. 214, 215 and 302[1] from the CC*	19834	1349	28806	826	23753	1187	19094	1887	15468	1828	6247	173
Counterfeiting currency												
282 from the CC	1718	31	1792	23	2754	25	3806	67	2519	38	628	14
Counterfeiting and piracy of products												
▪ *Art. 139[9] from the Law no. 8/1996 on protecting copyright*	3604	59	4439	34	3454	82	3193	36	2707	24	1797	0
Environmental crimes												
▪ *Law no. 137/1995 on protecting environment*	226	1	225	7	245	0	269	1	254	18	91	0
Murder, grievous bodily injury												
▪ *Art. 174 – 178 from the CC*	2902	1331	1165	1245	2431	1538	2128	2026	2060	1625	518	403
Kidnapping, illegal restraint and hostage-taking												
▪ *Art. 189 from the CC*	1055	81	1392	90	1280	64	1326	133	1045	106	334	26
Robbery or theft												
▪ *Art. 208 – 212 from the CC*	158875	12596	185528	10393	199516	13416	232379	16717	250628	15838	86701	2620
Smuggling												
▪ *Art. 270 and art. 271 from the Customs Code*	532	10	371	8	1380	65	1824	228	1488	345	619	102
Extortion												
▪ *Art. 194 from the CC*	1043	39	1350	35	1533	42	1582	64	1510	94	435	7
▪ *Art. 282 – 294 from the CC*	28965	628	29502	389	31903	388	34843	509	34843	461	14840	41
Piracy												
▪ *Art. 212 from the CC*	N/A	2	NA	5	NA	0	NA	0	NA	0	NA	0
Insider trading and market manipulation												
▪ *Art. 279 from the Law no. 297/2004 on the capital market*	24	NA	36	NA	10	NA	5	NA	0	NA	3	NA

Predicate offenses and recurring typologies

28. The analysis process carried out by the National Office for the Prevention and Control of Money Laundering (FIU) during 2010-2011 identified a series of methods and techniques used by money launderers in Romania. The general features identified following the analysis of cases processed throughout this period were as follows:

- the activities of illegal trading in perishable goods
- the use of electronic payment systems for the purpose of money laundering
- money laundering operations in connection with the funds generated by cybercrime
- transfers to/ from tax havens
- use of shell companies for VAT frauds in the case of intra-Community transactions
- cash payment/ collection operations, followed by their transfer abroad and use by criminal groups in the international trade.
- excessive use of cash
- use of middle men/ "straw men" and fictitious companies as anonymous collectors and distributors of money
- illegal currency exports
- transfers of unusual amounts between natural persons or legal entities
- recurrent transfers to/ from tax havens and payments upfront for fictitious imports.

29. In 2012, the following typologies were identified by the FIU:

- Use of cash. This is one of the most recurring means in Romania to conceal the unlawful origin of goods/ money. From information available to the FIU, it was noted that professional money launderers provide financial mechanisms, in exchange for a fee, that are based on the use of shell companies controlled by nominees, with a view to creating fictitious transfers of goods/ services followed by immediate withdrawals in cash. This mechanism enables the clients of the professional money launderers to receive the money back in cash. The FIU has also identified geographic areas where economic operators make daily cash withdrawals of significant value from accounts opened with various credit institutions, using transaction typologies that cannot be justified through an actual economic activity.

- Money transfers from Romania to other countries based on justifications which are not in line with the financial profile of the clients, as legal entities. According to available data and information, groups of economic operators acting in specific fields of activity transfer large amounts of money to countries outside of the EU based on fictitious justifications such as *"payment for commodity*" (whereas the transfer operations are not followed by the actual import of commodities). The funds transferred are generally illegal proceeds originating from value added tax frauds (the so-called roller-coaster fraud) perpetrated in Romania. In some cases, the layering of the funds is carried out using the financial system of the third country, after which the funds are returned to Romania and reinvested in the activities of the economic operator. The form of integration that is mainly used is the granting of loans to Romanian trading companies provided by their non-resident shareholders/business partners.

- Transfer of small amounts of money (often just below the reporting threshold in order to avoid detection) out of personal accounts opened by natural persons with banks in Romania to the accounts of non-resident natural persons or legal entities. In such cases the financial profile of the customers is not in line with the value of the amounts transferred.

The non-resident accounts receive funds from various accounts which in total add up to significant amounts of money. In general, funds are generated through tax evasion in Romania.

- Another method involves Romanian natural persons without a stable occupation and with a low level of education and training who transfer significant amounts of money from an EU Member State to Romania, with such justifications as "insurance compensation" or "death compensation". Two cases have been identified:
  - The first when the amounts are directly pooled out of the accounts of various insurance companies in the respective country. What is suspicious is that the amounts collected are significant (around 10 persons collected over 2 million Euro, the amounts/ PAX vary from tens of thousands of Euro up to 800,000 Euro). At the same time, even if the money collected is justified as "death compensation", none of the beneficiaries has ever submitted documents providing justifications to that effect;
  - The second is when Romanian natural persons (around 20) have opened personal accounts in the EU country, wherein they had entered cash (over 3.5 million Euro), which they transferred to personal accounts opened in Romania and from which they have withdrawn money in cash. All transactions were justified as "insurance compensation", even if no documents have been submitted to that effect.
  - The analysis process carried out by the FIU in the past three years has highlighted that, out of the total complaints forwarded to the criminal investigation bodies, the main crimes that had generated dirty money were: tax evasion, deceit, crimes provided in the Customs' Code, as well as other crimes, such as drug trafficking, corruption and fraudulent bankruptcy etc.

30. The dynamics of the results of the financial analyses carried out by the FIU between 2010-2012 is shown in the table below:

Table 3: Results of the financial analyses carried out by the FIU between 2010-2012

Year	Predicate crime[16]	Suspect person's Citizenship[17]	Vulnerable fields of activity[18]
2010	**Tax evasion (65%)** fraud (15%), cross-border crimes (10%), crimes provided in the Customs' Code (4%), other crimes generating dirty money (drug trafficking, corruption, fraudulent bankruptcy, crimes provided in Law 535/2004 on the prevention and fight against terrorism etc. (6%).	Romanian (47.58%), Asian (28.64%), Citizens from other European states (22.63%), North-American citizens (0.69%) African citizens (0.46%).	"internal trade", "foreign trade", "real-estate", " financial" and "services".
2011	**Tax evasion (79%)** Crimes provided in Law 31/1990 on the commercial companies (30%), deceit (14%), crimes provided in the Customs' code (2%), other crimes generating dirty money (drug trafficking, corruption, fraudulent bankruptcy, crimes provided in Law 535/2004 on the prevention and fight against terrorism etc. (2%).	Romanian (48.72%), Asian (5.75%), Citizens from other European states (44.12%), North-American citizens (0.64%) African citizens (0.77%).	"internal trade", "foreign/ intra-Community trade", "investment", "real-estate", "financial", "banking" and "services".

[16] Identified in cases when there was probable cause with respect to the crime of money laundering.

[17] Citizenship of suspects of having committed money laundering and who were referred to the PHCCJ or SRI.

[18] Vulnerable fields of activity identified based on the source or origin of the amounts subject to recycling, included in the financial analyses carried out in 2011 by ONPCSB.

2012	**Tax evasion (74%)** Crimes provided in the Law 39/2003 on the prevention and fight against organised crime (7%) deceit (6%), crimes provided in the Customs' Code (5%), crimes provided in Law 31/1990 on the commercial companies (2%), other crimes generating dirty money (drug trafficking, corruption, fraudulent bankruptcy, crimes provided in Law 535/2004 on the prevention and fight against terrorism, Law 85/2006 on insolvency proceedings, Law 365/2002 on e-commerce etc. (7%).	Romanians (75.8%), Asian (11.2%), Citizens from other European states (11.7%), North-American citizens (0.2%) African citizens (1%).	"internal trade", "foreign trade", "investment", "real-estate", "financial" and "services".

Terrorist Financing Risks

31. The Romanian Intelligence Service (RIS), which is responsible for the prevention of terrorism, carries out assessments on the threat of terrorism in Romania. It was noted that fundraising activities by followers of radical or terrorist groups continued to be reported, albeit to a lesser extent when compared to previous years. The RIS explained that in such cases it is difficult to establish a link between the fundraising and activities of a terrorist nature. The type of suspected fundraising identified in Romania was conducted both in a legal manner (collection of funds for humanitarian needs to assist compatriots in areas of conflict) or through illegal means (economic crime, such as usury and undervalued import/export of goods and cybercrime).

32. During their presence in Romania, persons suspected of being followers of terrorist organisations were involved in collecting and funding terrorist entities without the involvement of the financial system. In one case the RIS monitored the activities of a foreign national of Kurdish ethnicity who was an important member of the Romanian branch of the terrorist organization "People's Congress of Kurdistan – KONGRA - GEL", former PKK. The data and information obtained by RIS established with certainty that during the suspect's stay in Romania he financed the "KONGRA-GEL" through a complex mechanism of collection and transfer of funds. The information obtained by the RIS was disseminated to the Prosecutor's Office of the Bucharest Court of Appeal, who instituted proceedings against the person to be declared as an undesirable person in Romania. As a result, on 6 February 2013 by Decision no. 542, the Court of Appeal declared the person concerned as undesirable person for Romania and debarred from entering the country for a period of 10 years.

33. As regards terrorist financing, there have been no prosecutions or convictions in the period 2009-2013. The authorities have referred to a conviction for terrorism, which was achieved at the time of the third round evaluation, and which included elements of terrorist financing in the indictment.

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

General

34. The table below gives an overview of the number of registered institutions, types of activities provided and the authorities competent for their supervision.

Table 4: Number of registered institutions, types of activities provided and the authorities competent for their supervision

Financial Institutions		
Type of business	**Supervisor**	**No. of Registered Institutions**
1. Acceptance of deposits and other repayable funds from the public	National Bank of Romania	41
2. Lending		
3. Financial leasing	National Bank of Romania	129
	FIU (only for the ones that are outside of the NBR's supervision)	32
4. The transfer of money or value	National Bank of Romania	3
5. Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveller's cheques, money orders and bankers' drafts, electronic money)	National Bank of Romania	4
6. Financial guarantees and commitments	National Bank of Romania	6
7. Trading in: (a) money market instruments (cheques, bills, CDs, derivatives etc.); (b) foreign exchange; (c) exchange, interest rate and index instruments; (d) transferable securities (e) commodity futures trading	National Bank of Romania	National Bank of Romania For the activities performed by banks, according to their objective
8. Participation in securities issues and the provision of financial services related to such issues	Romanian National Securities Commission NSC (from May 2013: FSA) . National Bank of Romania	Romanian National Securities Commission - *underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis; placing of financial instruments without a firm commitment* (37 financial investment services companies and 8 credit institutions) - *advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and acquisitions* (42 financial investment services companies and 8 credit institutions) National Bank of Romania For the activities performed by banks according to their activity objects.
9. Individual and collective portfolio management	Romanian National Securities Commission NSC (from May 2013: FSA)	Romanian National Securities Commission - *individual portfolio management* (40 financial

		investment services companies + 7 credit institutions + 15 asset management companies) - *collective portfolio management* (22 asset management companies)
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Romanian National Securities Commission NSC (from May 2013: FSA)	Romanian National Securities Commission *Safekeeping and administration of financial instruments on behalf of clients, including custodianship and related services to them, such as managing funds or securities* (43 financial investment services companies + 10 credit institutions)
11. Otherwise investing, administering or managing funds or money on behalf of other persons	N/A	
12. Underwriting and placement of life insurance and other investment related insurance	Insurance Supervisory Commission (from May 2013: FSA)	11 life insurance undertakings; 22 non-life insurance undertakings; 8 mixt undertakings (life insurance and non-life insurance); 12 branches of foreign undertakings; 523 insurance brokers
13. Money and currency changing	FIU (only for those which are outside of the NBR's supervision) Ministry of Finance – Commission	85 (authorised up to now)
14. Administrators and marketing agents legal persons	Private pension system supervisory commission (from May 2013: FSA)	1 administrators 38 marketing agents legal persons

Designated Non-Financial Institutions		
Type of business	**Supervisor**	**No. of Registered Institutions**
1. Casinos (which also includes internet casinos)	FIU	7
2. Real estate agents	FIU	10.366
3. Dealers in precious metals and precious stones	FIU	1.113
4. Dealers in precious stones		
5. Lawyers, notaries, other independent legal professionals and accountants – this refers to sole practitioners, partners or employed professionals within professional firms. It is not meant to refer to internal professionals that are employees of other types of businesses, nor to professionals working for government agencies, who may already be subject to measures that would combat money laundering	CAFR Financial auditor – EGO no. 75/1999, republished and with subsequent modifications and completions, activity which is supervised by the Council for Supervision in Public Interest of the Accountancy Profession (CSIPPC) based on EGO no. 90/2008, with subsequent modifications and completions. CECCAR UNNPR	CAFR - natural persons 4269 and legal persons 970. CECCAR 26000 active expert accountants and over 4600 active licensed accountants. UNNPR

	UNBR	2375 public notaries UNBR 20646 definitive active lawyers, 2538 active stagiaires lawyers and 931 active law firms
6. Trust and Company Service Providers refers to all persons or businesses that are not covered elsewhere	FIU (for CSPs)	N/A

Type of business	Supervisor	No. of Registered Institutions
a) Associations, registered in the Central Register of Associations	FIU	59.856
b) Foundations, registered in the Foundations Register	FIU	17.694
c) Registered churches and religious communities		

NOTE

1.Until 1st May 2013, several supervisory authorities had responsibility for the oversight of the AML/CFT framework in relation to financial institutions, namely the NBR, the NSC, the CSA, the CSSPP and the Office. By virtue of the new Financial Services Act which came into force in May, the NSC, the CSA and the CSSPP were amalgamated in a new supervisory authority, the FSA, although the three authorities constituting the FSA continue to exist operationally, working from their premises.

2.The number of dealers of precious metals and stones metals and real estate agents is according to data provided by the National Office of Trade Register. However, this number includes but also entities that no longer carries economic activity, entities that have suspended business activities, which are in insolvency, dissolution, etc.. Number of entities which are operating this function effectively represents app. 65% of NOTR registered companies (mentioned in the table)

3. Service providers represent some categories of activities which might be/are related activities defined as CSPs, due to NACE coding business system (EU)

Regarding the Statistical Classification of Economic Activities in EU / NACE, there are some activities which can include complementary elements of CSPs definition. Because there is not a clear delimitation between CSPs definition and some (parts of) activities coded under NACE, the FIU started a comprehensive supervisory cycle (off-site/on-site) for some sectors, in order to have no loopholes as regards the reporting entities and the coverage of the AML/CFT legal framework.

These sectors were supervised because some parts of their activity fall under the CSPs definition. For example, renting / providing a headquarters for companies (not as real estate, but as renting their own facilities), some form of financial/management counselling, ensuring of outsourced services (for holdings), etc.

These types of activities are included under the definition provided by the Art. 2 letter. k) point 2-3 of the Law 656/2002 (r)

These providers do not offer trust services.

Because of how NACE classification, the actual number of these entities cannot be properly identified, the status of reporting entity being determined after monitoring / supervision activities done by the FIU. This status is related to the specificity of certain types of economic activities, which are coded through NACE. Up to this moment, the FIU has identified more than 10,000 companies which provide some services connected with CSPs definition.

4. The number of NGOs is according to the National Register (the public).

However, most of these foundations and associations no longer conduct this type of activity, according to data and financial indicators which are provided by the MFP database (public)

a. Financial Sector

35. All the financial activities covered by the glossary by the FATF Recommendations are undertaken by some or all of the financial institutions. The different types of financial institutions which operate in Romania can be classified under the following categories:

Credit institutions

36. Credit institutions are licensed by the National Bank of Romania (NBR) and are authorised to undertake the business of banking as specified in the Government Emergency Ordinance no. 99/2006. There were forty-one credit institutions in 2013, with a total market share of 88% in

terms of assets. The ownership structure of banks in Romania is indicated in the table below. Furthermore, the Romanian banking system included a co-operative organisation, namely CREDITCOOP with their territorial network of 124 co-operatives. By the end of 2007, the total number of account holders opened with a credit institution was 20,914,215.No updated figures were provided. The Romanian authorities do not have data regarding the proportion of non-resident account holders. During the period December 2004 – September 2007 the banking network has been extended within the territory by 70 %.

Table 5: Ownership structure of commercial banks

Ownership structure of commercial banks in 2013			
	2011	**2012**	**2013**
Foreign ownership more than 50%	26	25	25
Foreign ownership less than 50%	3	3	3
Resident Shareholders 100%	4	4	4
Foreign Branches	8	8	9
Total number of banks	41	40	41

37. Credit institutions undertake the following activities:

- Acceptance of deposits and other repayable funds;
- Lending including, *inter alia*: consumer credit, mortgage credit, factoring with or without recourse, financing of commercial transactions, including forfeiting;
- Financial leasing;
- Money transmission services;
- Issuing and administering means of payment, such as credit cards, travellers cheques and other similar means of payments, including the issuing of electronic money;
- Guarantees and commitments ;
- Trading for own accounts and/or for account of clients, according to the law, in:
  - Money market instruments such as: cheques, bills, promissory notes, certificates of deposit;
  - Foreign exchange
  - Financial futures and options
  - Exchange and interest-rate instruments
  - Transferable securities and other financial instruments;
- Participating in securities issues and other financial instruments by underwriting and selling them or by selling them and the provision of services related to such issues;
- Advise on capital structure, business strategy and other services relating to mergers, and purchase of undertakings as well as other advice services;
- Portfolio management and advice;
- Safekeeping and administration of securities and other financial instruments;
- Intermediation on the interbank market;
- Credit reference services related to the provision of data and other credit references;
- Safe custody services;
- Operations in precious metals, gems and objects thereof;
- Acquiring of shares in the capital of other entities;
- Any other activities or services that are included in the financial field, abiding by the special laws regulating those activities, where appropriate.

38. The NBR regulates and supervises credit institutions for AML/CTF purposes. Consequently, the NBR issued Norms no. 3/2002 on know-your-customer standards for credit institutions. Following the amendment of the primary legislation, the norms were replaced by Regulation no.9/2008 on know-your-customer for the purpose of money laundering and terrorism financing prevention.

Non-banking financial institutions

39. Non-bank financial institutions are permitted to engage in lending activity, payment services and other ancillary activities. Non-bank financial institutions are not permitted to take deposits or other repayable funds.

40. In order to perform their lending activity, non-banking financial institutions are registered, according to the type of their lending business, by the NBR in three registers as follows:

- Pawn houses, credit unions and legal persons without patrimonial scope, which grant credit exclusively from public funds or from funds provided from inter-governmental agreements, are registered in the **Evidence Register** (exclusively for statistical purposes). Around 4,600 entities are registered in this category.
- Other types of non-bank financial institutions are registered in the **General Register**. 219 such entities are registered.
- Non-bank financial institutions, registered in General Register, which exceed a threshold established by the NBR in such a way that their activity presents an increased interest from a financial stability perspective are also registered in the **Special Register**. Out of the 219 entities registered in the General Register, 45 are also registered in the Special Register.

41. At the end of 2007, the main activity performed by the non-bank financial institutions from the Special Register represented 87% from the total volume of activities performed by the non-banking financial institutions in the General Register and 15% of the volume of loans granted by the banking system.

42. For AML/CFT purposes, the NBR is responsible for regulating and supervising only the non-bank financial institutions registered in the Special Register. The NBR issued Regulation no.8/2006 on know–your-customer for non-bank financial institutions registered in the Special Register. These were replaced by Regulation no.9/2008 on know-your-customer for the purpose of money laundering and terrorism financing prevention. At the end of 2012, 52 non-banking financial institutions (NBFIs) were supervised by the NBR.

43. Since 2008, the other categories of non-bank financial institutions (registered in the Evidence and General Register) have been supervised by the FIU for AML/CFT purposes. The number of entities subject to FIU supervision is as follows:

a) Financial leasing, micro-crediting, guarantee issuing, factoring, etc., low level: 42
b) Multiple crediting activities, at low level: 88
c) Pawn shops: 2557

In 2009, the FIU launched a comprehensive (off-site/on-site) process of supervision related to these entities.

Payment institutions

44. In October 2009, Government Emergency Ordinance no. 113/2009 on payment services was adopted. The Ordinance transposes Directive no. 2007/64/EC on payment services in the Internal Market into the national legislation and establishes the NBR as the competent authority for the

authorisation and prudential supervision of payment institutions. In 2013, seven entities were authorised to provide payment services in Romania.

45. Payment institutions can provide the following payment services:

- Services enabling cash to be placed on a payment account as well as all the operations required for operating a payment account.
- Services enabling cash withdrawals from a payment account as well as all the operations required for operating a payment account.
- Execution of payment transactions, including transfers of funds on a payment account with the user's payment service
- provider or with another payment service provider:
    - —execution of direct debits, including one-off direct debits,
    - —execution of payment transactions through a payment card or a similar device,
    - —execution of credit transfers, including standing orders.
- Execution of payment transactions where the funds are covered by a credit line for a payment service user:
    - —execution of direct debits, including one-off direct debits,
    - —execution of payment transactions through a payment card or a similar device,
    - —execution of credit transfers, including standing orders.
- Issuing and/or acquiring of payment instruments.
- Money remittance.
- Execution of payment transactions where the consent of the payer to execute a payment transaction is given by means of any telecommunication, digital or IT device and the payment is made to the telecommunication, IT system or network operator, acting only as an intermediary between the payment service user and the supplier of the goods and services.

46. Payment institutions may hold payment accounts for their clients, which can be used exclusively for payment transactions. The receipt of funds from payment service users with a view to the provision of payment services does not represent deposit taking. Payment institutions are allowed to engage in business activities other than the provision of payment services, those activities being excluded from the scope of NBR supervision.

47. The NBR issued Regulation no. 27/2009 which amended Regulation no. 9/2008 on know-your-customer for the purpose of money laundering and terrorism financing prevention, in order to include payment institutions into the category of institutions regulated by the NBR from the AML/CTF perspective.

Electronic money institutions

48. In July 2011 Law no. 127/2011 on the activity of issuing electronic money was adopted. This law transposes Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions into national legislation. Law no. 127/2011 established the NBR as the competent authority responsible for the authorisation and prudential supervision of electronic money institutions. At the time of the evaluation there were no entities authorities by the NBR to undertake the activities of an electronic money institution.

49. Electronic money institutions can engage in:

- electronic money issuance
- payment services, as described in the section dedicated to payment institutions

50. Electronic money institutions may hold payment accounts for their clients, which can be used exclusively for payment transactions. The receipt of funds in exchange for electronic money or with a view to the provision of payment services does not represent deposit taking. Electronic money institutions are allowed to engage in any other business activities, those activities being excluded from the scope of NBR supervision.

51. The NBR issued Regulation no. 7/2011 for amending, supplementing and repealing certain normative acts, whereby electronic money institutions were included in the category of institutions regulated by the NBR for AML/CTF purposes.

Capital Market

52. The Capital Market Law no. 297/2004 regulates the setting up and the functioning of the financial instruments markets, with their specific institutions and operations, in order to provide a framework for investments in financial instruments. Government Emergency Ordinance no. 32/2012 regulates specific aspects related to undertakings for collective investment in transferable securities and investment management companies.

53. Financial Investments Services Companies (SSIF) authorised under Law no. 297/2004 are regulated, supervised and monitored by the National Securities Commission (NSC).

54. The NSC's regulatory activity (including AML/CFT) is conducted according to EU standards and practices aimed at permanently improving the secondary legislation and to develop it according to the exigencies and practices required by the evolutions of Romania's capital market. The NSC's authorization activity covers two major areas: the authorization and registration of regulated entities with the NSC Register, and the authorization and approval of market operations.

55. The situation at the end of 2012 was as follows:

- Intermediaries (investment firms and credit institutions) provide investment activities and services, as well as related services, according to the provisions of GEO no. 99/2006 on credit institutions and capital adequacy, as amended and supplemented. Due to the global crisis, the number of investment firms has been on a downward trend (46 in 2012, down from 72 in 2008). Out of the total 46 intermediaries, 36 were controlled by Romanian individuals and entities, and 10 by foreign individuals and entities (5 from Greece, 1 from the USA, 2 from Italy, 1 from the Republic of Moldova and 1 from Austria).
- According to the NSC Register, 12 Romanian entities organised as credit institutions were operating as intermediaries on the Romanian Capital Market (13 credit institutions in 2008). Out of the 12 credit institutions, 7 are authorised to act on the authorized and supervised markets by NSC and 6 mainly provide custody services for financial services entities.
- 21 asset management companies (AMC) were registered with the NSC Register (25 in 2008). At the end of 2012, 14 managed individual investment portfolios. Out of the total of 21 AMC, 14 are controlled by Romanian natural and legal persons and 7are controlled by foreign natural and legal persons (from Austria, Italy, Slovenia, Hungary, Switzerland and France).

- 64 open-end investment funds were operating on Romania's capital market, and 26 closed-end investment funds (57 open-end investment funds and 14 closed-end investment funds in 2008). Also, at the end of 2012, 5 closed-end investment companies were operating on Romania's capital market, being admitted to trading on the Bucharest Stock Exchange (the same situation as in 2008).
- At the end of 2012, 10 credit institutions were authorised as depositories for the assets of investment funds (9 depositories in 2008).

56. In terms of capital market institutions, two market operators (Bucharest Stock Exchange and Sibex-Sibiu Stock Exchange), two clearing houses (Bucharest Clearing House and Sibiu Romanian Clearing House), two central depositories (Central Depository and Sibex Depository) and one Investor Compensation Fund are authorized and supervised by NSC.

Insurance

57. Institutions providing insurance (life and non-life) and re-insurance services are required to be licenced by the Insurance Supervisory Commission (ISC) under the Law on insurance business and insurance supervision. Insurance and/or re-insurance brokers are also licenced by the ISC. Insurance and re-insurance undertaking and branches of foreign insurance and re-insurance undertakings are monitoring entities which are required to observe the AML/CFT Law.

58. In 2012, out of a total of 41 insurance companies, 22 conducted general insurance business, 11 conducted life insurance only, while 8 conducted both. Gross premiums subscription by the insurers at the end of 2012 amounted to a cumulative value of 8.272.481.375 lei, registering a nominal increasing of 5,75% from 2011, as follows:

- Gross premiums subscription for general insurance amounted to 6.468.986.426 lei and registered an increasing of 6,33% from 2011;
- Gross premiums subscriptions for life insurance amounted to 1.803.494.949 lei and registered a nominal increase of 3,75% from 2011.

59. Subscriptions in other EU Member States represented 4,22% from the total volume of the subscription on the insurance market and registered an increase of 25,79%, from 2011. One company conducts its activity according to the principle of the right of establishment in Hungary, the other five companies perform their activity based on the free services principle.

60. In addition, 12 branches authorized in other EU Member States according to the principle of the right of establishment conduct business in Romania. Two of the branches stopped their activity and since they were in liquidation.

61. On 22 December 2008, the ISC issued the Order no.24/2008 on the implementation of the Norms on prevention and combating money laundering and terrorist financing through the insurance market, which repealed the Norms on preventing and combating money laundering and terrorist financing through the insurance market, approved by ISC Order no. 3.128/2005

62. On 30 July 2009, the ISC issued the Order no.13/2009 for implementation of the rules on supervision in the insurance sector, on the application of international sanctions regime. According to this order, reporting entities should develop and implement policies and procedures relating to the international sanctions regime and to designate one or more persons within its personnel, with responsibilities in the enforcement of the international sanctions regime.

63. On 7 March 2011, the ISC issued the Order no.5/2011 amending and supplementing the Norms on preventing and combating money laundering and terrorist financing through the

insurance market, implemented by Order of the President of the ISC no.24/2008. The supplementing Order no.24/2008 did not bring about any major changes. However, it simplified the structure of the order for a better understanding of the requirements, particularly on customer due diligence measures.

Private Pensions

64. Law no. 411/2004 on private pension funds and Law no. 204/2006 on voluntary pension funds are the two acts of primary legislation governing private pensions in Romania. Private pensions are supervised by the Private Pension System Supervisory Commission. Governmental Emergency Ordinance no.50/2005 regulates the establishment, organization and functioning of the private pension supervisory system.

65. In terms of market size at the end of 2012 the following data was provided:
- Mandatory private pension system:
  - 9 pension funds and 9 administrators
  - 37 corporate marketing agents
- Voluntary private pension system
  - 11 pension funds and 9 administrators
  - 20 marketing agents, legal persons

66. At the end of 2012 6 credit institutions were approved as depositories for private pension fund assets. In 2012, a Guarantee Fund Rights for the private pension system was established, constituted as legal entity of public law, under the supervision and control of the Private Pension System Supervisory Commission, pursuant to Law no. 187/2011.

Currency exchange offices – the currency exchange offices which are not supervised by the NBR

67. A series of recommendations were made in the Third Round Mutual Evaluation Report of Romania to clarify the scope of responsibility for Romanian authorities as regards the supervision of currency exchange offices which operate outside the banking system. As a result, Law 656/2002 (AML/CFT Law)was amended to provide for the licensing of such offices by a Committee set up within the Ministry of Public Finance, which includes representatives from the FIU and the Ministry of Internal Affairs (Article 23 of the AML/CFT Law[19]).

68. MFP Order 663/2012 stipulates the structure of the committee, while MFP Order 664/2012 regulates the currency exchange operations of these entities, as well as the licensing requirements that they are subject to. The Committee is made up of 7 members (MFP representatives – legal and tax structures, legislative regulation structure, FIU and law enforcement, having as permanent

[19] Article 23 - (1) Licensing and/ or registration of entities engaged in currency exchange operations on the territory of Romania, other than those subject to supervision by the National Bank of Romania, according to this law, shall be performed by the Ministry of Public Finance, through the currency exchange licensing Committee, hereinafter, the Committee.

(2) The legal provisions regarding the tacit approval procedure shall not apply to the licensing and/ or registration procedure relevant for the entities provided under par. (1).

(3) The making up of the Committee provided under par. (1) shall be set in a Joint Order by the Minister of Public Finance, the Minister of Administration and Interior and the President of the Office, its structure including at least one representative of the Ministry of Public Finance, the Ministry of Administration and Interior and the Office.

(4) The procedure applicable to the licensing and/ or registration of entities provided under par. (1) shall be determined in an Order by the Minister of Public Finance.

representative the Financial Squad). The Committee is coordinated by a State Secretary, having decision-making powers over this sector. The Secretariat of the Committee is provided by the General Directorate Management of Specifically Regulated Fields, from the Ministry of Public Finance.

69. In June 2012, which was the date of the take-over from the NBR jurisdiction, there were 485 currency exchange offices outside the banking system licensed by the NBR. At the time of the evaluation visit only 85 offices out of the 485 had renewed their licence under the MFP committee. The remaining entities were still in the process of renewing their licenses.

b. Designated Non-Financial Businesses and Professions (DNFBP)

Casinos

70. There are 7 land-based casinos authorized and licensed in Romania. The number of licensed casinos was much higher (over 25) before 2009-2010 when a strict licensing/supervision system was introduced. The number also decreased due to the financial crisis.

71. Casino operations are regulated through a comprehensive legal framework that includes:

- Government Emergency Ordinance 77/2009 on the organization and operation of gambling, as approved with amendments and supplements through Law 246/2010, with its subsequent amendments and supplements
- Government Decision 870/2009 on the approval of the General Rules for the application of Government Emergency Ordinance 77/2009 2009 on the organization and operation of gambling with its subsequent amendments and supplements
- Law 656/2002
- MFP/FIU Order 2398/2009 setting up the institutional making-up of the gambling licensing committee

72. Casino operators in Romania are required to obtain an authorization and license issued by a committee set up within the Ministry of Public Finance. The Committee is made up of 7 members (MFP representatives – legal and tax structures, FIU and the law enforcement and the Financial Squad as a permanent representative) and is coordinated by a State Secretary who has decision-making powers over the sector. The General Directorate for the Management of Specifically Regulated Fields provides the secretariat for the committee.

73. The casino sector is subject to all AML/CFT obligations set out in the AML/CFT Law. The FIU plays an active role in the supervision of the sector and conducts yearly training and control sessions. The FIU is also involved in the authorization and licensing process.

74. There are no online casinos authorized or licensed in Romania. The current layout of the applicable legislation enables the authorization of online casinos. However, there is still no supervisor for this sector and general rules regulating the sector are still to be developed.

Real Estate Agents

75. There are 9,570 real estate agencies registered in Romania. Real estate agencies are either commercial companies or authorised natural persons performing an activity in the real estate field, registered in accordance with the provisions in Law no. 31/1999 on commercial companies.

76. There are two professional associations in the real estate field, organising and regulating the sector. The National Union for Real Estate Agency (UNIM) is established by Law 35/2001. This association has the main objective of regulating the activity in the field of real estate and for

ensuring that professional standards are maintained by operators. The Romanian Association of Real Estate Agencies (ARAI) is a non-governmental professional, non-political organisation. The main objectives are to promote and ensure co-operation relationships between the members; to continually improve the service quality offered to clients, and to attract investors; to train and educate its members etc.

Dealers in precious stones and metals

77. In Romania, the legal framework for operations involving precious metals and stones is set out in GEO no. 190/2000 and Decision no. 700/2012 of 11 July 2012, complemented by Decision 580/2012. Operations involving precious metals and stones, as trading deeds and acts, can only be performed based on an authorisation issued by the National Authority for Consumers Protection (NACP). According to NACP figures, there are 726 economic agents who are authorised to perform operations involving precious metals and stones.

78. The supervision of the market on precious metals and stones is performed by specially designated personnel of the NACP, the Ministry of Internal Affairs and Administrative Reform and from the Ministry of Economy and Finance. The NACP maintains separate evidence and monitors the operations involving rough diamonds on Romanian territory, in accordance with the provisions of the Council Regulations (EC) no. 2368/2002 on implementing the Kimberley Process certification scheme for the international trade in rough diamonds. Out of the 24 registered economic agents, only 9 still perform operations with rough diamonds.

Lawyers

79. The National Union of Bar Associations of Romania (UNBR) is a legal entity of public interest with own assets and budget. According to the provisions of Law 51/1995 on the organization and exercise of the legal profession, with its subsequent amendments and supplements, the legal profession may only be practiced by lawyers registered with a bar in Romania. Each county in Romania has a bar which must be a member of the UNBR.

80. According to Article 17 par. 1 letter c) of Law 656/2002, with its subsequent amendments and supplements, UNBR is also a supervision and control body for lawyers, with respect to the observance of rules for the prevention and fight against money laundering and terrorism financing. A cooperation protocol signed between the FIU and the UNBR in 2005 provides for cooperation mechanisms for the prevention and fight against money laundering and terrorism financing with respect to the legal sector.

81. As of March 2013, 20,646 active senior lawyers, 2,538 lawyers active as interns and 931 active law firms were registered with the UNBR.

Public notaries

82. The total number of notaries public in operation at the time of the evaluation visit was 2375.

83. The National Union of Notaries Public of Romania and the Chambers of Notaries Public are set up and perform their roles based on *Law 36/1995 on Notaries Public and Notary Activity*, republished. Notarial activity is performed by notaries public, through notary documents and legal advice. All notaries public exercise their profession based on the conditions provided in Law 36/1995 and must all be members of the Union.

84. Based on the protocol signed between the National Union of Public Notaries from Romania and the FIU, the information that represents transactions reported by the public notaries are centralised by the Union and submitted on daily basis, on CD and on paper.

Accountants

85. The Corps of Chartered Accounting Experts and Chartered Accountants of Romania (CECCAR) is a legal entity of public and autonomous utility, made up of chartered accounting experts and chartered accountants, as well as the accounting experts' companies and the accounting companies, according to the provisions of the law. The corps, as delegated by the public authority, shall grant and withdraw the right to exercise the professions of chartered accounting expert and chartered accountant and shall have the right to control the competence and the morality of its members, as well as the quality of the services that they provide.

86. CECCAR operates according to the Rules for the organization and operation of the Corps of Accounting Experts and Chartered Accountants of Romania, an act approved through the Decision 1/1995 of the National Conference of accounting experts and chartered accountants of Romania. In the course of its professional operation and in connection with the prevention and fight against money laundering, the Corps of Accounting Experts and Chartered Accountants of Romania issued the Ethical Rules for accountants, applicable to all accountants in the economic area who must implement them in practice, as well as the Guide for Accounting Experts and Chartered Accountants for the activity of preventing and fight against money laundering and terrorism financing (published in 2009 by CECCAR).

87. In 2013 CECCAR was managing the operations of over 41,000 active accounting professionals (accounting experts and chartered accountants) of which over 26,000 active accounting experts and over 4,600 active chartered accountants (respectively 12,744 and 5,357 in 2007).

Auditors

88. The Chamber of Financial Auditors of Romania (CFAR) is the competent authority responsible for the oversight of financial auditors. CFAR was set up through Government Emergency Ordinance 75/1999 on the financial auditing, republished with its subsequent amendments and supplements. The profession of financial auditors may only be exercised in accordance with the provisions of GEO 75/1999 and the Rules for the organization and operation of CAFR, approved through Government Decision 433/2011. The statutory auditing has been supervised since 2008 by a supervision body of public interest, according to the provisions of EC Directive 43/2006, transposed in Romania through Government Emergency Ordinance 90/2008. Membership of CFAR comprises 4269 natural persons and 970 legal persons (respectively 2,364 and 746 in 2007).

89. Since 2010 CFAR has been implementing the Guidelines of proceedings of prevention and fight against money laundering, which is an operation supported by the FIU through training programs. As from 2010, the Chamber of Financial Auditors of Romania, jointly with the FIU, has been organising training sessions with the goal of implementing the Professional Training Plan for reporting entities, provided under Article 8 of Law 656/2002. The purpose of the training sessions is to raise awareness on the FIU manual concerning the risk-based approach and suspicious transaction indicators.

Trust and Company Services providers

90. There is no specific law regulating trustees in Romania. The concept of 'fiducia' is set out in Title IV of Law No. 287/July 17, 2009 on the new Civil Code, which entered into force in October 2011. By virtue of these new provisions a settlor may transfer real rights, instrument rights, securities or other property rights or a set of such rights, present and future, to one or more trustees with a specific purpose for the benefit of one or more beneficiaries. These rights form an

autonomous patrimony distinct from other rights and obligations of the trustee. Only credit institutions, investment and investment management companies, financial investment companies, insurance and reinsurance companies can act as trustees. Notaries and lawyers can also act as trustees. Trust activity in Romania is therefore already subject to AML/CFT requirements.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

91. The legal persons and legal arrangements that can be established or own property in Romania are civil and commercial legal persons and their activity is regulated by Law on 16 November 1990 No. 31 on commercial companies (legal persons performing profitable activities), republished, with subsequent amendments and by Governmental Ordinance (GO) No. 26/2000 on foundations and associations (legal persons with non-profitable purpose). The number of registered companies, foundations and associations is indicated in the tables below.

a. Companies

General description

92. Legal persons performing profitable activities (commercial companies) are regulated by Law No. 31/1990 on Commercial Companies. Commercial companies may have one of the following statutory forms:

- General partnership;
- Limited partnership;
- Joint-stock company (public limited liability company);
- Limited partnership by shares; and
- Limited liability company**.**

93. In compliance with the Law No. 31, within 15 days from the signing of the constitutive act, the founders, the first administrators or, as the case may be, the first members of the Management Board and the Supervisory Board or a representative of the above-mentioned shall request the registration of the company in the Trade Register. They shall be jointly liable for any of prejudice caused by the failure to observe this requirement. They should request the incorporation of the company in the Trade Register of the place where the registered office of the company is located. The commercial company becomes a legal person from the date of its incorporation in the Trade Register.

94. The representatives of the company, appointed by the constitutive act are compelled to submit their signatures at the Trade Register on the date of submitting the application for registration, while the representatives elected during the functioning of the company shall have 15 days after the election to submit their signatures.

95. According to Law no. 26/1990, the National Trade Register is a public register. The trade register office is obliged to issue, at the applicant's expense, certified copies of registrations performed in the register, of the presented documents, as well as certificates ascertaining that certain deeds or facts are or are not registered. The abovementioned documents can be required and delivered by correspondence (including email, when the electronic signatory should be mandatorily attached).

96. The management of the companies is performed by the administrators of a company who may carry out all the operations required for the fulfilment of the company’s object of activity, except for the restrictions provided by the statutory act.

97. The company must keep, through the good care of the administrators, a register of the associates, where the name and first name, denomination, domicile or registered office of each associate, his share of the registered capital, the transfer of the participating shares or any other amendments should be mentioned. The administrators are personally and jointly liable for any damage caused by breach of this obligation.

98. The applications for incorporation of the company shall be solved by the director of the trade register office or/and by the person/persons appointed by the general director of the National Trade Register Office.

99. Foreign companies may set up branches in Romania, in compliance with the provisions of Romanian laws, as well as branches, agencies, representation offices or other secondary offices, provided this represents a right recognized as such by the law governing their organic statute.

Table 6: Statistical Data on Companies registered in the National Office for Commerce Register[20]

Total of the registered companies	2.463.330
Total of the companies radiated	1.026.137
Total of the companies in function	1.437.193

b. Non-Profit Organisations

100. Non-profit organisations are legal persons with a non-profitable purpose, regulated by GO 26/2000 on foundations and associations.

101. An association is comprised of at least 3 persons and is set up for the purpose of performing activities for the general or local interest or for the non-profitable interest of the associates.

102. A foundation may be set up by one or several persons on the basis of a legal act and should have the property permanently and indisputably appropriated for a purpose of general or local interest. Associations and foundations may also set up a federation.

103. According to GO 26/2000, the constitutive act and statute of an association or a foundation should comprise: denomination, identification data of the associates, explicit consent for association and the purpose, duration, premises, initial property owned by the association, categories of property owned, identification data of the first leading, managing and controlling persons, rights and obligations of the associates, tasks of the leading, managing and controlling bodies, destination of the funds and assets when the association is dismantled and signatures of the associates.

Table 7: Number of NGOs currently registered in the Ministry of Justice database

NR. CRT	CATEGORY	TOTAL
1	Foundations	17.863
2	Federations	966
3	Unions	688
4	Foreign legal entities	29
5	Other forms	353
	TOTAL	**19.899**

[20] Source: http://www.onrc.ro/romana/operatiuni.php#operatiuni2013

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

National Strategy for the Prevention and Combating of Money Laundering and Terrorism Financing

104. The National Strategy for the Prevention and Combating of Money Laundering and Terrorism Financing was approved in Decision 72 of the Supreme Council for the Defence of the Country on 28 June 2010. The national strategy is based on the provisions of the Constitution of Romania and the provisions of Law 656/2002 on the prevention and sanctioning of money laundering, as well as the establishment of measures of prevention and combating of terrorism financing, with its subsequent amendments and supplements, as well as secondary regulations, which provide for the institutional framework for the specialized bodies involved in the prevention of ML/FT.

105. The strategy's main goals are to strengthen the national capacity for the prevention of ML/FT, enhance the existing structures and strengthen Romania's role on an international level. The measures to achieve these goals are set out in an action plan approved in September 2010 by all competent authorities. The most important objectives of the action plan are the following:

- The analysis of the AML/CFT legal framework and the functionality of the cooperation mechanism in the area of preventing and combating money laundering and terrorism financing;
- Strengthening the operative activities with respect to risk-profiles and specific risk indicators, based on the actual progress, through the joint efforts of institutions/ authorities with competences in this area;
- Strengthening the analysis, the criminal prosecution capacity, the criminal investigations in the prevention and combating of money laundering and terrorism financing;
- Increasing the possibilities to disseminate information, with a view to strengthening pro-active investigations, based on financial information;
- Strengthening the cooperation with the private sector, by strengthening the training and the awareness of the reporting entities, which make up the national cooperation mechanism;
- Strengthening the capacity to supervise and control the authorities with tasks in this area, including the FIU, taking into account its capacity of supervision authority for the categories of reporting entities which are not supervised by other authorities;
- Increasing the information and the awareness of the public with respect to the risks related to money laundering and terrorism financing;
- Active participation in the development of international mechanisms as regards prevention and combating of money laundering and terrorism financing.

106. The measures included in the action plan are implemented with the support of the inter-institutional working group (IWG) made up of representatives appointed by the competent authorities. The IWG takes part in regular and extraordinary meetings whenever necessary. The representatives of the FIU provide secretariat services to the IWG, which coordinates the implementation of activities under the action plan, ensures the direct communication between partners and develops regular reports concerning the status of activities.

National Anticorruption Strategy

107. The National Anti-corruption Strategy (SNA) for 2012 – 2015, approved through Government Decision 215/2012 sets out a cooperation mechanism at the national level for the implementation of recommendations formulated by the European Commission concerning Romania in connection

with the Mechanism of Cooperation and Verification. It also incorporates the specific recommendations formulated in the independent Evaluation concerning the implementation of the National Anti-corruption Strategy 2005-2007 and the National Anti-corruption Strategy concerning the Vulnerable Sectors and the Local Public Administration for 2008-2010 in Romania.

108. The SNA is supplemented by the National Action Plan to implement the Strategy, which is part of the Government Decision, as well as the sectorial plans developed by the responsible institutions. The goal of the action plan is to prevent corruption in public institutions, increase awareness on anti-corruption issues and combating corruption through administrative and criminal measures.

National Strategy for preventing and combating tax evasion

109. The National Strategy for preventing and combating tax evasion was adopted in Supreme Council for National Defence (CSAT) Decision 69/2010. A platform was set in place based on the strategy, to mutually cooperate to identify the main characteristics of the tax evasion phenomenon, to set priorities, organize operations and assess performance. Basically, the model that implemented the provisions of this decision was similar to the European operative information model (MEIO), promoted by EUROPOL and the Belgian Presidency within the Harmony Project on the agenda of the Justice and Home Affairs Council.

110. CSAT Decision provides the possibility for Romanian law enforcement authorities to put in practice and comply with the following strategic documents: European Union Internal Security Strategy; the Stockholm Program and its related action plan; the National Defence Strategy 2010; the Public Order National Strategy 2010-2013.

The inter-ministerial committee to combat corruption

111. The Inter-ministerial Committee[21] to combat corruption, cross-border organised crime and severe forms of economic and financial crimes, set up through Prime-Minister Decision 275/2012, is mainly aimed at the following:

- To apply the law and strengthen the authority of institutions in the fields of reference;
- To support the fight against tax evasion, according to the goals of the National Strategy on preventing and combating tax evasion and fight against smuggling;
- To improve cooperation between the institutions responsible with the fight against tax evasion and smuggling (National Agency for Tax Administration, Border Police General Inspectorate and Romanian Police General Inspectorate);
- To implement the sectorial strategy to combat corruption with the structures of the Ministry of Internal Affairs and the National Agency for Tax Administration; and
- To improve international police cooperation with a view to combating organised crime acts related to trafficking in human beings and drugs.

112. As far as the prevention and fight against money laundering and terrorism financing is concerned, the institutional contribution of the FIU means making available to the competent

[21] The Inter-ministerial Committee was replaced by the Inter-ministerial Strategic Group for prevention and combating macro-criminality affecting citizen safety and functionality of public institutions (GIS), according to the Decision of the Prime Minister 233/2013. GIS functions under the subordination of the Prime Minister and under coordination of the Vice Prime Minister for national security and has the role of elaboration, integration, correlation and monitoring the governmental policy for preventing macro-criminality, ensuring the execution of an efficient management for the fight against this phenomenon.

institutions data and information concerning the money laundering phenomenon, presented under the form of analyses of phenomena and trends in the field, as well as money laundering typologies, in corroboration with other statistical data, which may be viewed as a support for the decision-making process related to the adoption of strategic measures to prevent and fight tax evasion and smuggling phenomena.

Inter-ministerial Council

113. The Inter-ministerial Council set through Government Emergency Ordinance 202/2008, approved with amendments and supplements through Law 217/2009, ensures the general cooperation framework in the area of application of international sanctions in Romania.

114. The Council has the following tasks:

- to ensure the consultation framework with a view to harmonizing the activities of the Romanian public authorities and institutions in the area of implementing international sanctions;
- to ensure the consultation framework amongst Romanian public authorities and institutions to support Romania's position with respect to the adoption, amendment, suspension or end of international sanctions;
- to develop and issue consultative opinions, at the request of the seized competent authority, to represent the basis for decisions related to the application of international sanctions;
- to present to the Prime-Minister and the President of Romania recommendations on the feasibility of absorbing international non-binding sanctions in the national legislation;
- whenever necessary, but at least once a year, to present information reports concerning the measures adopted by Romania with a view to implementing international sanctions to provide support to the reports of the Prime-Minister, provided under Article 6;
- to ensure, whenever possible, the information of natural persons and legal entities owning or controlling assets, with respect to the imminent adoption of the international sanctions provided under Article 1, to enable their timely implementation right after their adoption.

115. The Council convenes whenever necessary by the Ministry of the Foreign Affairs at the request of any of its members. The Ministry of Foreign Affairs shall also ensure the secretariat for the Council.

NSPCT/CAOC Cooperation

116. Cooperation in the field of prevention and combating terrorism between the components of the National System for Preventing and Countering Terrorism (NSPCT) by the Center for Anti-terrorist Operative Coordination – According to the provisions of the National Strategy for Preventing and Combating Terrorism, of the General Protocol for the organization and operation of the National System for Preventing and Combating Terrorism, as well as the provisions of Law 535/2004 on preventing and combating terrorism, the Center of Anti-terrorist Operative Coordination (CCOA) operates within the RIS.

117. The CCOA has the following tasks:

- to coordinate the activities carried out within the National System for Preventing and Combating Terrorism, through the appointed representatives of public authorities and institutions, as part of the system;

- to ensure the operative exchange of data and information amongst public authorities and institutions, part of the National System for Preventing and Combating Terrorism, with respect to the terrorist activities;
- to integrate data and information, with a view to establishing and taking the necessary measures;
- to monitor terrorist activities and operatively inform the relevant authorities and institutions which are part of the National System for Preventing and Combating Terrorism;
- in cases of terrorist crisis, CCOA shall ensure the logistical and operational support of the National Center for Anti-terrorist Action, which shall be functionally integrated in the component of the general crisis management mechanism and shall be organised in compliance with the legal provisions;
- to send data and information to public institutions and authorities which are part of the National System for Preventing and Combating Terrorism, to take the adequate measures in compliance with the legal roles.

118. The FIU has been involved in preventing and combating terrorism financing, based on Law 535/2004 on the prevention and fight against terrorism, owing to its active participation at the meetings of the CCOA and at the meetings of the group of experts from CCOA. The fundamental component of the activity of the Office in the area of terrorism financing is represented by the prevention activities, which involve the implementation and strengthening of the data and information exchange with all authorities, institutions and components of the national mechanism with tasks in the field, as an active element of developing specialized surveys, as well as the development of a supervision and control mechanism that could activate the participation of the reporting entities in the development of the national mechanism.

b. The AML/CFT institutional framework

119. This section refers to some of the main changes that have taken place on an institutional level since the third round report. The information in the third round report on the AML/CFT institutional framework remains otherwise valid.

National Office for Prevention and Control of Money Laundering (Romanian FIU)

120. The National Office for Prevention and Control of Money Laundering (ONPSCB) is designated as the FIU in Romania. The FIU was established by Law no. 656/2002 for prevention and sanctioning of money laundering. The FIU is also involved in combating terrorist financing.

121. In order to filter the information received by the FIU, according to its legal competence, a new structure, the *Compartment for Preliminary Analysis*, was set up and became fully operational in 2011. Its activity conducted to the prioritisation of the received Suspicious Transactions Reports, based on an analytical process, depending on their operative value and the risk of money laundering/terrorism financing, this process, in this way, significantly shortened the reply timing to the requests of information sent by the competent prosecutorial bodies.

122. The off-site supervision activity was focused on the evaluation of the non-conformity risks in the sector of service providers and real estate agents. The system of off-site supervision of activities was analysed and amended in 2011 and a new system for risk assessment, MAINSET 2, was implemented. During 2011, 4,708 entities were supervised on an off-site basis by FIU.

123. Another component of the supervision activity is the supervision in applying the international sanctions regime, attribution addressed to our institution by the Governmental Emergency

Ordinance no. 128/2010. By elaboration and implementing specific regulations, FIU created a legal and operational framework for the application of restrictions on transfers of funds and financial services to/from Iran. On the purpose of prevention the nuclear proliferation, FIU was authorised to receive notifications, to receive and solve requests for authorisation for performing financial transactions under the provisions of EU Regulations no. 961 of 27.09.2010 of the Council on restrictive measures against Iran.

National Bank of Romania

124. The National Bank of Romania (NBR) is an independent public institution with its headquarters in Bucharest. Since the previous evaluation, the NBR has been made responsible for the regulation and supervision of payment institutions. In 2009, a specific division was set up within the supervision department of the NBR tasked with the responsibility of conducting AML/CFT supervision and monitoring of international sanctions.

The National Securities Commission (NSC), the Insurance Supervisory Commission (ISC) and the Private Pensions Supervisory Commission (PPSC)

125. In December 2012 Government Emergency Ordinance no. 93/2012 on the establishment and functioning of the Financial Supervisory Authority (FSA) was adopted. The Emergency Government stipulates that the new authority shall assume the responsibilities of three existing authorities, namely: NSC, ISC, PPSC. At the time of the on-site mission, the FSA had still not been physically established.

126. The FSA is intended to be an autonomous administrative authority, with legal personality, independent and self-financed. The President of the FSA shall present to the Romanian Parliament the activity reports, the audit and budgetary execution reports. The supervision of the FSA shall be focused on the activities of the intermediaries, mutual funds, financial instruments market and central depository, issuers and securities operations, insurance and reinsurance intermediaries and the private pension system.

National Office for Gambling

127. Shortly before the on-site visit, Governmental Emergency Ordinance (GEO) No. 20 of 27 March 2013 and Governmental Decision No. 298/2013 were adopted. The new GEO and Decision established the National Office for Gambling (NOG), which has taken over the licensing and supervisory responsibilities of the Commission for Authorising Gambling Activities. The NOG is directly subordinated to the Government and has a multi-institutional decisional/deliberative structure which also includes a representative from FIU. The organizational chart of the NOG covers 200 posts including territorial structures, which will be used to monitor the operators, to perform risk-based analyses in relation to the financial/fiscal activities of operators, to elaborate and implement a supervisory and/or regulatory framework, to process the requests for authorization / licences and to submit these requests to the supervisory committee, to set up specific databases, etc. The NOG will also participate at the meetings of the international organizations and will set up a direct system for exchanging information with other responsible authorities.

c. The approach concerning risk

128. One of the objectives of the national strategy for the prevention of ML/FT is to intensify the identification and assessment of ML/FT risks, trends and vulnerabilities in Romania. To this aim, the FIU has identified a series of methods and techniques used by money launderers in Romania. These include the use of electronic payment systems, transfers to and from tax havens, the use of shell companies for VAT fraud, cash payment / collection operations. With respect to the risk of

FT, the Centre for Anti-terrorist Operative Coordination, which is coordinated by the Romanian Intelligence Service, has identified various risks. In particular reference was made to fundraising activities by followers of radical or terrorist entities. These entities engage in illegal economic activities (such as usury, import / export of goods at a lower value) and cybercrime to raise funds to assist their compatriots in areas of conflict. Notwithstanding the various risk assessments carried out by different authorities, a comprehensive national risk assessment has not been undertaken by Romania.

129. The National Bank of Romania issued Norm No.3/2002 on Know Your Customer Standards. The norms require the application of a risk-based approach to CDD. Every credit institution is required to draw up its own KYC programme, which corresponds to the nature, size, complexity and extent of its activity and be adapted to the degree of risk related to the categories of clients for which it provides banking services. The National Bank of Romania has issued similar regulations for the non-banking financial institutions, registered in the Special Register.

130. The FIU has issued Decision no. 496/2006 for the approval of the Norms on prevention and combating money laundering and terrorism financing, customer due diligence and internal control standards for reporting entities, which are not subject to the supervision of other authorities. The Decision introduced new risk-based procedures for the supervision of DNFBP. The procedures establish a supervision approach based on the exposure of reporting entities to ML/TF risks, leading to the detection of vulnerabilities to money laundering and terrorism financing as resulted through off-site and on-site activities and inspections.

131. The main element for generating the supervisory activity of the FIU is based on the System MAINSET 2 (off-site). The operational circle of the off-site/on-site supervision activity is based on a transparent and independent working process, which includes the evaluation of several risk indicators (general and specific) and categorising the supervised entities on risk levels.

d. Progress since the last mutual evaluation

132. Since the 3rd round evaluation, Romania has registered overall progress. Various pieces of legislation were amended and new acts, ordinances and government decisions were issued both to address deficiencies identified in the 3rd Round Evaluation and to transpose Directive 2005/60/EC and Directive 2006/70/EC.

133. The main legislative activity in the area of AML/CFT included the issuance of a regulation setting out the rules for the organisation and operation of the FIU and Law 238/2011 supplementing Law 656/2002. The latter law, among other issues, provided for a clearer definition of 'beneficial owner', new provisions dealing with 'politically exposed persons', an increase in the threshold for cash transaction reports, further measures in connection with the suspension of suspicious transactions by the FIU, and a ban on anonymous accounts. The form and content of reporting forms for suspicious transaction reports (STRs), cash transaction reports (CTRs) and external transaction reports (ETRs) was established and subsequently updated by the FIU through various government decisions. A list of equivalent third countries was issued and updated accordingly.

134. The framework regulating international sanctions, in particular that relating to the freezing of terrorist assets, was subject to various developments to improve the mechanism.

135. In the period under review, the number of convictions for money laundering, freezing measures and confiscation orders has increased. A substantive reform of the Criminal Code and the Code of Criminal Procedure has resulted in the adoption of provisions for extended confiscation and rapid capitalisation of seized movable assets. Another important development in the area of confiscation of criminal proceeds relates to the setting up of an asset recovery office.

As of October 2010, ML cases may be investigated by the police, under the supervision of a prosecutor, and not by the prosecutors only. It is hoped that this amendment will facilitate the process for the investigation of certain ML cases and significantly improve the effectiveness and efficiency of criminal investigation in this area.

136. Developments were also noted within the supervision of financial institutions. In 2008 the National Bank of Romania issued new regulations adopting customer due diligence standards based on Law 656/2002. Within the Supervision Department a new specialised body was set up in 2009 which is responsible for the fulfilment of specific tasks in the AML/CFT and monitoring of international sanctions enforcement field, according to the applicable law. In December 2012 the Government Emergency Ordinance no. 93/2012 on the establishment and functioning of the Financial Supervisory Authority (FSA) was adopted.

137. Further information on progress achieved is referred to under specific sections of this report.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1)

2.1.1 Description and analysis

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

Summary of factors underlying the 3rd round rating

138. In the 3rd round evaluation report, Romania received a Largely Compliant rating. The main deficiency underlined in respect of R.1 concerned the ineffective implementation of the ML offence, the evaluation team having noted with concern the impact of long procedural delays, a low number of final convictions despite several indictments, and the absence of autonomous money laundering convictions. Romania's second progress report to MONEYVAL, adopted in December 2011, highlighted several positive developments, notably an increase in the number of ML indictments and convictions since the MER, including two autonomous ML cases, various measures introduced to speed up the judicial process, as well as several training initiatives conducted involving law enforcement, prosecutors and judiciary. It concluded that Romania had achieved some progress on clarifying the legal issues raised in respect of R.1 and that there had been a clear improvement in the number of indictments and convictions with two cases during the reporting period involving autonomous money laundering offences.

Legal Framework

139. Since the last evaluation, Romania has adopted a series of modifications to its criminal legislation, to its specialised laws, together with a new Criminal Code (July 2009) and a Criminal Procedure Code (July 2010), which had not entered into force at the time of the on-site visit[22].

140. Since its enactment, the AML/CFT Law no. 656/2002 has been amended almost every year in respect of various provisions, through various laws and emergency ordinances. At the time of the third round, the ML offence was set out in Article 23. It is currently set out in Article 29, following the re-numbering of the modified law. The ML offence in force at the time of the 4th round onsite visit did not change substantively in comparison with the one in force at the time of the previous evaluation. Thus the text of the previous analysis remains valid in many aspects[23]. Money laundering is criminalised as follows:

> *"(1) The following deeds represent offence of money laundering and are punished with prison from 3 to 12 years:*
>
> *a) the conversion or transfer of property, knowing that such property is derived from offences, for the purpose of concealing or disguising the illicit origin of property or of assisting any person who is involved in the committing of such activity to evade the prosecution, trial and punishment execution;*

[22] The criminal legislative package - both Codes, as well as the implementing laws - entered into force on 1st of February 2014.

[23] The new ML offence, which will remain defined in article 29 of the AML/CFT Law, differs slightly from the ML offence in force at the time of the onsite visit, in that (1) the upper maximum penalty applicable is slightly lowered (3 to 10 years, instead of 3 to 12 years); (2) "knowledge" and "purpose" would still be inferable from objective factual circumstances, but not "intention" as is currently the case under article 29 paragraph 4 of the AML/CFT Law; (3) it is now explicitly stated that the ML offence shall apply, irrespective of the fact that the predicate offence was committed in Romania or abroad.

b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from offences ;

c) the acquisition, possession or use of property, knowing, that such property is derived from offences;

(2) The attempt is punishable.

(3) If the deed was committed by a legal person in addition to the fine penalty, the court shall apply, as appropriate, one or more of complementary penalties referred to in article 53 index 1, para (3) (a) –(c) of the Criminal Code.

(4) Knowledge, intent or purpose required as an element of the activities mentioned in paragraph (1) may be inferred from objective factual circumstances."

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

141. The previous assessment already found that the elements of the money laundering offence are in line with the requirements of the Vienna and Palermo conventions. This criterion is met.

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

142. As previously noted, the money laundering offence applies to property derived from offences[24]. Property is defined in the AML/CFT Law as *"the corporal or non-corporal, movable or immovable assets, as well as the legal acts or documents that certify a title or right regarding them".*

143. It is not required to have a prior or simultaneous conviction for the predicate offence in order to obtain a conviction for ML. Two decisions of the High Court of Cassation and Justice (Criminal Section, decision no° 3711/2011 and Criminal Section, decision no. 2270/2012) confirmed the previous ML judgments in respect of the ML convictions on this point. The latter pointed out that " *the fact that the first instance has not indicated, in the reasons for its decision, the so called predicate offence, has no practical relevance, while it was fully proved that the amounts of money were obtained by the indicted persons by committing offences and that they received the money in their own name*."

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

144. As noted previously, Romania's criminalisation of the ML offence is based on an all crimes approach and all categories of predicate offences for ML required under the FATF methodology are covered under the Criminal Code (CC) or other criminal law provisions set out in other Codes or special laws (See Annex III)[25]. Criterion 1.3 is only largely met, as there are several shortcomings in the definition of the FT offence as a predicate offence (See Section 1.2 of this report). Criterion 1.4 is not applicable.

Extraterritorially committed predicate offences (c.1.5)

145. Romania assumes jurisdiction for extraterritorially committed predicate offences. This is based primarily on the principle of territoriality (article 3 CC) when at least some acts of the money laundering offence are committed on the Romanian territory, and the predicate offence committed abroad, would have constituted a predicate offence had it occurred domestically. Furthermore, it also assumes jurisdiction in cases when the offender is a Romanian national, or a stateless person

[24] Decision no. 524 dated 27 June 2006 of the Constitutional Court clarified that when referring to the expression "knowing that such assets are derived from offences", the term "offence" is used in its generic form, reflecting the multitude of the possible predicate offences.

[25] This will also be the case with the new CC provisions as of 1st of February 2014.

living on the territory of the country (art 4 CC). This applies also to offences committed abroad by foreign or stateless persons if those are committed against the security of the State or of a Romanian citizen, or if they have led to serious damage to the physical integrity or health of a Romanian citizen, in cases where dual criminality is met, that the perpetrator is in Romania and that the prosecution was authorised by the Prosecutor General (article 5 CC). [26] The authorities have provided several examples of cases where Romania has assumed jurisdiction in situations where proceeds stemming from a predicate offence committed abroad were laundered on the national territory, regardless of whether the offender has ever been in Romania.

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

146. As indicated in the third round report, Romania has extended the ML offence to cover self-laundering. This issue has addressed and confirmed as well through several decisions of the Constitutional Court[27]. In practice, there are a number of self-laundering cases. This criterion is met.

Ancillary offences (c.1.7)

147. As noted previously in the third round, all relevant ancillary offences are covered, including attempt which is punishable as set out in the ML offence. (See articles 23, 25, 26 and 323 of the CC).

Recommendation 32 (money laundering investigation/prosecution data)

148. At the time of the third round onsite visit, the authorities were not in a position to provide consolidated statistics. The previous report indicated that in the reference period until 2007, the Directorate for Investigating Organised Crime and Terrorism (DIOCT) had generated 77 indictments (involving 258 persons), which had resulted in 14 non-final convictions, 4 final convictions and 3 final acquittals. 56 indictments were outstanding at the time of the on-site visit. As regards the National Anti-corruption Directorate (NAD), between 2002 and 2006, it had generated 4 indictments (involving 36 persons) for money laundering, which resulted in 2 non-final convictions, while the other 2 were outstanding.

149. Since the third round, the authorities have modified their policies regarding statistics, and data and some breakdowns were available upon request regarding ML investigations, prosecutions and convictions. There is however room for improvement in ensuring that comprehensive statistics are being kept. The statistics below cover the period 2008-2013. There are no statistics available on the range of FATF designated categories of offences which have acted as predicate offences for money laundering prosecutions and convictions though the authorities have indicated that the range is quite broad. The general rate of acquittals for all offences is about 6-7%, which is also applicable in ML cases.

[26] The amendments introduced and in force as of February 2014 state explicitly that the ML offence shall apply irrespective of the fact that the predicate offence was committed in Romania or abroad.

[27] One of the last decisions of the Constitutional Court on this aspect is Decision n° 73 from 27 January 2011 (Official Gazette no° 108 dated 10 February 2011). Previous decisions are decisions no. 299(23.03.2010), no. 889 (16.10.2007). They all confirm that the ML offence set out in the AML/CFT law does not infringe upon the ne bis in idem principle. The Court stated that in the case of concurrent offences, the perpetrator will be convicted without prejudice to article 4 paragraph 1 of the 7th protocol to the European Convention on Human Rights.

Table 8: Total number of cases/persons investigated, of prosecutions and final convictions for money laundering

	Investigations[28]		**Prosecutions**		**Convictions (final)**	
	cases	**persons**	**cases**	**persons**	**cases**	**persons**
2008	364	777	26	106	6	12
2009	559	1315	30	164	5	13
2010	518	762	37	138	3	9
2011	403	1150	67	300 (out of which 29 legal persons)	17	48
2012	874	1205	89	306 (out of which 24 legal persons)	16	33
1st semester 2013	1154	NA	41	245 (out of which 8 legal persons)	13	33

	Investigations[29]		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2008	661		26	106	6	12
2009	826		30	164	5	13
2010	526		37	138	3	9
2011	431		67	300 out of which 29 legal persons	17	48
2012	519		89	306 out of which 24 legal persons	16	33
First semester 2013	365		41	245 out of which 8 legal persons	13	33

Note: Statistics compiled by the Public Ministry and the General Inspectorate of Police (do not include data from the High Court of Cassation and Justice).

[28] These figures refer to investigations concluded in the specific year. Concluded in this case means either the investigation was closed with no further action taken or else the investigation led to a prosecution. For instance in 2008, 26 prosecutions were initiated from 364 concluded investigations.

[29] These figures refer to new investigations initiated in every year in the period under review.

Table 9. Total number of cases disseminated by the FIU to the General Prosecutor's office, number of investigations and indictments

Year	Notifications submitted by the FIU to GPO, according to art.8(1)[30] from AML/CTF Law (only on solid grounds of ML)	Answers submitted to GPO according to art.[31] 8(5) and art. 8(6) from AML/CTF Law	ML indictments of DIOCT as a result of an FIU notification	ML indictments of DNA as a result of an FIU notification	ML indictments of GPO and other prosecution units as a result of an FIU notification	Total indictments
2008	709	201	1	3	1	5
2009	366	201	2	1	0	3
2010	175	259	2	3	0	5
2011	207	257	2	4	2	6
2012	340	327	1	1	3	7
1st semester 2013	306	179	0	2	1	3

Effectiveness and efficiency

150. As evidenced by the statistics above, there is a strong upward trend in the number of money laundering investigations, prosecutions and convictions, when compared with the situation at the time of the third evaluation round. The number of ML investigations has increased by over 50% from 2011. There has been a sharp increase in the number of final convictions, from 3 in 2010 to 17 in 2011 and 16 in 2012, and this should be commended. It should also be acknowledged that these figures are close to figures available for many European countries, including other MONEYVAL and FATF members, and even higher than others European States which could be considered for comparison purposes, in terms of overall size of the economy, GDP, etc.

151. The information gathered during the onsite visit, supported by the figures of overall investigations, prosecutions and final convictions achieved does suggest that the implementation of the ML offence is still lacking in effectiveness and raises a number of questions.

152. Undoubtedly, the application of the ML offence by law enforcement authorities has improved since the third round evaluation. Relevant case law has been and is being developed. Since the last evaluation, a number of measures have been taken by Romania aimed at improving its record in this field. The policy objectives of the Public Ministry focused in the last five years particularly in

[30] Art. 8 para 1 of the Law no. 656/2002, as republished, stipulates that: „Art. 8 - (1) The Office shall analyse and process the information, and if the existence of solid grounds of money laundering or financing of terrorist activities is ascertained, it shall immediately notify the General Prosecution's Office by the High Court of Cassation and Justice. In case in which it is ascertain the terrorism financing, it shall immediately notify the Romanian Intelligence Service with respect to the transactions that are suspected to be terrorism financing."

[31] Art. 8 para 5 and 6 of the Law no. 656/2002, as republished, makes reference to the requests of information addressed by LEA in ML/TF cases. The provisions of the law state that: "Art. 8(5) Following the receipt of notifications, based on a reason, General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, may require the Office to complete such notifications.

Art. 8(6) The Office is obliged to put at the disposal of the General Prosecutor's Office by the High Court of Cassation and Justice or the structures within Public Ministry, competent by law, at their request, the data and information obtained according to the provisions of the present law"

tackling corruption, organised crime, tax evasion, smuggling and more recently on aspects related to asset recovery. Numerous training initiatives have also been organised for the law enforcement authorities and the judiciary to ensure that they have a proper understanding of the offence and to improve their capacities to successfully pursue ML offences and financial crimes generally. In 2012, the General Prosecutor issued a legal opinion to clarify that a conviction for money laundering as an autonomous crime may be obtained under the applicable legal provisions without the need for a prior or simultaneous conviction for the predicate offence or a precise determination of the predicate offence or of its author. This interpretation was also sustained by the High Court of Cassation and Justice's in several final judgments, which serve as useful judiciary guidance for practitioners, and should impact positively on a more uniform interpretation and application by courts.

153. While the importance of these recent judgments should be stressed, during the visit, the evaluation team noted that there remained diverging opinions, particularly among police and prosecutorial bodies on the possibility of obtaining a ML conviction in the absence of a conviction for a predicate offense. This finding raises questions about the awareness of the various competent law enforcement bodies regarding the latest legal developments and is also revealing of the investigative approach being adopted (see further on this issue in the analysis of Recommendation 27).

154. The authorities indicated that the most relevant predicate offences for money laundering are tax evasion, corruption, organised crime and cybercrime. However the number of prosecutions and convictions of ML relating to these offences could be seen as considered low, when considered in the context of the risks identified by the authorities, the criminal activity generating large proceeds in Romania (including corruption crimes, organised crime) and the fact that the Romanian criminal procedural system is based on the legality principle related to the investigation and prosecution of committed offences (see art.1 of the Criminal Procedure Code (CPC)).

155. The authorities have stressed that the main legal value protected by the ML offence is the integrity of the financial system, of the financial markets in general and the need to protect all of the reporting entities' markets from proceeds of crime. They also acknowledged that since for many years (until 2009), criminal investigations were focused on persons, and not on assets, there remained some reluctance in the system to shift to an approach geared towards identifying and tracing proceeds of crime. Starting from 2009, every project of the Ministry of Justice and the Public Ministry covering the prevention of money laundering, corruption and organised crime included a component focused on asset recovery.

156. Furthermore, the authorities explained that the current system does not allow for a separation of the financial investigation from the investigation concerning the predicate offence, and in this process, certain aspects, including the ML offence investigation, may be overlooked. The majority of indictments that the evaluation team has seen identify the specific predicate offence, with the ML offence being rather an add-on to the predicate offence. Charges brought focus strongly on tax evasion cases, often coupled with money laundering. The survey of cases received shows, except for a few very interesting and complex cases, that the levels of sophistication of ML operations identified remain limited and that the ML activity prosecuted is rather minimal.

157. The authorities also indicated that a large percentage of the illicit proceeds is generated in cash, which makes it difficult for the law enforcement authorities to detect it. Given that Romania's economy is to a large extent still cash-based, it remains fairly easy for perpetrators to place proceeds in an undetectable way. Many of the indictments reviewed by the evaluation team show that the main purpose of the perpetrators of the predicate offences is to find ways to justify legally the withdrawal in cash of proceeds (resulting from the economic crimes committed) from financial institutions.

158. The discrepancies between the number of investigations and prosecutions also indicate that there are probably weaknesses in identifying and tracing proceeds or of knowledge in tackling the ML offence, while those between the number of prosecutions and convictions is indicative of weaknesses with the evidence used by prosecutors to support their charges.

159. An additional issue raised by some practitioners related to a number of cases investigated and then handed from one service to another as a result of the necessity to decline competence, with consequences in terms of loss of evidence, overlaps and parallel investigations and delays in the procedures. Nevertheless the evaluation team could not assess whether this is a recurring practice or concerns only isolated cases, nor estimate its impact overall in the context of ML cases.

160. Overall, the results achieved seem to indicate that the system remains focused on pursuing the predicate offence, with ML as an ancillary offence, and that there is still limited emphasis on autonomous and third party ML as opposed to self-laundering cases. The evaluation team is also concerned that several years after the introduction of the provisions regarding the criminal liability of legal persons, there is limited judicial practice in ML cases[32] and in general. There is however a positive shift with jurisprudence changing after 2009 and 2011, when the first final decisions were reached and the High Court of Cassation and Justice confirmed the autonomy of the money laundering offence[33].

161. There are also questions as to whether law enforcement authorities may be underutilizing the financial intelligence reports that originate from the FIU, given that the overall number of prosecutions commenced on the basis of STRs disseminated is low, when compared with the number of FIU cases disseminated for investigation. Although their use seems to be low, statistics do show an upward trend in some of the years. This could either indicate an improvement in the quality of FIU reports (as a result of the steps that the FIU has taken in this respect, and particularly the re-evaluation of its risks indicators, and the modifications brought to its internal methodology for analysis and processing of information) and/or some increased focus by law enforcement on cases reported by the FIU. In either case, further improvement in this area is required.

162. The practitioners with whom the evaluation team met acknowledged that a key impediment to effective ML investigations and prosecutions may be related to structural/capacity problems. There continue to be important backlogs, coupled with human resources insufficiencies (as regards the two specialized prosecutorial bodies and prosecutors' offices generally, including a lack of adequate number of specialists attached to prosecution offices to support investigations related to financial crimes) and heavy workload, which impact on the effectiveness of the investigation and prosecution of ML cases. Measures were reported to have been taken to address the procedural delays, but the court system is still overloaded with a high number of cases and it takes several years to obtain a first instance conviction, and in cases of appeals a final conviction.

[32] On a positive note, though outside of the evaluation time reference, during the first months of 2014, 9 legal persons were finally convicted for money laundering.

[33] Criminal Sentence no. 1024/F/2009 of the Bucharest Tribunal (final decision of the High Court of Cassation and Justice no. 1020/16.03.2011), in which the accused person was caught into act while selling to his accomplice 1,5 kg of heroine. In the same period, this person purchased a land in Bucharest and a vehicle. From the evidence presented before the Court, it resulted that the legal income was not sufficient to allow the person to procure such goods, and the declarations of the accused person related to the modality in which he obtained the funding for acquisitions were eliminated. It was noted that the goods were purchased from the amounts of money obtained from other sales of heroine, non-individualized, and the transactions constituted the money laundering offence, for which he was convicted. The court disposed the confiscation of the goods. In this case, there was no conviction for the predicate offence. The investigation of this case has been carried out by DIOCT.

2.1.2 Recommendations and comments

Recommendation 1

163. Romania should criminalise FT[34] in conformity with international standards, so that it is fully a predicate offence to ML.

164. Overall, and taking into account the recent positive developments in the implementation of the ML offence, the evaluation team considers that the Romanian authorities should have a more systematic and informed debate on the results and effectiveness in respect of the criminal and law enforcement policy on the treatment of the ML offence in Romania. The Romanian authorities are thus strongly recommended to undertake appropriate measures to strengthen the implementation of the ML offence, including by:

a) taking appropriate measures to address the structural and capacity deficiencies in the law enforcement and judicial process. These measures should be included as priorities of the National Strategy for combating ML and its action plan, and the measures taken in this respect and the results should be monitored and reviewed on a regular basis;

b) 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 and ensuring that these are effectively implemented;

c) carrying out a comprehensive review of discontinued cases, prosecutions, case law and sentencing practices in order to identify the source of the continuing obstacles that may impede or hinder an adequate application of the ML offence. This review should then be used as a basis for developing clear methodologies to investigate and prosecute ML cases (with an emphasis on complex, third party and autonomous ML cases); additional guidelines and case compendiums to assist practitioners to develop their understanding of the types of conduct criminalised under the ML offence, how to prove the mental element required, the level of evidence required for the predicate offence, how to manage the complexity of ML cases etc.;

d) taking measures, as appropriate, to strengthen the ability of law enforcement officials to uncover and prosecute ML offences more proactively, including in particular by increasing the number of specialists (financial investigators) attached to prosecution offices to support investigations related to financial crime. This should also involve a regular review of the geographical distribution of the investigations, prosecutions and convictions on the Romanian territory and possible discrepancies. This should be viewed in the context of the particular risks identified in the geographical areas, put into perspective with current identified risks;

e) by developing adequate and continuous training programmes to enhance the capacity of prosecutors and judges to prosecute and adjudicate ML cases and financial crimes generally.

165. Initiatives should also be pursued on strengthening the integrity of law enforcement and judiciary generally (see also R.27).

Recommendation 32

166. The authorities should ensure that statistics kept enable to have a comprehensive picture of the state of ML investigations, prosecutions and convictions.

[34] 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).

2.1.3 Compliance with Recommendation 1

	Rating	Summary of factors underlying rating
R.1	**LC**	• Shortcomings remain in the definition of the FT offence[35] as a predicate offence to ML. **Effectiveness** • (1) 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 (2) underutilisation of FIU generated reports; (3) continuing resource and capacity problems affect ML investigations, prosecutions and convictions.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

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

Summary of 2008 factors underlying the rating

167. The deficiencies identified in the third round were the following:

- The Law on preventing and fighting terrorism needs to be amended to cover all elements of SR II, to explicitly provide for the offence also covers legitimate funds and that "funds" cover the terms as defined in the Terrorist Financing Convention
- The provisions should furthermore provide that knowledge can be inferred from objective factual circumstances.
- Attempt to commit the offence of terrorist financing should also be an offence.
- There have been no terrorist financing cases and consequently it is not possible to assess whether the offence is effectively implemented.

Legal framework

- Law 656/2002 for the Prevention and Sanctioning of Money Laundering (published in the Official Gazette no. 904 of 12 December 2002, as amended subsequently) (AML/CFT Law);
- Law 535/2004 on Preventing and Fighting Terrorism (Law on Terrorism).
- Law no. 187 from 24th of October 2012 on the application of Law n° 286/2009 regarding the Criminal Code, amending Law 535/2004 on Preventing and Fighting Terrorism (published in MO n° 757 of 12 November 2012, not in force at the time of the visit)

[35] See previous footnote.

168. At the time of the onsite visit, the legal provisions related to terrorism financing which were in force and applicable had remained unchanged.

169. However, it is important to note that a new definition of the offence of terrorism financing had been adopted through Law no. 187 from 24th of October 2012, whose entry into force coincides with the entry into force of the Criminal Code (1st of February 2014). In application of the FATF methodology, given that at the time of the onsite this law was adopted but was not brought into force, the evaluation team could not take it into account for the purpose of the assessment below. References are included though in this text, given that this act brings several important improvements to the legal framework.

Criminalisation of Financing of Terrorism (c. II.1)

170. The analysis of the third round evaluation applies as the legal provisions have remained unchanged. The text below updates the previous analysis and provides a few additional comments on certain issues.

171. FT is criminalised under Article 36(1) of the Law on Terrorism[36], which reads as follows:

> *"Making available to a terrorist entity moveable or immoveable assets, knowing that they are being used for supporting or committing terrorist acts, and acquiring or collecting funds, either directly or indirectly, or performing any financial-banking operations, with a view to financing terrorist acts, shall be punished by imprisonment from 15 to 20 years and the interdiction of certain rights."*

172. The requisite material elements of the FT offence (provides or collects) are covered (making assets available and collecting) and to a certain extent go beyond what is required under international standards (acquiring and performing any financial-banking operations).

173. The law specifies that both direct and indirect acquisition and collection of funds constitute an offence. The evaluators consider the meaning of 'making assets available' to be wide enough to include both direct and indirect provision of assets. The FT offence covers the wilful provision of moveable or immoveable assets or collection of funds.

174. Article 36 makes a distinction between the mental element required when making assets available and when acquiring and collecting funds and performing financial-banking operations. When assets are made available to a terrorist entity, the FT offence applies where there is awareness that the assets are being used for supporting or committing terrorist acts. The mental element in this case ('knowing that they are being used …') appears to cover both aspects envisaged under the FT Convention ('with the intention that they should be used or in the knowledge that they are to be used'). In contrast, the acquisition, collection and performance of financial-banking operations constitute an FT offence only where they are carried out specifically with a view to finance terrorist acts[37]. Knowledge that the funds are to be used to carry out

[36] Art. 36 as modified by Law n° 187/2012:
(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 15 to 20 years and interdiction of certain rights.
(2) Committing of an offence, knowing 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 para 2 were given to the terrorist entity, the rules regarding concurrence of offences shall be applied.
(4) Attempt of the offence provided in para 1 shall be punished.

[37] The mental element distinction is no longer to be found in the new FT offence.

terrorist acts, as an indirect intentional element, does not appear to be covered. The authorities clarified that given that there is no reference to whether the funds should be used in full or partly, a wide interpretation would be applied. [38]

175. The FT offence is limited by reference to terrorist acts. Through a combined reading of Articles 32 and 2 of the Law on Terrorism, terrorist acts are defined as acts (such as homicide, seizure of aircraft, production of nuclear arms, etc.) which meet one of the following conditions:

a) They are usually committed through violence and they cause states of disquiet, uncertainty, fear, panic or terror among the population;
b) They seriously infringe upon both specific and non-specific human factors and material factors;
c) They are aimed at specific objectives, of political nature, by determining the State authorities or an international organisation to ordain, to renounce or to influence the making of a decision in favour of the terrorist activity.

176. Under the FT Convention, the provision and collection of funds is linked to acts which constitute an offence within the scope of and as defined in one the treaties listed in the annex to the Convention, without requiring that such acts meet any additional conditions such as those found under Article 2 of the Law on Terrorism.

177. Romania ratified the FT Convention on 9 January 2003.

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

Convention for the Suppression of Unlawful Seizure of Aircraft, done at the Hague on 16 December 1970	Ratified on 19 April 1972 by Decree no. 143, published in the Romanian Official Journal no. 49 of 9 May 1972 Articles 109 and 111 of the Civil Aerial Code (Government Ordinance no. 29/1997) and 26 & 27 of the Criminal Code
Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation done at Montreal on 23 September 1971	Ratified on 30 May 1975 by Decree no. 66, published in the Romanian Official Journal no. 58 of 10 June 1965 Article 104, 107, 108 of the Civil Aerial Code
Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973	Ratified on 10 July 1978 by Decree no. 254, published in the Romanian Official Journal no. 64 of 17 July 1978 Article 171 of the Criminal Code
International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979	Ratified on 30 March 1990 by Decree no. 111, published in the Romanian Official Journal no. 48 of 2 April 1990 Article 189 of the Criminal Code
Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980	Ratified on 8 November 1993 by Law no. 78, published in the Romanian Official Journal no.

[38] Though there has been no practice on this issue, the authorities have considered useful to clarify this question for the future and have included an explicit reference in the revised FT offence (see above art.36) on this aspect.

	265 of 15 November 1993 Article 279 [1] of the New Criminal Code
Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988	Ratified on 29 June 1998 by Law no. 133, published in the Romanian Official Journal no. 252 of 7 July 1998 Article 107 of the Civil Aerial Code and art. 32 of Law no. 535/2004 on preventing and combating terrorism
Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988	Ratified on 22 December 1992 by Law no. 123, published in the Romanian Official Journal no. 2 of 12 January 1993 Article 32 of Law no. 535/2004 on preventing and combating terrorism
Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988	Ratified on 22 December 1992 by Law no. 123, published in the Romanian Official Journal no. 2 of 12 January 1993 Article 32 of Law no. 535/2004 on preventing and combating terrorism
International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997	In accordance with Article 2, paragraph 2, subparagraph (a) of the TF Convention, Romania declared that, on the date of the application of the Convention to Romania, the International Convention for the Suppression of Terrorism Bombings of 15 December 1997, shall be deemed not to be included in the annex referred to in Article 2, paragraph 1, subparagraph (a).

178. Part of the FT offence (making assets available) refers to a "terrorist entity". A terrorist entity is defined under Article 4 of the Law on Terrorism as "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". Therefore, as far as the provision of assets is concerned, Article 36 covers the financing of a "terrorist entity". The definition is wide and includes an individual terrorist, a group, a structured group and a terrorist organisation which : a) commits or participates to terrorist acts; b) prepares to commit terrorist acts; c) promotes or encourages terrorism; d) supports, in any form, terrorism. The definition of a "terrorist organisation", as provided for under Article 4(5) of the Law on Terrorism[39], appears to be rather restrictive compared to the definition of a terrorist organisation provided in the Glossary to the FATF 2004 Methodology. This is attenuated by the reference to a "terrorist entity" as mentioned above.

179. The law does not specify whether the collection of funds, as a terrorism financing offence, applies to a terrorist organisation or an individual terrorist. The law simply states that the collection shall constitute a FT offence if committed with a view to finance terrorist acts. In terms

[39] Article 4(5) terrorism organisation – a hierarchically created structure that has its own ideology of organisation and action, which is represented both nationally and internationally, and that uses violent and/or destructive modalities to achieve its specific goals.

of Article 32, a terrorist act is a criminal offence committed under the conditions provided in Article 2. Article 2 of the Law on Terrorism refers to acts committed by terrorist entities. As stated in the preceding paragraph, terrorist entities include both terrorist organisations and individual terrorists.

180. With respect to the definition of funds under criterion II.1(b), Article 36 links the material elements of the FT offence to different types of property. Reference is made to making "moveable and immoveable assets" available to terrorist entities and to acquiring and collecting "funds". The authorities clarified that these terms are defined in the law under article 4 paragraphs 8 (*financial resources:* "funds collected or acquired, either directly or indirectly, as well as accounts belonging to natural or legal persons or their banking deposits") and 9 (*logistical resources*: "movable or immovable assets, held on any grounds, means of telecommunication, standard or special means of mass communication, trade companies, means of indoctrination, of training and practice, counterfeit identification documents or that are issued based on false statements, elements of disguise, and any other assets"). The authorities indicated that the definition makes reference in a wide manner to "any other assets", which could as such be interpreted widely and include missing elements of the glossary. This is accepted, as far as the definition of assets is concerned. The provisions may be applied in relation to legitimate assets or funds. However the distinction made between "moveable and immoveable assets" and "funds (i.e. financial resources as defined in the law")" when referring to the conducts of "making available" and respectively "acquiring or collecting" raises concerns, as it is clearly limitative with respect to the scope of "funds" as defined in the FATF methodology which should apply to all conducts. [40]

181. Article 36 links the collection of funds generally to "terrorist acts". Funds are not linked to a specific terrorist act. Financing of the legitimate activities of terrorist organisations and individual terrorist is however not covered.

182. The attempt to commit a FT offence and the conduct set out in Article 2(5) of the FT Convention (complicity, organising and directing others, contributing to the commission of an offence by an organised criminal group) are not criminalised in the Law on Terrorism.[41]

Predicate offence for money laundering (c.II.2)

183. The ML offence, which is found under Article 29 of the AML/CFT Law, is predicated on an all-crime regime. More specifically, Article 29 states that the conversion, transfer, concealment, disguise, acquisition, possession or use of property deriving from offences shall constitute a money laundering offence. Thus, the terrorism financing activities that fall within the scope of Article 36 of the Law on Terrorism are predicate offences to ML.

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

184. The authorities have indicated that article 36 could be applied regardless of whether the financed act or organisation is located in Romania or abroad. They referred in this context to the general provisions of the Criminal Code (art. 4 – principle of personality; art. 6 – principle of universality).

[40] Law 187/2012 has amended article 4 paragraphs 8 and 9 by replacing them with a consolidated definition of "funds" which reflects to a large extent the definition of funds set out under the FT Convention: "Funds – assets, whether tangible or intangible, moveable or immoveable, acquired in any way, as well as documents and legal instruments of any kind, including in electronic or numeric format, which prove a property right or other interest regarding these assets, financial credits, travel cheques, bank cheques, mandates, shares, titles, obligations, special provision rights and credit letters, without limiting the latter list".

[41] Attempt is explicitly covered in the new FT offence.

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

185. There is no explicit reference in the Law on Terrorism as to whether the intentional element of the FT offence may be inferred from objective factual circumstances. The authorities have clarified that this principle does not need to be set out explicitly, given that it has been accepted for many years in the legal system. The intention is to be proved only through factual circumstances.

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

186. The criminal liability of legal persons is set out under Article 19^1 of the Criminal Code (art. 135 and foll. from the CPC) and therefore applies to FT offences. Legal persons are criminally responsible for the crimes committed in achieving the aim of their activity or for the crimes committed in the interest or on behalf of that legal person, if the crime was committed with the guilty form requested by the criminal law. The criminal liability of the legal person does not exclude the criminal liability of the natural person which contributed, in any way, in committing the same crime.

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

187. Pursuant to Article 36 of the Law on Terrorism, any person who is found guilty of a FT offence shall be liable to imprisonment from 15 to 20 years and the interdiction of certain rights (64 and following CC[42]). In addition, any moveable or immoveable assets made available to a terrorist entity and the funds acquired or collected with a view to financing terrorist acts, or their equivalent, shall be confiscated. The penalties applicable to legal persons are set out under Article 53^1 of the Criminal Code. A legal person found guilty of a criminal offence shall be liable to a fine ranging from RON 2,500 to RON 2,000,000 [approx. 625 - 500.000 Euros] . In addition, the legal person may be dissolved, its activity may be suspended for a period ranging from 3 months to 1 year, the activity related to the offence may be suspended for a period ranging from 3 months to 3 years, establishments of the legal person may be closed for a period of 3 months to 3 years, the legal person may be prohibited from participating in public purchasing procedures for a period of 1 to 3 years and the conviction may be displayed or disseminated.

188. The evaluation team considers these penalties to be sufficiently effective, proportionate and dissuasive.

Effectiveness

189. There has been only conviction achieved in June 2007 for terrorism, which referred also in the overall description to the support to financing under article 35 paragraph 2 of the Law on Terrorism, though this aspect was not retained for the sentence. The authorities have provided the following data in respect of FT investigations.

Table 11: FT investigations of law enforcement based on FIU notifications

	2008	2009	2010	2011	2012	2013
FT investigations	10	14	17	6	6	3

190. The number of FT investigations relate all to disseminations sent by the FIU to law enforcement authorities. The FIU explained that in 2010, the FIU submitted to the General prosecutor's Office and to the RIS a notification for suspicions of acts of terrorist financing, which

[42] The revised sanctions are now from 5-12 years imprisonment.

was initiated based on an STR received from an insurance company. In this case, an operation was suspended in the amount of 234.101,11 RON, which subsequently was subject to the provisional measures (seizure) of DIOCT.

191. No investigations have been generated from law enforcement authorities' investigations. According to the representatives of the DIOCT, which is the department responsible for the investigation and prosecution of terrorism, none of the FT notifications forwarded by the FIU were found to present a case of FT. The prosecutor's office has explained that cases were closed under art. 10 letter d) CC, namely one of the constitutive elements of the offence was missing. They have stated that these were closed mainly because a link between the beneficiaries of the transactions and the terrorism phenomenon could not be established or the amounts of money transferred were not proved to be sent to such beneficiaries. During the visit, an example was also given to the evaluation team of a particular case where two individuals were found to be providing financial support to the Kurdish liberation party. DIOCT could not pursue the case since a nexus between the funding and an act of terrorism could not be established.

192. The evaluation team questions whether the figures of total investigations and their outcome reflect adequately the level of FT risk inferred by the evaluation team from the discussions with the authorities. During the on-site mission, the RIS referred to fundraising activities by followers of radical or terrorist entities, who also engaged in illegal economic activities (such as usury, import / export of goods at a lower value) and cybercrime to raise funds to assist their compatriots in areas of conflict (for further details see Special Recommendation VIII, Criterion VIII.1). It is therefore surprising that these activities have never been prosecuted and the persons involved convicted.

193. The law enforcement authorities have responded that their action focuses primarily on preventing the commission of activities which may represent threats to the national security, and that includes also possible FT activities. This is reflected also by the use of the administrative procedure of declaring a foreign or stateless person "undesirable", which is foreseen in the Law on Terrorism under Article 44. In the period 2011-2012, upon proposal by the Romanian Intelligence Service, the Court of Appeal of Bucharest has declared "undesirable" and expelled 12 foreigners. These persons were involved in activities constituting a threat to national security, involving a terrorist threat, and included some prerequisites of terrorist financing, though the elements of the offence were not met. This administrative procedure is initiated before the court by a prosecutor from the Prosecutor's Office attached to the Bucharest Court of Appeal. This administrative procedure may be applied if the prosecutor decides that the evidence is not sufficient to bring a criminal case to court. The authorities have referred in this context to the example where two individuals recently established in Romania with the intention to establish a mechanism for acquiring funds for the PKK/Kongra Gel were declared undesirable and expelled under the administrative procedure.

2.2.2 Recommendations and comments

194. Considering that the gaps identified in the third evaluation round were still in place at the time of the fourth round evaluation visit, the evaluation team reiterates the previous recommendations. However, these are not detailed below and for the purpose of the action plan, given that in the meantime a new FT offence is in force, and it appears to the evaluation team that it would be impractical to recommend to take legislative action for modifying an offence which is no longer in force.

195. Under the Methodology, the evaluation team was unable to analyse the new FT offence, considering that at the time of the onsite visit, the text was not in force and in effect. Thus, it cannot have a consolidated conclusion as to whether the new FT offence fully meets the requirements of SR.II, though at a glance, it appears to address important deficiencies previously

identified. The rating below is given taking into consideration the deficiencies in place at the time of the visit, as set out under the Methodology.

196. It is however recommended to Romania to:

- Review the new FT offence in the light of the FATF standard on the terrorist financing offence and demonstrate that it covers adequately all the requirements. Where applicable, it should take measures to amend the law in order to cover all essential criteria;

- Reconsider the current approach to tackling FT risks so that that there is an adequate balance between the preventive and repressive policy applied in order to ensure that FT activities are investigated and prosecuted effectively in Romania.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**PC**	• The FT offence[43]: o 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; o 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); o partly applies to "funds" as defined under criterion II.1(b) o 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. **Effectiveness** • Investigations and prosecutions of FT offences appear to be hampered by the limitations of the FT incrimination, though alternative measures have been applied.

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

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

2.3.1 Description and analysis

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

Summary of 2008 factors underlying the rating

197. Romania has received a Largely Compliant rating in the Third round in respect of Recommendation 3, given the following deficiencies:

- There is no third party confiscation apart from instrumentalities which have been used and belong to a third person who has knowledge about the purpose of their use.
- No authority to take steps to prevent or void actions, whether contractual or otherwise, where persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.
- The effectiveness of the confiscation system is questionable taking into consideration the limited confiscation proceedings.

Legal framework and additional measures

198. Romania has taken the following additional measures since the third evaluation round to strengthen its legal framework in respect of confiscation, freezing and seizing of proceeds of crime:

- It adopted a new Criminal Code (July 2009) and a Criminal Procedure Code (July 2010), though these had not entered into force at the time of the on-site visit[44] and thus cannot be considered for the purpose of this assessment under the Methodology.
- In 2011, a common order of the General Prosecutor and the Minister of the Interior has established a standardised procedure to be applied in all criminal cases in order to identify assets that could be frozen through a checklist questionnaire covering the main steps of a financial investigation
- In 2011 Romania has established an asset recovery office, implementing the requirements of the Council Decision 2007/845/JHA
- In April 2012, Romania has adopted a new law on extended confiscation (Law no. 63/2012 amending and supplementing the Criminal Code and Law no. 286/2009), implementing the Council Framework Decision 2005/212/JHA of 24 February 2005.
- Training programs for prosecutors have been developed in the area of asset recovery and a best practices manual has been drafted and distributed to all prosecutors' offices.

Confiscation of property (c.3.1)

General confiscation

199. The general confiscation measures are set out in the Criminal Code and the Criminal Procedure Code. They apply to all offences set out in the Code or otherwise in the special laws.

200. Confiscation measures are included in the Romanian CC in article 111 as a "safety measure", that is a measure whose aim is "to eliminate a situation of threat, and which is to be taken in respect of a person who has committed acts set out under criminal law". In order to apply a safety measure, it is thus necessary to establish that a person has committed a criminal act, that this has resulted in a situation of threat which is serious enough to justify the application of criminal

[44] The criminal legislative package - both Codes, as well as the implementing laws - entered into force on 1st of February 2014.

legislation in order to eliminate it[45]. They can thus only be applied against the person who committed the offence, and can be applied even when the main penalty is not applied (article 111(3) of the CC).

201. Both "special confiscation" and "extended confiscation" are safety measures, and are not part of the main penalty of a criminal sanction. Confiscated property becomes property of the State or is destroyed, unless it is used to cover damages.

202. Article 32 of the AML/CFT Law provides that when a ML or a TF offence has been committed, the application of safety measures is mandatory. Article 33(6) further provides that in order to ensure that property can be confiscated, the safety measures set out in the Criminal procedure Code shall be applied.

203. Provisions on confiscation are also set out in specific laws. *Law 39/2003 on Preventing and Countering Organised Crime* provides that in case of offences set out in article 7 (initiation or constitution of an organised crime group, or joining or supporting such a group in any manner), in article 10 (concealment of goods if there are a result of a serious offence committed by one or more of the members of an organised crime group) the provisions of article 118 shall be applied. Article 17 of the *Law 143/2000 on Preventing and Countering Trafficking and Illicit Consumption of Drugs* also provides for the mandatory confiscation of drugs and other assets that constitute the subjects of the offence, as well as for their equivalent in money, plus for the mandatory confiscation of money, values and any other goods obtained from the capitalisation of drugs and other goods which constitute the subject of the offence.

204. Special confiscation is set out under article 118-1 CC. This article has not been modified since the third round evaluation and thus the deficiencies identified previously remain valid.

205. The newly introduced Article 118-2 of the Criminal Code covers the situation of extended confiscation. The article defines extended confiscation as the safety measure used to confiscate illegal assets from persons who have committed a certain category of criminal offence and are unable to justify their assets. This new mechanism includes third party and value based confiscation, and allows for the confiscation of assets derived from criminal proceeds. Equivalent confiscation is also covered, if the intended assets to be confiscated are not found.

206. This regime may include other property than the one referred to in article 118 CC. The measure of extended confiscation is ordered by the court when the person is convicted for one of the offences set out below, if the offence is of such a nature that it can generate financial gain to the person convicted and if the penalty provided by the law is imprisonment of 5 years or more. The list of offences to which it applies are as follows:

a) Pimping;
b) Offences relating to the drugs trafficking and precursors;
c) Offences concerning human trafficking;
d) Offences related to the regime of Romanian state borders;
e) Money laundering offences;
f) Offences regarding preventing and countering pornography;
g) Offences regarding preventing and countering terrorism;
h) Association to commit offences;
i) The offences of initiating or establishing a criminal organization or membership or support in any form such a group;
j) Offences against property;

[45] The authorities have advised that according to the legal doctrine, there is no need to prove the existence of a dangerous situation in order to apply the safety measure of confiscation. The situation of danger is presumed after an offence was committed.

k) Offences related to non-observance of the regime of weapons and ammunition, nuclear or other radioactive materials and explosives;
l) Counterfeiting of currency or other values;
m) The disclosure of economic secret, unfair competition, failure to comply with the import or export operations, embezzlement, failure to comply with the import of waste and residues;
n) Organization and operation of the offences relating to gambling;
o) Trafficking of migrants;
p) Corruption offences, crimes assimilated to corruption offences, offences in connection with corruption, offences against the financial interests of the European Union;
q) Tax evasion;
r) Offences related to customs regime;
s) Offences relating to the fraudulent bankruptcy;
t) Offences committed through computer systems and electronic means of payment;
u) Trafficking in human organs, tissues or cells of human origin.

207. Extended confiscation may be enforced whenever the following conditions are met cumulatively:
a) If the value of assets obtained during a period of 5 years before and , depending on the case, after the offence is committed up to the date when the document instituting the proceedings is issued, noticeably exceeds the offender's lawful income
b) The court is convinced that the assets result from the perpetration of the criminal offences listed above.

208. Article 118-2 CC states that "*confiscation shall not exceed the value of property […] going beyond the legitimate income of the convicted person*". The value of assets transferred by the convict or by a third party to a member of the family, to persons with whom the convict has a similar relationship to the one between spouses or between parents and children, if they live with the convict, to the legal entities owned by the convict is taken into consideration. Article 118-2 clearly indicates that assets will also entail amount of money. If the assets to be confiscated are not found, assets and money shall be confiscated up to their equivalent value, and assets and money obtained from the exploitation or use of assets subject to confiscation are also confiscated.

209. Article 33 of the AML/CFT Law provides that for ML and TF offences, the provisions of article 118 shall apply. In addition, paragraphs 4 and 5 enable the following :

"4) If the proceeds of crime subject to confiscation cannot be singled out from the licit property, there shall be confiscated the property up to the value of the proceeds of crime subject to confiscation.
(5) The provisions of para (4) shall be also applied to the income or other valuable benefits obtained from the proceeds of crime subject to confiscation, which cannot be singled out from the licit property."

210. The table below sets out which property can be confiscated based on the provisions above for the commission of a ML, FT or other predicate offences, including property of corresponding value. It is to be noted that confiscation of proceeds which have been intermingled with legitimate assets can only be applied under the AML/CFT Law, i.e. for a money laundering case, and thus cannot be applied to all categories of offences.

Table 12.

Confiscation of property constituting:	Legal basis	Remarks
Proceeds of ML	Art 118 -1 a), e) CC	Money[46] is not explicitly covered by the concept of assets ("*bunuri*" in original) in the Criminal Code.
Instrumentalities of ML	Art 118 – 1 b) CC	
Intended instrumentalities of ML	Art 118 –1 c) CC	The scope of the instrumentalities intended to be used is narrower than the standards. Those instrumentalities which are not produced, modified or adapted are not covered.
Laundered property	Not covered explicitly.	
Proceeds of FT	Art 36- b) Law 535/2004 – corpus of the offence confiscated	
Instrumentalities of FT	Art 118- 1 b) CC	No provisions within the special law. General provisions are applicable.
Intended instrumentalities of FT	Art 118 – 1 c) CC	No provisions within the special law. General provisions are applicable.
Proceeds of predicates	Art 118 – 1 a), d),e) CC	
Instrumentalities of predicates	Art 118 – 1 b) CC	
Intended instrumentalities of predicates	Art 118 – 1 c)	The scope of the instrumentalities intended to be used is narrower than the standards. Those instrumentalities which are not produced, modified or adapted are not covered.
Property of corresponding value	AML/CFT Law, art 33(2) : property of corresponding value in cash or assets generated Art 118 – 2,3,4 CC	
Direct proceeds	Art 118-1 a),e) CC	The law does not make a distinction between direct and indirect proceeds. It remains to be clarified whether this should be widely interpreted as covering indirect proceeds.

[46] It was noted that where money is also considered, explicit provisions are in place. The concept of "assets" (bunuri) covers also the money. This is also exemplified for instance by the fact that, for example, let. d) from art. 118 – assets given to determine the commission of an offense or to reward the perpetrator, cannot be interpreted as not including money. The definition of "assets" is the one provided by the civil doctrine and includes also movable assets, including money. The Criminal Code was and does still not include a definition of "assets" mainly because it was generally accepted that the definition provided by the civil doctrine would cover all the types of property. In the vast majority of criminal files in which the confiscation was applied, monies were confiscated along with other types of identified assets. Also according to art. 44 para 9 of the Romanian Constitution, **the assets** intended, used or acquired from offences or misdemeanours may be confiscated only according to the legal provisions. The Romanian Constitution refers only to assets, which includes money.[47]
[47] Final criminal decision no. 914 from 19.12.2012 issued by the Bucharest Tribunal, confirmed by the High Court of Cassation and Justice through decision no. 2873 in 2013.

Indirect proceeds	Art 118 – 1 a),e) CC, Art 118 – 5) CC Art 33(3) of the AML/CFT Law	Art 33(3) is related only to ML offence.
Owned by criminal	Art 118 – 1b), c) CC	The rule impliedly contained by Art 118 of the CC is that the property can be confiscated regardless of who owns it. The exception is provided for the instrumentalities. Considering Article 111 of the CC, the special confiscation cannot be apply to third party, in principle, but only to person who commit facts (deeds) foreseen by the penal law. The exceptions to this rule are (and should be) expressly provided (i.e. Art 118 - 1b),c), 3 CC.
Owned by third party	Art 118 – 1 b),c), 3 CC 118- 1e)	The instrumentalities can be confiscated from the third parties only if some additional conditions are met.

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

211. Provisional measures are available as per the provisions set out in the AML/CFT Law, article 118 of the CC and the CPC provisions. These include the provisions set out in Chapter II, Section II of the CPC (articles 163 -170 CPC). Article 163 CPC clarifies that safety measures may be ordered during criminal proceedings by the prosecutor or the court, and consist in dispossession of movables and immovable assets, with a view to applying special confiscation, to repair damages caused by the offence, and to ensure that the fine which has been ordered can be enforced. It is to be noted that paragraphs 2 and 3 of article 163 delineate explicitly that safety measures taken for the purpose of repairing damages caused by offence can only be taken in respect of assets of the accused or indicted person and of the person who bears the civil responsibility, up to the estimated value of the damage. Safety measures taken for the purpose of securing the payment of the fine can only be taken with regards to the assets of the accused person or defendant. As a conclusion, *per a contrario*, the provisional measures may be applied to assets belonging to a third party, with the purpose of securing a future confiscation – the legal provision is limited to the assets of the suspected person, of the defendant or of the person who bears the civil responsibility only in the case when the provisional measure is taken with the view to guarantee the execution of a fine or to repair the damages, but not in the case of a future confiscation order.

212. The main provisions have remained unchanged compared with the third round evaluation. The only novelty related to amendments made by Law 28/2012 which has introduced in the CC new provisions enabling the authorities to sell seized certain types of assets before a final decision is taken, during criminal proceedings and appeal processes (articles 168-1 to168-4).

213. It is recalled that prosecutors can apply provisional measures during the pre-trial investigation and that the Court can further extend the freezing and seizure measures at the request of the parties (civil party or prosecution) under its competences, if assets have not been already frozen or seized at the pre-trial investigation. The police carries out actions determined by the prosecutor during the pre-trial investigation, including the collection of evidence. During the investigation, the freezing of assets is the responsibility of the prosecutor, who can issue such orders without the need for the authorisation of the court. Such orders can be appealed, but the release of assets cannot be requested until the actual trial takes place. The Police are competent to enforce the freezing orders.

214. Sections VII (articles 95-96) and VIII of the CPC (articles 96-111) cover the evidence and set the procedures available for seizing and conducting a search. Articles 94-95 refer to the seizure of objects which may be used as evidence in order to reveal the facts, as well as to objects which have been used or are destined to be used for the commission of an offence. Means of evidence are required to be seized (article 96 CPC). Expert opinions can be used when there is a need to clarify the facts, in application of article 116 CPC.

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

215. The CPC does not require a notification prior to the application of provisional measures. The authorities have indicated that provisional measures are issued on an ex parte basis and without prior notice and that this is the accepted practice in such matters.

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

216. The FIU and investigative bodies (police and prosecution units) have direct access to a variety of electronic databases (bank account register, trade register, real estate register, auto register etc.) to identify and trace property. They can use their powers to secure documents and based on the CPC provisions to identify and trace property. There are also provisions covering the use of special investigative techniques. There are no obstacles preventing law enforcement authorities to access bank records and professional or banking secrecy is being lifted in the case of criminal investigations and prosecutions. It is referred in this context to the aspects covered regarding general law enforcement powers under Recommendation 28 of this report.

217. In transnational cases, the investigative bodies may ask information from the Assets Recovery Office set up within Ministry of Justice. The Assets Recovery Office, in very urgent cases, may provide information also in national files, without transnational element, having direct and indirect access to several databases (bank account, Trade Register, Real Estate register, Auto register, Boat Register, Plane Register etc.).

218. The authorities have indicated that they have ready access to the information they need to identify and trace proceeds and instrumentalities and that the CPC provisions enable them to support the gathering of evidence.

Protection of bona fide third parties (c.3.5)

219. The rights of the bona fide third parties are protected. Art. 118 let. b from the Criminal Code provides that it shall be confiscated the assets that were used, in any way, to the committing of an offence, if they are of the offender or if, belonging to the other person, that knew the purpose of their use. 118 let. c from the Criminal Code also provides that when the objects belong to another person, the confiscation is disposed if the production, modification or adaptation has been performed by the owner or by the offender, with the owner's understanding.

Power to void actions (c.3.6)

220. The authorities referred in this context to several final court decisions[47] regarding the confirmation of provisional measures or confiscation orders applied to assets belonging to third parties, acting as "front" owners, but in reality belonging to the perpetrator. In such cases, the courts considered that the real owner is the perpetrator, which through a simulated behaviour and/or simulated civil acts acquired or transferred assets on the name of a third party in order to avoid the eventual application of provisional measures and confiscation regime. As a general rule, the prosecutor requests the court, if the prejudiced person did not, to pronounce that a contract concluded in order to avoid the confiscation, is null and, according to art. 170 from the CPC, to restore the existing situation prior to the offence, when that situation was a clear consequence of

[47] Final criminal decision no. 914 from 19.12.2012 issued by the Bucharest Tribunal, confirmed by the High Court of Cassation and Justice through decision no. 2873 in 2013.

an offence. When an asset or property was acquired through the commission of an offence, the court may apply art. 170 from the CPC and may dissolve the contract.

221. According to art. 348 of the CPC, even if there is no partie civile, the court is obliged to make its decision regarding the partial or total dissolution of a writing and to restore the existing situation prior to the offence The prosecutor may ask the court to declare the absolute nullity of the legal acts concluded with the aim to avoid the confiscation regime, on a separate trial or within the criminal proceedings, and the court may, *ex officio*, to declare the absolute nullity of such legal acts. The case of absolute nullity is the illicit cause – the reason for concluding legal acts was not the real intention of the contracting parties to transfer the assets, but the intention was to avoid a future confiscation – *fraus omnia corrumpit.*

222. Furthermore, according to the Civil Code, when the contracting party knew or should have known the reason for concluding the contract, the illicit cause determines the absolute nullity of that specific contract (art. 1238 para 2 of the Civil Code). According to art. 1237 of the Civil Code, the cause is also illicit when the contract was concluded with the aim to avoid the application of binding legal provisions. The absolute nullity may be invoked by any interested party, anytime – it is not affected by the statute of limitations.

223. The High Court of Cassation and Justice decided in a decision of the law interest, mandatory for all judicial bodies (decision in the law interest no. 2/2011, published in the Official Gazette no. 372/2011) that the prosecutor has the legal capacity to declare the civil action for the dissolving, total, or in part, of the writing, including the forged ones, in the case when the criminal action was stopped during the criminal investigation, which was finalized with a non-indictment solution – art. 245 para 1 let. c^1 of the CPC and art. 45 from the Civil Procedure Code (now art. 92 from the new Civil Procedure Code).

Additional elements (c.3.7)

224. The situation as described previously at the time of the third round report has remained unchanged.

225. The authorities have referred in addition to a confiscation procedure outside criminal proceedings. Confiscation is ordered in the case when there is a significant difference[48] of wealth, in a case initiated by the National Integrity Agency (ANI) in respect of a number of categories of persons which are required by Law nr.115/1996 (Law on the declaration and control of wealth of officials, magistrates, officials of the management and control of civil servants) to declare wealth and interests. In these cases the court is deciding the confiscation of the difference between legal incomes and the real wealth of a person, if this difference is not justified. The evaluation report through which the National Integrity Agency finds that a significant difference between the gained wealth and the realised incomes are communicated to a Commission (consisting of two judges and a prosecutor).

226. As mentioned in the third round report, according to Article 44 of the Romanian Constitution "*legally acquired assets should not be confiscated. Legality of acquirement should be presumed. Any goods intended for, used or resulted from a criminal or minor offence may be confiscated only in accordance with the provisions of the law*". Accordingly, any requirement for the perpetrator of a crime to prove the origin of assets of an alleged criminal origin would be contrary to the constitutional order of Romania. The Constitutional Court of Romania has delivered several ruling on the interpretation of article 44 and that it does not prevent the search and confiscation of unlawfully acquired property.

[48] Significant differences means the difference of more than 10,000 euro or the equivalent in lei of this amount between changes in wealth and dignity while exercising public functions and revenues in the same period.

227. Provisions on extended confiscation allow for an apportionment of the burden of proof in certain situations.

Recommendation 32 (Statistics)

228. Various authorities maintain statistics which include information on the application of provisional and confiscation measures. The General Prosecutor's Office has put in place starting 2011 an application which includes information on cases concerning money laundering, accessible in real time to all prosecutors' units, including DNA and DIICPT, and which includes inter alia the amounts which allegedly were subjected to the laundering process, the value of assets for which were instituted provisional measures during the period, the preventive measures ordered, the indictments, the amount mentioned in the indictment, the number of dependants (natural and legal persons) prosecuted etc. The Ministry of Justice also keeps a number of statistics and breakdowns in relation to the activity of the asset recovery office. The DNA and DIOCT have also provided separately detailed statistics on criminal cases involving ML offences as well as the application of freezing, seizure and confiscation measures. Additional statistics are also available in table 25 and 39. A selection of tables is provided below.

Table 13. Statistics on confiscation orders for major proceeds generating cases (period 2008-2013) - Ministry of Justice

	2009	**2010**	**2011**	**2012**
Value of the damage observed through the indictment	911.949.523 (app. 203.000.000 EUR)	2.445.158.577 (approx. 544.000.000 EUR)	3.227.646.119 (approx. 717.000.000 EUR)	3.426.362.917 (approx. 762.000.000 EUR)
Value of interim measures	226.711.591 App. 51.000.000 EUR	371.646.024 (approx. 83.000.000 EUR)	1.024.979.707 (approx.. 228.000.000 EUR)	1.869.681.989 (approx. 415.000.000 EUR)
Value of confiscation orders (data from the Fiscal Authority)	N.A.	7.053.914 (approx. 1.600.000 EUR)	21.582.411 (approx.. 4.800.000 EUR)	34.821.415 (approx.. 7.800.000 EUR)

N.B.: all amounts are in Romanian New Lei – RON; the table regards all crimes.

Statistics on seizures and confiscation orders for ML cases (period 2008-2013)

	Proceeds seized (Euro)	**Proceeds confiscated**
2008	377.045	20.000 EUR
2009	7.180.000	1.596.000 EUR (3 cases)
2010	3.458.000	1 flat (app. 30.000 EUR) and 10.000 USD (1 case)
2011	24.822.310 EUR 1.231.059 USD	166.030 EUR and 296 packs of cigarettes (4 cases)

2012	103.283.891 EUR 7.015.500 USD	152.500 EUR, 75.000 USD and 287 packs of cig. (4 cases)

229. It appears to the evaluation team that the collection of statistics, as currently undertaken, cannot be easily integrated in order to be able to draw a meaningful picture of the overall efforts undertaken by the various bodies and institutions at the various stages (pre-trial investigation, prosecution, adjudication etc.) to secure and recover assets.

Effectiveness and efficiency

230. Although confiscation and provisional measures are applied in Romania, the evaluators noted an important imbalance between assets frozen – which have moderately increased in comparison with the third round evaluation figures, and those finally confiscated. There is also a clear gap between the value of damages observed, the value of interim measures and the value of confiscation orders achieved. The figures are low when considering the scale of crime in the wider economy and the number of crime generating offences recorded. There is however an overall increase of the figures regarding natural and legal persons under investigation to the identified assets, and an increase in the number of identified assets and bank accounts. It was explained that the criminal procedures in complex cases of money laundering lasted quite a long time and that there are important backlogs. While this may indeed be a factor, the evaluators have doubts that the competent authorities are indeed pursuing a proactive 'follow the money' approach, and that the identification and seizure of proceeds of crime are targeted within law enforcement and prosecution bodies, as opposed to identification of assets for the purpose of applying confiscation measures being in order to secure compensation of damages.

231. The Romanian authorities have adopted a strategy and an action plan which recognise the need to take further measures at a policy level to strengthen the confiscation regime. The recent introduction of the extended confiscation regime is undoubtedly to be commended in this context, and further legal and institutional measures shall be required to establish relevant mechanisms and norms for the adequate asset identification, tracing, recovery and management of seized property. It is worth mentioning in this context that the Romanian authorities have implemented several activities under projects financed with bilateral donors and/or the European Union aimed at reinforcing their capacities to confiscate and recover proceeds from crime49 and studies have been developed on this issue.

232. At the time of the onsite visit, it was clear that extended confiscation remained a new concept for police, prosecutors and judges. On a positive note, several measures had already been ordered. The statistics provided in respect of ML cases alone show a major increase in respect of assets seized though the results on confiscation decisions remain modest.

233. The authorities also indicated that several trainings were organised to develop expertise and understanding on the application of the new provisions. A first court decision extending confiscation in the period between 1 January and September 2013, the law has been applied by the prosecution in 34 cases to order interim measures, with a view to applying extended confiscation. The majority of these cases were from DIOCT (26 cases), regular prosecutors' offices (14 cases), DNA (4 cases). There is already jurisprudence involving extended confiscation, at the first instance level in a corruption case and a final decision of the High Court (June 2013) which rules the extended confiscation of two apartments purchased by the defendant convicted for trafficking in influence.

[49] See for example a study on this issue commissioned under the Swiss-Romanian Co-operation programme http://www.baselgovernance.org/fileadmin/docs/publications/commissioned_studies/130722_Romania_ARO.pdf

234. It remains however unclear to the evaluation team whether this overall strategy has adequately been incorporated into the individual crime strategies of the criminal justice system bodies, with clear benchmarks and performance data indicators, as well as a clear accountability mechanism. This is also to be seen from the perspective of comments made in this report in respect of the need for more collaboration and more targeted approach between law enforcement authorities.

235. In addition, the lack of comprehensive statistics does not enable the authorities to be in a position to monitor progress and draw meaningful conclusions on the effectiveness of the system, and as such to take any remediating action. The information available suggests that most of the financial sanctions imposed by courts are damages, and that the authorities responsible for recovering them rarely pursue the cases.

236. Considering the traditional approach of the application of safety measures generally, despite the focus put by the legislator on how this should be applied for ML and TF specifically, it did seem to the evaluators that the recurring practice of applying provisional measures often focuses on assets which are in the name of the accused or indicted person, and that there remains a focus on seizing for the purpose of determining the damages caused by the criminal activity rather than on illegal assets obtained in connection to the criminal activity. The application of provisional measures for the purpose of confiscation, as a safety measures, also seems to have generated diverging jurisprudence on the categories of persons to which provisional measures can be applied which may hinder ultimately the application of confiscation measures. It was positively noted though that a recent decision of the Bucharest Court of Appeal has indicated that the legal theory considers that the AML/CFT Law has to be interpreted in consideration of the aim and purpose of the anti-money laundering legislation and as a result, the confiscation under the AML/CFT Law can be applied also in relation to assets of persons who are involved in a ML case involving various offenders but who are not personally guilty for ML.

237. As indicated earlier, the burden of proof always rests with judicial bodies. This aspect has been raised as an issue of concern by a number of practitioners in relation to the application of extended confiscation. It was mentioned in this context also that given that only certain categories of persons are required by law to declare their wealth and are subject to controls, investigations into property of suspected persons other than those which are by law subject to a declaration of wealth are substantially complex. As a result of that, it is very challenging to determine which assets have been legally acquired and which are proceeds of crime, and hence to apply correctly provisional measures for confiscation purposes. Through expertise may be requested under the procedures, and there are financial specialists working in the prosecution bodies, overall practitioners with whom the evaluation team has met have consistently indicated that the capacities in financial investigations were limited, and that not all law enforcement bodies were adequately resourced in this respect.

238. The discussions held during the visit with practitioners indicated also that one of the main obstacles relate to the lack of sufficient resources – and particularly of financial investigators - coupled often with the lack of expertise, or the fact that the investigators are suffering from workload and cannot thus be adequately involved early enough to gather evidence alongside the criminal case, particularly when dealing with very complex cases. Reference was made in this context also to difficulties in identifying assets, as very often these are moved to other people's names in order to hinder their identification and location.

2.3.2 Recommendations and comments

239. Considering that the legal gaps identified in the third evaluation round were still in place at the time of the fourth round evaluation visit, the evaluation team reiterates the previous recommendations. However, these are not detailed below and for the purpose of the action plan, given that in the meantime a new CC and CPC Code are in force, and it appears to the evaluation

team that it would be impractical to recommend to take legislative action for modifying legal provisions which are no longer in force.

240. Under the Methodology, the evaluation team was unable to analyse the new CC and CPC provisions, given that at the time of the onsite visit, they were not in force and in effect. The rating below is given taking into consideration the deficiencies in place at the time of the visit, as set out under the Methodology.

241. It is therefore recommended to Romania to:

- Review the new CC and CPC provisions the light of the FATF standard on provisional measures and confiscation and demonstrate, under MONEYVAL's follow-up processes, that they covers adequately all the requirements. Where applicable, it should take further measures to amend the laws in order to cover all essential criteria;
- Adopt comprehensive measures in the legal framework enabling to void legal actions when these have been made to transfer illicitly acquired assets to another person.
- Review the national strategy and action plan in respect of the implementation of the confiscation regime and include clear and measureable objectives and indicators of success, based on a comprehensive audit of Romania's policy to deprive criminals of the proceeds of their crimes and its effective implementation in practice in respect of financial crime particularly.
- Consider the possibility of requiring that an offender demonstrates the lawful origin of alleged proceeds of crime or other property liable to confiscation envisaged in the Article 12 of the Palermo Convention (reversal of the burden of proof).

Recommendation 30

- Identify gaps in the capacity and analytical skills of police and prosecutors to handle the caseload and financial investigations, to gather evidence and estimate the legality of particular assets, and strengthen current training for law enforcement and the judiciary to address the identified gaps.
- Make a comprehensive assessment of the overall resources allocated to conduct financial investigations and results achieved, and based on that, take any additional measures as necessary to ensure that all law enforcement bodies are adequately resourced for the purpose of conducting financial investigations, and having access to qualified financial investigators and expertise.

Recommendation 32

242. Ensure that the collection of statistics enable it to draw a meaningful picture of the overall efforts undertaken by the various bodies and institutions at the various stages (pre-trial investigation, prosecution, adjudication etc.) to secure and recover assets, so that these can be used at a wider policy level for the assessment of the effectiveness of the system.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**LC**	• Deficiencies[50] in the legal framework previously identified in the third round remain valid[51].

[50] 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.

		Effectiveness: • (1) Imbalance between the total amounts of assets seized and final confiscations which may in part be explained by the backlogs of the system, (2) Limited resources, particularly of financial investigators, and lack of expertise impact negatively on the application of provisional measures and confiscation.

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

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

Summary of 2008 factors underlying the rating

243. The deficiencies identified in the third round were the following:

- No clear guidance that "shall be frozen" is an automatic freezing procedure.
- Funds or other assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations should be covered by the freezing actions.
- Banking operations between residents listed in the Annex or on their behalf are not detected.
- Freezing on behalf of a foreign jurisdiction is not covered.
- Communication channels in respect of listing and their updating also need to be enhanced.
- The Romanian authorities cannot give effect to a designated freezing mechanism of other jurisdictions and cannot freeze on behalf of a foreign FIU.
- No efficient and effective systems are in place for communicating actions taken under the freezing mechanism to the financial sector immediately upon taking such action.
- No effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds of de-listed persons or entities in a timely manner consistent with international obligations.
- No clear provisions regarding the procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated.
- No provisions implemented that gives access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses.
- Lack of freezing orders raises issues with regard to effective implementation.

244. Since the third round evaluation, Romania has modified the legal framework for the implementation of international sanctions. The primary legislation applicable are Government Emergency Ordinance no. 202 of 4 December 2008 on the Implementation of International Sanctions (GEO 202/2008) , as subsequently amended and completed, and Law no. 535 of 25 November 2004 on Preventing and Combating Terrorism (L 535/2004) as amended.

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

245. Government Decision no.1541/2009 established an Inter-institutional Council in order to provide a general framework for cooperation in the implementation of international sanctions in Romania.

246. A series of sectorial secondary legislation were also issued by supervisory authorities, which are enforceable and sanctionable. The NSC issued Regulation no. 9/2009 on the supervision of the enforcement of international sanctions on the capital market and Executive Order no. 8/11.03.2010.

247. The CSSPP issued Norms no. 11/2009 regarding the procedure for monitoring the implementation of international sanctions in the private pension system as modified and amended by the Norms no. 4/2010.

248. The NBR issued Regulation no.28/2009, as further amended and supplemented, which establishes minimum standards regarding the internal regulations issued by the institutions which are subject to National Bank of Romania supervision (credit institutions, payment institutions, electronic money institutions, non-bank financial institutions registered in the Special Register held by the National Bank of Romania and Romanian branches of foreign such entities) on the implementation of international sanctions regarding the freezing of funds, for the purpose of the detection of persons and entities subject to international sanctions and the operations involving goods that belong to those persons or are under their control.

249. The ISC issued Order no. 13/2009 for the enactment of the Norms regarding the procedure of supervising the application of the international sanctions in the insurance area. According to this Order, the reporting entities must draft and implement policies and procedures regarding the international sanctions and to appoint one or more persons from its own staff with responsibilities in applying and complying with the international sanctions.

250. As regards entities under FIU's supervision, Government Decision no. 603/2011 sets out the Norms of supervision by the FIU of the implementation of international sanctions. According to this act, ONPSCB performs the following attributions of supervision of the implementation of international sanctions:

a) assures immediately the publication of legal acts establishing mandatory international sanctions in Romania, on its own website;

b) monitors and controls the compliance to the norms and related legislation by the regulated persons

c) establishes the mechanism and the way of reporting for the regulated persons;

d) informs the Ministry of Foreign Affairs, half-yearly or whenever requested, on the implementation of international sanctions in its field of competence, on infringements to these, cases under solving process and any other difficulties in the implementation;

e) organizes its own recording on the implementation of international sanctions in its area of competence, respecting the legal provisions regarding protection and processing of personal data, and makes available these information to the Ministry of Public Finances. The information included in this record, except classified information, will be stored for a period of 5 years, from the end of validity of international sanctions;

f) organizes training and information seminars on the legal provisions for the implementation of international sanctions;

g) cooperates with other competent authorities for an efficient supervision of the implementation of international sanctions.

251. Additional acts adopted by the FIU are the President's Order no. 95/2011 approved methodological norms for notification and solving of requests for authorization to perform financial transactions (published in Romania's Official Gazette no. 87/02.02.2011) and the FIU Board's Decision no. 1426/10.11.2011 for the approving the Norms on the transmission mechanism of the reports to the FIU, referred to in art. 18 of EO no. 202/2008 on the implementation of international sanctions, and the form for reporting persons, entities designated and operations involving real meaning GEO 202/2008 the implementation of the implementation of the international sanctions.

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

General legal framework

252. Government Emergency Ordinance No. 202 of 4 December 2008 (GEO 202) governs the implementation of the following categories of international sanctions in Romania:

- Sanctions established by resolutions of the United Nations Security Council or other acts adopted pursuant to Article 41 of the United Nations Charter;
- Sanctions established by regulations, decisions, common positions, joint actions and other legal instruments of the European Union; and
- Non-binding sanctions established unilaterally by an international organisation, Romania or any other state for the purpose of maintaining international peace and security, preventing and combatting terrorism, ensuring respect for human rights and fundamental freedoms, developing and consolidating democracy and the rule of law and achieving other goals in line with the objectives of the international community, international law and the law of the European Union.

253. Pursuant to Article 3 of GEO 202, all international sanctions adopted by the UN and the EU assume a mandatory character in Romania. As a result, UNSCR 1267 and 1373 are automatically binding. The sanctions apply to all (1) Romanian authorities, (2) Romanian public institutions, (3) Romanian natural or legal persons and (4) other natural or legal persons residing or present on the territory of Romania.

254. Article 4 of GEO 202 provides for the adoption of measures by relevant competent authorities where the existing UN, EU or other sanctions are not sufficiently detailed to permit implementation on a national level. The authority which has competence over matters related to the freezing of funds and economic resources, including in the context of UNSCR 1267 and 1373, is the Ministry of Finance through the National Agency for Fiscal Administration (NAFA).

255. The following types of regulations[52] may be issued to introduce national implementing measures:

- Regulations providing for sanctions of breaches of international sanctions where such international sanctions are directly applicable in Romania. (Article 4(2))
- Regulations providing for implementation measures indicating the type and content of the international sanctions, the designated persons and entities and sanctions for breaches, where such international sanctions are not directly applicable in Romania. This provision does not apply where the implementation measures are already detailed at EU or international level by directly applicable acts. (Article 4(3))

[52] The regulations are drawn up at the initiative of the Ministry of Foreign Affairs together with the relevant competent authorities and adopted by emergency procedures.

- Regulations providing for implementation measures, including sanctions for breaches, for non-binding international sanctions established unilaterally by an international organisation, Romania or any other state. (Article 4(4))

256. The authorities indicated that since UNSCRs 1267 and 1373 are sufficiently detailed as to ensure implementation in Romania, no further regulations were deemed necessary on a national level. Article 26(1) on law on terrorism provides a legal basis for the issuance of national regulations to implement domestic lists. The absence of national regulations in the context of UNSCR 1373 poses difficulties in the implementation of freezing measures, as explained in further detail below.

257. As soon as sanctions are issued by the UN or EU (or existing lists updated), the authorities which are competent in the field of international sanctions are required to publish them on their website (Article 5 of GEO 202). The authorities which are responsible for the publication of asset-freezing sanctions are the NAFA, the financial supervisory authorities, self-regulatory organisations overseeing the activities of professionals and the FIU. UN sanctions are also published in the Romanian Official Journal within five days of their adoption.

258. The law also provides for the procedure to be followed when funds, assets or resources subject to freezing are identified. Article 7(1) requires persons who (1) are in possession of data or information on designated persons or entities (2) hold or control certain assets) (as defined in article 2c) or (3) are in possession of data or information on transactions related to goods or involving designated persons or entities to notify the competent authority immediately. The notification must include minimum data for identification of the person submitting the information and contact details of the sender. Additionally, in terms of Article 18(1), financial institutions and DNFBPs subject to the AML Law are required to conduct CDD measures to determine whether any of their customers have been designated on the list of UN and EU sanctions or whether operations undertaken with any of their customers involve goods within the meaning of GEO 202. In the event that any such persons or operations are identified, a report is to be sent to the NAFA and the relevant supervisory authority. For this purpose, the relevant supervisory authorities are required to establish a specific reporting mechanism, which is to include a reporting form.

259. The reporting form is unique for all supervised entities and its format was established within the Inter-institutional Council, according to art. 18 para 3 of GEO no. 202/2008.

260. The FIU, based on the provisions of the Decision no. 1426/2011, published in the Official Gazette no. 846/30 November 2011, approved the Norms on mechanisms for submission to the National Office for Prevention and Control of Money Laundering of the reports provided by the art. 18 from the GEO 202/2008 on application of international sanctions regime. These norms set out details on the form of the report and also the channels that could be used by reporting entities under the supervision of the FIU to submit these reports. These reports are submitted to the FIU for information purpose only, in accordance with the provisions of art. 4. Entities are required to submit without delay to the Ministry of Public Finances – National Agency for Fiscal Administration and for information purpose only to the competent authorities and public institutions provided under art. 17 para. 1 of GEO 202/2008, including to the National Office for Prevention and Control of Money Laundering, the reports on funds and/or economic resources held or controlled by clients which are subject to international sanctions or that are held or are under the control of designated persons."

261. In the case of the National Bank, the Order No. 340 of 13/04/2010 regulated the template reporting model of the frozen funds and economic resources.

262. Within five days from the receipt of a notification in terms of Article 7 or Article 18 of GEO 202, the NAFA will determine whether the reported funds or economic resources are to be frozen. The NAFA may also identify designated persons and entities through its own databases. A decision to freeze funds or other economic resources is to be issued by the Minister of Finance by means of an order (Article 19 of GEO 202). The order is issued in accordance with Order No. 1856 of 2011 (Order 1856), which also provides for the procedure to be followed when an order is to be revoked. Order 1856 sets out detailed measures that are to be undertaken by the various directorates within the NAFA for the monitoring of international sanctions, the publication and communication of the sanctions, identification of the persons, entities and goods subject to freezing measures, the analysis of information concerning designated persons and entities, and periodic monitoring of the orders.

263. The freezing order shall be immediately communicated to the person having filed the report, the relevant supervisory authorities, public authorities responsible for recording the freezing (such as the National Agency for Cadastre and Real Estate Publicity), any other person in possession of funds, assets or resources covered by the order, the Romanian Intelligence Service and the Foreign Intelligence Service. An order to freeze funds, assets or resources shall be published in the Romanian Official Journal within three working days from its issuing. The order may be appealed under an administrative procedure (see further details under criterion III.10).

264. The general obligation to notify the competent authority is provided by Article 7 of GEO 202 and bounds any person who has data or information regarding designated persons or entities; holds or controls goods; has data or information about transactions related to goods or involving designated persons or entities.

265. Article 18 of GEO 202 covers the obligation to report suspicious transactions under the anti-money laundering and / or financing of terrorism legislation. Article 24 (1) sets out what a person is allowed to do with the goods in their possession if she is in one of the situations described in articles 7 or 18 of the GEO 202. Such persons "are required without delay and prior notification to the competent authorities, not to perform any operation with regard to those goods, except for the operations covered by this emergency ordinance and to notify immediately the competent authorities".

266. The NAFA is required to create and manage a centralised database of funds and other economic resources subject to freezing. Information maintained on the database shall be stored for a period of five years which period shall commence on the date when the relevant sanction ceases to apply. The law also provides for certain measures to be undertaken for the proper management and administration of the property which is subject to a freezing order by the Minister.

267. GEO 202 establishes the Inter-institutional Council which is set up primarily to provide a framework for cooperation in the implementation of international sanctions. The Council is composed of representatives from the following entities: the Chancellery of the Prime-Minister, Ministry of Foreign Affairs, Ministry of Justice, Ministry of Internal Affairs, Ministry of Defence, Ministry of Public Finance, Department of Foreign Trade of the Ministry for Small and Medium Size Enterprises, Commerce, Tourism and Liberal Professions, Ministry of Communications and Information Society, Ministry of Transportation, Romanian Intelligence Service, Foreign Intelligence Service, National Agency for Export Control, National Bank of Romania, ASF (previously the Romanian National Securities Commission, Insurance Supervisory Commission, Private Pension System Supervisory Commission) and the FIU.

268. The Council is responsible for harmonising the activities of all authorities in Romania in the context of international sanctions. Consultations on the adoption, modification, suspension or termination of international sanctions take place within the Council. In particular, discussions on the issuing of regulations pursuant to Article 4 of GEO 202 are conducted within the Council. The

Council is responsible for advising the Prime Minister on the implementation of non-binding sanctions issued by other states or international organisations. The Council also has the specific task of issuing an advisory opinion on issues related to the application of international sanctions at the request of a competent authority. Additionally, at least once a year, the Council presents information to the Prime Minister on the implementation of international sanctions in Romania. Whenever possible, the Council also disseminates information on the imminent adoption of international sanctions to ensure the timely application of the relevant measures by persons in Romania.

Freezing of assets under UNSCR 1267(1999)

269. As stated previously, UNSCR 1267 and its successor resolutions are directly applicable in Romania by virtue of Article 3(1) of GEO 202. The obligation to freeze funds and other financial assets or economic resources of persons designated by the UN Al-Qaida and Taliban Sanctions Committee pursuant to paragraph 4(a) of UNSCR 1267 is therefore automatic and is not subject to any prior notice to the designated persons involved. In addition, Article 24 of GEO 202 requires persons to refrain from carrying out any operations with respect to goods subject to international sanctions (until a freezing order is issued by the Minister). The evaluators noted that the definition of goods in Article 2(c) of GEO 202 encompasses funds and economic resources, which are defined in a manner broadly consistent with the definition of funds and other financial assets or economic resources for the purpose of UNSCR 1267[53].

270. As stated previously, following the receipt of a notification, the NAFA freezes funds or economic resources that are held, owned by or under the control of natural or legal persons that have been identified as designated persons or entities. Therefore, although the freezing requirement arises through the automatic application of UNSCR 1267, in practice the formal freezing of funds, assets and resources only becomes operative upon the issuance of an order by the Minister. This distinction is significant since NAFA is only empowered to freeze funds or economic resources that are held, owned by or under the control of designated persons or entities. Contrastingly, under UNSCR 1267, the obligation to freeze not only applies to funds and other financial assets or economic resources of designated persons but also to funds derived from property owned or controlled directly or indirectly by designated persons or by persons acting on their behalf or at their direction. It is the view of the evaluation team that the powers of the NAFA are not broad enough to ensure that all categories of funds, assets or resources envisaged under UNSCR 1267 are effectively frozen.

271. The authorities consider however that NAFA is empowered to freeze the funds or economic resources that are "under the control" of designated persons or entities, and that this encompasses those funds that are derived or generated from property owned or controlled directly or indirectly by the designated persons or entities. As such, Article 2i) of GEO 202 defines "to have under control" as "all situations where, without holding a property title, a natural or legal person or entity has the possibility to dispose in any way with respect to goods, without obtaining a prior

[53] d) funds - funds and benefits of any kind, including but not limited to:
(i) cash, checks, cash receivables, bills, orders and other payment instruments;
(ii) deposits in financial institutions or other entities, balances on accounts, debts and debt obligations;
(iii) securities negotiated at public and private level, debt securities, including stocks and shares, certificates representing securities, debentures, ticket orders, securities, unwarranted debentures and derivate contracts;
(iv) interests, dividends or other income or asset value charged on assets or generated by them;
(v) credits, compensatory rights, guarantees, performance guarantees or other financial commitments;
(vi) letters of credit, bills of lading, contracts of sale;
(vii) shares of the funds or economic resources and documents attesting to their ownership;
(viii) any other means of financing or document evidencing export financing.
f) economic resources - assets of any kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, products or services.

approval from the legal owner or to influence in any way designated persons or entities or other natural or legal persons". The terms used do not limit the scope to property under the control of designated persons or entities, but extends it to situations where there is a mere possibility of disposing of the property, while this prerogative may be done in anyway. Therefore, should a certain property be owned or controlled by a designated person or entity then the funds generated by that person or entity will implicitly have possibility of disposing in some way of the funds generated by that property. Moreover, since Article 19(1) does not make a distinction as to whether the funds may be directly or indirectly controlled by a designated person or entity then it can be assumed that the provision covers both cases. They have also referred in this context to article 3(2) of the GEO 202 which sets out that the provisions of national legislation cannot be invoked to justify the lack of implementation of international sanctions referred to in Article 1(1), and as such, should there be any interpretative question raised, the UNSCR text shall prevail.

272. The definition of designated persons and entities under Article 2(b) of GEO 202 refers to governments of states, non-state entities or persons subject to international sanctions.

273. GEO 202 does not prohibit persons to make funds, financial assets or economic resources available, directly or indirectly, for the designated persons' benefit. However, the evaluation team accepts that, in view of the direct applicability of UNSCR 1267 in Romania, this prohibition arises directly from the text of the resolution.

Freezing of assets under UNSCR 1373(2001)

274. As in the case of UNSCR 1267, UNSCR 1373 applies directly in Romania by virtue of Article 3(1) of GEO 202. However, UNSCR 1373 requires countries to adopt additional measures on a national level to ensure effective implementation of the freezing obligations. In particular, countries should have a mechanism in place to determine the persons and entities whose funds and assets should be frozen without delay.

275. Such a mechanism may be adopted pursuant to GEO 202, which regulates the implementation of international sanctions, including those which are adopted by unilateral decisions taken by Romania or by other States (article 1 – Scope). Article 4(4) of GEO 202 provides that in such cases the necessary regulations for national implementation shall be adopted, setting out the necessary measures for their implementation including the criminalisation of their violation. Romania has not yet adopted any national regulation for such measures.

276. As an EU member, Romania is required to comply with Council Common Positions 2001/930/CFSP and 2001/931/CFSP and Council Regulation (EC) No. 2580/2001, which jointly set out the framework for the implementation of UNSCR 1373 on an EU-wide basis. Pursuant to Article 2 of Regulation 2580/2001 (which is directly applicable in Romania), all funds, other financial assets and economic resources, belonging to, or owned or held by, a natural or legal person, group or entity included in the list (contained in Common Position 2001/931/CFSP[54]) are to be frozen. Additionally, no funds, other financial assets and economic resources are to be made available, directly or indirectly, to, or for the benefit of, a natural or legal person, group or entity included in the list. The freezing of assets becomes applicable in all EU member states as soon as the list is amended by the EU Council. The freezing therefore applies without delay and without prior notification.

277. The definition of funds, other financial assets and economic resources under the Regulation 2580/2001 is consistent with the definition provided for the purpose of UNSCR 1373. However,

[54] The most recent updated list of persons, groups and entities subject to asset freezing is set out under Council Decision 2009/1004/CFSP.

the Regulation does not extend the freezing measures to funds, assets or economic resources controlled indirectly by a listed person or entity or by a person acting in their name or at their direction. The notions of joint ownership and possession are also not covered. Nevertheless, Regulation 2580/2001 should be read in conjunction with Article 2 of Common Position 2001/931/CFSP, which specifies "that for the purposes of this common position, 'persons, groups and entities involved in acts of terrorism' means persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; entities owned or controlled directly or indirectly by such persons; and persons, groups and entities acting on behalf of, or at the direction of such persons and entities, including funds or derived or generated from property owned or controlled, directly or indirectly, by such persons and associated persons, groups and entities." This definition is in accordance with that set out in Criterion III.2 of the Methodology.

EU Internals

278. Before the entry into force of the Lisbon Treaty on 1 December 2009, the list of designated persons and entities under the EU framework for the implementation of UNSCR 1373 distinguished between two categories of persons listed in the annexes to the Common Positions: (1) persons and entities classified as 'external to the EU' i.e. falling within the remit of the common foreign and security policy of the EU and therefore subject to the freezing measures under Regulation 2580/2001; and (2) persons and entities classified as 'internal to the EU' which fell under the third pillar of the EU concerning police and judicial cooperation for criminal matters. EU internals were not subject to automatic freezing measures but only reinforced police and judicial cooperation[55]. The freezing measures with respect to EU internals remained a competence of the individual Member States.

279. Following the entry into force of the Lisbon Treaty, the list of designated persons, groups and entities was updated through Council Decision 2009/1004/CFSP, which was enacted on 22 December 2009. EU internals were removed completely from the list of designated persons, since Article 34 of the Treaty on European Union[56], which provided the legal basis for police and judicial cooperation, ceased to have effect. However, Article 75 of the Lisbon Treaty now provides an express legal basis for EU institutions to introduce EU-wide freezing measures against EU internals. To date, this measure has not been implemented by the EU. Freezing of assets of persons, groups and entities that were formerly referred to as EU internals continues to fall within the competence of each individual Member State. The implementation of UNSCR 1373 is therefore inadequate at an EU level.

280. The evaluation team noted that although GEO 202 and article 26.1 of Law 535/2004 provides for the necessary legal basis to designate persons, groups and entities on a national level, no regulations have been issued under Article 4(4) of GEO 202 to designate persons, groups and entities formerly known as EU internals and adopt measures to freeze their funds, assets and resources.

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

281. The freezing mechanisms specified by Regulation 2580/2001 authorize freezing the assets of persons and entities from a non-member state (an EU member state may request the listing of a person or entity from a non-member state). Any non-member state also has the possibility of presenting the Council with a listing request. This will be examined in the light of the requirements of Common Position 2002/931 and Regulation 2580/2001; to be accepted it must be

[55] EU internals could not be made subject to a common position adopted in pursuance of the Community's foreign security policy.

[56] The Treaty on European Union was the treaty which preceded the Lisbon Treaty.

the subject of a consensus decision by member states. Each member state of the EU may propose the listing of a person or entity to the Council, as may any non-EU State (through the President of the Council). Article 2.3 of Regulation 2580/2001 specifies that the Council, by unanimous decision, establishes reviews and amends the list of persons, groups and entities to which this regulation applies. This possibility has been implemented by the EU Council.

282. On a national level, GEO 202 sets out the legal framework for the implementation in Romania of non-binding international sanctions adopted unilaterally by international organisations, Romania or any other state for the purpose of maintaining international peace and security, preventing and combating terrorism, ensuring respect for human rights and fundamental freedoms, developing and consolidating democracy and the rule of law and achieving other goals in line with the objectives of the international community, international law and the law of the European Union. Sanctions adopted by another state become binding in Romania by the adoption of national regulations providing for the necessary measures for implementation.

283. The procedure set out in GEO 202 to examine and give effect to sanctions implemented by other jurisdictions appears to be sufficiently expeditious. In deciding whether sanctions adopted by other states are to be implemented in Romania, the competent authorities (in case of freezing of assets, the NAFA) shall make all inquiries that they deem necessary, including consultations with the competent authorities of any other state. In this respect, the law provides wide-ranging powers of access to information to competent authorities. The competent authorities may also (but are not obliged to) request an advisory opinion from the Inter-institutional Council on a decision relating to the application of sanctions. Where an advisory opinion is requested by a competent authority, the Council is required to meet within three days of the request and provide an advisory opinion within two working days from the date of the meeting. Upon receipt of an opinion in the affirmative, regulations on the implementation of sanctions would then be issued by emergency procedures.

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

284. Under GEO 202, the NAFA freezes funds, assets or resources upon the issuance of an order by the Minister. The NAFA is only empowered to freeze funds or economic resources that are held, owned by or under the control of designated persons or entities. The freezing does not extend to funds or other assets wholly owned or controlled indirectly by designated persons and jointly owned or controlled, whether directly or indirectly, by designated persons. Additionally, the freezing does not apply to funds derived from property owned or controlled directly or indirectly by designated persons or by persons acting on their behalf or at their direction. It is the view of the evaluation team that the powers of the NAFA are not broad enough to ensure that all categories of funds, assets or resources envisaged under UNSCR 1373 are effectively frozen. The authorities do not share this view, as described earlier.

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

285. All freezing orders are published in the Official Gazette by the National Agency for Fiscal Administration.

286. Pursuant to Article 5(1) of GEO 202, the NAFA and all relevant supervisory authorities are responsible for publishing UN and EU sanctions on freezing of terrorist assets on their websites immediately after they are issued. In terms of Article 3 of Order 1856, the NAFA constantly monitors the website of the UN, the EU and the Romanian Official Journal to identify any international or national acts requiring the freezing of funds, assets or other resources. Where any such acts are identified, they are immediately published on the website of the NAFA.

287. The website of the Ministry of Foreign Affairs contains a list of all UN and EU sanctions regime in force. The evaluation team noted that the links provided to the Al-Qaida Sanctions List on the UN website do not function properly. Additionally, no reference is made to the most recent resolution (UNSCR 2083(2012)) issued by the Al-Qaida Sanctions Committee.

288. The website of the National Bank of Romania contains a section dedicated to international sanctions, which provides general information and specific links for direct access to relevant resources of the UN Security Council, the Official Journal of the European Union, as well as the Ministry of Foreign Affairs of Romania (specifying the sanctions' regimes in force). The authorities also advised that, since the establishment of the specialized division within the Supervision Department of the National Bank of Romania, all credit institutions have been systematically informed through e-mail or fax on updates in terrorist lists issued by the respective structures of the UN and the EU.

289. In applying the provisions of article 5 of GEO 202, the NSC has created a dedicated section of its website regarding the international sanctions regime. The NSC provides on-going information about international sanctions. In order to increase the level of awareness by regulated entities and public investors the NSC issued Executive Order 8/2010. Article 3 requires regulated entities to create on their web pages a separate section on the enforcement of international sanctions, which includes at least one link to the international sanctions section of the website of the NSC.

290. Article 3 of NSC Regulation 9/2009 requires the NSC to ensure publicity for Romanian acts establishing international sanctions by posting warnings on its web page with links to the web pages of the international organizations issuing international sanctions. The NSC must register in its own records every frozen fund owned, held or controlled by clients of regulated entities after the Minister of Public Finance has issued a freezing order and after notification to the NSC by the Central Depositary where frozen funds are deposited. Hence, the NSC is in a position to communicate freezing actions to entities it regulates.

291. Article 5 of the ISC Order also contains a provision by the CSA on publication of the provisions imposing international sanctions.

292. The CSSPP has also created a specific section on its website regarding the international sanctions regime (article 5 of the GEO 202/2008 and article 3 of CSSPP Norms 11/2009 refer). It posts updates on international sanctions on the website.

293. The FIU has also a specific section on its website where the UNSCR, EU common positions and regulations are published (www.onpcsb.ro). In addition, as part of its day to day activities, it conducts checks in the databases of the persons listed, in accordance with an internal procedure, it informs reporting entities through training sessions and periodic inspection activities organised by ONPSCB (statistical data), provides assistance to reporting entities on SR.III issues.

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

294. The NBR Regulation 28 (2009) provides the framework for monitoring implementation of international sanctions regarding the freezing of funds. In particular, Article 4 of the regulation establishes the obligation of credit and financial institutions to elaborate internal norms "for the implementation of the international sanctions regarding the freezing of funds", which should include, *inter alia*, the procedures for detecting potential and existing customers who might be designated persons, the policy regarding the acceptance as a customer and the occasional transactions regime for designated persons, as well as record-keeping and reporting procedures for such customers. Article 6 further requires that institutions appoint one or several persons with responsibilities in the coordination of the mentioned internal norms, including for matters related

to regular updating of information regarding relevant international sanctions and administering the alerts received from the NBR.

295. The authorities also advised that the specialized division within the Supervision Department of the National Bank of Romania extensively uses the guidelines issued by international bodies[57] and is in process of developing a new guideline taking into consideration both the international regulations and the specific circumstances identified at country level.

296. The FIU has indicated that it has organised periodical training sessions for reporting entities on the implementation of international sanctions. During the period 2008-2013, the Office participated, based on annual training programmed approved at the level of the FIU and based to the invitations received from the professional associations and supervision authorities, to a total number of 149 training sessions, to which 5.756 specialists participated. Apart from the curricula of such trainings, which covers various aspects related to the implementation of the international sanctions, they have also referred to the 2010 Manual on risk based approach and indicators of suspicious transactions, which includes a specific section on international sanctions, and which was widely disseminated to reporting entities. Additionally, a document was also published on the FIU's website which includes the best practices paper issued by the European Council on the implementation of international sanctions. Three best practices papers were also published on the website of the Ministry of Foreign Affairs.

297. The authorities consider that the combination of the various different pieces of legislation providing the legal framework for the implementation of international sanctions contain sufficient information on measures to be applied by financial institutions and DNFBPs. The associations supervising professionals do not appear to have provided any specific guidance within the meaning of Criterion III.6 for reference by the entities they supervise.

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

298. Requests for de-listing or unfreezing of funds only cover sanctions adopted by Romania under Articles 4(3) and 4(4) of GEO 202, since similar requests for listing done under resolutions of the United Nations Security Council or European Union legal acts do not require additional national measures, and the procedures are set out within the framework of these organizations. The EC Regulations do not enable Romania to have autonomy in de-listing persons or entities or to unfreeze funds and assets as a whole. The freezing remain in effect until otherwise decided by the EU and appeals can be lodged before the General Court of Justice of the EU to contest a listing decision. Delisting may only be pursued before the EU courts in case of a refusal of request for delisting. Nothing prevents the Romanian authorities from deciding to bring a request for delisting to the EU Council bodies, after being seized under article 10 GEO 202.

299. There are no specific provisions in the Romanian legislation on the procedures to challenge designations at national level, as this is a matter which would be regulated by the act which would establish the national list.

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

300. Article 10 of GEO 202 provides for a procedure to unfreeze the funds or assets of a person or entity that is inadvertently designated on a terrorist list. Any person may bring to the attention of the relevant competent authority an identification error with respect to a designated person,

[57] Particularly, the International Best Practices – Freezing of Terrorist Assets (FATF 2009), the EU Best Practices of Effective Implementation of Restrictive Measures (EU Council no 11679/07), and the Guidelines on Implementation and Evaluation of Restrictive Measures (Sanctions) within the Framework of the EU Common Foreign and Security Policy (EU Council no 17464/09)

entity or goods. The competent authority shall verify the information referred to it and for this purpose may make any further enquiries that it deems necessary. The decision of the competent authority shall be communicated within fifteen days from the receipt of information. The competent authority may take the necessary measures to release the person, entity or goods from the applicable restrictive measures. A decision under Article 10 may be challenged under administrative procedures set out under Law 554/2004.

301. In addition to the procedure set out under GEO 202, the authorities also referred to Order No 1856/2011, which provides for the procedure to be followed by the NAFA in those cases where a person or entity is erroneously designated.

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

302. Article 8 of GEO 202 provides that any person may make a request in writing to the competent authority for an exemption from the application of international sanctions. It is understood that such exemptions may, *inter alia*¸ be requested to authorise access to funds or assets necessary for basic expenses, etc.

303. The request shall be accompanied by all relevant documentation. The competent authority shall make a decision on the matter after obtaining a notice of compliance with international law from the Ministry of Foreign Affairs. The notice shall be communicated by the Ministry within five days from the receipt of the request from the competent authority. The decision of the competent authority shall be notified to the applicant within five days from the receipt of the request. In granting an exemption, the competent authority shall take all necessary measures to prevent its abuse. Additionally, the competent authority may resort to Article 9 which provides for access to any information it requires to make a determination. Decisions taken pursuant to Article 8 may be challenged under administrative procedures set out under Law 554/2004.

304. According to criterion III.9, national authorities are required to comply with UNSCR 1452(2002), which sets out the categories of funds and other financial assets or economic resources subject to freezing that a designated person, group or entity may have access. These categories are not specified under GEO 202. However, the authorities referred to Article 8(1) which states that a request for an exemption shall respect the conditions set out in the relevant UN resolution or EU regulation (in this case UNSCRs 1267 and 1452). Furthermore, an exemption may only be granted after a notice of compliance with international law is provided by the Ministry of Foreign Affairs.

Review of freezing decisions (c.III.10)

305. Article 19(5) of GEO 202 provides that an order for the freezing of funds or economic resources may be appealed under the administrative procedures. On a periodic basis, the NAFA is required to review the orders issued by the Minister and to revoke orders, *ex officio* or upon request, when it is determined that the freezing is no longer justified. No order has been revoked through this procedure to date. The freezing is no longer "justified" when the entity to whom the frozen funds and economic resources belongs is de-listed. Where an application for the revocation of an order is rejected, an appeal may be lodged under administrative procedures. (Law 54/2004).

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

306. The legislative measures described under Recommendation 3 are of general application and therefore apply to terrorist-related funds or other assets in the contexts other than those described in criteria III.1 – III.10. The deficiencies identified with respect to those measures also have an impact on compliance with criterion III.11.

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

307. Article 22 provides bona fide third parties with access to frozen funds. In particular, persons who have a right over the funds, assets or resources subject to freezing and creditors of designated persons and entities may request the NAFA (in accordance with the procedure set out under Article 8 of GEO 202) to authorise the use of frozen funds, assets or economic resources for the exercise and fulfilment of their rights. Additionally, freezing measures may only be invoked to justify the failure to fulfil an obligation where an exemption requested according to the provisions of Article 8 is refused. Where the NAFA receives a request under Article 22 from an interested third party, it shall examine the information provided by the third party and the designated person or entity to ensure that the request is not intended to circumvent the freezing measures. The NAFA will, wherever possible, notify the designated person or entity, where a request for an exemption is made by an interested third party.

308. Article 27 of GEO 202 stipulates that the application in good faith of the provisions of GEO 202 shall exclude any disciplinary, civil or criminal liability.

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

309. The EC Regulations oblige Member States to lay down rules on sanctions applicable to infringements of the provisions of the regulations and to ensure that they are implemented. There are clear penalties for violation, circumvention, infringements of the provisions of the Council Regulations, including for negligent violations.

310. The supervision of the implementation of international sanctions dealing with freezing of funds is carried out by the financial supervisory authorities, the management structures of liberal professions (self-regulatory organisations) and the FIU for other DNFBPs (Article 17 of GEO 202). The supervision of other persons that do not fall under the responsibility of the prudential supervisors, the SROs or the FIU is carried out by the NAFA (all taxpayers not covered by other regulatory bodies i.e. commercial entities other than banks, insurance companies, brokers, including individuals). All supervisory authorities are required to issue regulations on the supervision on the implementation of international sanctions.

311. Article 26 of GEO 202 provides for sanctions for failure to comply with the provisions of the ordinance. The sanctions consist of a fine of not less than RON 10,000 and not exceeding RON 30,000[58] and confiscation of property used or resulting from the contravention. The penalties are applicable to both natural and legal persons and are to be applied by the supervisory authorities or notified to criminal investigation bodies, as appropriate. In addition to the pecuniary penalty, one or more of the following supplementary sanctions may be applied: (a) suspension of the advisory opinion (authorities please clarify the meaning), license or authorisation for the exercise of an activity or suspension of the legal person's activity for a period of one to six months; (b) withdrawal of a license or advisory opinion for certain transactions or activities for a period from one to six months or perpetually.

Sectorial regulations

312. According to Article 3 of the NBR Regulations, banks are required to issue internal norms for the implementation of the international sanctions regarding the freezing of funds. These internal norms shall be submitted to the Supervision Department of the NBR within 5 days after their approval or their amendment, by the institution's competent bodies. Banks are also required to appoint one or several persons with responsibilities in the coordination of the internal norms, including the updating of information regarding sanctions, managing the alerts disseminated by

[58] Approx. 2500-7500 Euros.

the NBR and reporting obligations under Article 7 of GEO 202. The name and the position of the appointed persons shall be communicated to the NBR within 5 days from their appointment. Reports made under Article 7 of GEO 202 shall be filed in accordance with the forms established by GEO 202 and approved by the governor of the NBR. The institutions shall provide the NBR, at its request, with any supplementary relevant information as requested. The effectiveness of implementation of the measures for freezing terrorist funds is verified as a distinct objective of on-site inspections, by checking the updating of the UN Sanctions Committee lists at credit institutions level.

313. Article 11 of the NBR Regulation 28 (2009) establishes that, in the supervisory process, the National Bank of Romania may impose the following specific measures: a) requesting adjustment of the internal norms for the implementation of international sanctions regarding the freezing of terrorist funds; and b) requesting the financial institution to address the deficiencies identified. Article 12(1) further provides that infringement of the provisions of the regulation and non-observance of the measures imposed by the NBR are sanctioned according to Article 57 of Law 312 (2004) on the National Bank of Romania Statute. Article 11(2) sets out that the supervisory measures established according to Article11 may be applied distinctly or together with these sanctions.

314. Article 57 of Law 312 (2004) on the National Bank of Romania Statute provides that, for the failure to observe the provisions of that law, regulations and decisions of the NBA Board, certain sanctions may be applied to supervised entities, such as written warnings, fines within the range from RON 5 million to RON 50 million, partial or full suspension or withdrawal of authorization granted by the NBR.

315. According to Article 4 of the NSC Regulation, the NSC must supervise compliance by entities it regulates with the rules for enforcing international sanctions. The NSC may request regulated entities to provide any relevant information or document. It may apply the sanctions provided for in article 26 of GEO 202. Under article 10 of the Regulation, the NSC can also apply the sanctions under both Title X of Law 297/2004 and article 26 of GEO 202 for breaches of the Regulation. Under article 9 regulated entities must develop procedures on international sanctions, approved by their internal audit department if applicable. These procedures must be submitted to the NSC. Regulated entities must appoint an employee to be responsible for the management of international sanctions. Staff training is also required.

316. Under article 7 of regulations made under Order 13/2009 the CSA is responsible for monitoring the activities of entities to implement international sanctions and verify compliance with measures in local sanctions legislation. Under the same article the CSA may request additional information and documents. Article 8 requires supervised entities to develop policies, procedures and appropriate internal mechanisms for customer identification, reporting, record keeping, internal control assessment and risk management in order to prevent and stop involvement in ML/FT also ensuring proper training. Under article 9 entities must designate an individual with responsibility for implementation and compliance with international sanctions. Article 10 requires supervised entities to report transactions presumed to be suspicious to the ISC. Where there are breaches of the Order article 12 permits the ISC to apply sanctions in accordance with the provisions of Law 32/2000 and article 26 of GEO 202.

317. Article 4 of CSSPP Norms 11/2009 requires supervised entities to notify the CSSPP of designated persons which own or control property or who have data or information about related transactions involving designated goods, persons or entities. Under article 5 entities are required to report transactions suspected to be suspicious transactions under AML/CFT legislation and to send reports to the Ministry of Public Finance and the CSSPP. This provision seems to relate to AML/CFT suspicion rather than notifying the existence of a person listed under sanctions legislation whereas the NSC and CSA standards appear to refer to the reporting of notifications.

Please clarify whether the evaluation team's understanding is correct for all three standards and, if it is, why there appears to be no requirement to report the existence of a listed person in the CSSPP Norms. Under article 6 supervised entities must implement procedures under legislation relating to money laundering and/or terrorist financing acts and provide copies to the CSSPP. Article 7 requires the CSSPP to verify compliance with Romanian legislation implementing international sanctions. There does not appear to be a specific provision in the Norms which requires supervised entities to provide information and documents to the CSSPP on demand. Sanctions for failure to comply with the provisions of the Norms are included in article 10. The sanctions are those in Law 411/2004 and GEO 202/2008.

318. Government Decision no. 603/2011 establishes the norms regulating the FIU's supervision of the following legal and natural persons' compliance with international sanctions:

a) financial institutions, except non-banking financial institutions recorded in the Special Register of the National Bank, as provided in art. 44 of the Law no. 93/2009 on non-banking financial institutions;
b) casinos;
c) auditors, legal and natural persons providing fiscal or accounting consultancy, public notaries, lawyers and other persons performing independent professions;
d) providers of services for companies or other entities, others than those provided at letter c);
e) persons with attributions in the privatization process;
f) real estate agents;
g) associations and foundations;
h) other legal or natural persons trading in goods and/or services, based on cash operations, amounting to EUR 15.000 or the equivalent.

319. According to GD no.603/2011, regulated persons are required to notify the NAFA and the FIU of funds and/or economic resources owned or controlled by their customers, which are subject to international sanctions, or which are owned or controlled by designated persons. The reports are to be sent according to forms established under GEO 202. Upon the FIU's request, as a supervisory authority, the regulated persons are obliged to provide immediately any additional relevant data and information. Moreover, Article 6 requires the application of CDD measures provided under the AML Law for the purpose observing the obligations under GEO 202. Infringements to the provisions on submitting notifications and providing requested information constitute an administrative offence. Penalties for breaches of GEO 202 shall be imposed by the FIU.

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14) & Implementation of procedures to access frozen funds (c.III.15)

320. The Romanian authorities indicated that in drafting the provisions of GEO 202, the Best Practices Paper was carefully consulted. Reference was also made to explanatory memorandum of GEO 202 which makes specific mention of the Best Practice Paper. Although it is clear that many of the procedures contained in GEO 202 were inspired by the Best Practice Paper, certain important elements of a freezing regime, such as the procedure for de-listing, have still not been implemented.

321. The procedure referred to under criterion III.9 applies to both UNSCR 1267 and 1373.

Recommendation 32 (terrorist financing freezing data)

322. The authorities indicated that in the period under review the NAFA issued two freezing orders for an amount of EUR 306,346.91 and for 2 cars, 11 IT objects and 10 furniture pieces. One freezing order was issued based on Regulation 36/2012 and the other on Regulation 673/2012 for the implementation of art.32 (1) of Regulation 36/2012.

Effectiveness and efficiency

323. Romania has improved its legal framework to implement its obligations under the UN Security Council Resolutions and secondary legislation has been issued by the supervisory authorities aimed at implementing international sanctions. The framework has been tested successfully, in the context of the implementation of the restrictive measures taken at the EU level in view of the situation in Syria.

324. During the on-site mission, relevant staff of the commercial banks demonstrated adequate knowledge and understanding of the requirements for freezing and seizing terrorist funds under applicable UN resolutions. The sample set of internal norms received from a commercial bank comprises a document titled *Sanctions Management Rules*, which provide extensive description of various sanctioning regimes and establish the procedures and control mechanisms for tracing and blocking assets of designated persons and entities.

325. Representatives of non-bank financial institutions and, to a lesser extent, payment institutions showed somewhat limited knowledge and understanding of freezing and seizing requirements, basically perceived as their obligation to match the names of their customers with the ones included in the "black lists" (without a clear indication what exactly are those lists about) provided by the national FIU or, in some cases, by the parent company (headquarters), and to report any positive matches to the FIU.

326. There was better understanding in the investment sector - it was clear that the checking of websites for compliance with international sanctions was important; some firms checked sanctions lists manually and noted that there was no central list in Romania of persons listed in sanctions. It was not clear to what extent the consequences of identifying a listed person were always known.

327. Moreover, the assessment team has concluded that the deficiencies in the supervisory framework and the sanctioning regime, as articulated under the analysis for, respectively, the Recommendations 23 and 17, are equally relevant for the purposes of assessing efficiency of implementation of the requirements under SR III.

2.4.2 Recommendations and comments

328. 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.

329. 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.

330. Romania should consolidate the information contained within legislation and other best practices papers to provide guidance on the practical implementation of the freezing requirements within the legislation.

331. 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.

332. 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.

333. 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.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	**PC**	• 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. **Effectiveness** • 1) Limited knowledge and understanding of freezing measures by non-bank financial institutions, payment institutions and electronic money institutions; 2) it is not demonstrated that the relevant sectors are effectively supervised for compliance with the international sanctions regime and that sanctions are applied.

Authorities

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

Summary of 2008 MER Factors Underlying the Ratings

334. In the 2008 MER, R. 26 was rated 'Largely Compliant'. The deficiencies underlying the rating were mainly the following:

- The 30-day period within which reporting entities were required to provide additional information to the FIU was considered to be too lengthy.
- The law was found not to contain an express prohibition (without time limit) relating to the dissemination of information by FIU officers following the termination of their employment with the FIU.
- From an effectiveness stand point, the evaluators noted that a backlog of pending STRs had accumulated due to the large number of notifications received from reporting entities.

2.5.1 Description and analysis

Legal framework

- Law 656/2002 for the Prevention and Sanctioning of Money Laundering (published in the Official Gazette no. 904 of 12 December 2002, as amended subsequently) (AML/CFT Law);

- Decision 1599/2008 for the approval of the Regulations for the Organisation and Functioning of the National Office for Prevention and Control of Money Laundering (published in the Official Gazette no. 841 of 15 December 2008) (FIU Regulation).

- Decision 674 of 29 May 2008 on the form and content of the Suspicious Transaction Report, Cash Transaction Report and External Transfer Report, published in the Official Gazette no. 451 of 17 June 2008;

- Decision 673 of 29 May 2008 on the approval of the Working Methodology on submission to the FIU of the Cash Transaction Reports and External Transfers Reports, published in the Official Gazette no. 452 of 17 June 2008;

- Decision 964 of 28 October 2010 on amendments and completion of the Working Methodology on submission to the FIU of the Cash Transaction Reports and External Transfers Reports, as adopted by Decision 673/2008, published in the Official Gazette no. 761 of 15 November 2010;

- Decision 962 of 22 October 2010 on amending the Annexes 2B, 3A and 3B from Decision 674/2008 on the form and content of the Suspicious Transaction Report, Cash Transaction Report and External Transfer Report, published in the Official Gazette no. 761 of 15 November 2010.

- Law 182/2002 on the Protection of Classified Information;

- Governmental Decision 585/2002 for the Approval of the National Standards for the Protection of Classified Information;

- Governmental Decision 781/2002 on the Protection of Secret Service Information.

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

335. The National Office for the Prevention and Control of Money Laundering (FIU of Romania) is an administrative-type FIU, set up in 1999 with the adoption of Law 21/1999. In 2002, Law 21/1999 was repealed and replaced by Law 656/2002 (AML/CFT Law), which extended the remit of the FIU to the combating of FT and broadened the responsibilities of the FIU beyond its core functions[59].

336. The AML/CFT Law governs the structure, powers, functions and duties of the FIU. Article 26 of the AML/CFT Law establishes the FIU as a specialised unit and legal entity responsible for the receipt, analysis, processing and dissemination of information for the purpose of preventing and combating ML and FT.

337. The FIU Regulation sets out the functions and powers of the FIU in further detail[60]. The FIU is responsible for receiving data and information from reporting entities which includes suspicious transaction reports (STRs), cash transaction reports (CTRs)[61] and external transaction reports (ETRs)[62]. Upon receipt of data and information, the FIU is responsible for the analysis and

[59] The FIU also supervises certain entities for compliance with international sanctions.

[60] Article 5(a-q).

[61] The requirement by reporting entities to submit CTRs is found under Article 5(7) of the AML/CFT Law, which states that reporting entities shall be required to report to the FIU, within ten working days, the carrying out of operations with sums in cash, in RON or foreign currency, whose minimum threshold represents the equivalent in ROM of EUR 15,000, irrespective of whether the transaction is performed through one or more operations that appear to be linked.

[62] The requirement by reporting entities to submit ETRs is found under Article 5(8) of the AML/CFT Law, which states that the provisions of dealing with CTRs shall also apply to external transfers in and from accounts for amounts of money whose minimum limit is the equivalent in RON of EUR 15,000.

processing of information to identify the existence of solid grounds of ML/FT. The FIU is competent to analyse suspicious transactions when notified by a reporting entity and *ex officio* when it otherwise detects a suspicious transaction[63]. The FIU is also empowered to suspend the execution of a suspicious ML/FT transaction, either when a report is received from a reporting entity or when the FIU is so requested by a foreign FIU or by a Romanian judicial authority.

338. In the course of its analysis the FIU may request information from any public authority or reporting entity, where such information is necessary for the performance of its functions. The FIU may also cooperate with any public authority or reporting entity that can provide useful data to assist the FIU. Regarding international cooperation, the FIU may exchange information with its foreign counterparts, based on reciprocity and provided that information is exchanged for the purpose of preventing and combating ML/FT. Where following the analysis, the FIU determines that grounds of ML/FT exist, it is required to immediately notify the Office of the General Prosecutor and, in the case of FT, the Romanian Intelligence Service. The FIU may also inform any other competent body when it identifies grounds indicating the existence of an offence other than ML/FT[64].

339. In addition to its core functions, the FIU has other ancillary responsibilities. The FIU elaborates and updates the lists of persons suspected of committing or financing terrorist acts. It also has supervisory powers to ensure that obliged persons that are not under the supervision of a prudential supervisory authority comply with their AML/CFT requirements. As the central authority for AML/CFT purposes, the FIU may make proposals to the government and central public administration bodies for the adoption of preventive measures.

340. The FIU is responsible for training its officers and reporting entities and may participate in training programmes organised by other institutions. It is in charge of elaborating the internal procedures of the office and drafting and presenting the annual activity report. With a view to establishing a wide network of cooperation with other entities, it may negotiate and concluding conventions, protocols and agreements with domestic institutions and foreign FIUs. The FIU can become a member of international specialised bodies and participate in the activities of these bodies.

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

341. Article 5(o) of the FIU Regulation authorises the FIU to establish the format and content of STRs, CTRs and ETRs and the working methodology regarding the procedures for reporting CTRs and ETRs. In terms of Article 5(10) of the AML/CFT Law, the form and contents of the reporting forms are to be established by a decision of the Board of the FIU. To this end, the Board of the FIU issued the following decisions:

- Decision 674 of 29 May 2008 on the form and content of the Suspicious Transaction Report, Cash Transaction Report and External Transfer Report, published in the Official Gazette no. 451 of 17 June 2008;
- Decision 673 of 29 May 2008 on the approval of the Working Methodology on submission to the FIU of the Cash Transaction Reports and External Transfers Reports, published in the Official Gazette no. 452 of 17 June 2008;
- Decision 964 of 28 October 2010 on amendments and completion of the Working Methodology on submission to the FIU of the Cash Transaction Reports and External

[63] Article 26(3) of the AML/CFT Law

[64] Pursuant to Law No. 51/1991 on the National Security of Romania, the FIU also provides information support for the activities of protection of national security.

Transfers Reports, as adopted by Decision 673/2008, published in the Official Gazette no. 761 of 15 November 2010;

- Decision 962 of 22 October 2010 on amending the Annexes 2B, 3A and 3B from Decision 674/2008 on the form and content of the Suspicious Transaction Report, Cash Transaction Report and External Transfer Report, published in the Official Gazette no. 761 of 15 November 2010.

342. Decision 674/2008 contains standards reporting forms for STRs, CTRs and ETRs. The STR reporting form contains information fields which must be completed by the reporting entities. These include information on the reporting entity, the customer's identity, for both natural and legal persons, details of the customer's account, connections of the customer with other persons, significant operations carried in the previous twelve months, details on the transaction/s and a description of unusual/suspicious nature of the operation/transaction. The reporting form is to be signed by the reporting entity and accompanied by the requisite documentation.

343. According to Decision 673/2008, CTRs and ETRs must be completed and submitted either personally to the premises of the FIU, by registered mail/courier, or through an online reporting system. CTRs and ETRs may not be submitted by email or fax. Banks may submit CTRs and ETRs in electronic form using the inter-banking communication network, subject to the signing of a protocol with the FIU. No similar instructions are provided with respect to the submission of STRs. The authorities informed the evaluators that the same procedure applies, as indicated in the FIU's Manual on Risk-Based Approach and Suspicious Transactions Indicators. This was confirmed by the evaluators.

344. Guidance on reporting is also provided in the FIU's Manual on Risk-Based Approach and Suspicious Transactions Indicators. The manual refers to the type of information that is to be submitted in the STR, which correlates to the information fields in the STR form. It also contains instructions on the submission of STRs which are identical to those found under Decision 673/2008. However, the guidance also refers to an application on the internet portal of the FIU which enables reporting entities, other than banks, to submit their STRs electronically.

345. STRs are generally submitted personally, by courier or by post. Some entities submit STRs via the online reporting system. The FIU indicated that in the period September 2010 – August 2013, twenty-six per cent of STRs received by the FIU were submitted through the application on the internet portal of the FIU. In order to promote the online reporting system various awareness-raising activities were held. The FIU also intends to propose the introduction of mandatory legislative provisions requiring reporting entities to report online.

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

346. The legal basis for the FIU's access to information is found under Article 7(1) of the AML/CFT Law and Article 5(c) of the FIU Regulation. Pursuant to Article 7(1) the FIU may require competent institutions to provide the data and information necessary to perform the functions attributed to it by law. In terms of Article 5(c), the FIU has the power to request any public authority and institution to provide data and information they hold which is necessary for the accomplishment of its objectives. None of these provisions require the provision of information on a timely basis.

347. The evaluators were informed that, as a result of forty-one cooperation protocols concluded by the FIU with various institutions, the FIU has direct access to various online databases, which are the following:

- Integrated Information System made available by the Internal Affairs Ministry (which contains records on persons, criminal records, Border Police, Visas Register, Auto Register, Guns register, Possession of weapons, Romanian Immigration Office);
- Commerce Register database;
- National Agency for Fiscal Administration database – only centralised bank accounts database;
- National Custom Authority database – operations of import – export of goods;
- National Custom Authority database – Declarations of cash and/or other monetary instruments at EU border crossing;
- National Agency for Cadastre and Real Estate Publicity database – the registered owners of lands/buildings;
- Public database of the Ministry of Finance - tax information and balances;
- Public electronic records of the Insurance Supervisory Commission – register of insurance and reinsurance companies and brokers, insurance brokers register, reinsurance actuaries register, register of insurance companies and brokers from European Economic Area;
- Public Register of the National Securities Commission – including information on brokers, agents, traders, consultants, investment management companies, unit trusts, investment companies, closed investments funds, closed-end investment companies, depositories, market operators , system operators, representatives of the internal audit department, special administrators, liquidators, assessment / independent experts, qualified investors, entities performing post trade operations, independent operators, rating agencies, investment instruments, asset management of instruments, IT auditors;
- Public records of the National Bank of Romania – including records of credit institutions, payment institutions, electronic money institutions, non-banking financial institutions - General Register and Special Register for consumer loans, mortgages and/or real estate loans, microfinance, financing of commercial transactions, factoring, discounting, forfaiting, financial leasing, issuing guarantees and assumption of liabilities, including credit guarantee, other forms of financial credit nature, multiple lending activities and also Registers for unions, pawnshops and non-profit entities, the List including the credit institutions which notified the NBR with regard to the directly providing services in Romania, the List including the payment institutions which notified the NBR with regard to the directly providing services in Romania, the List including the electronic money institutions which notified the NBR with regard to the directly providing services in Romania;
- Public Records of the Supervisory Commission of Private Pension System – Pillar II and Pillar III administrators, pension funds, custodians, auditors, marketing agents, removed entities, suspended entities, the Guarantee Fund of the rights of the private pension system, EU entities;
- Public Portal including declarations of assets and interests – managed by the National Integrity Agency;
- Public Register of associations and foundations in Romania;
- Public portal of courts of justice in Romania;
- European Business Register;

- World-check;

348. Despite the fact that the FIU is connected to a large number of databases, the evaluation team noted that the FIU's Analysis Methodology refers to requests for information by the FIU to other authorities on declared income, penal antecedents, fiscal financial statements and real estate transactions. The authorities explained that requests for information to the authorities are made only on an exceptional basis, such as for instance where the required information is not already contained within the database. However, during the on-site mission, various authorities indicated that the database of the National Agency for Cadastre and Real Estate Publicity does not yet contain all the records on real estate in Romania. The database is still in the process of being updated.

Additional information from reporting parties (c.26.4)

349. The FIU may request additional information from reporting entities pursuant to Article 7(1) of the AML/CFT Law and Article 5(c) if the FIU Regulation. Article 7(1) states that the FIU may require persons subject to the AML/CFT Law (which includes both financial institutions and DNFBPs) to provide the data and information necessary to perform the functions attributed to it by law. Article 5(c) states the FIU has the power to request any natural or legal person to provide data and information they hold which is necessary for the accomplishment of its objectives. Requests for information made by the FIU override any provisions dealing with professional and banking secrecy (Article 7(3) of the AML/CFT Law). Failure to provide the FIU with the requested information is subject to a pecuniary sanction of (approximately) EUR 3,000 to EUR 11,000.

350. Article 7(1) does not specify that additional information may also be requested from reporting entities that have not submitted a STR. However, the wording is sufficiently wide to include any reporting entity, as long as information is necessary by the FIU to perform its functions, including the analysis of STRs.

351. Article 7(2) requires persons subject to the AML/CFT Law to provide information to the FIU within thirty days from the date of the FIU's request. During the on-site mission, the evaluators pointed out that the thirty-day period appeared to be rather lengthy, given the urgency with which certain STRs may have to be analysed, especially within the context of the suspended execution of a suspicious transaction. The evaluators further remarked that the third round evaluators had already commented on this matter and had included it as a deficiency underlying the rating. In response to this, the authorities referred to a number of proposed amendments to the AML/CFT Law which aim to shorten the period of time to fifteen days. The authorities also explained that an alternative approach was being considered, which would enable reporting entities to respond to FIU requests within forty eight hours for urgent cases and fifteen days for other cases. It was also pointed out that, in practice, whenever information is required on an urgent basis, reporting entities generally provide information within a matter of hours. The FIU indicated that there has never been an instance where information was not provided within the time-frame imposed, even where the time-frame was very short.

352. Notwithstanding the explanations provided by the authorities and in the light of the recommendations made in the 2008 MER, the evaluators retain their concerns regarding the time period within which reporting entities are to provide information to the FIU when so requested. The evaluators believe that the time frames being considered by the authorities are still rather lengthy.

Dissemination of information (c.26.5)

353. In terms of Article 8(1) of the AML/CFT Law, where following the analysis of a suspicious transaction, the FIU ascertains the existence of solid grounds of ML/FT, it shall immediately notify the General Prosecutor's Office attached to the High Court of Cassation and Justice. Where the analysis relates to a transaction suspected to relate to FT, in addition to notifying the GPO, the FIU shall also immediately notify the Romanian Intelligence Service. The FIU may also notify another competent authority where it ascertains the existence of solid grounds relating to an offence other than ML/FT.

354. The evaluators noted that, whereas criterion 26.5 refers to the dissemination of information to domestic authorities for investigation where there are grounds to suspect ML/FT, the AML/CFT Law requires the FIU to ascertain the existence of solid grounds of ML/FT. It is the view of the evaluators that the AML/CFT Law sets a threshold which goes beyond the requirement under criterion 26.5.

355. The requirement to ascertain solid grounds appears to cast the FIU into an investigative role, which is normally reserved for law enforcement authorities. In theory, the FIU may only notify the GPO where it has obtained a level of proof that is equivalent to that required by law enforcement authorities to institute criminal proceedings. This defies the spirit of the main function of a FIU, which is not intended to replace the criminal investigation stage but to filter financial information for further investigation by law enforcement authorities. The requirement in the law is also particularly peculiar in light of the fact that the FIU in Romania is an administrative agency and not a law enforcement-type FIU with investigative powers.

356. The authorities referred to Article 68 of the CPC which defines solid grounds as a reasonable assumption based on existing data that a person has committed an offence and in whose respect criminal proceedings should be instituted. It is the opinion of the evaluators that Article 68 only serves to reinforce their views. The interpretation of solid grounds within the context of criminal proceedings should not be applied in the context of the FIU's functions. It is necessary to require solid grounds in order for a person to be indicted for a criminal offence. The situation is different when the FIU needs to determine whether an analytical report is to be disseminated to the competent authorities. The threshold in the FIU's case should be lower.

357. The representatives of the FIU explained that despite the reference to solid grounds in the AML/CFT Law, in practice the FIU disseminates analytical reports to competent authorities in accordance with the requirements under Criterion 26.5. However, it was noted that the existing provision has engendered different expectations among competent authorities as to what is required to be provided by the FIU, with some expecting an analytical report from the FIU to be sufficient to initiate criminal proceedings.

358. Following the receipt of a notification, the GPO may request the FIU to provide further information to supplement the analytical report (Article 8(5)) and the FIU is required to put at the disposal of the GPO all the data and information obtained in the performance of its functions (Article 8(6)). The following table indicates the number of punctual replies provided by the FIU.

Table 14: Number of punctual replies provided by the FIU

Year	Replies to requests by the GPO under articles 8(5) and (6) of the AML/CFT Law
2008	201
2009	201
2010	259
2011	257
2012	327
2013	113

359. On a quarterly basis, the GPO is under an obligation to notify the FIU on the progress of the notifications submitted by the FIU (see Table 15 below) and the amount of funds frozen following a suspension of a transaction or the provisional measures imposed. Further analysis on the figures provided in the table is found under the Effectiveness Section.

Table 15: notifications submitted by the FIU to the GPO

YEAR	Total number of notifications sent to GPO, according to the provisions of art. 8 (1) from the Law no. 656/2002, republished	Indictments		Number of notification included in the indictments	Number of STRs included in the notification
		Registration number prosecutor`s unit	Provisional Measures		
2010	192	38		1	1
		160		1	1
		29		1	2
		97		1	1
		46		1	10
		61		1	2
		284	554.000 EURO	1	1
		129		1	1
		132	234.104,11 RON	1	1
		266		1	1
		711		1	1
		1643	119.210 EURO	2	9
		47		1	2
		349		4	60
		TOTAL		18	93
2011	213	345		1	1
		1625		1	3
		10		1	2
		227		1	1
		224		1	3
		1097		2	5
		TOTAL		7	15
2012	346	29		1	1
		353		1	1
		6554		1	1
		1165		1	8
		7		3	58
		TOTAL		7	69

Operational independence and autonomy (c.26.6)

360. The FIU is a specialised, central body with legal personality. The structure of the FIU is set up internally and approved by a governmental decision. The budget of the FIU is adopted by the Romanian Parliament through a law on the state budget for every financial year. The FIU is responsible for the administration of its own premises once the property is transferred by the government.

361. The executive management of the FIU is vested within the President, with the assistance of a board of seven members. The board is composed of representatives from:

- The Ministry of Public Finances;
- The Ministry of Justice;
- The Ministry of Internal Affairs;
- The General Prosecutor's Office attached to the High Court of Cassation and Justice;
- The National Bank of Romania;
- The Court of Accounts;
- The Romanian Banks Association

362. The President is appointed by the government from among the members of the board. The members of the board are appointed for a five-year period by their respective entity and approved by government decision. The appointment may be renewed upon the expiry of the term.

363. The members of the Board may not affiliate themselves to a political party and carry out public activities with a political character. They are also barred from holding any other public or private office. Throughout their office, the members of the Board are not answerable to the authority which they represent on the Board. The mandate of the members ceases at the expiration of their term, by resignation, by death, where they are not in a position to exercise their mandate for a period exceeding six months, where there is an incompatibility with their position and by revocation of their mandate by the appointing authority.

364. The Board is the deliberative and decisional structure of the FIU. It is in charge of deliberating on the analytical reports prepared by the analytical departments of the FIU following the receipt of a STR and deciding on whether a notification is to be sent to the GPO. It also plays a key role in determining whether a STR that had been previously ranked as lower priority is to be analysed in further detail after it had been held in abeyance for one year (see further details under the Effectiveness Section).

365. Decisions relating to the economic and administrative matters of the FIU are taken by the President. The President may however, whenever he considers it necessary, consult with the Board before taking a decision.

366. The powers of the President and the Board are set out in more detail under the FIU Regulation. The President is, *inter alia*, authorised to represent the FIU in its relations with the (Romanian) Parliament, judicial and administrative authorities, national or foreign natural and legal persons and international bodies and organisations. The legal and judicial representation is vested within the President, who may bind the FIU contractually with third parties. The President may also initiate, negotiate and conclude, based on a proxy granted by Government, international cooperation agreements with foreign entities. With regard to the internal operations of the FIU, the President approves the job descriptions of the employees of the FIU, organises the activities of the different departments, including the internal methodological norms, and sets out the medium and long term strategic objectives of the FIU. All these factors contribute towards the independent nature and status of the FIU.

367. The Board is the key decision-making body of the FIU, taking decisions by majority voting. In terms of Article 9 of the FIU Regulation, the Board decides whether:

1) a suspicious transaction is to be suspended;
2) a notification is to be sent to the GPO where solid grounds related to ML/FT exist;
3) a notification is to be sent to the RIS where solid grounds related to FT exist;
4) a notification is to be sent to the competent body where solid grounds of an offence other than ML/FT exist;
5) and information is to be sent to competent authorities following a request.

368. During discussions on-site, the evaluators raised the issue of undue influence or interference in the FIU's matters, as a result of insufficient operational independence and autonomy. Although the FIU is a stand-alone authority directly answerable to the Government of Romania, the decision-making process on the dissemination of analytical reports to the GPO for further investigation (which is a crucial operational stage in the AML/CFT process) is in the hands of a body (the Board) that, to some extent, is composed of persons appointed by a political authority without a set criteria applicable for their appointment and dismissal. This raises the question as to the potential risk of interference or undue influence in the operational decisions taken at Board-level by the political authorities being represented on the Board. This risk is compounded by the fact that the mandate of a member of the Board, though in theory valid for a fixed period, may be revoked by the appointing authority at any time without giving any reason. This could result in a situation where the Board members may be forced to follow instructions from their respective appointing authority in order to preserve their position on the Board. Moreover, it is unclear whether confidentiality obligations set out in the AML/CFT Law apply to the members of the Board since Article 25(1) only prohibits the personnel of the FIU from disseminating confidential FIU information and not the members of the Board.

369. The evaluators also noted a potential conflict of interest arising out of the appointment of a representative of the Romanian Banks' Association on the Board of the FIU. A representative of a professional association is by the nature of his position required to act in the interest of the members of the association. Given that the Board deals with sensitive issues and confidential matters regarding the banking sector on an on-going basis, which might include matters that go against the interests of the banking sector, it appears that the position of the representative of the Bank Association may, in certain instances, be incompatible with the FIU functions assigned by law to the Board.

370. Furthermore, the presence of a representative of the Court of Accounts in the Board can raise questions, considering that the sending institution does not have any specific AML/CFT competences, but rather general supervisory functions on the management and use of public funds.

371. The representatives of the FIU assured the evaluators that no political authority has ever exerted influence or interfered in the operational matters of the FIU. Reference was made to Article 26(14) in the AML/CFT Law which explicitly provides that during their tenure of office at the FIU, the members of the Board shall not be answerable to their appointing authority and shall exercise their individual judgement when decisions are taken. Furthermore, the FIU representatives pointed out that in the performance of their functions, Board members are required to abide by a code of conduct issued by the FIU (which, the evaluators noted, only applies to FIU employees and not Board members). The FIU representatives also explained that the majority-voting system of the Board is designed in a manner that ensures that a single member is not in a position to influence a decision unilaterally.

372. While noting that various factors contribute towards safeguarding the operational independence of the FIU (e.g. separate premises and budget, authority of the President to bind the

FIU and to determine the internal operational structure of the FIU without further authorisation from the government, restrictions on the activities of Board members), the evaluators remain concerned that the decision-making process to disseminate notifications to the GPO may give rise to the potential of undue influence or interference, given that certain Board members are senior officials of government ministries. In a similar vein, the evaluators consider the involvement of a representative of the Banks Association in decisions on dissemination to give rise to potential conflicts of interest. The safeguards laid down in the law are not considered to be sufficient to adequately counter the risk of possible abuse.

373. An additional factor of significant concern is that, since the establishment of the FIU, the representatives appointed on the Board (including the various Presidents) have never served an entire mandate (which under Article 26(7) of the AML/CFT Law is envisaged to be 5 years). With very few exceptions, such as the Romanian Banks association's representative, the Board members from all institutions served a maximum of 2-3 years before their mandate being revoked and replaced. The same applies for the FIU's President position, the longest term being 4 years in service[65]. Furthermore, though the legislation requires the Authorities represented on the Board to appoint a representative within 30 days from the date on which a vacancy within the Board has arisen, during the period under review, important Board positions have been left vacant for several months (i.e. for instance no appointments made by the Ministry of Interior or the General prosecutor's office). This constant "turnover" of Board members raises concerns regarding the institutional stability of this body and has a negative impact on the decision-making process, when considering the important functions that the Board and FIU carry out.

374. It is thus the view of the evaluation team that politically-appointed officials should not be involved in the core operational functions of the FIU. Moreover, the appointment of the President of the FIU should be subject to a clearly-defined and transparent procedure which should also guarantee for the future that the person selected is independent and displays high professional standards, probity and integrity. A structure or mechanism which brings together representatives from institutions involved in the AML/CFT sphere (such as some of the authorities represented on the current Board but possibly other relevant institutions) should be established. This structure or mechanism should be entrusted with higher-level responsibilities and with a broader co-ordination and oversight role, possibly in the context of the national AML/CFT strategy of Romania. The current operational and analytical functions of the Board could be assigned to, for instance, an analysis committee, which could include the Head of the Analysis and Processing of Information Directorate (DAPI), the heads of departments of the financial analysis departments, and, if appropriate, the FIU head, who are specialist staff with the appropriate expertise required to perform these functions. These measures would address the concerns regarding the present decision-making structure, the potential conflicts of interest with Board members dealing with STRs, and the inefficiencies of the current system.

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

375. The evaluators were advised that a number of security measures have been implemented by the FIU to ensure that the information received and processed by the FIU is adequately protected. During the on-site mission, the evaluators inspected the premises of the FIU to view the security features implemented by the FIU. It was noted that the premises are under constant CCTV surveillance and access to certain sensitive areas, such as the server room, is restricted to authorized personnel only. All the workstations of the officers of the FIU are secured by a password and access to the databases is subject to a logging system which keeps a trail of all the activities conducted by each authorized member of staff.

[65] It is noted that one of the former President has challenged in Court its dismissal and the procedure was on-going at the time of the onsite visit.

376. The members of the staff of the FIU are given access to classified information on a need-to-know basis. The classification system of information is based on Law 182/2002 on Protection of Classified Information, Governmental Decision 585/2002 for the Approval of the National Standards for the Protection of Classified Information and Governmental Decision 781/2002 on the Protection of Secret Service Information. The Director of Information Technology and Statistics is appointed as the security officer of the FIU, as required under the relevant provisions of Law 182/2002. In his capacity as the security officer, the Director has elaborated norms for the protection of national classified information and European Union classified information with the assistance of the National Security Authority.

377. In addition to the classification system of FIU information, Article 25 of the AML/CFT Law prohibits the personnel of the FIU from disseminating information received in the performance of their functions. The information received may not be used for the personal interests of the personnel of the FIU, either during or after their employment. According to Article 23 of the FIU Regulation, at the start of their employment, the personnel of the FIU is required to sign an agreement which prohibits them from disclosing any information received during their employment with the FIU, except in the case of a judicial procedure. Article 25(4) of the FIU Regulation provides that where the personnel of the FIU infringe any of their legal obligations they incur civil, criminal or disciplinary liability, as the case may be, according to the law.

378. The confidentiality obligations under Article 25 of the AML/CFT Law and Article 23 of the FIU Regulation cease to apply to FIU personnel after five years from the termination of their employment. This issue had been raised by the evaluators in the 2008 MER, which was included as a deficiency underlying the rating. The evaluators enquired whether the authorities had considered addressing the deficiency in the intervening period. At the suggestion of the FIU, the issue was discussed with representatives of the Ministry of Justice, who indicated that the current five-year prohibition is deemed to be sufficient for the protection of information. The representatives of the ministry argued that imposing an indefinite prohibition would breach fundamental human rights. They pointed out that criterion 26.7 did not specify that information was required to be protected indefinitely. It was also explained that information handled by the FIU is classified in accordance with Law 182/2002 for an indefinite period of time and may therefore, in accordance with that law, not be disclosed.

379. It is however the view of the evaluators that the confidentiality obligations under the AML/CFT Law (and the FIU Regulation) and Law 182/2002 conflict with each other and may give rise to ambiguity.

380. The evaluators noted another issue which raised significant concern. The confidentiality obligations in the AML/CFT Law and FIU Regulation do not appear to extend to the members of the Board, including the President of the FIU, since Article 25 and Article 23 only refer to the personnel of the FIU. It is not clear whether the personnel includes the members of the Board as Article 19 of the FIU Regulation states that employment of personnel is carried out by contest and therefore does not cover the members of the Board. The FIU explained that the Romanian Labour Code refers to seconded persons of Government entities as being employed by the entity to which they are seconded. The evaluators took note of the explanation provided. However, they are of the view that given the sensitive nature of the activities carried out by the Board, an express confidentiality obligation applicable to the Board should be introduced.

Publication of periodic reports (c.26.8)

381. As a public authority, according to Law 544/2001 on the Free Access to Public Information, the FIU is required to publish an activity report on an annual basis. The annual reports are published in the Official Gazette of Romania. The obligation to prepare an annual activity report is also found under Article 5(p) and Article 8(k) of the FIU Regulation.

382. The preparation of annual reports is coordinated by the Inter-institutional Cooperation and International Relations Directorate of the FIU. The report is then presented to the President of the FIU for the adoption by the Board and endorsement by the Prime Minister. The reports are accessible on the website of the FIU[66].

383. The reports contain information on the main activities performed by the FIU in the reporting year, ML/FT trends identified in that year, typologies, statistics and the long and medium-term strategic objectives of the FIU.

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

384. The FIU became a member of the Egmont Group in May 2000 based on Memorandum no.5/3445/M.I./12.04.2000, adopted by the Minister of Foreign Affairs, the Minister of Public Finance, the Minister of Internal Affairs and the Minister of Justice. The Memorandum was endorsed by the Prime Minister. Following the modification of the Egmont Group Charter in 2008, the FIU reaffirmed its membership on the basis of Memorandum no. 1550/12.03.2008 adopted by the Minister of Foreign Affairs, the Minister of Public Finance, the Chancellor of the Prime Minister and the Minister of Justice. The Memorandum was endorsed by the Prime Minister. As a member of the Egmont Group, the FIU exchanges information with foreign FIUs through the Egmont Secure Web (ESW) and FIU.Net with FIUs of EU countries.

385. The exchange of information with foreign counterparts is considered to be one of the main priorities of the FIU. The National Strategy for the Prevention and Combating Money Laundering and Terrorism Financing adopted in June 2010 contains a specific objective on international cooperation ("Consolidation of the role of Romania in the international mechanisms and organisations for prevention and combating money laundering and terrorism financing"). The measures set out to achieve this objective are the conclusion and/or revision of international agreements on ML/FT and participation by the FIU in international organisations in the field of ML/FT.

386. The FIU is actively involved in the activities of the Egmont Group. It is a member of the Operational Working Group and has been designated to lead a recent project of the working group on financial analysis.

387. The exchange of information between the FIU and its foreign counterparts is regulated by Article 7(4) of the AML/CFT Law. The FIU may exchange information, based on reciprocity, with foreign institutions having similar functions and which are subject to the same secrecy obligations. Information may only be exchanged for the purpose of preventing and combating money laundering and terrorism financing. No unduly restrictive conditions exist which restrict the exchange of information.

388. The unit within the FIU which is responsible for the exchange of information is the International Relations Department within the Directorate for Inter-institutional Cooperation and International Relations. According to Article 12 of the FIU Regulation, the International Relations Department is responsible for receiving, submitting and managing incoming and outgoing requests for information related to ML/FT from/to foreign FIUs. The evaluators noted that the FIU has established well-functioning mechanisms for the exchange of information with foreign FIUs. Information is provided in a rapid, constructive and effective manner, as confirmed by other FIUs prior to the on-site mission.

[66] www.onpcsb.ro/html/prezentare.php?section=8

389. Article 5(q) of the FIU Regulation provides that the FIU may conclude conventions, protocols and agreements with foreign institutions. However, the existence of a memorandum is not a prerequisite for the exchange of information. In order to enhance bilateral international cooperation, the FIU has concluded fifty-three Memoranda of Understanding with foreign FIUs.

Recommendation 30 (FIU)

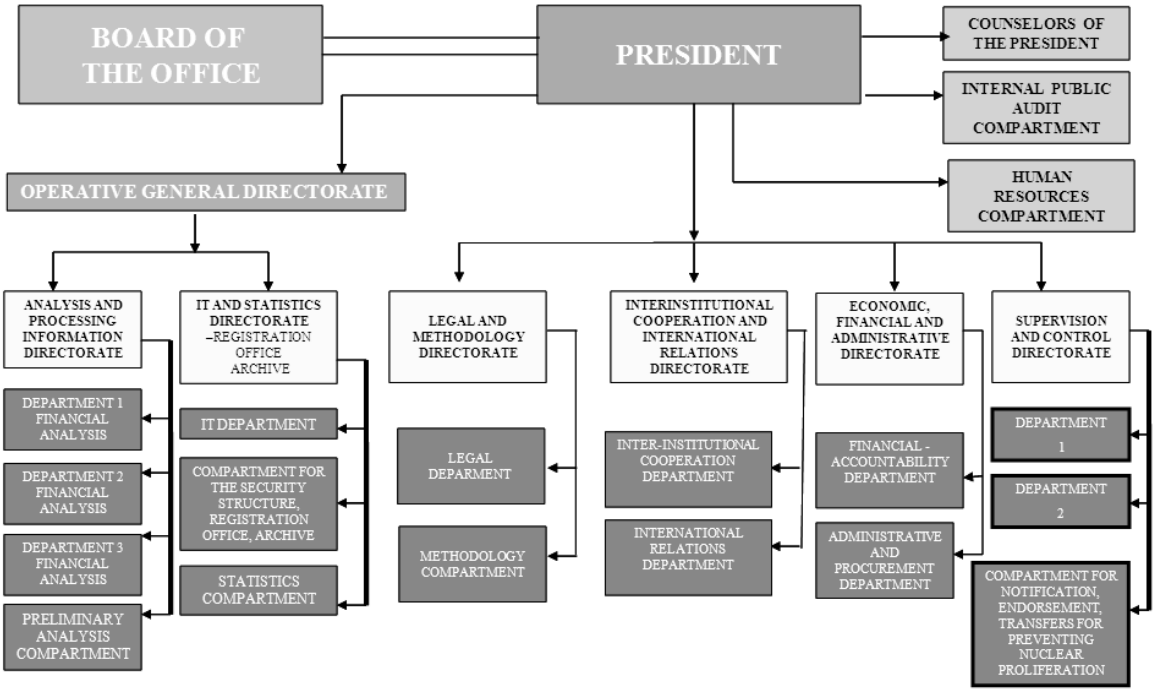
Adequacy of structure and resources to FIU (c.30.1)

390. The organisation and structure of the FIU is governed by the FIU Regulation. The structure is set up in the following hierarchical manner:

- President of the FIU;
- Members of the Board;
- Counsellors of the President (3);
- General Operative Directorate:
- Analysis and Processing Information Directorate;
- Directorate for Information Technology and Statistics;
- Inter-institutional Cooperation and International Relations Directorate;
- Economic-Financial and Administrative Directorate;
- Supervision and Control Directorate;
- Legal and Methodology Directorate;
- Internal Public Audit Compartment;
- Human Resources Compartment.

391. The current organisational structure of the FIU is indicated in the chart below:

ORGANISATIONAL CHART



392. The competences and responsibilities of each directorate are set out in detail in the FIU Regulation. The internal organisation of each unit within the FIU may be organised by an order of the President in accordance with article 4(2) of the FIU Regulation.

393. The main unit of the FIU is the General Operative Directorate (GOD), which is managed by a general director. The GOD is comprised of two Directorates: the Analysis and Processing of Information Directorate and the IT and Statistics Directorate. The Analysis and Processing of Information Directorate, which is composed of three separate Financial Analysis Departments and a Preliminary Analysis Department, is responsible for the core analytical functions of the FIU. Among other responsibilities, it receives, analyses and processes cases suspected of ML/FT, requests information from reporting entities and competent authorities, draws up reports following the analysis of a case, notifies the GPO/competent authority following a decision by the Board to disseminate a case, provides feedback to reporting entities and elaborates reports on typologies. During the on-site mission, the evaluation team met with representatives from the Financial Analysis Departments. In general, the evaluators were satisfied with the level of knowledge and expertise demonstrated by the analysts.

394. The Information Technology and Statistics Directorate manages the IT system and databases of the FIU. It receives and inputs information received in the form of CTRs, ETRS and reports by the Customs Authority and elaborates the statistics on the activity of the FIU. The Directorate is also in charge of the good functioning of the online connection of the FIU with the databases of other institutions. Explanations were provided during the on-site mission on the set up of the system and the security measures implemented to safeguard the system. The persons in charge of IT appeared to be sufficiently skilled and experienced.

395. The other core Directorate of the FIU is the Inter-institutional Cooperation and International Relations Directorate. Its most relevant activity is the exchange of information with foreign FIUs. As mentioned previously the International Relations Department receives, submits and manages the incoming and outgoing requests of information from/to foreign FIUs. The Directorate is also responsible for the cooperation with prudential supervisory authorities, law enforcement authorities and other authorities having a role in the prevention of ML/FT and coordinates the activity of the FIU with respect to EU matters. The staff of the Directorate also displayed a high level of expertise during the on-site mission.

396. The FIU is also responsible for the supervision of certain categories of DNFBPs through its Supervision and Control Directorate. The functions of this Directorate are discussed in greater detail under Recommendation 24. The other directorates and departments of the FIU provide administrative and legal assistance to the other core directorates of the FIU.

397. The budgetary personnel of the FIU is comprised of specialised personnel represented by the financial analysts, the auxiliary specialised personnel, represented by the assistant analysts and contractual personnel, who carry out specific functions (such as drivers and unqualified staff). The detached personnel comprises the members of the Board, who are appointed for a period of five years. The maximum number of budgeted positions under the FIU Regulation is one hundred and thirty. However, the total number of persons working within the FIU, including the Board and the President, currently stands at ninety-five. The representatives of the FIU indicated that since 2009 there has been no further intake of staff due to a government budgetary decision affecting all government authorities which was taken in response to the financial crisis. However, following a proposal of the President of the FIU in 2012, two vacancies were created, which will be filled during 2013. The evaluators do not consider the number of staff employed by DAPI to be sufficient to deal with the large number of notifications received.

398. The allocation of personnel in each directorate is as follows:

Table 16: allocation of personnel in each directorate of the FIU

Allocated personnel		No. of persons
I. Management of the FIU		**7**
President of the FIU		**1**
Members of the Board of FIU		**6**
II. Operational structures for fulfilment of the activity object of the FIU		**69**
DAPI	**Preliminary analysis**(Department of Preliminary Analysis)	**9**
	In depth analysis (Department 1, Department 2, Department 3, Director)	**27**
IT (IT and Statistics Directorate)		**12**
Supervision (on-site and off-site) (Supervision and Control Directorate)		**14**
National and International Relations (Inter-institutional Cooperation and International Relations Directorate)		**7**
III. Administrative structures		**19**
Legal and Methodology Directorate		**4**
Economic - Financial and Administrative Directorate		**10**
Counselors of the President of the FIU		**3**
Internal Public Audit Compartment		**1**
Human Resources Compartment		**1**
TOTAL personnel of FIU Romania		**95**

399. The budget of the FIU is approved by the Romanian Parliament, through the State Budget Law, and is managed by the President of the FIU. It is the view of the evaluators that the budget of the FIU is sufficient to enable the FIU to adequately perform its functions.

400. During the period under review the FIU has implemented and continued developing a number of projects, with the assistance of funds received from the EU. A secure on-line reporting system was implemented which simplifies and accelerates the reporting procedure of STRs, CTRs and ETRs. The system will standardise the reporting procedure and enable the automatic inputting of data into the database of the FIU. A number of new online connections with various authorities were established, including with the National Agency for Cadastre and Real Estate Publicity. New hardware and software were integrated into the system necessary to obtain IT accreditation under Law 182/2002 on the Protection of Classified Information. The process included the implementation of a case management and training system and document management and electronic archiving system. The case management system permits a constant audit of the system to ensure that no information is disclosed without authorisation. The document management system created an automated document flow, optimised the registration of documents and supports operative and decisional activities. The system is also intended to provide for a more secure handling of sensitive information. A new project was initiated in 2011, which is aimed at developing analysis software and training analysts in financial analysis. The project is expected to be finalised in the near future.

401. Nevertheless, the evaluators noted with concern that IT analytical tools are not as yet available to the analysis department. The analysis of cases is conducted in a rudimentary manner using basic IT tools (such as Excel). Another area of concern is the space afforded by the current

premises of the FIU. The offices of the staff dealing with analysis were extremely crowded and this cannot be considered as conducive to the proper functioning of the analysis function of the FIU.

402. As explained in detail under criterion 26.6, the structure and certain activities of the Board give rise to concerns in relation to the operational independence and autonomy of the FIU.

Integrity of FIU (c.30.2)

403. Article 20 of the FIU Regulation sets out the conditions which must be met for a person to apply for a position within the FIU, which are the following:

- be a Romanian citizen;
- be in possession of a degree in economics, legal or IT studies or other certification depending on the level of the position applied for;
- to have the exercise of civil and political rights;
- to have a professional and intact moral reputation;
- not have a conviction for any offence;
- to pass a medical and psychological test.

404. In their application, candidates must submit their education certificates, a reference letter of recommendation from their previous employer, a criminal and medical record and a declaration stating that the candidate has not been subject to or convicted of a criminal case and is not subject to a criminal investigation or procedure. Other documentation may be requested by order of the President depending on the position being offered.

405. Upon signing the employment agreement, all the officers of the FIU bind themselves not to disclose any information received during their employment, which shall continue to have effect for a five year period following the termination of their employment. The officers of the FIU may not hold any employment position with a person subject to the AML/CFT Law.

406. Where the members of the Board and the personnel infringe any of their legal obligations they incur civil, criminal or disciplinary liability, as the case may be, according to the law.

407. As one of the authorities involved in the implementation of the National Anticorruption Strategy in Romania, the FIU has had to implement a number of anti-corruption measures which are applicable to its staff members.

408. In 2005 a mandatory code of conduct for FIU employees was issued, which was last updated in 2012. The code of conduct establishes the ethical and professional norms to be followed by FIU employees in order to maintain public confidence in the FIU. Its objectives are to increase the credibility of the FIU, improve the quality of the FIU's activities and ensure that a high professional level is exercised by all employees. It includes norms on the proper exercise of official duties, loyalty to the FIU, (non)involvement in political activity, use of public resources and misuse of powers and enables disciplinary measures to be applied. During the period under review no violations of the code were reported. The code of conduct does not apply to the members of the Board. In 2012, two members of staff attended a three-day course entitled 'Promoting Mentoring in Public Institutions' organised by the Ministry of Internal Affairs within the project 'Development and Strengthening of the National Integrity Centre'.

409. Senior members of staff of the FIU, including the Board, are required to submit an asset, gift and interest declaration on an annual basis as a requirement under various orders of the President of the FIU which implement Law No. 144/2007 on the establishment, organisation, and functioning of the National Integrity Agency. In 2012, all employees required to submit these

declarations to the National Integrity Agency of Romania, complied with this requirement. A designated person within the FIU is responsible for the implementation of this requirement. The designated person circulates an internal memo in advance of the deadline explaining the requirements of the declarations. The declarations are recorded in the register of declarations and published on the website of the FIU. In 2012, none of the members of staff declared any interest which is incompatible or in conflict with their position.

410. Since the last evaluation of Romania, the internal regulations of the FIU were amended by an order of the President of the FIU to implement provisions on the protection of whistle-blowers. A procedural system was also set up by an order of the President for the reporting of irregularities within the FIU and the protection of the whistle-blower.

411. In 2012, the FIU set up a commission responsible for the monitoring, coordination and providing guidance on the implementation and development of internal control and management systems of the FIU. The measures which are overseen by the commission are intended to enhance the operational activities of the FIU, thereby increasing the professional standard of the FIU.

Training of FIU staff (c.30.3)

412. The FIU develops an annual training plan in accordance with the provisions of the Labour Code (Law No. 53/2003) and the professional needs identified in the structures of the FIU. The plan is approved by President at the beginning of each year. From information provided by the authorities, it appears that internal training provided to staff, especially the financial analysts, does not appear to be sufficient.

413. The FIU also indicated a number of projects in which the FIU was involved either as a participant or as a beneficiary:

- "Combating money laundering and terrorism financing", organised by the FIU together with the Polish FIU (January-December 2010). Forty-one FIU experts participated in training seminars organised at a national level. Four two-week exchange programmes involving sixteen financial analysts were also arranged with FIUs and law enforcement authorities of Portugal, Poland, Bulgaria and Cyprus. Two three-day seminars on strategic analysis, which included training on the use of IT tools and statistical methods, were attended by the personnel of the Information Technology and Statistics Directorate and the Information Analysis and Processing Directorate.
- Regional Conference on New Trends and Techniques of Money Laundering and Terrorist Financing. This event brought together twenty two experts from EU and applicant countries' FIUs, experts from specialized international organizations, and representatives from various government institutions in Romania, the FIU, supervisory authorities, law enforcement authorities and professional associations in the AML/CFT sphere (over hundred Romanian experts). During the conference presentations were provided on the investigation of ML/FT, legislative developments and other institutional measures undertaken by Romanian authorities.
- "Development of the professional investigators in Romania" (August 2011-September 2012). This project was implemented by the Ministry of Public Finances – the General Prosecutor's Office by the High Court of Cassation and Justice in partnership with the German IRZ Foundation, the Ministry of Internal Affairs – Anticorruption General Directorate, the General Inspectorate of Romanian Police and the Police Academy "Al. I. Cuza", the National Council of Magistrates through the National Institute for Magistrates and the FIU. Six three-day seminars were organised with the aim of creating a professional body of financial investigators who are trained to investigate all financial crimes, focusing on serious criminal cases and organised crime cases. This training was attended by twelve specialists from the Analysis and Processing Information Directorate.

- "Increasing investigation capabilities of the National Anticorruption Directorate" (June 2009-July 2010). British experts participated in the project. The aim of the project was to improve cooperation and coordination mechanisms through the adoption of best practices in corruption investigations. Three experts from the FIU participated in various sessions of the programme including "Sampling methods for the identification of money laundering schemes through offshore country and tax havens", "Identification and asset recovery of proceeds of crimes", "Detecting and proving the fraudulent mechanisms used in the insurance market", and "Detecting and proving fraudulent mechanisms used on capital market".
- "Strengthening the practical and legal framework in Romania in the assets recovery field", initiative implemented by the General Prosecutor's Office by the High Court of Cassation and Justice in partnership with the Northern Ireland Public Sector Enterprises Limited (NI-CO), having as beneficiaries Public Ministry, Ministry of Justice, General Inspectorate of Romanian Police, FIU, National Agency for Integrity, National Agency for Fiscal Administration and Financial Guard. Two specialists from the FIU participated.
- Reinforcing institutional capacities in the asset recovery field" implemented by the Ministry of Justice in partnership with Basel Institute on Governance from Switzerland (August 2012-August 2013): The main beneficiary of the project is the National Office for Crime Prevention and Asset Recovery Cooperation (NOCPARC) within the Ministry of Justice. Three FIU experts participated in this project. The project is still underway.
- On the basis of a cooperation protocol signed between Worldcheck and the FIU, two international events on the issue of preventing and combating money laundering and terrorist financing were organised in Bucharest, in 2009 and in 2012, which were attended by specialists from the FIU, representatives of law enforcement authorities, supervisory authorities and of reporting entities within the financial sector.
- In 2013, the FIU participated in the project "Strengthening the capacity of law enforcement authorities to combat intra-community fraud", within the European Commission programme "Preventing and Combating Crime" – ISEC Framework Partners 2012, approved in February 2013. The overall objective of the project is to develop the capability of law enforcement authorities to combat intra-community fraud. The project is expected to last 24 months.

414. Although, the FIU participated in the various conference and projects referred to above, the evaluators noted with concern that no on-going training is provided to analysts within the Analysis and Processing Information Directorate on operational and tactical analysis.

Recommendation 32

415. Statistics on the activities of the FIU are maintained by the IT and Statistics Directorate situated within the General Operative Directorate. Statistics are maintained on STRs received by the FIU, including a breakdown of the type of financial institutions and DNFBP submitting the report, breakdown of STRs analysed and disseminated, indictments initiated by the GPO, CTRs and ETRs. Tables 17 to 20 in the 'Effectiveness and efficiency' section refer to various statistics maintained by the FIU.

Effectiveness and efficiency

416. The analysis of STRs falls within the responsibility of the Analysis and Processing of Information Directorate ("DAPI"). The analysis is conducted through various graduated stages. As soon as an STR is received, information is inputted into the system and is subject to a preliminary analysis. Depending on the outcome of the preliminary analysis, the STR may either be held in abeyance for a year or else analysed in further detail. Where no significant changes

occur within that year the case may then be closed, following a final decision by the Board. Cases which are analysed in further detail are then submitted to the Board with a proposal for dissemination to the GPO or for the case to be closed. The Board deliberates on every individual case and determines, by majority voting, whether the case is to be disseminated to law enforcement authorities. The Board may also decide to put the case away or send the case back to the analysis departments for further analysis.

417. Since the third round evaluation, the FIU has implemented a number of measures to improve the effectiveness and efficiency of its analytical function. An on-line reporting system, a case management system and a document management and archiving system were implemented. Direct access to the Real Estate Registry was established and existing connections with the National Office for Commerce Registry, the Ministry of Public Finance and the Ministry of Internal Affair were enhanced. A preliminary analysis department was set up to address the concerns of the third round evaluators in relation to the significant backlog of STRs which had accumulated due to lack of resources and inefficient case management.

418. The Preliminary Analysis Department (PAD) was set up with the primary purpose of identifying those STRs which require further in-depth analysis and to facilitate the management of the significant number of STR reports received by the FIU. A case is opened for every STR received which is then filtered through the PAD. The analysts of the PAD are required to perform a preliminary analysis of every case by performing searches through various internal and external databases. The report is then subject to a scoring mechanism based on a risk-matrix. The scoring mechanism is built on various indicators, depending on which a score is assigned to the case. Indicators refer, for instance, to the amount involved in the STR, whether cash is involved, connection to high-risk jurisdictions, involvement of PEPs etc.).

419. Depending on the score resulting from the preliminary analysis different courses of action may be undertaken. Where a pre-defined score is exceeded, the coordinator of the PAD submits the case to the Director of DAPI. The case is then assigned to one of the three analysis departments within DAPI for a more in-depth analysis. Where the pre-defined score is not exceeded, the PAD submits the case to the Director of DAPI for endorsement. The case file is marked electronically as 'pending'. On a monthly basis the case is examined by the heads of the respective analysis departments and the PAD coordinator. Where a change in the risk is identified, the case is sent for in-depth analysis. The case is held in abeyance for a year. Thereafter, it is submitted to the Board to determine whether further action is required or whether the case is to be put away. Where the preliminary analysis indicates the existence of an offence other than ML or FT, a note with a proposal to notify the relevant competent authority is drafted and submitted to the Board of the FIU. A decision is taken on a case-by-case basis on whether the case is to be kept as evidence or whether further in-depth analysis should be carried out. Where, in the course of a preliminary analysis, a suspicion of FT is identified, the case is immediately forwarded to the Director of DAPI for in-depth analysis irrespective of the score. Concurrently, a note is submitted to the President of the Board with a proposal to forward the case to the relevant person within Centre for Operative Anti-Terrorist Coordination.

420. The setting up of the PAD has to some extent alleviated the problems related to the large backlog of STRs which had accumulated over the years without receiving any attention. It has also improved the management of the substantial volume of STRs received by the FIU. The system ensures that resources are focussed on cases which present a higher risk of ML/FT. A series of tests were carried out over a period of time to verify that the filtering mechanism within the PAD is functioning properly. It was determined that the efficiency of the system stood at 98%. The risk criteria of the system are updated regularly. The matrix was developed by a working group involving the analysis department and the Board. The indicators were established after an analysis was performed on the evolution of ML on a national and international level. Information was requested from other FIUs and input was also provided by the GPO. Although the situation

has improved, concerns still remain regarding the ability of the FIU to deal with the cases referred for in-depth analysis (as explained below).

421. The cases requiring in-depth analysis are assigned by the Director of DAPI to any one of the heads of the three analysis departments. The distribution of cases is carried out in accordance with the level of workload and the complexity of cases to be analysed. The head of the analysis further assigns the case to any one of the analysts within the department. A search is performed in all the internal and external databases to which the FIU has access to, information is collated and a work plan is drawn up for the endorsement of the head of the department. Cases related to FT receive the highest priority.

422. In the course of the analysis additional information is requested from reporting entities or other authorities, whenever this is considered necessary by the analyst. Additional information is only requested where the information accessible to the FIU is not sufficient and where that information is relevant to the case. The methodology provides guidance to analysts on the possible additional information that may be requested:

- Bank statements to determine the money flows of the suspect;
- Information on the declared income, the penal antecedents and fiscal-financial statements of the person under analysis;
- Information from foreign FIUs;
- Information from special services (i.e. intelligence services);
- Information from Ministry of Public Finances and National Bank of Romania;
- Information on securities and real estate transactions by the person under analysis.

423. The issue related to the timing for the provision of additional information referred to under criterion 26.4 may have a negative impact on the effectiveness of the analysis of an STR.

424. The information obtained from the databases accessible to the FIU and the additional information obtained from reporting entities and other public authorities is processed and analysed. The analysis is carried out according to the operational procedures drawn up by the DAPI and approved by the President of the FIU. However, the FIU does not, as yet, make use of IT analytical tools. Unless information is provided in excel format by the reporting entity, information is inputted manually by the analysts. Analysis is conducted by using basic IT tools. The evaluators consider this to be a serious shortcoming, especially in view of the significant number of cases subject to in-depth analysis[67] (see Table 17 below).

425. The assessors requested and received copies of two sanitised versions of analytical reports prepared by the FIU to gauge the level of analysis carried out. Following an examination of such reports it was determined that, despite the lack of analytical tools, the analysis conducted in those two cases was sufficiently thorough. The analytical reports inspected indicated that the analysis department successfully filtered the information obtained from various sources to create intelligence which clearly linked the activity of the suspects to a suspicion of money laundering. It was evident that the analysts involved had a high level of understanding of ML/FT analytical procedures involving scrutiny of financial flows and the identification of links between entities within a complex corporate structure involving entities situated in high-risk jurisdictions.

426. Notwithstanding the positive findings of the evaluators in this respect, the criticism levelled by certain sections of the GPO at the FIU in relation to the quality of the analysis and the analytical reports raised some concern. The evaluators probed further to determine the reasons for the dissatisfaction of certain prosecutors with the analytical reports of the FIU. It was concluded that

[67] As stated in other parts of this report, the FIU has initiated two projects to resolve this matter.

the direct involvement of the Board in operational matters could potentially have a negative impact on the dissemination process. As stated previously, the Board deliberates on every analytical report submitted by the DAPI to determine whether the case is to be disseminated or closed. Although the analysis department involved makes a proposal on the course of action to be undertaken, it is the Board which ultimately takes the final decision. The Board may take a different view from the conclusions reached by the analyst and may even send back the case for further analysis. The evaluators are of the opinion that the DAPI is better placed to take such decisions since it is debatable whether the Board has the necessary technical and operational expertise to decide on such cases. Based on the interviews held with various prosecutors, it would appear that the decision by the Board to disseminate a case for further investigation is not always justified. This reinforces the evaluators' view that the Board should not be involved in the operational activities of the FIU but should ideally assume a higher-level role related to policy-setting and national AML/CFT coordination.

427. Table 17 below provides a statistical overview of the analytical case-load of the FIU in terms of STRs (and other notifications) received on annual basis.

Table 17: Overview of the analytical case-load of the FIU in terms of STRs

1	2	3	4	5	6	7
Year	New input: STRs/ notifications/ requests for information	New cases resulting from STRs/ notifications/ requests for information	Cases held in abeyance following preliminary analysis (low risk-scoring)	Cases under in-depth analysis from previous year(s)	Total number of cases dealt with during the year	Number of cases finalised during the year
2008	2332	1397	763	2625	3259	1669
2009	2771	1870	405	1590	3055	1060
2010	3477	2063	2180	1995	1878	1198
2011	4116	2608	1693	680	1595	1468
2012	4637	2854	1789	710	1775	3157
2013	1519	984	322	957	1619	966

428. Column 2 indicates the number of STRs and notifications received by the FIU on a yearly basis. Column 3 represents the cases generated by the STRs and notifications referred to in Column 2. The cases referred to under Column 3 are subject to a preliminary analysis. A portion of these cases are held in abeyance following preliminary analysis (column 4). The rest generate new cases which require an in-depth analysis or are found to be connected to cases already under in-depth analysis. On a yearly basis, in addition to the new cases (column 3), the DAPI also deals with cases brought forward from previous years (column 5). In total, on average, the DAPI annually deals with 2,000 cases (column 6) which require in-depth analysis. The number of cases finalised every year varies. Although the FIU appears to be making significant efforts to ensure that the backlog of cases from previous years is cleared, the evaluators consider that the resources of the analytical departments in terms of IT tools are not adequate to handle the volume of generated cases. This has resulted in a situation where a considerable number of cases are brought forwarded to successive year(s)(column 5), thereby potentially delaying the analysis of higher-risk cases. The lack of analytical tools and insufficient training may also have an impact on the quality of the analysis.

429. The figures in Table 18 below indicate the number of disseminations to competent authorities.

Table 18: Number of disseminations to competent authorities

YEAR	Total number of cases dealt with during the year[68]	Cases finalized by DAPI and approved by a decision of the Board			Total disseminations to the law enforcement authorities				Percentage of disseminations compared with the number of cases dealt with during the year
		Total	From which, finalized with keeping in evidences of the cases held in abeyance	The rest of the decisions	ML	FT	Other	Cases to GPO, acc. to art. 8 para. 5&6 (cases relating to requests for information by the GPO to the FIU)	
1	2	3	4	5	6	7	8	9	10
2008	3259	1669	-	1669	796			201	30,6%
					709	10	77		
2009	3055	1060	-	1060	505			201	23,1%
					366	14	125		
2010	1878	1198	-	1198	265			259	27,9%
					175	17	73		
2011	1595	1468	583	885	311			257	35,6%
					207	6	98		
2012	1775	3157	2338	819	384			327	40,0%
					340	6	38		
2013	1619	966	305	661	298			113	25,4%
					188	3	107		

430. A number of observations may also be made in relation to the total number of disseminations made by the FIU to law enforcement authorities (columns 6, 7 and 8 of Table 18 above). From a statistical perspective, it appears that very few cases are disseminated for further investigation when compared with the number of cases dealt with on a yearly basis. The percentage of cases disseminated to law enforcement authorities on the basis of finalised cases is slightly higher (for 2008-2009 almost 50% of the cases were disseminated). However, the authorities pointed out that they also disseminate information to the GPO following a request for information from the GPO pursuant to Article 8 paras. 5 and 6 of the AML/CFT Law. Table 19 indicates the number of prosecutions and convictions emanating from a FIU notification. It is the view of the FIU that the low number of cases finalised by the GPO, indictments and convictions emanating from FIU notifications is the result of issues which are beyond the FIU's purview.

[68] In the total cases are included also the requests submitted to the FIU by GPO based on art. 8 para. 5 and 6 of Law no. 656/2002, republished

Table 19: Outcome of FIU disseminations to law enforcement authorities[69]

Year	Disseminations to law enforcement authorities	Finalised cases by the GPO	Indictments	Convictions
2008	796	37	37	-
2009	505	64	2	-
2010	265	14	14	-
2011	311	7	7	-
2012	384	36	7	-
2013	298	-	-	-

431. The FIU referred to a number of initiatives undertaken in conjunction with the GPO in order to improve the effectiveness of the dissemination process and the quality of analytical reports. A protocol of cooperation was signed in January 2009 by the General Prosecutor and the President of the FIU for the purpose of organising regional seminars on issues related to prevention of ML/FT. The purpose of the training, which was attended by eighty one prosecutors, was to explain the analytical process of the FIU, the type of information held by the FIU, the means by which law enforcement authorities may obtain information and to identify the problems encountered by prosecutors in the investigation of ML/FT offences. In addition, meetings were held on a regular basis between the FIU and the GPO to discuss money laundering typologies identified by the FIU and issues relating to specific cases notified to the GPO by the FIU. Notwithstanding the various endeavours undertaken by the FIU and the GPO in resolving the issues which have a negative impact on the dissemination process, it is evident, from the results, that further efforts are needed.

432. The large majority of cases analysed by the FIU relate to ML connected to tax evasion (65% of the cases in 2010, 79% in 2011 and 74% in 2012) suggesting that the focus on the analysis of ML cases related to predicate offences involving corruption and organised crime, such as drug trafficking, human trafficking and cybercrime, may perhaps not be sufficiently developed. The authorities pointed out that tax evasion is the predicate offence which generates most of the criminal proceeds in Romania. However, the evaluation team retains some concern that reporting entities may primarily submit STRs relating to tax evasion since the typologies involved may be easier to identify.

433. With respect to FT cases, Table 18 above indicates that the FIU forwarded a total of fifty six notifications to the GPO and RIS. None of these cases have resulted in an indictment or conviction. It is not clear what the outcome of the notifications was. According to the representatives of the RIS, none of the notifications forwarded by the FIU were found to present a case of FT, after having carried out intelligence investigations. Reference was made to cases which involved persons who were allegedly listed on sanctions lists. Following investigations, the RIS confirmed that the cases did not involve the person on the list and therefore no further action was taken.

434. As part of its core analytical function, the FIU is empowered to suspend the execution of a suspicious transaction for forty-eight hours. Statistics provided by the FIU (see Table 20 below) show an increase in the number of reports submitted by reporting entities on unperformed transactions. From a total of 73 reports of such transactions, the FIU suspended 31 transactions. The total value of the transactions which were suspended was EUR 27,855,436, most of which was seized by an order of the GPO.

[69] Information included in the Annual Activity Reports of the FIU, including feedback received annually from GPO at the beginning of the following year the notifications were submitted

Table 20: Number of reports submitted by reporting entities on unperformed transactions

Year	Reports on unperformed transactions suspected of ML/TF	No. decisions of suspension taken by FIU	Amounts subject to suspension	Amounts seized by GPOHCCJ
2008	3	3	198.420 euro	87.000 euro
2009	5	5	1.329.598 euro	1.290.077 euro and 42.622 USD
2010	12	6	829.171 euro and 234.104 RON	654.000 euro and 234.104 lei (in addition, the National Agency for Fiscal Administration applied seizure measure for 170.871 euro)
2011	10	4	5.102.128 euro	5.010.289,70 euro
2012	23	6	1.480.980 euro, 100.000 USD and 29.580 lei	1.380.980 euro 600.000 USD
Jan-July 2013	20	7	9.646.920 euro 40.525.448 lei 72.750 USD	40.525.448 lei 9.550.000 euro
Total	**73**	**31**	18.587.217 euro, 40.789.132 lei (equivalent 9.142.650 euro), 172.750 USD (equivalent of 125,569 euro) = **27.855.436 euro**	17,972.346 euro+642.622 USD (467,203 euro)+40,759.552 lei (9,134.905 euro) = **27,574.454 euro**

435. Overall, the evaluators concluded that the FIU is in possession of a large volume of valuable information which is not being utilised in the most effective manner. The evaluators welcome the setting up of the preliminary analysis department, which has gone some way in reducing the backlog of STRs that had not been previously received any attention. However, a number of factors hinder the adequate handling of STR information – the online reporting system is still in the early stages of implementation and STR information is received and inputted manually in the databases. The analysis procedure may be affected by the absence of analytical tools.

2.5.2 Recommendations and comments

Recommendation 26

436. 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 no longer be involved in the decision making process of core operational functions of the FIU. This includes the receipt, analysis and dissemination functions and also related domestic and international co-operation in this context. 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.

437. Should the authorities nevertheless determine that the Board is to be retained, the latter should assume only higher-level responsibilities with a broader co-ordination and oversight role, possibly

in the context of the national AML/CFT 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/CFT sphere (such as some of the authorities represented on the current Board but possibly other relevant institutions).

438. 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 only of representatives, at the appropriate level, of institutions which have a significant role in the co-operation and coordination of AML/CFT issues. 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.

439. 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, who are specialist staff with the appropriate expertise required to perform these functions.

440. The nomination process 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.

441. The requirement to establish solid grounds of ML/FT in order to disseminate financial information to competent authorities should be removed.

442. Efforts should be made by the authorities concerned to ensure that the process in train to digitalise information on real estate in Romania is concluded within the shortest period of time.

443. The 30 day period for the submission of additional information by reporting entities should be reduced[70].

444. The obligation to maintain FIU information confidential by FIU staff after they cease to be employed by the FIU should apply for a sufficiently longer period of time to ensure that investigations are not prejudiced[71]. Clear confidentiality obligations should be introduced for the members of the Board[72].

445. 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 reporting entities, especially banks.

446. 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

[70] The AML Law has now been amended to provide that reporting entities are required to provide information within 15 days for requests which are not urgent and 48 hours for urgent requests. The amendment was adopted by the Romanian Parliament in November 2013 but is still not in force. Amendments will come in force once these are signed by the President of Romania.

[71] The AML Law now no longer provides that confidentiality obligations are extinguished after 5 years from termination of the employment of a member of the FIU staff. The amendment was adopted by the Romanian Parliament in November 2013 but is still not in force. Amendments will come in force once these are signed by the President of Romania.

[72] This deficiency was addressed after the on-site visit, in October 2013. The FIU Code of Conduct was amended and now obliges the Board members of the FIU to the same confidentiality regime imposed on the other FIU members (see Order No 177/23 Oct. 2013)

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

Recommendation 30

447. Analytical tools should be introduced as a matter of priority.

448. Internal training to FIU staff, especially financial analysts, should be provided on a more regular basis.

449. More adequate premises should be sought for the FIU.

450. The members of the Board (if the Board is retained) should receive more training on AML/CFT issues.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**PC**	• 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. **Effectiveness** • 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;

2.6 Law enforcement, prosecution, and other competent authorities—the framework for the investigation and prosecution of offenses, and for confiscation and freezing (R.27 and 28)

2.6.1 Description and analysis

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

451. Recommendation 27 was rated LC in the 2008 MER. The only deficiency noted related to effectiveness. The evaluators expressed reservations on the effectiveness of money laundering investigations given that there were few convictions.

Legal framework

452. The legal framework governing ML/FT investigations is set out under the AML/CFT Law, the Criminal Procedure Code, Law No. 508/2004 (DIOCT) and Government Emergency Ordinance No. 43/2002 (NAD).

453. Other laws governing issues related to R. 27 include:
- Law no.39/2003 for prevention and combating organised crime;
- Governmental Decision no. 594/June 4, 2008 on approval of the Regulation for applying the provisions of the Law no. 656/2002 for prevention and sanctioning money laundering;
- Law 78/2000 on detection of corruption;
- Law 63/2012 modifying the criminal code (extended confiscation);
- Law 364/2004 on judicial police;

Designation of Authorities ML/FT Investigations (c. 27.1):

454. Criminal investigations in Romania, including investigations of ML, are conducted by the judicial police investigation bodies[73], except for certain serious offences which are required to be investigated by the prosecution[74]. In those cases which fall under the competence of the judicial police, including ML cases, the criminal investigation is supervised by the prosecution.

455. ML investigations are conducted by various bodies within the General Prosecutor's Office, depending on the nature of the predicate offence. The four main bodies involved in ML cases are:

- The Department for Investigating Organised Crime and Terrorism (DIOCT), which is responsible for the investigation and prosecution of organised crime and terrorism.
- The National Anticorruption Directorate (DNA), which is responsible for the investigation and prosecution of crimes involving corruption[75].
- The Criminal Investigation Section within the General Prosecutor's Office (Sectia de Urmarire Penala - SUP).
- Prosecutors' Offices attached to Appellate Courts and Tribunals, where the predicate offence does not fall within the competence of the SUP, DIOCT or DNA.

456. Within the Judicial Police, the following two directorates are mainly responsible for the investigation of ML cases:

- The ML Department of the Fraud Investigation Directorate (FID), which falls within the General Directorate for Criminal Investigations. All judicial police officers investigate M/L offences. Delete ref to department.
- The Directorate of Combating Terrorism Financing and Money Laundering (DCCOA), which falls within the General Directorate for Countering Organised Crime.

457. Investigations of FT offences are conducted exclusively by DIOCT.

458. ML/FT investigations in Romania are conducted both on the basis of notifications disseminated by the FIU and at the competent bodies' own initiative. As explained under R. 26,

[73] Article 207 of the CPC

[74] Article 209 of the CPC

[75] Since 26 June 2013 the DNA is no longer competent to investigate financial crimes as predicate offences, such as tax evasion and fraud.

all FIU notifications are disseminated to the General Prosecutor's Office. These notifications are then distributed to the competent body. Table 21 below indicates the manner in which FIU notifications were distributed in the period 2008-2013. The statistics were provided only after repeated requests by the evaluation team, suggesting that they were not readily available and had to be compiled manually. Additionally, the figures still appear to be incomplete (e.g. the figures in rows 1 to 7 do not add up to the number of ML notifications sent to the GPO and no information was made available under rows 6 and 7) indicating that the manner in which the GPO distributes FIU notifications is not entirely systematised.

459. A designated prosecutor within the GPO receives and evaluates all FIU notifications and assigns the notification to the appropriate competent body. It is not clear whether this procedure is formalised. Considering the complex manner in which competence for the investigation of ML cases is distributed in the CPC (as explained further on in the analysis), this raises some concern.

Table 21: Distribution of FIU Notifications by the GPO to ML/FT Law Enforcement Authorities in Romania

	2008		2009		2010		2011		2012		2013	
	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT	ML	FT
ML notifications to GPO (art.8(1))	709	10	366	14	175	17	207	6	340	6	188	3
1. Sectia de Urmarire Penala (SUP)	1	0	6	0	1	0	7	0	2	0	30[76]	0
2. Tribunal Prosecutor's Office	203	0	188	0	87	0	106	0	135	0	205	0
3. Appellate Court Prosecutor's Office	2	0	15	0	4	0	2	0	6	0	0	0
4. DIOCT	16[77]/26[78] Total: 42	10	19/31 Total: 50	14	8/39 Total: 47	50	6/31 Total: 37	6	15/40 Total: 55	6	26/32 Total: 58	3
5. DNA	62	0	95	0	81	45	58	0	137	0	85	0
6. ML Department of Fraud Investigations Directorate (Judicial Police)	NA	0	NA	0	NA	0	NA	0	NA	0	NA	0
7. Directorate of Combating Terrorism Financing and Money Laundering (Judicial Police)	NA	0	NA	0	NA	0	NA	0	NA	0	NA	0

[76] Out of this, in 3 cases the notification was directly registered at SUP and 27 cases, containing FIU notifications, have been taken for investigations from inferior bodies.

[77] Transmitted directly to DIOCT by GPO

[78] Transmitted indirectly to DIOCT (e.g., by declining competence)

460. During the interviews with the various representatives met onsite, the evaluators were informed that the majority of notifications were assigned to the Prosecutors' Offices attached to Tribunals and investigated by FID under the supervision of the prosecutors.

DIOCT

461. The DIOCT was set up by Law No. 508/2004 as a specialised structure within the General Prosecutor's Office. It operates both as a central structure and through territorial offices. Pursuant to Article 12 of Law No. 508/2004, DIOCT is competent to investigate and prosecute money laundering where the criminal proceeds originate from a predicate offence falling within the competence of DIOCT. The predicate offences falling within the competence of DIOCT are the following:

- Offences related to organised crime;
- Offences against state security;
- Terrorism offences, including financing of terrorism;
- Cybercrime;
- Offences related to intellectual and industrial property;
- Drug trafficking;
- Offences related to the capital market;
- Trafficking in tissues, cells and human organs;
- Smuggling and other customs offences.

462. DIOCT is not competent to investigate any of the above offences, where they fall within the competence of the DNA[79].

463. The ML investigations carried out by DIOCT are indicated in the table below[80].

Table 22: ML Investigations prosecutions, convictions carried out by DIOCT

	Investigations[81]		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2008	966	NA	17	72	5	6
2009	692	NA	18	130	4	6
2010	409	NA	23	106	3	4
2011	250	NA	33	157	7	35
2012	229	NA	37	194	7	22
2013[82]	261	NA	22	200	3	6

464. The figures indicate that DIOCT is fairly active in the investigation of ML offences. However, there appears to have been a stark decrease in the number of investigations, especially after 2010.

[79] According to Article 45 (4^1) of the Criminal Procedure Code which entered into force on 25 November 2010, in the case of indivisibility or connections between crimes which fall within the competence of both DNA and DIOCT, the body that is the first to have been notified of the crimes will retain competence to investigate the crime.

[80] The authorities indicated that following a full review of ML pending cases carried out by the GPO in September 2013 it was determined that there were 358 pending ML cases (involving 822 natural persons and 131 legal persons) within the DIOCT.

[81] The figures in this column represent the number of on-going investigations during that year (this includes new cases started in that year).

[82] First semester

While the number of investigations has decreased, the number of prosecutions and convictions has gradually increased. It was not possible to provide separate statistics for the number of investigations carried out as a result of an FIU notification and investigations initiated independently of an FIU notification. However, since the number of FIU notifications received by DIOCT is approximately 45 per year, (see Table 22 above), it is clear that DIOCT mainly initiates ML investigations independently of FIU notifications. The representatives of DIOCT indicated that such investigations are carried out both in conjunction with and independently of the investigation of a predicate offence. Various examples of investigations for autonomous ML were referred to. For instance, in one case, the representatives of DIOCT conducted a financial investigation into the financial affairs of a drug trafficker (who was not convicted of any drug offences). In the course of the investigation, it was noted that purchase of real estate and other property by the person could not have been funded by legal income. The person was indicted for a ML offence and eventually convicted.

465. DIOCT investigates all FT notifications disseminated by the FIU to the GPO. The number of investigations carried out by DIOCT are as follows:

Table 23: Number of TF investigations carried out by DIOCT

	2008	2009	2010	2011	2012	2013
FT investigations	10	14	50	6	6	3

466. The figures correspond to the number of FT notifications submitted by the FIU, except for 2010 where the FIU submitted 17 FT notifications. It appears that the other cases (33) were initiated by the DIOCT.

DNA

467. The DNA was set up by Government Emergency Ordinance No. 43/2002 as a structure with legal personality within the framework of the General Prosecutor's Office to combat corruption. It is a central office based in Bucharest and exerts its attributions on the entire territory of Romania through prosecutors specialised in combating corruption. Unlike DIOCT, DNA has its own judicial police force.

468. Pursuant to Article 13(1) of the GEO No. 43/2002, the DNA is responsible for the investigation and prosecution of corruption offences set out under Law No. 78/2000 on Preventing, Discovering and Sanctioning Corruption Deeds. The DNA is competent to investigate ML offences where the proceeds originate from corruption offences in terms of Article 17(e) of Law No. 78/2000.

469. The ML investigations carried out by DNA are indicated in the table below[83].

Table 24a: Number of prosecutions and convictions carried out by DNA on the basis of a FIU notification

	Investigations[84]		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2008	NA	NA	**3**	**15**	**0**	**0**
2009	NA	NA	**1**	**2**	**0**	**0**
2010	NA	NA	**3**	**8**	**0**	**0**
2011	NA	NA	**4**	**14**	**0**	**0**
2012	NA	NA	**1**	**1**	**0**	**0**
2013	NA	NA	**2**	**5**	**2**	**6**

Table 24b: Number of investigations carried out by DNA

	Investigations		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2008	20	NA	6	23	0	0
2009	63	NA	9	27	0	0
2010	47	NA	11	26	0	0
2011	62	NA	21	91	0	0
2012	97	NA	20	52	8	15
2013	145[85]	NA	9	25	8	18

470. It was not possible to provide separate statistics for the number of investigations carried out as a result of an FIU notification and investigations initiated independently of an FIU notification. It is therefore not clear whether FIU notifications are being effectively utilised by the DNA. In the period under review a total of 518 FIU notifications were assigned to the DNA by the GPO. However, the number of ML investigations carried out by the DNA for the same period only amounted to 434. The representatives of the GPO explained that this discrepancy is due to the fact that some of the notifications sent by the FIU related to on-going investigations.

471. In addition to the above investigations, the DNA also conducted a number of ML investigations independently of an investigation of a predicate offence. The number of convictions resulting from such investigations are shown in Table 25 below.

Table 25: Number of convictions resulting from ML investigations

Year	Convictions	Persons	Confiscations/orders to pay damages
2008-2011	N/A	N/A	N/A
2012	8	15	- 1 case: it was disposed the confiscation of the amount of 575.592 RON - 6 cases: it was disposed orders to pay damages to the civil parts for all the offences which generated a damage for which they were indicted (in this case the confiscation is no longer disposed)
2013 (till 24th of	7	24	- 2 cases: it was disposed the confiscation

[83] The authorities indicated that following a full review of ML pending cases carried out by the GPO in September 2013 it was determined that there were 127 pending ML cases within the DNA.

[84] For the number of investigations see table below since the DNA does not maintain separate statistics

[85] First semester

May)			of: (1) an apartment; (2) two cars and 40.000 RON - 5 cases: it was disposed orders to pay damages to the civil parts for all the offences which generated a damage for which they were indicted (in this case the confiscation is no longer disposed)

SUP

472. Pursuant to Articles 209 and 29 of the Code of Criminal Procedure, the Criminal Investigation Section within the General Prosecutor's Office is responsible for the investigation of ML offences committed by:

- senators and deputies;
- members of the Government;
- judges of the Constitutional Court, members, judges, prosecutors and financial controllers of the Court of Accounts, by the president of the Legislative Council and by the People's Advocate;
- marshals, admirals, generals and quaestors;
- the chiefs of religious orders established under the law and by the other members of the High Clergy, who are at least bishops or equivalent;
- judges and assistant magistrates of the Supreme Court of Justice, by the judges of the courts of appeal and of the Military Court of Appeal, as well as by the prosecutors of the prosecutor's offices attached to these courts.

473. The SUP maintains discretion to conduct investigations of any ML cases as it deems appropriate. The authorities explained that due to the low jurisdiction of the SUP in ML investigations, it has proceeded to take over cases within the Tribunal and Court of Appeal Prosecutor's Office pursuant to Article 209 paragraph 4^1 of the CPC[86].

[86] **Art.209 par. 4^1 CPC.**

(4 ^ 1) The prosecutors within the hierarchically superior prosecutor's offices can take over, in the view of prosecution, the cases from the prosecutor's offices hierarchically inferior, by order of the head of the superior prosecutor's offices when:

a) the impartiality of the prosecutors may be impaired due to circumstances of the case, the local enemies or quality of parties;
b) one party has a relative or marriage up to the fourth degree including among the prosecutors or judges or court clerks, judicial assistants or clerks of the court;
c) there is the danger of disturbing the public order;
d) prosecution is prevented or hindered due to the complexity of the case or other objective circumstances, with the consent of the prosecutor who performs or supervises the prosecution.

(4 ^ 2) In cases taken as provided in par. 4 ^ 1, prosecutors in the superior prosecutor's office can refute prosecutor's acts and measures of the lower level if they are contrary to law, and may perform any of their duties.

474. The number of ML investigations carried out by SUP is shown in Table 26 below[87].

Table 26: investigations carried out by the Criminal Investigation Section of the General Prosecutor's Office (Sectia de Urmarire Penala) including a ML component and the prosecutions, convictions, proceeds frozen/seized and confiscated as a result of such investigations

	Investigations		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2008	3	NA	0	0	NA	NA
2009	11	NA	0	0	NA	NA
2010	11	NA	0	0	NA	NA
2011	26	NA	1	5	NA	NA
2012	19	NA	2	13	NA	NA
2013	10[88]/32[89]	20/57	1	1	NA	NA

475. The SUP was not in a position to provide separate statistics on the number of ML investigations initiated on the basis of a FIU notification and on the number of ML investigations independently of an FIU notification (except for 2013).

Prosecutors' Offices attached to Appellate Courts and Tribunals

476. The Prosecutors' Offices attached to Tribunals is competent to investigate ML offences pursuant to Articles 209 and 27 of the Code of Criminal Procedure, unless the case falls within the competence of any other law enforcement body. The majority of FIU notifications are assigned to the Prosecutors' Offices attached to Tribunals. The investigation in these cases is carried out by the Fraud Investigation Directorate (FID) of the Judicial Police under the prosecutors' supervision (for further information on FID see analysis below).

477. Pursuant to Articles 209 and 281 of the Criminal Procedure Code, the Prosecutors' Office attached to Appellate Courts is competent to investigate ML offences committed by:

- judges of first instance courts and tribunals, by prosecutors of the prosecutor's offices attached to Appellate courts, as well as by public notaries;
- judges, prosecutors and financial controllers in the regional chambers of accounts, as well as by financial controllers of the Court of Accounts;
- executors appointed by judges.

478. The number of ML investigations carried out by the Prosecutors' Offices attached to Appellate Courts and Tribunals is shown in Tables 27 and 28 below[90].

Table 27a: Investigations, prosecutions, convictions carried out by the Tribunal Prosecutor's Office including a ML component

	Investigations		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2008	741	NA	3	11	1	6

[87] The authorities indicated that following a full review of ML pending cases carried out by the GPO in September 2013 it was determined that there were 43 pending ML cases within the SUP.

[88] Investigations independently of an FIU notification

[89] Investigations on the basis of an FIU notification

[90] The authorities indicated that following a full review of ML pending cases carried out by the GPO in September 2013 it was determined that there were 923 pending ML cases within the prosecutor's offices attached to tribunals and appellate courts.

2009	1130	NA	3	7	0	0
2010	1102	NA	3	6	1	2
2011	845	NA	10	28	4	4
2012	886	NA	26	56	2	2
2013	883[91]	NA	7	10	3	9

Table 27b: prosecutions, convictions carried out by the Tribunal Prosecutor's Office initiated on the basis of a FIU notification

	Investigations[92]		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2008	NA	NA	**1**	**1**	**0**	**0**
2009	NA	NA	**0**	**0**	**0**	**0**
2010	NA	NA	**0**	**0**	**0**	**0**
2011	NA	NA	**1**	**1**	**1**	**1**
2012	NA	NA	**2**	**4**	**0**	**0**
2013	NA	NA	**1**	**1**	**1**	**1**

Table 28: Investigations carried out by the Appellate Court Prosecutor's Office including a ML component and the prosecutions and convictions

	Investigations		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2008	15	NA	0	0	0	
2009	42	NA	0	0	0	
2010	61	NA	0	0	0	
2011	26	NA	2	3	0	
2012	39	NA	4	15	0	
2013	22[93]	NA	2	9	0	

479. Together with FID, the Tribunal's Prosecutor's Office conducts the highest number of ML investigations in Romania. It appears that the large majority of these investigations are initiated independently from a FIU notification. The number of prosecutions resulting from the investigations conducted by the Tribunal Prosecutor's appears to be staggeringly low. It is not clear to the evaluation team what the specific reasons for this remarkable discrepancy are. However, a number of general issues which hinder the effective implementation of Recommendation 27 (discussed under the effectiveness section) may also partly be the cause of the low number of prosecutions in this case.

FID

480. Following an amendment to Article 209 of the Criminal Procedure Code in October 2010, the investigation of ML may be conducted by the judicial police under the supervision of the prosecution (often at Tribunal level). Prior to this amendment, investigations could only be conducted by the prosecution. As a result, the prosecutors could not cope with the large volume of ML investigations. This development has relieved the prosecutors from a significant burden and resulted in ML investigations being conducted in a more expedited fashion.

[91] First semester

[92] For the number of investigations see table above since the Tribunal's Office does not maintain separate statistics

[93] First semester

481. The ML Department of the Fraud Investigation Directorate (FID), which falls within the General Directorate for Criminal Investigations of the Judicial Police, is the main body responsible for the investigation of ML offences under the supervision of the Prosecutors' Offices attached to Tribunals. Since, the investigators within FID are specialised in financial investigations, ML investigations have definitely benefited from the change in policy.

482. The table below shows the number of investigations conducted by FID.

Table 29: ML investigations, carried out by ML Department of the Fraud Investigations Directorate on the basis of an FIU notification and prosecutions, convictions

	Investigations		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2008	324	802	19	32	2	5
2009	398	1156	12	27	1	1
2010	260	729	14	26	2	3
2011	287	859	24	43	1	1
2012	279	877	48	105	4	6
2013	205	672	24	64	1	2

Table 30: ML investigations carried out by ML Department of the Fraud Investigations Directorate independently of an FIU notification and the prosecutions and convictions

	Investigations		Prosecutions		Convictions	
	cases	persons	cases	persons	cases	persons
2008	429	687	9	16	N/A	N/A
2009	112	190	12	17	N/A	N/A
2010	251	345	13	21	N/A	N/A
2011	423	659	34	59	N/A	N/A
2012	384	512	43	68	N/A	N/A
2013	180	356	48	87	N/A	N/A

483. FID indicated that certain information such as the number of convictions and confiscation of proceeds is generally maintained by the Ministry of Justice. Such figures are not available to FID since an integrated case/criminal proceeds management system does not exist in Romania.

484. FID conducts the highest number of ML investigations in Romania. The number of prosecutions resulting from FID investigations is modest. During the on-site mission, the evaluation team was satisfied with the level of knowledge and expertise of the representatives from FID. It was clear from the responses provided that the FID is being managed in a serious and professional manner.

DCCOA

485. The other body within the Judicial Police which conducts ML investigations is the Directorate of Combating Terrorism Financing and Money Laundering (DCCOA), which falls within the General Directorate for Countering Organised Crime. The DCCOA conducts ML investigations related to organised crime under the supervision of DIOCT.

486. No statistics were provided by the DCCOA on the number of ML investigations conducted.

Ability to Postpone/Waive Arrest of Suspects or Seizure of Funds (c. 27.2):

487. The authorities indicated that in terms of Articles 136 and 163 of the Criminal Procedure Code, which provide for the powers of arrest and freezing of funds, the prosecutor conducting or

supervising the investigation determines the point in time when a suspect is to be arrested or funds are to be frozen.

Additional Element—Ability to Use Special Investigative Techniques (c. 27.3):

488. The special techniques that can be used in the context of a ML/FT investigation are undercover investigators (Article 224^1 of the Criminal Procedure Code), wiretapping (Article 91^1 of the Criminal Procedure Code), locating a person by GPS (Article 91^4 of the Criminal Procedure Code), remote access to a suspect's computer (Article 35(c) of Law no. 656/2002), real time surveillance of banking accounts (Article 35(a) of Law no. 656/2002) or controlled delivery (Article 35(d) of Law no. 656/2002)[94].

Additional Element—Use of Special Investigative Techniques for ML/FT (c. 27.4):

489. The authorities could not provide examples of instances where special investigation techniques were used since no such records are maintained. However, they pointed out that any complex investigation requires the use of special investigative techniques (the most commonly used are physical surveillance, account surveillance, wire-tapping, protected witnesses and undercover investigator. When needed, investigators use surveillance of electronic communication and access to electronic systems (if perpetrators use such kind of systems). Physical surveillance is ordered by the judicial police or the prosecutor, account surveillance, protected witness and undercover investigator are authorized by the prosecutor and the other special investigation techniques are authorized by the judge based on complexity of the case and the real need for using these techniques.

Additional Element—Specialised Investigation Groups and Conducting Multinational Cooperative Investigations (c. 27.5):

490. It does not appear that any permanent or temporary groups composed of representatives from various law enforcement bodies have been set up to investigate the proceeds of crime.

491. Cooperative investigations for ML/FT with foreign competent bodies have been carried out in terms of Law 302/2004 which provides for cooperation on the following:

a) spontaneous exchange of information (Article 165);
b) controlled deliveries (Article 166);
c) covert operations (Article 167);
d) cross border observations (Article 169); and
e) confiscation (Article 170).

Additional Elements—Review of ML and TF Trends by Law Enforcement Authorities (c. 27.6):

492. The authorities explained that the GPO has issued an order to ensure that accurate statistical data is maintained by prosecutor. The evaluators have concerns as to the effective implementation of this order, in view of the fragmented manner in which statistics on ML investigations were provided. The order requires designated Prosecutors within the Prosecutor's Office attached to the High Court of Cassation and Justice to carry out a review of the statistics every six months. The review is to consist of the analysis of all the indictments issued in order to identify evolving

[94] In the latest report issued by the European Commission to the European Parliament and Council on Progress in Romania under the Co-operation and Verification Mechanism (February 2014) reference is made to concerns by DNA and DIOCT regarding new restrictions concerning special investigative techniques, in particular for investigating Ministers. For further information see report on page 9 at the following link: http://ec.europa.eu/cvm/docs/swd_2014_37_en.pdf

criminal patterns. The results of this review are to be shared with the Prosecutors' Offices and the FIU of Romania.

493. In addition to the review conducted by the GPO, within the context of the national strategy for Preventing and Combating Money Laundering and Terrorism Financing, the FIU gathers information from various entities and stakeholders involved in the prevention of ML/FT to identify ML/FT methods, techniques and trends. The results of the analysis carried out by the FIU are shared between the various authorities. Further information on the national strategy may be found under Recommendation 31.

Recommendation 28 (rated C in the 3rd round report)

Ability to Compel Production of and Searches for Documents and Information (c. 28.1):

494. Section VII of the Criminal Procedure Code provides for the powers of criminal investigation bodies to confiscate and perform searches to secure any object or writing which may serve as evidence during a criminal trial. Any object or writing that may serve as evidence can be confiscated. This covers all the data and information referred to in Criterion 28.1.

495. In particular, Article 96 provides for the seizure of articles to be used as evidence. In terms of Article 97 any natural or legal person who is possession of an object which may be used as evidence is required to produce such object at the request of the criminal investigation body. Where the object to be used as evidence is not produced voluntarily, Article 99 empowers the criminal investigation body or the court to order the forced confiscation of the object. Pursuant to Article 100, the criminal investigation body may search a person or property to gather evidence, either when this is necessary or when the person holding the object denies the existence or possession of the object.

Power to Take Witnesses' Statement (c. 28.2):

496. Pursuant to Article 78 of the CPC, any person who is in possession of information related to a case may be heard as a witness during an investigation. This article is sufficiently wide to cover the requirement under Criterion 28.2.

Recommendation 30 (LEA)

Adequacy of resources to Law Enforcement and other AML/CFT investigative or prosecutorial authorities (c.30.1)

DIOCT

497. DIOCT was set up by Law No. 508/2004 (modified by GEO No 7/2005, 131/2006 and 54/2010). It is the only structure within the GPO specialised in the investigation of organised crime and terrorism. DIOCT has its own legal personality and manages its own budget. It is headed by a chief prosecutor and has both a central office in Bucharest and 15 territorial offices distributed around Romania.

498. The central structure of DIOCT is composed of 280 prosecutors, 200 administrative personnel and 40 specialised personnel. There are five different services within the structure each responsible for preventing and combating different crimes.

499. ML investigations are conducted by the Office for Countering Economic and Financial Crimes and Money Laundering situated within Service III for Preventing and Combating Economic and Financial Crimes.

500. FT investigations are conducted by the Office for Investigating Terrorism Crimes and Crimes related to Terrorism Financing situated within Service V for Preventing and Combating Terrorism and Crimes against National Security.

501. The independence and impartiality of prosecutors is governed by Law No. 303/2004.

DNA

502. DNA was set up by GEO No. 43/2002 as an entity with legal personality for the purpose of combating and investigating corruption. It is a central authority with its own budget within the GPO. It is headed by a chief prosecutor. Article 2 of GEO No. 43/2002 states that the DNA is independent in its relationship with the courts of justice, the prosecutors' offices and other public authorities. The DNA has its own judicial police.

503. As at May 2013, 523 staff were employed by DNA as follows:

- Prosecutors: total of 145 posts set out, 130 occupied (of which 6 prosecutors are now posted at other institutions);
- Personal assimilated magistrates: 1 post set out, 1 position occupied;
- Judicial police officers and agents: 170 set out, 168 filled;
- Specialists: from 55 set out, 51 employed (of which 1 specialist has a labour contract suspended)
- Clerks: 99 set out, 93 employed (of which 1 specialist on maternity leave)
- Drivers: 43 set out, 34 filled;
- Public: under 28 set out, 22 occupied;
- Contract staff: 25 set out, 24 employed (of which 1 reviewer on unpaid leave)

SUP, Prosecutors' Offices attached to Appellate Courts and Tribunals

504. In 2010 the General Prosecutor of Romania adopted an order requiring all Prosecutor's Offices to designate prosecutors specialized in investigating money laundering cases, tax fraud and smuggling and to provide dedicated training programmes for such purposes.

505. All criminal prosecutors that work within SUP, Prosecutors' Offices attached to Appellate Courts and Tribunals can investigate ML laundering offences. There are 844 prosecutors at SUP, Prosecutors' Offices attached to Appellate Courts and Tribunals, including chief prosecutors.

FID

506. The Fraud Investigation Directorate operates as a specialized unit within the General Inspectorate of Romanian Police, having as its main objective the prevention and combating of crime in the financial-economic field. It falls under the management and control of designated prosecutors, according to the provisions of the law. FID operates at a central and territorial level and has the following organisational structure:

- within the General Inspectorate of Romanian Police operates the Fraud Investigation Directorate, organised on services and specialized compartments in sectors and working lines;

- within the General Directorate of Bucharest Police operates the Fraud Investigation Service and the correspondent services within the sector police services;
- within the county police inspectorates operates the fraud investigation services, organised on sectors and lines of work and coordinated by the management of the county police inspectorates;
- in the county capital towns, depending on the operative situation, fraud investigation offices function, in the sub ordinance of the chief of the local police or fraud investigation compartments which are included in the county fraud investigation service.

507. ML investigations within FID are conducted by the Financial Criminality and Money Laundering Service. In total there are 92 officers responsible for the investigation of ML offences.

DCCOA

508. The Directorate for Combating Terrorism Financing and Money Laundering was set up by Ministry of Interior Order no. I/0582/30.06.2008 on 1 August 2008.

509. As at 2012 there were 32 positions of judiciary police officers at the central level and 161 positions of judicial police officers, all specialised in the field.

510. As from 2009, during the PHARE Project 2006/018-147.03.16.03, at the level of the General Inspectorate for Romanian Police – Directorate for Combating Organised Crime and at its territorial level, 50 working stations were procured needed for performing activities in the field of combating terrorism financing and money laundering.

Integrity of competent authorities (c.30.2)

511. No information was made available to the evaluation team on this criterion by DIOCT, DNA SUP and the Tribunal and Appellate Court Prosecutor's Office.

FID and DCCOA

512. Confidentiality is a requirement according to ML Law, in ML cases, but also it is a requirement according to Law No. 677/2001 for the protection of the persons regarding the processing of the personal data and the free circulation of such data, Law No. 182/2002 regarding the protection of classified information. The General Inspectorate of Romanian Police standardised the circuit of documents and data. Each police unit has its own Security Structure created in order to monitor and prevent data losses. When such cases occur, they are presented to all the subordinated structures in order to prevent such incidents. No data loss regarding ML cases was identified so far.

513. Law No. 360/2002 regarding the status of the police, Law No. 188/1999 regarding the status of public office workers, Government Resolution No. 991/2005 approving the Code of ethics and deontology of the policeman. Law No. 7/2004 regarding the Code of conduct of public office workers stipulate other obligations related to confidentiality and integrity.

514. According to Article 12 of Law 78/2000 "the utilisation, in any modality, directly or indirectly, of information that are not meant for publicity or allowing the access of unauthorized persons to these information" is a criminal offence and shall be punished by imprisonment from 1 to 5 years.

515. Additionally, the Anticorruption General Directorate has set up an integrity test in vulnerable areas. If a criminal offense is identified, the case is sent to the competent Prosecutors' Office.

Training for competent authorities (c.30.3)

516. In the reference period, the Public Ministry implemented several training programs aimed at increasing the efficiency of money laundering investigations.

517. Strengthening the operational capacity of Romanian law enforcement agencies to combat crime Romania economic and financial (FT 2007/19343.01.04, with a total budget of 270,000 euro), which included 4 training sessions of 5 days on financial crimes investigations for 70 specialists (30 prosecutors, 20 judges, 10 policemen and 10 experts) and ended by the release a common best practices manual. The implementation period was January to June 2009.

518. Continuing to strengthen the institutional capacity of the Public Ministry, especially in the fight against organised crime and terrorism (PHARE 2006/018 - 147.01.04 with a total budget of 887,500 euro), which aimed to organize internships of 3 months to relevant institutions in EU Member States for prosecutors, training seminars on combating organised crime and terrorism for all DIOCT prosecutors, as well as training seminars for trainers to ensure further dissemination of knowledge. The implementation period was 15 December 2008 - 30 November 2009.

519. Strengthening the practical and legal in Romania in the recovery of assets (FT Project 2007/19343.07.01/IB/JH 23 TL). The project's objective was to strengthen the effectiveness of national and international cooperation of Romanian judicial institutions in the recovery of proceeds of crime. Among the results were an analysis of the operational tools and mechanisms for freezing, seizure or confiscation of assets in order to identify existing and potential bottlenecks, especially in the international cooperation; a comparative analysis of Romanian and European legislation in the field; proposals to adapt the Romanian legal framework; recommendations to support the development of a national strategy to recover proceeds of crime and a handbook of national and international best practices.

520. Increasing the efficiency of law enforcement in the field of money laundering and asset recovery (HOME/2010/ISEC/AG/FINEC-021) aimed at strengthening the international judicial cooperation and developing the expertise of practitioners from the national authorities active in the field. Joint training sessions were held in order to increase effectiveness in combating money laundering and recovery and to implement relevant international instruments.

521. Developing professional financial investigators in Romania (HOME/ISEC/2010/AG/FINEC-022) had the overall objective of improving the investigative financial crime in Romania through capacity building of financial investigators, trained professionals to investigate all financial crimes, focusing on cases of serious crime and organised crime. The specific objectives of the program were the development of financial investigators through training based on scenarios and practical aspects encountered in real cases, developing a best practice guide detailing the steps of financial investigations and setting up a national program of training for financial investigators by developing a curriculum to be adopted by the National Institute of Magistracy and the Police Academy. Thus, 121 prosecutors, police officers and staff have been trained in financial investigations, while 20 prosecutors and police officers were trained to become trainers in this area.

522. All FID and DCCOA units are required to attend a monthly professional training, covering all the aspects of the fraud investigation work. When possible, external experts from FIU, NBR, NAFA and other competent authorities are invited. Money laundering is required to be discussed at least once in a year. Every year, centralised training for all AML Police Officers in Romania is organised. These training sessions are focused on practical aspects of the ML work, legal changes and inter-institutional and international cooperation. Speakers from all relevant authorities are invited in order to share their experience and improve cooperation. Periodically, meetings are held

with the prosecutors in order to share best practices in the field. When changes of legislation occur, training sessions are organised in order to disseminate the new legal provisions.

523. Despite the various training activities organised by the authorities it appears that further specialised and systematic training is required, especially within certain Prosecutors' Offices, on operational and legal issues regarding financial investigations.

Additional element—Special training for judges (c.30.4)

524. The authorities indicated that 20 judges received training relating to money laundering and financing of terrorism.

Recommendation 32 (LEA)

525. Since the third round, the authorities have modified their policies regarding statistics, and data and some breakdowns were available upon request regarding ML investigations, prosecutions and convictions. There is however room for improvement in ensuring that comprehensive statistics are being kept. For instance, the statistics maintained by prosecutors do not distinguish between ML investigations initiated on the basis of an FIU notification or independently.

Effectiveness and efficiency

526. During the on-site visit, the evaluators met with representatives from the SUP, DNA, DIOCT, Prosecutors' Offices, FID and DCCOA who all appeared to be very skilful and experienced in the investigation of ML/FT offences. Most representatives interviewed displayed a good knowledge of different ML typologies and vulnerabilities in Romania. They referred to the different techniques used in the investigation of ML, giving examples of how proceeds are identified and traced, for instance, in complex cases involving shell companies and numerous active bank accounts. Information was also provided on the manner in which cases are prioritised, such as for instance where the suspect had already been arrested or whether the losses could be recovered. However, the prioritisation of cases does not appear to be conducted in a systematic manner based on objective criteria.

527. The number of ML investigations has increased significantly in the period under review. However, the number remains modest compared to the significant number of proceeds generating offences (see Table 1 on Predicate Offences). This is also the case in relation to the number of investigations of autonomous ML. The number of prosecutions and convictions as a result of ML investigations also remains rather low, especially in the case of the Tribunal Prosecutor's Office (see the section on Effectiveness under Recommendation 1 for further information on this issue). The authorities pointed out that ML cases are often complex and as a result the investigative process is often lengthy. Furthermore, they consider that a large percentage of proceeds-generating crime relate to low level theft and other crimes which do not generate significant criminal proceeds and therefore do not give rise to the need to initiate concurrent ML investigations.

528. One of the main challenges in the investigation of ML faced by law enforcement bodies in Romania concerns the legal uncertainty as to whether the existence of a conviction for a predicate offence is necessary to obtain a conviction for ML. Despite recent jurisprudence of the courts confirming this principle (as discussed under Recommendation 1), it was evident that some representatives of ML/FT law enforcement bodies met onsite still operate under the assumption that the existence of a conviction for a predicate offence is a requirement for the prosecution of ML offences. Some indicated that this assumption derives from the fact that in the Constitution of Romania any property held by a person is presumed to have been acquired in a legal manner. Some representatives interviewed emphasised the fact that prosecution of ML without any

evidence of the predicate crime would constitute an abuse for which the prosecutor could be held liable. Concrete measures were taken at the Prosecutors' Offices level to customise the work for each specific case to ensure that evidence of the predicate offence is obtained. Additionally, in 2011 the GPO drafted detailed guidance regarding the autonomous nature of the ML offence and seminars were organised with a view to increasing awareness on this issue. However, it is evident that further efforts will be required in this area.

529. Another factor which significantly impacts on the outcome of law enforcement efforts is the complex manner in which competence for ML is assigned. As explained in the analysis of this recommendation and Recommendation 1, law enforcement bodies acquire competence of a case depending on the predicate offence or, for instance, the extent of the damage sustained or the nature of perpetrator involved in the offence. Various accounts were provided during interviews of cases where competence was transferred to a law enforcement body, following an intense investigation conducted by another law enforcement body, after establishing that the amounts involved exceeded the latter body's competence. The representatives interviewed expressed their frustration at the fact that often the case would be put on hold by the receiving law enforcement body once transferred, due to prior commitments. In some cases, after a period of time the statute of limitations would come into effect and the case would then have to be closed. In 2010, the CPC was amended (in particular Article 45(4^1)) to regulate the issue of competence between the DNA and DIOCT. Despite these changes the representatives interviewed all agreed that the issue of competence constituted a systemic problem and needed to be addressed urgently[95].

530. As mentioned in the analysis, a designated prosecutor within the GPO receives and evaluates all FIU notifications and assigns the notification to the appropriate competent body. The fact that this procedure is not formalised may negatively impact the manner in which reports are assigned to the appropriate body.

531. The authorities also pointed out that the current system does not allow for the separation of the financial investigation from the investigation concerning the predicate offence. As a result, in some cases, the ML offence would be overlooked. The majority of ML cases being investigated appeared to be part of a wider investigation concerning one or more predicate offences.

532. All representatives interviewed cited difficulties in conducting ML investigations in a timely and efficient manner due to limited human resources which are available to the authorities at a prosecutorial level and to the judicial police. This problem, the interviewees pointed out, has become particularly acute in recent year as a result of an increased emphasis on the identification, tracing and recovery of assets, which is often a time-consuming operation.

533. While acknowledging the fact that the 2010 amendment to the CPC has relieved the prosecution from a significant burden by shifting competence of (certain) ML cases to the judicial police (under the supervision of the Prosecutors' Offices attached to Tribunals), the representative of DNA and DIOCT were of the opinion that the competence of a further number of offences should be assigned to the Prosecutors' Office attached to Tribunals and the judicial police. Due to the number of cases required to be investigated by DIOCT and DNA, the investigation of certain urgent ML cases often has to be postponed due to limited resources, resulting in a large backlog of investigations. The representatives interviewed remarked that the managing prosecutors of both DIOCT and DNA have had to get involved in the operative aspects of investigations.

[95] After the on-site visit a new Criminal Procedure Code entered into force on 1 February 2014. The new CPC contains various provisions which seek to reduce the number of cases which require the transfer of competence of a case from one authority to another. In particular, reference was made to DIOCTArticle 281 dealing with situations of absolute nullity which now no longer refers to the material or personal competence of law enforcement bodies but only courts.

534. During discussions held on-site, other difficulties faced by law enforcement authorities in the operational stages of an investigation were highlighted. Some representatives interviewed referred to problems in identifying real estate property belonging to a suspected person since the real estate registry in Romania is not updated. Others referred to certain information databases only being available to the police and not to prosecutors directly. On a more serious note, some prosecutors referred to instances where banks were uncooperative in providing information, even though the law expressly provides for the power of the prosecution to request and obtain information. In these cases, search warrants had to be issued on the banks to enable prosecutors to seize documents. It was also pointed out that in some cases information provided by banks is not in electronic format, which causes delays in the analysis of the information provided.

535. Most representatives interviewed indicated that cooperation with the FIU was positive. However, different reviews were received on the adequacy of the output of the FIU. Some representatives indicated that the analytical reports of the FIU sometimes contained unsubstantiated conclusions. Others appeared to be satisfied with the level of analytical reports produced by the FIU. Nevertheless, there appeared to be general agreement that the FIU had improved considerably in recent years. As explained under Recommendation 1, the evaluation team retains concerns regarding the possible under-utilisation of FIU analytical reports.

536. According to the representatives of DIOCT, none of the FT notifications forwarded by the FIU were found to present a case of FT. However, they referred to a particular case where two individuals were found to be providing financial support to the Kurdish liberation party. DIOCT could not pursue the case since a nexus between the funding and an act of terrorism. The representatives of DIOCT pointed out that under Romanian law a person may be charge with FT only in those cases where the funding is directly linked to an act of terrorism. This issue is discussed in greater detailed under SR II.

537. Overall, the evaluators concluded that there is a lack of a clear overarching policy to target ML/FT offences, involving all the different authorities responsible for ML/FT investigations. As a result, investigative efforts to combat ML/FT are fragmented and have only led to modest results.

2.6.2 Recommendations and comments

Recommendation 27

538. In addition to the recommendations made under Recommendation 1 which have a direct bearing on law enforcement authorities, Romania should consider implementing the following measures:

- Formalise the procedure within the GPO for the distribution of FIU notifications to the appropriate competent authority. This could entail the establishment of a team of experts within the GPO responsible for the receipt and distribution of FIU notifications acting according to written procedures which set out time-frames and criteria on the basis of which distributions are to be made;
- Consider introducing a system of prioritisation of ML investigations based on objective criteria, possibly in cooperation with the FIU, to ensure that the most urgent and serious cases receive the highest attention;
- Increase the awareness of all law enforcement bodies regarding the investigation and prosecution of autonomous ML offences through, for instance, training activities and additional guidance on operational issues relating to financial investigations;

- Consider further simplifying the manner in which competences for ML investigations are attributed to avoid unnecessary transfers of competence from one law enforcement authority to another;
- Conduct periodical reviews to determine the reasons for the low number of prosecutions and convictions as a result of ML investigations, especially by the Tribunal Prosecutor's Office;
- Consider adopting measures to ensure that FIU reports are utilised to an appropriate degree by all law enforcement authorities. This should entail providing training to all law enforcements bodies on the purpose and content of FIU reports and the manner in which such reports can be used effectively in the course of an investigation;
- Consider setting up permanent or temporary groups specialised in investigating the proceeds of crime for the purpose of investigating, seizing and confiscating proceeds of crime.

Recommendation 30

539. The authorities should increase the number of financial investigators attached to prosecution offices to support investigations related to financial crime.

540. The authorities should also develop adequate and continuous training programmes to enhance the capacity of all law enforcement authorities to investigate ML cases and financial crime generally.

Recommendation 32

541. The statistics on ML/FT investigations maintained by the authorities should distinguish between investigations initiated on the basis of an FIU notification and investigations initiated independently by the authorities.

2.6.3 Compliance with Recommendations 27 and 28

	Rating	Summary of factors underlying rating
R.27	**LC**	**Effectiveness** • 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.
R.28	**C**	

2.7 Cross-Border Declaration or Disclosure (SR.IX)

2.7.1 Description and analysis

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

542. SR IX was rated partially compliant in the 3rd round MER on the basis of the following deficiencies:

- No clear power to stop or restrain cash where suspicion of ML/FT existed following a cash declaration;
- No clear power to stop or restrain cash where suspicion of ML/FT existed despite the fact that the cash did not exceed the threshold;
- No procedures were implemented to ensure that the public is aware that the cross-border transportation of cash exceeding the threshold is to be declared.

Legal framework[96]

- Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on control of cash entering or leaving the Community since 15 June 2007 (the Cash Control Regulation);
- Law no. 86/2006 on Customs Code of Romania (Customs Code) as amended and completed;
- Governmental Decision no. 707/2006 approving the rules for the implementation of the Customs Code;
- Government Decision no. 797/2007 for the completion of the Implementing Provisions of the Romanian Customs Code approved by Governmental Decision no. 707/2006;
- Customs Order no. 2028/19.09.2012 amending Customs Order no.7541/06.08.2007.

Mechanisms to Monitor Cross-border Physical Transportation of Currency (c. IX.1):

543. Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on control of cash entering or leaving the Community since 15 June 2007, applies directly in Romania as member of the EU. Pursuant to Article 3 of the Regulation, any natural person entering or leaving the Community and carrying cash of a value of EUR 10 000 or more is required to declare that s um to the competent authorities of the Member State through which he is entering or leaving the Community. The obligation to declare is not considered to have been fulfilled if the information provided is incorrect or incomplete. Article 3 corresponds to the requirement under SR IX to detect the physical cross-border transportation of currency and bearer negotiable instruments and meets the prescribed threshold under the essential criteria. As a

[96] MONEYVAL discussed the evaluation of SR IX in its EU Member States in the follow-up round during its 35th plenary meeting in April 2011. MONEYVAL noted that under the supranational approach, there is a pre-condition for a prior supranational assessment of relevant SR IX measures. It further noted that there is as yet no process or methodology for conducting such an assessment. Pending the FATF's 4th round, as an interim solution, MONEYVAL agreed that it will continue with full re-assessments of SR.IX in the remaining EU countries to be evaluated (which includes Romania). These countries will be evaluated using the non-supranational approach. Nevertheless, it noted that, for the purpose of Criterion IX.1, the EU has been recognised by the FATF as a supranational jurisdiction and therefore there is no obligation to comply with this criterion for intra-EU borders. Downgrading solely for the lack of a declaration/disclosure system is thus not appropriate. The other criteria that mention supranational approach (C.IX.4, C.IX.5, C.IX.7, C.IX.13 and C.IX.14) would not be evaluated against the requirements that apply to the supranational approach, and C.IX.15 would not be evaluated. The FATF was advised of this solution as it involves a departure from the language of the AML/CFT Methodology. At its plenary meeting in Mexico in June 2011 the FATF took note of this interim solution for EU Member States in MONEYVAL's follow-up round.

supranational jurisdiction, the requirements under SR IX do not apply to movement of cash within the borders of the EU.

544. Article 2 of the Cash Control Regulation defines cash as including currency and bearer negotiable instruments including monetary instruments in bearer form (such as travellers cheques), negotiable instruments that are either in bearer form, endorsed without restriction, made out to a fictitious payee, or otherwise in such a form that title thereto passes upon delivery as well as incomplete instruments (such as promissory notes and money orders) signed but with the payee's name omitted.

545. According to the Regulation, the declaration form model, as well as the instructions for the completion of the form, is to be established by the National Customs Authorities. The Romanian National Customs Authority (NCA) issued Order No. 2028/2012 to make the single European Union Cash Declaration (UCD) Form (issued by the European Commission) applicable within Romania. The form is available in both Romanian and English. The UCD form enables the NCA to gather data under EU and Romanian legislative provisions. At the time of the on-site visit, NCA was in the process of amending the Order to include a reference to the relevant legislation applied, within the form.

546. For the purpose of informing natural persons of their obligation to declare, the Romanian authorities explained that EU and national communication tools, such as information panels, brochures and roll-ups, were set up at entry/exit border points. Such information can also be obtained from the European Commission's and the NCA's official website. The declaration form is made available free of charge and upon request in all customs offices at the borders. Nevertheless, upon their arrival in Bucharest for the on-site mission, the evaluators only noted one public notice in the airport regarding the requirement to declare cash.

Request Information on Origin and Use of Currency (c. IX.2):

547. The Customs Code empowers the NCA to perform controls at the border to identify the existence of undeclared or hidden cash and to determine whether a declaration is false (article 10, Law no. 86/2006 on the Customs Code). Upon discovery of a false declaration or undeclared cash, the NCA may require the carrier to provide information, data or explanations regarding the cash (article 15 of Law 86/2006 on the Customs Code).

548. The standard form which needs to be completed includes information on (a) the origin of the currency; and (b) on the intended use. If a person refuses to cooperate, based on the Customs legislation, the NCA has the right to perform the customs control out of its own initiative, without the consent of the person (article 10(3) and (4) of the Law 86/2006 as amended and completed).

549. Where the findings of the NCA represent the constitutive elements of an offence, the customs agent concerned is required to draw up a control findings act, which will be communicated to and signed by the carrier. The act is included in a file which will be communicated for investigation by the competent authorities.

550. During discussions with prosecutors on-site, the evaluators were informed that Romanian legislation did not clearly provide for the power of the NCA to request and obtain information from the carrier and to restrain cash in case of failure to declare cash or in case of a false declaration.

Restraint of Currency (c. IX.3):

551. The NCA has no power to stop or restrain currency or bearer negotiable instruments for a reasonable time in order to ascertain whether evidence of ML or TF may be found where there is a suspicion of ML or TF.

552. The authorities pointed out that in terms of Article 100(7) of the Customs Code, where a suspicion of a criminal offence (including ML/FT) exists, customs agents immediately notify the Romanian Border Police. The Border Police may initiate a criminal investigation and issue a seizure order to restrain the cash, pending approval from the prosecution. The cash is restrained for as such as the seizure order is in force.

553. Although the system described by the Romanian authorities should work in practice, especially in view of the fact that it was said by the NCA that customs agents always have direct access to border police present at control points, essential criterion IX.3 is not fully met, since it requires Customs Authorities themselves to restrain cash by applying administrative rather than criminal measures.

554. Furthermore, in practice, it appears that when a suspicion of ML/FT is identified by the NCA, a report is made to the FIU rather than the Border Police. Indeed, the authorities met on-site pointed out that it is the FIU's responsibility to ascertain whether evidence of ML/FT may be found when a suspicion of ML/FT exists or when false declaration is identified. For this purpose, Article 5(12) of the AML/CFT Law requires the NCA to immediately notify the FIU where it identifies suspicions of ML/FT in the performance of its functions. The evaluators noted that the NCA only submitted 45 notifications to the FIU since 2008. The NCA does not keep statistics on the number of instances where the NCA reported suspicions of ML/FT to the Border Police for the purpose of issuing a restraining order.

555. With respect to the power of the NCA to stop or restrain cash where there is a false declaration (or incomplete or incorrect information is provided), the authorities referred to Article 653(1)(a) and (i) of GD No. 707/2006, which provides for the freezing or confiscation of cash by the NCA. However, this article only covers instances for failure to declare, and not false declarations. Furthermore, this article provides that " the cash which exceeds the limit established by the EU regulation shall be seized". In addition, there is no provision in the Romanian Customs Code giving the power to Customs officers to seize cash.

Retention of Information of Currency and Identification Data by Authorities when appropriate (c. IX.4); Access to Information by FIU (c. IX.5):

556. Declarations made by carriers and information on currency or bearer negotiable instruments detected by the NCA are maintained in a database. The database contains information on the amount of currency or bearer negotiable instruments declared or otherwise detected and the identification data of the bearer.

557. The following statistics on cash declarations were provided:

Table 31: Statistics on cash declarations

Period	No. of cash declarations	Sum in euro
2008	1025	98312116
2009	658	81833708
2010	1057	150816139
2011	894	146737803
2012	817	142669414
TOTAL	**4845**	**649543750**

558. It is noted that from last quarter of 2008 to 2013, only 35 cases of non-compliance with the obligation to declare cash were detected by the NCA. This number appears to be surprisingly low, when considering the period of time involved.

559. Pursuant to Article 12(5) of the AML/CFT Law, the NCA communicates cash declarations, equal to or above the threshold, to the FIU on a monthly basis. The authorities indicated that the current communication procedure established between the NCA and the FIU is currently being updated.

560. In the period from January 2008 to December 2012, the FIU received 45 notifications from the competent authorities on suspicions of money laundering, out of which in 8 cases there were suspicions of smuggling cash at the EU border.

Domestic Cooperation between Customs, Immigration, and Related Authorities (c. IX.6):

561. The NCA has established protocols with the FIU and the Border Police to facilitate and enhance cooperation with these two entities.

562. A protocol was concluded between NCA and the General Inspectorate of the Border Police in 2010 for the purpose of cooperating on issues related to, and exchanging data and information regarding, *inter alia*, ML.

563. As mentioned previously, the AML/CFT Law requires the NCA to cooperate with the FIU by submitting cash declarations on a monthly basis and reporting suspicions of ML/FT. In accordance with the requirements to report declarations on cash under the Regulations no. 1889/2005/CE on controls of cash entering or leaving the Community and based on the article 5 para. 12 of the Law no. 656/2002 on prevention and sanctioning money laundering, as well as for setting up some measures for prevention and combating terrorism financing, republished, the National Customs Authority is required to communicate to the Office, on a monthly basis, all the information it holds, according with the law, in relation with the declarations of natural persons regarding cash in foreign currency and/or national one, which is equal or above the limit set forth by the Regulation (CE) no. 1889/2005 of European Parliament and Council on the controls of cash entering or leaving the Community, held by these persons while entering or leaving the Community.(...)").

564. The authorities have provided the data below covering the notifications received by the FIU regarding declarations at EU border. The evaluators have reservations about the effectiveness of the system, in view of the limited number of cases sent to the FIU (about 10 per year).

Table 32: Notifications submitted by the General Inspectorate of the Romanian Police Border (IGPFR) and National Customs Authority (NCA) regarding the cash declarations at EU border presenting ML suspicions

YEAR	General Inspectorate of the Romanian Police Border	NCA
2008	5	6
2009	7	4
2010	0	0
2011	5	1
2012	1	1
01.01-01.08.2013	0	7
Total	**18**	**19**

565. The authorities have provided the data below covering the notifications received by the FIU regarding declarations at EU border. These figures represent part of the total notifications submitted by the Ministry of Internal Affairs and the National Customs Authority to the FIU Romania in respect to ML/TF suspicions. The total NCA reporting to FIUR for the reference period amounted to 78 notifications containing suspicions of money laundering.

566. The evaluators have reservations about the effectiveness of the system, in view of the limited number of cases sent to the FIU (about 10 per year).

International Cooperation between Competent Authorities relating to Cross-border Physical Transportation of Currency (c. IX.7):

567. As a member state of the EU, Romania is bound by the international cooperation arrangements within the framework of the Cash Control Regulations. The exchange of information with other Customs Authorities within the EU and third countries is regulated by Articles 6 and 7 of the Cash Control Regulations.

568. At the EU level, the NCA through its central coordination unit (structure organised at the level of Directorate for Supervision of Excises and Customs Operations) provides mutual customs assistance to EU member states, in administrative matters, based on Regulation no. 515/1997/EC on the Mutual Assistance between the Administrative Authorities of Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters.

569. Article 6 of the Cash Control Regulations provides that where there are indications that the amounts in cash are related to an illegal activity, the information obtained from (1) the declarations regarding cash or (2) as a result of customs controls can be sent to competent authorities in other EU member states. The provisions of Regulation 515/1997/EC apply mutatis mutandis. Furthermore, where there are indications that the amounts in cash represent the proceeds of fraud or any another illegal activity adversely affecting the financial interests of the European Community, the information shall also be sent to the European Commission. In terms of Article 7 of the Cash Control Regulations information obtained pursuant to the provision of the regulations may be communicated to a third country either by a Member State or by the European Commission.

570. In the period 2008-2012, competent authorities in Romania received 16 requests for assistance regarding control of cash at the border. The evaluators have reservations about the effectiveness of the system in view of the limited number of requests for assistance received by the NCA (about 2 per year) and regarding the lack of requests sent by the NCA to its counterparts. This suggests that the NCA does not initiate investigation on cash couriers.

Sanctions for Making False Declarations/Disclosures (applying c. 17.1-17.4 in R.17, c. IX.8; Sanctions for Cross-border Physical Transportation of Currency for Purposes of ML or TF (applying c. 17.1-17.4 in R.17, c. IX.9):

571. According to Article 653 of the Customs Code a person who submits a false declaration or a declaration which is incomplete or contains incorrect information is subject to a penalty of RON 3,000 to RON 8,000 (approximately EUR 690 to 1,900 euros). The evaluators do not consider that this penalty is effective, proportionate and dissuasive.

572. The Romanian authorities indicated that 37 sanctions for false (or non) declarations were imposed since 2008 for a total amount of RON 130,000 RON (approximately 30,000). The cash involved amounted to approximately EUR 1,300,000. (See Table below). The evaluators consider these figures to be very low.

Table 33: RO on false (non) declarations and penalties imposed

Period	recordings	entering	leaving	sum in euro	Penalty(RON)
RO_Q1_2013	2	0	2	72715	6000
RO_Q4_2012	1	1	0	21000	3000
RO_Q3_2012	3	1	2	70760	8000
RO_Q2_2012	1	1	0	13500	3000
RO_Q1_2012	1	1	0	3570	3000
RO_Q4_2011	3	1	2	16874	9000
RO_Q3_2011	3	1	2	90180	9000
RO_Q2_2011	4	2	2	137171	12000
RO_Q1_2011	1	0	1	1408	3000
RO_Q1_2010	2	0	2	46388	11000
RO_Q2_2010	4	3	1	54395	12000
RO_Q3_2010	2	1	1	30500	6000
RO_Q4_2010	6	2	4	245763	28000
RO_Q3_2009	1	0	1	14085	3000
RO_Q4_2009	2	2	0	539200	11000
RO_Q4_2008	1	0	1	2979	3000
TOTAL	**37**	**16**	**21**	**1 360 488**	**130 000**

573. During the on-site mission, the NCA explained that in addition to the penalty imposed sums exceeding EUR 10,000 were seized (pending confiscation after a decision of the court). The sums confiscated between 2009 and 2012 are as follows:

Table 34: Sums confiscated between 2009 and 2012

Period	**no of cases of undeclared cash or incomplete declarations**	**sum in euro seized to be confiscated (RON)**	**sum in euro confiscated after decision of the Court (situation at 30.05.2013)**
2009	3	535, 285	19, 285
2010	14	278, 813	244, 069
2011	11	215, 633	139, 579
2012	6	108, 830	5,000

* For 2011, one case is still pending a court decision, for 2012, 3 cases are still pending a court decision

574. Despite the figures provided the evaluators still consider that the sanctioning regime is not proportionate or dissuasive.

575. No sanctions have been applied to persons carrying out physical cross-border transportation of currency or bearer negotiable instruments related to ML or FT.

Confiscation of Currency Related to ML/TF (applying c. 3.1-3.6 in R.3, c. IX.10; Confiscation of Currency Pursuant to UN SCRs (applying c. III.1-III.10 in SR III, c. IX.11):

576. No information was provided to the evaluators on the manner in which Criteria IX.10 and IX.11 are implemented in Romania. Deficiencies identified in respect of the implementation of R.3 and the UNSCRs apply equally in this context.

Notification of Foreign Agency of Unusual Movement of Precious Metal and Stones (c. IX.12):

577. The Romanian authorities indicated that in the cases envisaged under Criterion IX.12, Articles 13-16 of Title II (Spontaneous assistance) of Regulation 515/97/EC would apply. Based on these Regulations, the NCA provides assistance to competent authorities from other member states, without a prior request. All the information available, documents, certified copies or extracts, regarding the operations which represent or may represent infringements to customs or agricultural legislation, including on the goods involved and new methods of performing the operations may be provided to the Customs Authority of another member state. The information can be used as evidence by the competent authorities of the receiving member state. This does not cover the case of controls at the EU external borders, though these would be covered by the customs declaration when such goods are imported.

578. No statistics were provided on the number of exchanges of spontaneous assistance provided by the NCA in relation to gold, precious metals and precious stones.

Safeguards for Proper Use of Information (c. IX.13):

579. The evaluators were unable to establish 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.

580. The Romanian authorities indicated that data and information provided by NCA (by mail and electronic format) are inputted into ONPSCB`s database, in a dedicated area, where they can be consulted by financial analysts for documentation of the cases. It was pointed out that the network is isolated and cannot be accessed from outside the institution.

Training, Data Collection, Enforcement and Targeting Programs (c. IX.14):

581. The ANC, through the Agency of the Finance and Customs School, organises centralized training sessions and continuous training for its officers, including courses provided by international bodies, inter-institutional courses with different partners and courses organised within technical assistance programmes (Phare, Customs 2013, Taiex). Training in ML/FT was not provided. E-learning programmes can be also developed by NCA.

582. The Control Guide on movement of cash, prepared by the group of MS experts under the coordination of EC-DG TAXUD, is under completion process, and will be implemented by NCA. The Guide will be distributed by the European Commission.

583. On a quarterly basis, the NCA submits information to the European Commission on the situation of (declared) cash movements and the number of cases of infringements of the obligation to declare cash at EU border. In the implementation of Regulation 515/1997/EC, instruments for collecting and exchanging information were developed, at the level of the European Commission and in Romania. The Risk Information Form was created for the purpose of ensuring a common EU framework for managing customs risk, priorities in control, risk criteria and common standards on a uniform implementation of customs control by MS. The system is designed to provide, for customs agents in MS, a quick and easy to use mechanism for access, transfer and direct exchange of information regarding customs control and identified risks.

584. In 2009, when the RIF application entered in production, 230 cases were introduced regarding the implementation of Rules 1889/2005/EC. Out of these, 9 were introduced by NCA.

585. The NCA is also connected to the Antifraud Information System (AFIS) of the European Commission.

586. The databases included in AFIS are the following:

a) FIDE – file for identification of investigation cases in customs field;

The purpose of FIDE is to allow national and EU authorities in charge with investigation in customs field, to coordinate the investigations at EU level (in relevant cases) and/or to exchange information with competent authorities in different fields, including ML.

b) CIS – Customs Information System – a centralized database storing personal data, necessary for reaching the objective or for providing assistance for prevention and prosecution of operations breaching the customs or agricultural legislation, providing information and contributing to the efficiency of procedures of cooperation and control between competent authorities.

CIS includes two databases, according to legal provisions and purpose:

-CIS-EU includes information for the following proposed actions: 1) observation and reporting; 2) discreet surveillance; 3) specific checks; 4) operational and strategic analysis. The component CIS(EU)CASH (in the field of cash movement) of the system is under completion of production version, at EC level.

-CIS – Member States includes information for the purpose of the following proposed actions at national level: 1) observation and reporting; 2) discreet surveillance; 3) specific checks.

587. The system is implemented at NCA level, but it is not in use due to lack of human resources and of the access profile allocated, depending on current administrative competences.

588. When considering the results achieved in practice, there remain questions whether the NCA officers have received adequate training to be able to detect the physical cross border transportation of currency and other instruments and whether such trainings are pursued on a regular basis.

Supra-national approach (IX.15) :

589. This criterion is not evaluated in the context of MONEYVAL's fourth round, as indicated above.

Additional Element—Implementation of SR.IX Best Practices (c. IX.16):

590. Romania has adopted the international Postal Convention which stipulates interdictions and or exemptions for transportation of cash in parcels.

Additional Element—Computerization of Database and Accessible to Competent Authorities (c. IX.17):

591. No information was provided on this criterion.

Recommendation 30 (NCA)

592. The information received does not enable to draw a comprehensive picture of the structures, funding, staffing of the NCA and Border Police.

593. It should be noted that the National Customs Authority has been identified in the National Anti-Corruption strategies as being among the public sectors considered to be vulnerable to corruption. A number of measures have thus since 2008 been put in place in order to address the identified vulnerabilities, including by monitoring the observance of the ethics and professional conduct norms, and the organisation of joint anti-corruption actions. In the reference period of the

evaluation, several major criminal investigations involving a large number of Romanian customs officials and border police officers for serious offences (involvement in smuggling, corruption, organised crime) have been undertaken by specialised prosecutorial bodies.

594. At central level, the Directorate for Supervision of Excises and Customs Operations performs the following functions:

- Through the Antidrug and Protection of Intellectual Rights Service, manages the activity in the field of control of movement of cash, based on Regulations no. 1889/2005/EC and on FATF Special Recommendation IX on cash couriers, representing the national contact point for Customs Administrations in MS;
- Through the Centre for Customs Information, organised at the level of service, provides mutual customs assistance, in administrative matters, based on Regulations 515/1997/EC, Directive 92/12 and Napoli Convention II, as well as mutual assistance for non-EU states.

595. Despite some information received during the evaluation regarding training, the results achieved raise questions about the adequacy of training received regarding the implementation of the declaration related requirements and inspection procedure by customs officials monitoring cross border cash movements.

Recommendation 32

596. The authorities keep a series of statistics, covering the issues set out in the tables above. The NCA maintains statistics on the cross border transportation of currency and bearer negotiable instruments. Statistics could be further detailed to cover details such as nationality of persons involved, direction of transport, results of controls per port of entry etc.

597. The FIU has also provided the following statistics at its disposal, covering the year 2012 and the first 8 months of 2013. There were registered 965 entries/exits in/from Romania, out of which 797 being entries in Romania from non-EU countries and 168 exits from Romania to non-EU countries. The total amounts[97] declared at the border being of 139.184.135 euro, out of this 135.264.800 euro being declared at the entrance in Romania and 3.919.335 euro when exiting the country.

598. Referring to the threshold values declared at transiting the country, please find below the following statistics:
- amounts exceeding 1.000.000 euro were declared at the border in 23 cases,
- amounts between 15.000-100.000 euro were declared at the border in 496 cases, and
- amounts under EUR 15.000 were declared in 179 cases.

599. Also, according to FIU Romania data, it resulted that 86% of the total amounts declared at the entry in Romania have as origin 3 non-EU countries. At the same time, 63% of the amounts declared at the entry in Romania belonged to 13 non-EU citizens, the purpose of using these amounts being "commerce, business".

600. From the analysis performed on the cased declarations submitted by ANV to FIU Romania during the first 8 months of the year 2013, it appeared that the total amounts declared[98] when transiting the border was of 83.509.452 euro, out of which 81.784.584 euros were declared at

[97] The total value of the amounts provided in the text by FIU Romania may vary from the statistics available to the ANC, depending on the date of submission and registration in the database.

[98] Idem above.

entry and 2.416.538 euros were declared at the exit of Romania. 82,8% of the amounts declared at entry originates from a single non-EU country. The majority of the total amounts declared (74%) was introduced in Romania by 14 non-EU citizens (part of them belonging to the same group of the previous 13 persons identified in 2012), Romania being used as transit country. The purpose of using these amounts was declared as "commerce, business". All amounts declared at the exit from Romania had thresholds under 100.000 euros, only 5 persons declaring amounts between 65.000-89.000 euros, the others having the threshold under 40.000 euros. Based on the analysis performed on cash declarations, the FIU Romania started an ex-officio financial analysis on the groups of the non-EU citizens identified in 2012 and 2013. A typology was also developed on the transit operations on the territory of Romania of citizens from a non EU country, serving as cash couriers on a route to other neighbouring countries.

Effectiveness and efficiency

601. Although the Romanian authorities have taken some measures to comply with criteria under SR IX, important deficiencies still remain and have a negative impact on the effectiveness of the entire regime as envisaged under SR IX. The evaluation team is not convinced that the overall results achieved by the authorities responsible for the detection of the physical cross border transportation of cash demonstrate that there is a clear internal policy to adequately address the phenomenon.

602. The information received from the authorities raises serious issues of effectiveness, as they indicate that the NCA is not always in a position to detect undeclared or false declaration of cross border transportation of cash. This is particularly significant in light of the vulnerability of the Romanian financial system to cash-based money laundering.

603. There are no ML/FT investigations triggered from cross-border cash declarations. As a result no money relating to ML/FT has been frozen, seized or confiscated.

604. The FIU indicated however that from the analysis performed on the NCA cases that are currently finalized, it resulted 3 notifications to the General Prosecutor's Office for solid grounds of ML and 4 notifications to Police for committing other offences than ML (according to art. 8 para. 10 of the Law no. 656/2002, republished). The FIU Romania started ex-officio financial analysis on the groups of non-EU citizens identified in 2012 and 2013 and 1 case was submitted to the General Prosecutor's Office by the High Court of Cassation and Justice for solid grounds of ML and 1 case to the Police for committing other offence than ML.

605. The evaluators are also surprised to note that the sanctions imposed by the authorities for false and non-declarations are very low. These cannot be considered proportionate nor dissuasive and raise questions about their effective application by the competent authority.

2.7.2 Recommendations and comments

Special Recommendation IX

606. The evaluators are of the opinion that all the deficiencies mentioned in the 3rd round evaluation remain outstanding. Romania should as a matter of urgency review the implementation of Special Recommendation IX as a whole and take the necessary steps as soon as possible to ensure that all criteria are adequately satisfied. They are advised in this process to also consider the measures set out in the Best Practices Paper for SRIX for further guidance.

607. NCA should have the power to stop/restrain cash, in order to ascertain whether evidence may be found for ML/FT and the legislation should be amended to ensure that this is adequately covered.

608. The sanctioning regime for false declarations or incomplete/inaccurate declarations should also be revised to ensure that proportionate and dissuasive sanctions are set out in the legal framework.

609. Romania should also take stock of the sanctions applied, and analyse the reasons which may undermine the effectiveness and deterrent scope of the sanctions. They should take additional measures, as appropriate, to ensure that sanctions are effectively applied and enforced.

610. The Romanian authorities should also make efforts to enhance public awareness and provide more information on cash declaration requirements especially at exit/entry points.

Recommendation 30

611. Romania should continue its efforts to ensure that the NCA and Border Police are maintaining high professional standards and that there is a continuous monitoring of compliance with the integrity requirements set out in the legal framework.

612. Comprehensive training should be provided regularly to the NCA (and Border Police) on detection of cash couriers and further guidance on trends/risks/patterns associated with cross border transportation of cash and other instruments, as well as typologies are available.

613. Resources should be provided to the NCA to enable it to make proper use of AFIS.

Recommendation 32

614. Romania should consider developing the breakdown of statistics available in order to be able to have supplementary information available to assess whether the system in place is effective. Statistics could be further detailed to cover details such as nationality of persons involved, direction of transport, results of controls per port of entry etc.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**PC**	• 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); • 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. **Effectiveness** • 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

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Legal framework and developments since the third round evaluation

615. Since the adoption of the third mutual evaluation report in July 2008, Romania has adopted several legislative and regulatory measures in order to address the main deficiencies identified in the third evaluation round. These developments are set out in detail under the description of each of the relevant recommendations.

Scope

616. Law 656/2002 for the prevention and sanctioning money laundering as well as for instituting some measures for the prevention and combat of the financing of terrorism (as subsequently amended) is the overarching legislation which sets out the AML/CFT requirements and categorizes the entities subject to customer due diligence (hereinafter the AML/CFT Law).

617. Article 2(f) of the law defines a credit institution as meaning the entity defined in article 7, paragraph (1), point 10 of Emergency Governmental Ordinance 99/2006 on credit institutions and capital adequacy.

618. Article 2(g) of the law defines a financial institution as meaning any entity, with or without legal capacity, other than a credit institution, which carries out one or more of the activities referred to in article 18, paragraph (1), points b) - l), n) and n1) of Government Emergency Ordinance 99/2006 on credit institutions and capital adequacy, including postal offices and other specialized entities that provide fund transfer services and those that carry out currency exchange. The following entities are also included within this category:

- Insurance and reinsurance companies and insurance/reinsurance brokers, authorized according with the provisions of Law no. 32/2000 on the insurance and insurance supervision activity, with subsequent modifications and completions, as well as the branches on the Romanian territory of the insurance and reinsurance companies and insurance and/or reinsurance intermediaries, which were authorized in other member states.
- Financial investment service companies, investment consultancy, investment management companies, investment companies, market operators, system operators as they are defined under the provisions of Law 297/2004 on the capital market and the regulations issued for its application;

619. Article 10 provides that the provisions of the law are applied to the following natural or legal persons :
a) credit institution and branches in Romania of the foreign credit institutions;
b) financial institutions, as well as branches in Romania of the foreign financial institutions;
c) private pension funds administrators, in their own behalf and for the private pension funds they manage, marketing agents authorized for the system of private pensions;
d) casinos;
e) auditors, natural and legal persons providing tax and accounting consultancy;
f) public notaries, lawyers and other persons exercising independent legal profession, when they assist in planning or executing transactions for their customers concerning the purchase or sale of immovable assets, shares or interests or good will elements, managing of financial instruments or other assets of customers, opening or management of bank, savings, accounts or of financial instruments, organization of contributions necessary for the creation, operation, or management of a company, creation, operation, or management of companies, undertakings for collective investments in transferable securities, other trust activities or when they act on behalf of and their clients in any financial or real estate transactions;

g) service providers for companies or other entities, other than those mentioned in paragraphs (e) or (f), as are defined in article 2 letter j);
h) persons with attributions in the privatization process;
i) real estate agents;
j) associations and foundations;
k) other natural or legal persons that trade goods and/or services, provided that the operations are based on cash transactions, in RON or foreign currency, whose minimum value represents the equivalent of 15000 euro, indifferent if the transaction is performed through one or several linked operations.

620. The list of entities subject to AML/CFT requirements is broader than the FATF requirements in some respects. The Romanian authorities have extended the AML/CFT framework within Romania to cover private pension fund administrators and authorized/licensed marketing agents. At least some of this framework (particularly that relating to administration) appears to go further than "underwriting and placement of life insurance and other investment related insurance" (which applies both to insurance undertakings and to insurance intermediaries (agents and brokers)) in the FATF definition of financial institution. From the materials and the overall response provided by the authorities, in the context of Romania, it is clear that this extension is considered by the Romanian authorities as one which should be included, in part at least, within the FATF definition of "financial institution" and expected by the Romanian authorities to be considered in section 3 and, as relevant, other sections of this report.

621. A number of AML/CFT secondary legislation and norms have been issued to implement the requirements set out in Law 656/2002. Government Decision no. 594/2008 (as amended by Government Decision 1100/2011) sets out the Regulation for the application of the provisions of the Law 656/2002, and includes implementing provisions applicable to all subject entities (hereinafter "the AML/CFT Regulation").

622. In addition, competent regulatory or supervisory authorities have issued sectorial regulations, orders, decisions or norms which clarify further the relevant AML/CFT requirements for the entities under their scope of activity.

623. With regard to entities supervised by the NBR, the following norms are also relevant:

- NBR Regulation 9/2008 on know your customer for the purpose of money laundering and terrorism financing prevention(as amended as of 19/07/2011)
- Regulation 28/2009 on monitoring the implementation of the international sanctions regarding the freezing of funds (as amended as of 19/07/2011)
- Regulation 20/2009 on non-bank financial institutions (as amended as of 19/06/2011)
- Regulation 21/2009 on payment institutions
- Regulation 8/2011 on electronic money institutions
- Regulation 11/2007 on the authorization of credit institutions, Romanian legal entities and branches in Romania of third –country credit institutions (as amended as of 19/07/2011)
- Regulation 6/2008 on the taking up of the activity and maintenance of authorization of credit institutions, Romanian legal entities and Romanian branches of credit institutions located in third countries (as amended as of 19/07/2011)

624. The NSC has also issued secondary legislation on AML/CFT aspects. NSC Regulation 5/2008 on the prevention and control of money laundering and terrorist financing through the capital market (defined in this report as the NSC Regulation) and NSC Regulation 9/2009 on supervision of the enforcement of international sanctions in the capital market lay down

requirements with regard to entities supervised by the NSC. Furthermore, the NSC has issued Executive Order 8/11.03.2010 (as amended by NSC Decision 576/2010) and Executive Order 2/09.02.2011.

625. Insurance Supervision Commission Order 24/2008 (defined in this report as the ISC Order) was issued in December 2008 to apply the regulations concerning the prevention and control of money laundering and terrorism financing through the insurance market. It was subsequently amended by Order 5/2011 dated 7 March 2011 . It applies to entities supervised by the CSA. In addition, Order 13/2009 issued in July 2009 implements the supervision procedure in the insurance sector in respect of the enforcement of international sanctions.

626. Norms 9/2009 regarding know your customer for the purpose of money laundering and terrorism financing prevention in the private pension system issued by the CSSPP Council (defined in this report as the CSSPP Norms) apply to entities supervised by the CSSPP. Furthermore, Norms 11/2009 regarding the supervision procedure for the implementation of international sanctions in the private pension system was adopted and published in May 2009.

627. It should be noted that the National Office for Prevention and Control of Money Laundering is entitled by law (article 7 of Government decision 1599/2008) to issue instructions regarding the implementation of legal requirements in respect of activities carried out by natural and legal persons under Art 10 which are not subject of supervision by any prudential public authority or regulatory entities of legal professions. Entities carrying out currency exchange activities are subject to Norms made under Decision 496/2006 of the Board of the National Office for Prevention and Control of Money Laundering – for the purposes of this report the document is defined as the Office Norms, and the organisation and the National Office as the Office or ONPCSB.

628. Immediately prior to the evaluation, the NSC, the CSA and the CSSPP were amalgamated in a new Financial Services Authority, established by Government Emergency Ordinance n° 93/23012. As the material provided to the evaluation team prior to its visit to Romania distinguishes the three authorities as separate authorities and as the separate AML/CFT standards which apply to each of the sectors regulated/supervised by these authorities remain in force, for ease of understanding this report also distinguishes between these parts of the Financial Services Authority, where this is useful.

629. The secondary legislation differs in detail and wording from sector to sector. Furthermore, some of them have not been updated following the amendments made to the AML/CFT law and /or the adoption of the AML/CFT Regulation, and thus there remain instances where the scope of their requirements differ or where cross-references to the relevant articles of the AML/CFT Law are no longer correct and thus may be a source of confusion.

Law, regulations and other enforceable means

630. For the purpose of this report, it is considered that Law 656/2002 (as amended) and Government decision no. 594/2008 (as amended) qualify as "law or regulation" under the Methodology. The supervisory authorities (NBR, CSSPP, CSA, Office) have each issued normative acts in the form of norms, orders, (executive) decisions or regulations which are published in the Official Gazette, Part I. This part of the Official Gazette is reserved for legally binding measures. Overall there is a direct correlation between the AML/CFT Law and the subsequently issued Norms, Orders, Decisions and Regulations. These measures are considered equivalent to implementing regulations as described in the Methodology. The methodological norms and instructions are considered in this context equivalent to "other enforceable means", according to the Methodology.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism

631. The NBR supervises credit institutions (i.e. banks), and the license granted to them permits engagement in all types of activities typical for the banking sector. Besides credit institutions, the NBR also supervises non-bank financial institutions mainly involved in lending activity, payment institutions involved in payment services (such as those enabling cash placement and withdrawal from account, execution of payment transactions, issuance of payment instruments, and money remittance), and electronic money institutions involved in issuance of electronic money. As of the moment of the on-site visit, there were 40 banks, 52 non-bank financial institutions (included in the Special Register), 7 payment institutions and no electronic money institution licensed and operating in Romania.

632. The NSC supervises entities active in relation to the capital markets. These entities are divided into three categories, namely financial intermediaries and credit institutions; asset management companies dealing with individuals and collective investment scheme management; and capital market institutions such as the two Stock Exchanges, including the Bucharest Stock Exchange.

633. Intermediaries mostly trade equities although there is some trading of derivatives. They specialise in retail customers who are individuals. A large majority of customers are based in Romania although pension funds, banks and investment companies are important customers. The typical intermediary has a small number of customers. Five to ten intermediaries, mostly credit institutions or their branches/subsidiaries comprise most of the market. Some ten entities are owned by foreign groups. It is these entities which have institutional clients.

634. Asset managers distribute funds mainly through credit institutions. These managers also have agents with broker/dealer networks throughout Romania. Two of the asset managers account for more than half of the fund industry. The largest investors in funds are Romanian institutional clients, banks, pension funds, other asset management companies and other funds. This investor base is similar to that investing through the stock exchange. Other asset management business is mainly aimed at high net worth individuals of whom the large majority are Romanian.

635. The capital market generally offers basic products and products of medium sophistication. Structured products are also available – these instruments represent some 25% of the Bucharest Stock Exchange by value. Structured products are relatively new to Romania; investors in them are mostly institutional clients.

636. The NSC is of the view that laundering arising from market abuse is the greatest potential money laundering risk in the investment sector. It also considers laundering arising from insider dealing to be a risk. It was apparent to the evaluation team that the NSC expends considerable effort in seeking to prevent and detect these crimes. Non-face to face business and electronic trading are emerging issues. A few comments were received from the investment sector in relation to risk. These comments included that the greatest risks derive from the source of the customer's money, that the risk to the firm is low as the transaction is undertaken between the bank and the customer, and that persons listed in international sanctions present the greatest risk. PEPs were also mentioned.

637. Sixty per cent of insurance products are traditional products such as term assurance and endowments. Unit linked sales are significant. Life insurance products represent 22% of the market. The CSA advised that there are no unique features to life insurance products in Romania. From the perspective of the ISC, there is no indication that clients outside Romania

are buying insurance from Romanian insurers. Most clients are individuals. Non-individual customers mostly comprise SMEs. Such companies purchase group life insurance for their employees. Forty per cent of insurance business is intermediated through brokers - this figure increased significantly in 2012.

638. The insurance market comprises insurers (and agents), reinsurers and insurance brokers. The insurance market is dominated by mandatory insurers. These insurers leverage the requirement for car insurance to sell other products. A relatively small number of brokers specialise in life insurance. Most business is face to face. There was small growth last year in internet sales, primarily in connection with car insurance.

639. The CSA sees the greatest risk of laundering in relation to general insurance as being money laundering the proceeds of a false claim. No STRs have been made in relation to general insurance. It considers the life sector to be most at risk of money laundering. The CSA was familiar with the general pattern of reasons for STRs. Most involve the surrender of policies a short time after clients have purchased them in order to obtain a partial or whole repayment. In addition, there are cases where a company has taken out a policy, surrendered it and requested payments to be made to individuals. Most STRs are submitted by insurers – this was felt to be reasonable by the CSA on the basis that most STRs involve repayments by insurers and also that insurers undertake more work in relation to individual policies that brokers.

640. Representatives from the insurance sector provided a number of comments relating to money laundering and terrorist financing risk in that sector. Cash payments appeared to be the predominant concern. Other responses included life products and contracts where there is a difference between the policy holder and the beneficiary.

641. The CSSPP supervises voluntary and non-voluntary pensions. All are structured as trusts and as defined contribution schemes. They are managed by administrators. Historically, these were insurance companies but there are now some pure pension companies which are part of banking groups. Trustees are mostly well known international insurance companies. The marketing agents are also the brokers for pension schemes; they do not receive any money from their customers. There are three pillars to the pension system, pillar one (public pension scheme), pillar two (mandatory private pension) and pillar three (private pension). For pillar two schemes the administrator receives all contributions from the Government. For pillar three schemes the employee the employer transfers the contributions directly to the bank account of the administrator. No STRs have been received in relation to pension schemes. The CSSPP suggested that issues might emerge generally when pensions become payable from 2023.

642. Supervision of currency exchange providers commenced in 2012. The key issue which has been, and is being addressed is to seek to ensure that the beneficial owners, directors and managers of providers are fit and proper, and that the source of funding for the providers raises no concerns. Client profiling by providers has been found to be weak. All currency exchange providers are owned by Romanians. Although this sector is still considered by the Romanian authorities as presenting a high or higher than medium risk of money laundering some risk is felt to have been removed following its programme of on-site inspections in 2012.

643. The evaluation team has noted the contents of legislation and the other AML/CFT instruments relevant to financial institutions which are analysed in part three of this report, together with the contents of the Manual on Risk Based Approach and Suspicious Transactions and Indicators. It has formed the conclusion that these documents do not explicitly include text, which, in particular, create focus on all of the risks pertinent to the investment and insurance sectors.

Verifying equivalence of AML/CFT framework of third countries / European equivalence

644. Throughout the sections of this report, there are references to the application of exemptions or certain specific low risk measures, with respect to institutions, transactions, counterparties, that originate from or are based in other EU Member States. These originate primarily from the EU – wide regulations and directives. It should be recalled that while in certain specific cases (eg. SR.VII), the FATF has recognized within its standards the validity of the single European framework, there is a consistent jurisprudence that there is no presumption by the FATF that the treatment of all EU Member States as being equivalent is appropriate in terms of a country fulfilling the requirements of the FATF Recommendations.

645. Under the analysis for Criteria 5.8 and 5.9, as well as other FATF Recommendations[99] implying risk-based classification of customers, transactions and business relationships, the assessment team examined legislative provisions available for verifying equivalence of the AML/CFT framework of third countries (states) and counterparties. In particular, such equivalence is assessed through references made to different pieces of Romanian AML/CFT legislation, specifically to the AML/CFT Law 656/2002, the Government Decision 594 (2008), and the NBR Regulation 9 (2008), in circumstances related to:

- Establishing AML/CFT standards for branches of Romanian credit and financial institutions *(for the purposes of R 22)*[100];
- Defining preconditions for simplified CDD in case of *(for the purposes of R 5.9)*:
  - Customers, which are credit and financial institutions[101];
  - Customers, which are beneficial owners of transactions performed through pooled accounts administrated by notaries and other independent legal professions[102];
  - Operations, which are performed through an account of the client opened with a credit institution[103];
- Defining enhanced CDD measures in case of:
  - Customers and transactions in and/or from jurisdictions which insufficiently apply AML/CFT requirements *(for the purposes of R 21)*[104];
  - Situations constituting higher ML/FT risk, by means of *(for the purposes of R 5.8)*:
    - Requesting certification of documents submitted by the customer from another credit institutions or financial institution[105];
    - Requesting the first operation to be performed through an account opened with another credit institution[106];
- Establishing jurisdictions with equivalent AML/CFT systems *(for the purposes of the "white list")*[107];
- Establishing third parties with equivalent AML/CFT regulation *(for the purposes of R 9)*[108];

[99] Such as Recommendations 9, 21 and 22
[100] See Article 13(4) of the Law 656 (2002) and Article 13(1) of the Annex to the Government Decision 594 (2008)
[101] See Article 17, Letter (d) of the Law 656 (2002) and Article 7(1) of the Annex to the Government Decision 594 (2008)
[102] See Article 8, Letter (b) of the Annex to the Government Decision 594 (2008)
[103] See Article 9(1), Letter (b) of the Annex to the Government Decision 594 (2008)
[104] See Article 12 of the NBR Regulation 9 (2008)
[105] See Article 12(2), Letter (b) of the Annex to the Government Decision 594 (2008)
[106] See Article 12(2), Letter (c) of the Annex to the Government Decision 594 (2008) and Article 16, Letter (b) of the NBR Regulation 9 (2008)
[107] See Article 18(3) of the Annex to the Government Decision 594 (2008)
[108] See Article 2, Paragraph 1, Letter (d) of the Annex to the Government Decision 594 (2008)

- Establishing arrangements for Romanian reporting entities to share information with foreign credit and financial institutions and DNFBPs[109];
- Establishing minimum requirements with respect to KYC norms of reporting entities *(for the purposes of R 21)*[110].

646. Overall, the mentioned references lack clear logic and consistency in the following aspects:

- *Scope of referred legislation* – equivalence is assessed by referring to the Law 656/2002, the Government Decision 594/2008 and the NBR Regulation 9/2008 in 1 case; by referring only to the Law 656/2002 and the Government Decision 594/2008 in 9 cases; and by referring only to the Law 656/2002 in 7 cases;
- *Linkage to applicable requirements* – equivalence is linked to general compliance with AML/CFT framework in 8 cases, and to meeting solely CDD and record keeping requirements in 7 cases;
- *Availability of supervision of compliance* – equivalence is conditioned by availability of supervision of compliance with the AML/CFT requirements in 8 cases only.

647. Hence, 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, 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).

648. As far as the establishment of the "white list" is concerned, in practice the list of equivalent third countries defined by the Government Decision 1437 (2008) and further amended by the Government Decisions 885 (2011) and 989 (2012) repeats that established by the Common Understanding between Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC) issued in June 2012. It is also noted in this context that the Romanian authorities have not undertaken an independent risk assessment of the countries on the list.

Modulation of preventive measures according to risk

649. The AML/CFT Law requires reporting entities to adopt adequate preventive measures by applying, on a risk-sensitive basis, standard, simplified or enhanced customer due diligence measures (also with regard to beneficial owners). Relevant provisions of applicable regulations provide further details of the application of the risk-based approach by reporting entities.

Use of a risk-based approach by the supervisory authorities

650. Some, but not all supervisory authorities have indicated that they use a risk-based approach in organising their AML/CFT inspections (see Section 3.9 of the report for further information).

[109] See Article 25(4), Letters (b), (c), and (d) of the Law 656 (2002)
[110] See Article 5(2), Letter (e) of the NBR Regulation 9 (2008)

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.7)

3.2.1 Description and analysis

Recommendation 5 (rated PC in the 3rd round report)

651. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a PC rating for Recommendation 5 based on the following underlying factors:

- No explicit definition of beneficial ownership;
- The requirement to take reasonable measures to verify the identity of the beneficial owner, as required by the FATF standards, is not adequately implemented;
- Further consideration should be given to the extent that reporting entities have applied CDD measures to existing customers particularly in the case of non-bank financial institutions.

Anonymous accounts and accounts in fictitious names (c.5.1)

ALL

652. Article 16, Paragraph 1 of the Law 656/2002 establishes that credit and financial institutions "*shall not open and operate anonymous accounts, respectively accounts for which the identity of the holder or owner is not known and documented accordingly*". Paragraph 2 of the same article further requires that standard CDD measures applicable to all new and existing customers should be applied to the "owners and beneficiaries of existing anonymous accounts as soon as possible and in any event before such accounts or are used in any way".

653. The AML/CFT Regulation (Government Decision 594/2008) provides similar regulation for anonymous accounts. Particularly, Article 4, Paragraphs 4 to 6 prohibit opening and operation of anonymous accounts and establish that the "*use of any type of existing anonymous accounts and savings checks shall not be allowed unless after the application of standard customer due diligence*".

654. Accordingly, the customer due diligence provisions of the Law 656/2002 and the AML/CFT Regulation (Government Decision 594/2008) prevent the establishment of accounts in fictitious names.

NBR

655. Article 14 of the NBR Regulation 9/2008 defines that "*in the case of non-nominative accounts for which the identity of the holder, known by the credit institutions, is replaced in records by a numerical code or by a code of another nature, in view of ensuring of a higher level of confidentiality, the documentation regarding the customer identification shall be available for the compliance officer …and the supervisory authority*". The authorities explained that, in practice, the non-nominative accounts are those accounts for which the name and surname of the customer are substituted by a numerical or an alpha-numerical code and thus the identity of the account holder is not available for the bank's employees other than the compliance officer and other KYC managing staff at the head office level. The assessment team was also advised that, as revealed by the NBR on-site inspections, opening and maintaining non-nominative accounts is not a practice in the Romanian banking sector.

NSC

656. Article 10(1) of the NSC Regulation states that regulated entities shall not keep anonymous accounts, that is accounts for which the identity of the holder or of the beneficial owner is not known and highlighted properly. Article 10(2) goes on to say that regulated entities shall take adequate measures in the case of operations which encourage the use of anonymity or which allow interaction with the client in its absence in order to prevent their use in money laundering or terrorist financing operations. Article 10(3) provides that regulated entities shall not open accounts, initiate operations or perform transactions and shall terminate any operation where it is not able to perform client identification in accordance with the provisions of the regulation and legal norms.

657. Article 4(3) of the NSC Regulation states that regulated entities shall identify, verify and record the identity of clients and beneficial owners before concluding any business relationship or performing transactions on behalf of their client/beneficial owner. This provision establishes the basic premise of identifying customers and beneficial owners.

CSA

658. Article 9(1) of the ISC Order states that supervised entities shall take adequate measures to apply risk based due diligence measures which allow the identification of clients or, where applicable, of beneficial owners. Article 5(8) of the Order requires entities to establish, verify and record the identity of clients and beneficial owners before entering into any business relationship or performing any transactions in the name of the client/beneficial owner.

CSSPP

659. The CSSPP Norms include a range of provisions requiring due diligence measures to be undertaken on customers, including article 11 which requires administrators and marketing agents to apply standard customer due diligence measures for all new customers.

THE OFFICE

660. The Office Norms include a range of provisions on due diligence measures to be undertaken on customers, including articles 4(a) and 5 which require identification of customers and to obtain all necessary information for establishing the identity of the beneficial owner.

Customer due diligence

When CDD is required (c.5.2)*

ALL

661. Article 13 of the Law 656/2002, as well as Article 4 of the AML/CFT Regulation (Government Decision 594/2008) establish that all reporting entities are obliged to apply standard customer due diligence measures, when:

a) Establishing a business relationship;
b) Carrying out occasional transactions amounting to or in excess of EUR 15.000, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
c) There are suspicions that the transaction is intended for money laundering or terrorist financing, regardless of any derogation of the CDD obligation under the law and of the amount involved in the transaction;

d) There are doubts about the veracity or adequacy of previously obtained customer identification data;
e) Purchasing or exchanging casino chips amounting to or in excess of EUR 2.000.

662. The definition of linked transactions, as set out in Article 2, Letter (i) of Law 656/2002, is limited to those carried out during the same day, which means that other possible common factors, such as the parties to the transactions (including the beneficial owners), the nature of the transactions and the sums involved, are not taken into consideration. The authorities advised that, when monitoring transactions through customer accounts, credit and financial institutions might consider transactions linked even if they are carried out during two or three consecutive business days. Nevertheless, this interpretation of the requirement under the Law 656/2002 was not confirmed by reporting entities.

663. Reporting entities apply CDD measures when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII. The authorities referred in this context to Regulation No 1781/2006 of the European Parliament and of the Council (November 15, 2006) regarding information on the payer accompanying transfers of funds. It is also noted that the Government Emergency Ordinance 53 (2008) designates the National Bank of Romania as the supervisor of compliance of credit and payment institutions with that regulation, also establishing sanctions for the breach of its provisions.

NSC

664. Article 8 of the NSC Regulation states that regulated entities are required to apply complete standard customer due diligence measures in a manner similar to articles 13(a) to (d) of Law 656/2002.

665. The Bucharest Stock Exchange is covered by the NSC Regulation. The Stock Exchange noted that the application of the Regulation had to be modified in practice from its perspective. The evaluation team is of the view that much of the regulation in areas such as customer due diligence (and also similar requirements in the Regulation made under Law 656/2002) as drafted cannot apply to the Stock Exchange (and presumably other market and system operators in Romania in any meaningful way).

FSA - CSA

666. Article 10 of the ISC Order states that entities shall apply all standard due diligence measures in the following situations:

a) upon inception of a business relationship;
b) upon performance of one-off transactions which amount to at least 15,000 euro or the RON equivalent, irrespective whether the transactions are conducted as single operations or through several operations which seem linked;
c) when suspicions arise with respect to the fact that the relevant operations have as purpose money laundering or terrorism financing, irrespective of the value of the operations or of the exemptions from the application of standard due diligence measures which may apply;
d) when doubts arise with respect to the accuracy or adequacy of the identification data already obtained; when suspicions arise with respect to the fact that the client does not act in his own name or the client is certain to act in the name of another person, entities shall apply standard due diligence measures in order to obtain information concerning the true identity of the person in whose name or in whose behalf the client acts.

THE OFFICE

667. Article 5 of the Office Norms provides that regulated entities have an obligation to identify their customers whether or not they are present for the performing of operations:

a) at the initiation of business relations or the offering of services;
b) in performing cash operations whose minimum limit represents the equivalent of 10,000 euro, irrespective of whether the transaction/operation is performed through one or more connected operations;
c) as soon as there is a suspicion that the purpose of a transaction/operation is money laundering or terrorism financing, irrespective of the amount of the transaction;
d) when the amount is not known when accepting the transaction/operation the entity must proceed to identification of the customer as soon as it is informed about the amount of the transaction/operation and when it is established that it has reached the minimum limit of 10,000 euro;
e) in a case where there is information or suspicion that a transaction/operation is not performed in the customer's own name, the necessary measures for obtaining identification data for the beneficiary owner of the transaction must be taken;
f) in the case of all operations in which persons are not present or represented when performing the operations;
g) when there are suspicions that data obtained in the process of identification of the customer or of the beneficial owner are not according to reality.

668. Article 5(b) is limited to cash operations, which is less expansive than the Law 656/2002 and the provisions of the AML/CFT Regulation (Government Decision 594/2008). This is one of a significant number of examples in the material provided to the evaluation team where the instruments issued by the supervisory authorities cover the same territory as Law 656/2002 and the underlying regulations but using different language and on occasion creating different requirements. Therefore the evaluation team recommends that these Norms should be amended and brought in line with the changes introduced to the AML/CFT Law and AML/CFT Regulation to ensure that the requirements are adequately reflected or clarified for subject entities to which they apply.

Identification measures and verification sources (c.5.3)*

ALL

669. Article 11 of the Law 656/2002 requires that, in order to combat money laundering and terrorism financing, reporting entities apply standard customer due diligence measures. Article 5, Paragraph 1, Letter (a) of the AML/CFT Regulation (Government Decision 594/2008) specifies that standard CDD measures include, *inter alia*, identification of the customer and verification of his identity on the basis of documents and information obtained from reliable and independent sources.

670. Article 16 of the Law 656/2002, as well as Article 5, Paragraph 2 of the AML/CFT Regulation (Government Decision 594/2008) establish that the identification data of customers shall comprise at least: a) for natural persons – the data of civil status specified in the documents of identity provided by the law; and b) for legal persons – the data specified in the documents of registration provided by the law. The authorities advised that the notion of the "data on civil status" includes data regarding a natural person's name and surname, date and place of birth, the unique individual numerical code, the address (the residence, where applicable) and citizenship.

671. It is noted that these requirements are further detailed in the sectorial regulations as set out below. There are instances where the provisions related to identification and verification measures in the implementing sectorial regulations are broader in terms of scope than the measures set out in the Law and thus appear to create new requirements which are not as such covered in the primary legislation. This is again an issue of consistency of drafting, or a manner to address certain gaps that might have been identified in law at a later stage. Consequently, the evaluation team considers that a comprehensive review of all these acts and the requirements that they establish should be undertaken, as recommended later in the text.

Identification data for individuals

NBR

672. Article 8, Paragraph 1 of the NBR Regulation 9/2008 sets out that customer identification for individuals shall pursue obtaining at least the following information:

h) Name and surname and, as applicable, pseudonym;
i) Date and place of birth;
j) Unique individual numerical code or, as applicable, another similar unique identification element;
k) Permanent residential address or, as applicable, residence;
l) Phone number, fax, e-mail, in accordance with the situation;
m) Citizenship;
n) Employment status and, as applicable, name of employer or nature of self-employment/business;
o) Prominent public position held by the client residing in other country, as applicable.

673. Paragraph 2 of the same article defines that verification of customer identity shall be performed based on documents which are most difficult to be forged or obtained in an unlawful manner, such as identification documents issued by an official authority, which include photography of the holder.

NSC

674. Article 4(3) of the NSC Regulation states that regulated entities shall identify, verify and record the identity of clients and beneficial owners before concluding any business relationship or performing transactions on behalf of their client/beneficial owner. This provision establishes the basic premise of identifying customers and beneficial owners. Article 7(1) of the Regulation states that regulated entities are required, based on risk, to apply standard, simplified or enhanced customer due diligence measures which allow identification, where applicable, of the beneficial owner.

675. Article 11 of the NSC Regulation provides that regulated entities shall record specified identification data of any customer who is a natural person. This information is the complete surname and name of the customer, as well as any other names used; the date and place of birth; the personal numeric code or its equivalent in the case of foreign persons; the number and series of the identity document; the date where the identity document was issued and the issuing entity; the domicile/residence (complete address – street, number, block, entrance, floor, apartment, city, county/sector, postal code, country); the citizenship, nationality and country of origin; the residency/non-residency (i.e. whether a person is resident or not resident in Romania) the telephone number/fax; the scope and nature of the operations performed through the regulated entity; the name and venue where the activity is performed; the public position if applicable , the name of the beneficial owner, if applicable. Under article 11(2) the regulated entity shall keep a copy of the identity document of the client. The client shall submit the

identity documents with a photo, issued under the conditions of the law by the legally competent bodies.

676. For customers which are legal persons or persons without legal personality article 12 of the NSC Regulation requires specified information to be recorded "as appropriate". The Romanian authorities confirmed that the meaning of the underlying Romanian text is that all information received is recorded. This information required is: the name; the legal form and structure; the number, series and the date of the registration certificate/the document of registration with the National Trade Register Offices or registration with similar or equivalent authorities; the subscribed and paid up share capital; the registration code or its equivalent in the case of foreign persons; the credit institution and the IBAN code; the list of persons authorized to sign account operations, administrators, persons with leading management functions or persons representing the client and a specimen signature; the complete address of the registered office/head office or, as appropriate, of the branch; the shareholder structure; the telephone number, fax and, as appropriate, the email address and the website; the purpose and nature of the operations performed through the regulated entity; and the name of the beneficial owner. Article 12(2) goes on to state that customers which are legal persons or entities without legal personality shall submit specified documents, certified copies of which shall be kept by the regulated entity, as appropriate. The Romanian authorities confirmed that the Romanian text requires all information received to be recorded. The documents are the document of legal incorporation and the statute; the mandate of the person authorized to represent the customer when the latter is not legally represented; the certificate issued by the National Trade Register Office (in the case of joint stock companies) or issued by similar authorities from the home state and the equivalent documents in the case of other types of legal persons or entities which certify the information which refers to client identification; a statement signed by the legal representatives related to the activity conducted by the customer and to its legal functioning.

CSA

677. Article 5(8) of the Order requires supervised entities to establish, verify and record the identity of clients and beneficial owners before entering into any business relationship or performing any transactions in the name of the client/beneficial owner. Article 9(1) of the ISC Order states that entities shall take, on a risk-based approach, standard, simplified or additional know your customer measures, in order to establish the identity, where applicable, of the beneficial owner.

678. Article 14 states that supervised entities must obtain specified information, which must be provided under signature by clients who are natural persons. The information is family name and first names as well as any other names used (e.g. pseudonym); date and place of birth; personal numeric code or the equivalent in the case of foreign natural persons; number and series of the identity document; the date when the identity document was issued and the issuing authority; domicile/residence (full address – street, number, block, entrance, floor, apartment, city/town, county/sector, postal code, country); citizenship and nationality; resident/non-resident telephone/fax number, e-mail address, where applicable; occupation and, where appropriate, the name of the employer or the nature of personal activity; public position held, when appropriate; name of the beneficial owner, when appropriate. The entity must keep a copy of the identity document of the client. The client shall present an identity document with a picture, issued by the relevant authorities under the law. The entity shall verify the information provided by the client on the basis of the documents provided by the latter.

679. For customers who are legal persons or persons without legal personality article 15 states that supervised entities must record specified information as appropriate. This information is the full company name/name recorded with the Register of associations and foundations; the legal form; number, series and date of the registration certificate/document of incorporation with the National Trade Register Office or similar or equivalent authorities; the VAT code or its

equivalent in the case of foreign legal persons; the identity of the persons empowered according to the status and/or decision of the statutory board, with the competence to manage and represent the entity and also the extent of their powers in engaging the entity; full address of the registered office/head office or branch, as appropriate; shareholder/associate structure; telephone/fax number and e-mail address, where applicable; type and nature of the business conducted; name of the beneficial owner. Article 15 goes on to state that the client shall submit specified documents and that the entity must keep true copies of such documents, as appropriate. The documents are the memorandum and articles of association; the power of attorney for the person who acts as representative of the client when the person is not the client's legal representative; the certificate issued by the National Trade Register Office (in the case of companies) or by similar authorities in the home state and equivalent documents for other types of legal persons or entities without legal personality, which support the identification data provided by clients; and a statement signed by the legal representatives with respect to the business conducted by the client and the legal status of the client.

CSSPP

680. Under article 9 of the CSSPP Norms, for the purpose of articles 9(1)(b) – (d) of Law 656/2002, administrators/marketing agents are obliged to apply standard customer due diligence measures. They must review the standard customer due diligence measures whenever suspicions emerge about the client, during the performing of operations.

681. Article 10 specifies that the standard customer due diligence measures for natural persons are aimed at obtaining at least the following information: name and first name; date and place of birth; personal identification number, the series and number of the identification card, or where applicable, another similar unique element for identification; domicile address and by case the residency address; the phone number, fax number, and by case the e-mail address; the nationality; the occupation and by case, the name of the employer or the nature of its own activity; prominent public function held, by case.

682. The verification of the client's identity must be carried out based on documents which are more difficult to be counterfeited or illegally obtained under a fake name than identification documents issued by an official authority which include a photo of the holder.

683. Article 11 of the CSSPP Norms specifies that administrators/marketing agents shall apply standard customer due diligence measures for all new customers, as well as, as soon as possible, to all existing clients on a risk based approach.

THE OFFICE

684. Article 4(a) of the Office Norms states that the regulated entities have an obligation to identify their customers. Under article 5(1), regulated entities must also identify their customers. Article 8 provides that the identity of customers must be established based on an official document or an identification document. Article 5(2) provides that regulated entities must obtain all necessary information for establishing the identity of the beneficial owner. Article 19 provides that regulated entities shall establish a systematized procedure for checking the identity of new customers and of persons who act on behalf of other persons and for not entering into business relationships until the identity of a new customer has been verified accordingly. It goes on to state that regulated entities must obtain all information necessary for establishing the identity of each new customer.

685. Article 10 states that, in the case of customers which are natural persons, regulated entities shall request and obtain, under signature, minimum specified information. This information is name and surname, and, where applicable, the pseudonym; domicile, residence or address where the

person lives effectively (the complete address – street, number, block, entrance, floor, apartment, city, county/district, postal code, country); date and place of birth; the personal identification number or, if necessary, another similar unique element of identification (the equivalent for foreigners); the number and series of the identification document; the date of issuance of the identification document and the entity which issued it; citizenship; the resident/non-resident status; and phone/fax numbers. Regulated entities will ensure that the documents which are used to verify the customer's identity fall into the category of most difficult to be forged or obtained by illegal means under a false name, such as original identity documents issued by an official authority that include a photograph of the holder and a description of the person and his/her signature, for example, identity cards and passports.

686. Regulated entities shall keep a copy of the identification document of the customer. Entities have an obligation to verify the information received from the customer on the basis of the primary documents received from the customer. In order to obtain an adequate placement into the customer categories established by regulated entities and ensure appropriate satisfaction of the reporting obligations, additional information which can be requested shall refer to the nationality or to the origin country of the customer, the public or political position and other information.

687. Article 11 specifies that, for legal persons and the entities without legal personality, regulated entities shall obtain minimum specified information from them. This information is the number, series and date of the incorporation certificate/incorporation document at the National Trade Register Office or at similar or equivalent authorities; name; fiscal code or its equivalent for foreign persons; the credit institution and IBAN code; the complete address of the headquarters/central headquarters or, if necessary, of the branch; the telephone and fax numbers and, if necessary, e-mail address and website; the goal and the nature of the operations performed with the regulated entity. The customer, legal person or entity without legal personality shall present at least the following documents and the regulated entity shall on a case by case basis keep copies of them: incorporation certificate/incorporation document at the National Office of Commerce Register or at similar or equivalent authorities; and the mandate/power of attorney for the person who represents the customer if this is not the legal representative.

688. Under article 7(1) the requirement for customer identification is not mandatory if it is established that the payment will be made by debiting an account opened in the name of the customer to a credit or financial institution from Romania, from a Member State of the European Union or from secondary premises situated in a Member State of the European Union belonging to a credit or financial institution of a third state. In addition, under article 7(2) customer identification is not mandatory if the customer is a credit or financial institution from Romania, from a Member State of the European Union or from a branch situated in a Member State of the European Union belonging to a credit or financial institution of a third state, which impose identification requirements similar to those provided by Romanian law. This text echoes article 17(d) of Law 656/2002.

689. Under article 16, in the case of relationships started through correspondence or through modern telecommunication means (telephone, e-mail, internet), regulated entities must apply the identification procedures applicable to customers who physically present. Regulated entities must refuse to start correspondent relationships or to continue this kind of relationship with entities that are incorporated in another jurisdiction where the entities do not a physical presence (the activity's management and the records/books of the institution are not located in that jurisdiction).

Identification of legal persons or other arrangements (c.5.4)

690. Article 16 of Law 656/2002 states:

> *"(1) The identification data of the customers shall contain:*
> *a) in the situation of the natural persons – the data of civil status mentioned in the documents of identity provided by the law;*
> *b) in the situation of the legal persons – the data mentioned in the documents of registration provided by the law, as well as the proof that the natural person who manages the transaction, legally represents the legal person.*
>
> *(2) In the situation of the foreign legal persons, at the opening of bank accounts those documents shall be required from which to result the identity of the company, the headquarters, the type of the company, the place of registration, the power of attorney who represents the company in the transaction, as well as, a translation in Romanian language of the documents authenticated by an office of the public notary."*

691. Articles 5(1) to 5(3) of the AML/CFT Regulation (Government Decision 594/2008) state:

> *"(1) Standard customer due diligence measures are:*
> *a) identifying the customer and verifying the customer's identity on the basis of documents, and, by case, of information obtained from a reliable and independent source;*
> *b) identifying, where applicable, the beneficial owner and taking risk-based measures to verify his identity so that the person covered by article 8 of the Law no. 656/2002 is satisfied that the information received is adequate and that it enables it also to understand the ownership and control structure of the customer – legal person;*
> *c) obtaining information on the purpose and intended nature of the business relationship;*
> *d) conducting on-going monitoring of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including, where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date.*
>
> *(2) The identification data of the customers shall include at least:*
> *a) as regards natural persons – the data of civil status mentioned in the documents of identity provided by the law;*
> *b) as regards legal persons – the data mentioned in the documents of registration provided by the law, as well as the evidence that the natural person who manages the transaction is entitled to legally represent the legal person.*
>
> *(3) The persons provided for in the article 8 of the Law no. 656/2002 shall apply all the measures provided for in para (1) letter a) - d), having the possibility to take into the account the circumstances based on the risk, depending on the type of the client, business relationship, product or transaction, case in which he has to demonstrate to the authorities or to the structures provided for in the article 17 of the Law no. 656/2002 that the customer due diligence measures are adequate in view of the risks of money laundering and terrorism financing."*

692. There appears to be no provision in the AML/CFT law, the AML/CFT Regulation and the texts of the NSC Regulation, the ISC Order and the CSSPP Norms do not refer to "verification" of

any person acting on behalf of a customer (other than a person acting on behalf of a legal person) and "verifying" the identity of that person nor a provision on the power to bind the legal person or arrangement. It is also noted that the existing provisions are not sufficiently detailed to cover adequately the requirements under criterion 5.1(b).

NBR

693. Article 9, Paragraph 1 of the NBR Regulation 9/2008 sets out that customer identification for legal persons[111] shall pursue obtaining at least the following information:

p) Name;
q) Incorporation form;
r) Registered office and, as applicable, the office where is located the headquarters;
s) Phone number, fax, email, according with the situation;
t) Type and nature of the performed activity;
u) The identity of the persons empowered, according to the status and/or decision of statutory board, with the competence to manage and represent the entity and also the extent of their powers in engaging the entity;
v) …
w) The identity of the person acting on behalf of the customer and information necessary to establish that the person is authorized to act.

694. Paragraph 2 of the same article defines that reporting entities should verify the legal existence of the entity and check relevant information and documents regarding the identity of the person acting on behalf of the customer and the nature and the extent of its mandate. Paragraph 3 requires that the information provided by the customer is verified by any adequate means[112] so that the reporting entities are satisfied with the accuracy of the data, and Paragraph 4 establishes that in the absence of registration requirements for an entity, the verification of the information shall be done on the basis of incorporation documents, including the business license and/or the audit reports.

NSC

695. Articles 11 and 12 of the NSC Regulation lay down the basic obligations of identification (and, in the case of article 11, verification). These are specified above.

696. For legal persons and entities without legal personality, article 12(3) provides that the regulated entity shall take measures of identification of the natural persons who intend to act on behalf of the customer in accordance with the policy and procedures related to natural person identification and review the documents by which the persons are authorized to act on behalf of the legal person.

697. Article 12(1) requires regulated persons to record information on the legal status of the legal person or arrangement as follows. For example, there is a requirement to record information on the number, series and the date of the registration certificate/document of registration with the

[111] As far as other legal arrangements are concerned, Article 776 of the Civil Code (Title IV adopted by the Law 287 (2009)) defines that "the quality of trustee in a [trust] contract may be get only by credit institutions, investment companies, financial investment service provider companies, insurance and reinsurance companies, legally established", which means that such arrangement should have legal personality, i.e. act as a legal person.

[112] Such as obtaining from the customer and/ or from a public register the documents upon which the registration of the entity was based, conducting an enquiry by a business information service or a firm of lawyers or auditors, visiting the entity, exchanging correspondence and/or contacting the customer by telephone, or using other independent references.

National Trade Register Office or with similar or equivalent authorities. Article 12(2) requires the legal person and entity without legal personality to provide (and the regulated entity to keep certified copies as appropriate) the document of incorporation and the statute, together with the proving certificate of the National Trade Register Office or similar authorities and equivalent documents in the case of, for example, entities without legal personality. In addition, there is a requirement in the article to obtain a statement signed by the legal representatives related to the activity conducted by the customer and to its legal functioning.

CSA

698. Articles 14 and 15 of the ISC Order lay down the basic obligations of identification.

699. For legal persons and entities without legal personality, article 15(3) provides that the supervised entity shall take measures to identify the natural persons who seek to act in the name of the legal person or entity without legal personality in accordance with due diligence policies and procedures and shall review documents of persons are empowered to act in the name of the legal person or entity without legal personality. Article 15 (1) provides that supervised entities shall, amongst other matters, with respect to clients which are legal persons or which do not have legal personality, verify the identity of the persons empowered, according to the status and/or decision of statutory board, with the competence to manage and represent the entity and also the extent to of their powers in engaging the entity.

700. Article 15(1) requires regulated persons to record information on the legal status of the legal person or arrangement as follows. There is a requirement to record information on the number, series and the date of the registration certificate/document of registration with the National Trade Register Office or with similar or equivalent authorities. Article 15(2) requires the legal person and entity without legal personality to submit (and the supervised entity to keep true copies) the memorandum and articles of association; the power of attorney for the person who acts as the representative of the client when the said person is not the client's legal representative; the certificate of the National Trade Register Office or similar authorities and equivalent documents for other types of legal persons or entities without legal personality. In addition, there is a requirement in the article to obtain a statement signed by the legal representatives with respect to the business conducted by the client and the legal status of the latter. The evaluation team is also of the view that the ISC Order does not clearly cover trustees of trusts and the provisions regulating the power to bind the legal person or arrangement.

THE OFFICE

701. Articles 5, 10 and 11 of the Office Norms lay down the basic obligations of identification. These are specified above.

702. Article 5(3) provides that the regulated entity shall identify the natural persons who intend to act on behalf of the customer, legal person or entity without legal personality, according to the rules on the identification of the natural persons. They must analyse the documents in which the persons are mandated to act on behalf of the legal person.

703. Article 11(1) requires regulated persons to obtain information on the legal status of the legal person or arrangement. For example, there is a requirement to obtain the number, series and date of the incorporation certificate/incorporation document of registration with the National Office of Commerce Register or at similar or equivalent authorities. Article 12(2) requires the legal person and entity without legal personality to present (and the regulated entity to keep copies on a case by case basis) the incorporation certificate/incorporation document at the National Trade Register Office or at similar or equivalent authorities and the mandate/power of attorney for the person who represents the customer if this is not the legal representative.

Identification of beneficial owner (c.5.5)

ALL

704. Article 11 of Law 656/2002 specifies that persons subject to the law must on the basis of risk apply standard, simplified or enhanced customer due diligence measures, which allow them to identify, where applicable, the beneficial owner. Article 4 of the law contains a definition of beneficial owner[113], as follows:

"(1) For the purposes of the present law, beneficial owner means any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly.

(2) The beneficial owner shall at least include:

x) in the case of corporate entities:

- *the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership over a sufficient percentage of the shares or voting rights sufficient to ensure control in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards. 2. A percentage of 25% plus one share shall be deemed sufficient to meet this criterion;*
- *the natural person(s) who otherwise exercises control over the management of a legal entity;*

y) in the case of legal entities, other than those referred to in para (a), and other entities or legal arrangements, which administer and distribute funds:

- *The natural person who is the beneficiary of 25% or more of the property of a legal person or other entities or legal arrangements, where the future beneficiaries have already been determined;*
- *Where the natural persons that benefit from the legal person or entity have yet to be determined, the group of persons in whose main interest the legal person, entity or legal arrangement is set up or operates;*
- *The natural person(s) who exercises control over 25% or more of the property of a legal person, entity or legal arrangement."*

705. Article 3 of the AML/CFT regulation (Government Decision 594/2008) echoes Article 11 of the law. Article 5, Paragraph 1, Letter (b) specifies that standard CDD measures include, *inter alia*, identifying, the beneficial owner and taking risk-based measures to verify his identity so that the reporting entity is satisfied about the information in its possession, which should enable it to also understand the ownership and control structure of the customer legal person.

706. While there are provisions in the Romanian law and regulation which seek to address the verification of persons purporting to act on behalf of the customer, there are no clear provisions on determining whether the customer is acting on behalf of another person (criterion 5.5.1) which would apply for entities other than those regulated by the NBR. The same gap in respect of the latter is noted as regards requirements specifying that verification should be on the basis

[113] The definition of beneficial owner in the Romanian legislation transposes the definition set out in the Third EU money laundering directive.

of relevant information or data obtained from a reliable source such that the regulated entity is satisfied that it knows who the beneficial owner is.

707. Also, more generally, the evaluation team notes that the requirements related to the identification and verification of the beneficial owner are treated differently in the various pieces of legislation, including the AML/CFT Law, the AML/CFT Regulation and secondary implementing regulations. The language of requirements focus to a great extent on identification (and not necessarily to the concept of verification).

708. Furthermore, the identification and/or verification measures to be undertaken in their respect are phrased with the terms "where applicable" which, regardless of potential issues of translation, leaves room for interpretation as to whether it would be necessary to undertake identification measures for beneficial owners (other than in situations at the establishment of the business relation or for occasional transactions, which is covered) in all cases, and reasonable measures for verifying their identity. It is the authorities' explanation that the use of the term "where applicable"(though this is not consistently used in all regulations) is a correlation referring to the fact that there may be no beneficial owner at all (that is the customer is not owned or controlled by or acting on behalf of someone else). While this view may be accepted, the evaluation team considers nevertheless that the different approaches may be a source of different interpretation which need clarifying.

NBR

709. Article 8, Paragraph 1, Letter (i) of the NBR Regulation 9/2008 defines that customer identification for individuals shall pursue obtaining, *inter alia*, the name of the beneficial owner. Paragraph 4 of the same article requires that in cases when the customer is represented by another person, who acts as a legal representative, trustee, guardian or in any other capacity, reporting entities shall also obtain and verify the information and the relevant documents regarding the identity of the representative and also, as applicable, regarding the nature and the extent of empowerment.

710. Article 9, Paragraph 1, Letter (g) of the NBR Regulation 9/2008 establishes that customer identification for legal persons shall pursue obtaining, *inter alia*, the name of the beneficial owner or, as applicable, information about the group of persons in whose main interest the legal arrangement or entity is set up or operates.

711. Article 10 of the same regulation requires that the procedures established for customer identification and identity verification with regard to individuals and legal persons are accordingly applied for the purpose of the beneficial owner identification and risk-based identity verification.

712. The sample set of internal norms received from a commercial bank comprises a document titled *Know Your Customer Rules*, which define that, for verifying the information obtained for CDD purposes of both natural and legal persons, the bank shall apply different measures including exchanging e-mails and/or accessing the telephone number of the customer, cross-checking with the data contained in invoices, fiscal sheets, audited financial statements and the like, accessing public (third party) and official website information, acquiring information from the National Trade Register etc.

NSC

713. Article 4(3) of the NSC Regulation states that regulated entities shall identify, verify and record the identity of clients and beneficial owners before concluding any business relationship or performing transactions on behalf of their client/beneficial owner. Article 11 of the Regulation

provides that, in relation to customers who are natural persons, the regulated entity shall record the name of the beneficial owner if applicable. In relation to customers which are legal persons and entities without legal personality article 12 states that the regulated entity shall record the shareholder/associates structure and the name of the beneficial owner.

CSA

714. Article 5(8) of the ISC Order requires entities to establish, verify and record the identity of clients and beneficial owners before entering into any business relationship or performing any transactions in the name of the client/beneficial owner. Article 14 of the Order provides that, in relation to customers who are natural persons, the regulated entity shall record the name of the beneficial owner when appropriate. In relation to customers which are legal persons and entities without legal personality article 15 states that the regulated entity shall record the shareholder/associate structure and the name of the beneficial owner. The Order does not specify that verification should be on the basis of relevant information or data obtained from a reliable source such that the regulated entity is satisfied that it knows who the beneficial owner is.

715. While the ISC Order contains a provision on identifying natural persons acting on behalf of the customer, it does not contain a provision on whether the customer is acting on behalf of another person.

THE OFFICE

716. Article 5(2) of the Office Norms requires regulated entities to obtain all necessary information for establishing the identity of beneficial owners. As a minimum this includes a statement from the customer by which he/she shall declare the identity of the beneficial owner, as well as the source of funds, in accordance with the form provided by the Norms; the purpose and the nature of the operations/transactions performed with the entity; the title and the place of performing the activity/job; name of the employer or the nature of his/her own activity. These provisions might potentially leave entities subject to the Office Norms over reliant on the customer; it is possible that the provision might not help compliance with the more independent approach embodied in Law 656/2002. Article 9 provides that regulated entities shall perform all necessary diligence for checking the information provided by the customer within the identification procedures. Checking can be performed through on-site visits to the location indicated as the address, exchange of correspondence and/or accessing the telephone number provided by the customer.

717. While the Office Norms contain a provision on identifying natural persons acting on behalf of the customer, there is no provision on whether the customer is acting on behalf of another person.

Information on purpose and nature of business relationship (c.5.6)

ALL

718. Article 5, Paragraph 1, Letter (c) of the AML/CFT Regulation (Government Decision 594/2008) specifies that standard CDD measures include, *inter alia*," obtaining information on the purpose and intended nature of the business relationship".

NSC, CSA, THE OFFICE

719. The requirement to obtain information on the purpose and nature of the business relationship is also restated or further complemented by sectorial regulations and norms. (See articles 11(1)

and 12(1) of the NSC Regulation, article 14(1) of the ISC order, article 5(2) of the Office norms).

On-going due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

ALL

720. Article 5, Paragraph 1, Letter (d) of the AML/CFT Regulation (Government Decision 594/2008) specifies that standard CDD measures include, *inter alia*, "*conducting on-going monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including, where necessary, the source of funds, and ensuring that the documents, data or information held are kept up-to-date*". The language used is considered wide enough to include the review of existing records.

NBR

721. Article 5, Paragraph 2, Letters (b) and (d) of the NBR Regulation 9/2008 requires that KYC norms introduced by reporting entities set out provisions on "customer identification and on-going monitoring procedures with a view to classifying customers in the relevant category, respectively for passing through another customer category", and on "procedures for the on-going monitoring of operations performed by the customers for the purpose of unusual and suspect transactions detection".

722. Article 16, Letter (e) of the same regulation establishes that for the customers and transactions representing higher risk, reporting entities should set up additional CDD measures, which might include "implementing of adequate IT systems …to identify at least the lack or the insufficiency of the adequate documentation at the setting up of the business relation, the unusual transactions performed through the customer account and the aggregate situation of all the customer operations with the institution".

NSC

723. Article 10(5) of the NSC Regulation states that regulated entities are required to continuously monitor the business relationship, including reviewing the transactions concluded during the relationship, in order to ensure that the transactions are consistent with the information held about the customer, the business and risk profile, including, where appropriate, the source of funds and updating the documents, data and information held.

724. Article 16 goes on to state that regulated entities shall monitor all operations performed by their clients, and by priority the operations performed by the customers from the high risk category. When deciding on the clients who shall be included in this category, the information required to be considered is the type of client (natural/legal person or entity without legal personality); the home state; the public or high-profile position held; the type of activity performed by the client; the source of client funds; and other risk indicators.

CSA

725. Article 11 states that entities shall implement mechanisms and measures to monitor business relationships on an on-going basis, including the review of transactions concluded in the course of the business relationship to ensure that such transactions are in line with the information provided by the client, the operations and the risk profile, the analysis of the sources of funds and the permanent updating of documents, data and information, when appropriate.

726. Under article 12, entities must verify, update or complete identification data as appropriate in the case of transactions which involve an amount equivalent to a minimum of 15,000 euro, irrespective of whether or not such transactions are conducted in single operations or through several operations which seem linked.

THE OFFICE

727. Article 17 of the Office Norms specifies that regulated entities must establish a programme of due diligence corresponding to the nature, size, complexity and limits of its activity, adapted to the level of risk associated with the categories of its customers. It must consider all transactions/operations and, amongst other matters, the programme must include monitoring of operations performed in order to detect suspicious transactions and modalities of analysing transactions/operations which do not fit normal patterns or which involve risk factors.

728. Article 21 specifies that monitoring of customers will be made as a minimum through the creation of a database on the identification of customers that will be permanently updated; permanent updating of the records on customers' identity; and the periodic assessment of the quality of the identification procedures applied by intermediaries and monitoring of the transactions/operations in order to detect and report suspicious transactions according to the internal procedures of the regulated entity. Article 22 adds that regulated entities shall update the database. Taking into consideration the evolution of the relationship with each customer regulated entities will re-rank them into the appropriate categories of customers. Further changes to the information provided must be checked and recorded accordingly. If frequent substantial changes appear concerning the structure of customers which are legal persons or entities without legal personality, regulated entities must carry out further verification. The review may take place when a significant transaction/operation is performed, when the documentation necessary for each customer is significantly modified or when there is a relevant modification concerning the modus operandi of the customer. Where there are gaps regarding the information available on an existing customer or when there are grounds or the regulated entity suspects that the information provided is not real, the entity must take all necessary measures in order that all relevant information to be obtained as soon as possible.

729. Article 23 states that regulated entities must ensure the monitoring of the customer's activity through the monitoring of the transactions/operations performed by them, taking into account the level of risk associated to different categories of customers.

730. Article 24 provides that the monitoring procedure shall take into account the classification of customers into several categories considering factors such as the type of the transactions/operations; the number and the volume of transactions/operations; the risk of an illegal activity associated with the different types of transactions/operations performed through the regulated entity.

731. With reference to customers with higher potential risk, article 25 states that it is necessary to monitor the majority or, if necessary, all the transactions/operations performed through the regulated entity. When establishing the persons who fall into this category, the regulated entity must take into consideration the customer's type – natural/legal person; country of origin; the public position or the importance of the position held; the specific activity performed by the customer; the source of funds; other risk indicators. Article 26 specifies that, for customers with a higher potential risk of money laundering and terrorism financing, regulated entities must have appropriate systems for the management of information in order to provide to management and/or control and internal audit staff information in due time necessary for the identification, analysis and effective monitoring of the customers. As a minimum, systems must point out the absence or insufficiency of appropriate documentation required at the beginning of the business

relationship, unusual transactions/operations performed by the customer and the aggregate of all customer's relationships with the regulated entity. Management must know the personal circumstances of the customers and pay enhanced attention to the information received from third parties concerning these persons.

732. Article 16 provides that, in the case of relationships started through correspondence or modern telecommunication means (telephone, e-mail, internet), regulated entities must apply the procedures for monitoring standards applicable to customers who physically present.

Risk – enhanced due diligence for higher risk customers (c.5.8)

ALL

733. Article 18 of Law 656/2002 provides that enhanced due diligence measures must be applied in the following situations, which, by their nature, may pose a higher risk of money laundering or terrorist financing:

a) Persons who are not physically present when performing the transaction;
b) Correspondent relationships with credit institutions from states that are not EU Member States or which are not in the EEA;
c) Transactions or business relationships with PEPs which are resident in another EU Member State, in an EEA Member State or a third country;

734. In addition, enhanced due diligence measures must be applied for other cases than the ones above, which, by their nature, pose a higher risk of money laundering or terrorist financing.

735. Article 3 of the AML/CFT Regulation (Government Decision 594/2008) specifies that reporting entities shall apply standard, simplified or enhanced customer due diligence based on risk. Article 12 establishes that application of enhanced due diligence measures shall be mandatory at least in case of:

a) Persons who are not physically present for the performance of the operations;
b) Correspondent relations with credit institutions within third states[114];
c) Occasional transactions or business relations with the politically exposed persons who are resident within a Member State of the European Union or of the European Economic Area or within a foreign state.

NBR

736. Article 11 of the NBR Regulation 9/2008 defines that reporting entities should establish classes of customers and transactions representing high risk, using risk parameters such as the size of the assets and income, the types of services to be provided, the activity field of the customer, the economic background, the reputation of the home country, the veracity of the customer's motivation, and value limits on each type of transaction.

737. Articles 12 to 14 of the same regulation define the following categories of high-risk customers, services and transactions:

- Customers and transactions in and/or from jurisdictions, which do not impose KYC and record keeping requirements equivalent to those laid down in the Law 656/2002, the Government

[114] In Romanian legislation, the terms "third states" and "third countries" are interchangeably used for countries other than those of the European Union plus Iceland, Liechtenstein, and Norway (jointly referred to as the European Economic Area [EEA-EFTA] countries).

Decision 594/2008 and the NBR Regulation 9/2008, and in which they are not supervised for compliance with those requirements;
- Personalized (private) banking services;
- Non-nominative accounts, for which the identity of the holder, known by the credit institutions, is replaced in records by a numerical code or by a code of another nature.

738. Article 16 of the same regulation establishes that, in relation to the higher risk categories of customers and transactions as specified under Articles 11 to 14, reporting entities are required to set up additional CDD measures, which may include :

a) Approval at a higher hierarchical level for initiating or continuing the business relationship;
b) Request for the first transaction to be performed through an account opened with a credit institution subject to requirements equivalent to those laid down in the Law 656/2002 and the Government Decision 594/2008;
c) On-going enhanced permanent monitoring of the business relationship;
d) Implementing of adequate IT systems facilitating identification, analysis, and effective monitoring of high-risk transactions;
e) Instructing relevant staff on personal circumstances of specific customers and requesting that they pay special attention to the information received from third parties about these persons;
f) Approval at a higher hierarchical level for transactions that exceed a certain pre-established threshold.

FSA – NSC

739. Article 7(1) of the NSC Regulation states that regulated entities are required to adopt adequate measures to prevent money laundering and terrorist financing during the performance of their activity and adequate measures to prevent money laundering and terrorism financing acts, and, based on risk, apply standard, simplified or enhanced customer due diligence measures which allow identification, where applicable, of the beneficial owner.

740. Article 15(1) provides that regulated entities are required to apply, beyond the standard customer due diligence measures, on a risk base, enhanced customer due diligence measures, in all situations which by their nature can present a higher risk of money laundering or terrorist financing. The appliance of enhanced due diligence measures is mandatory when persons are not physically present to perform operations. In this case, without limiting the measures, one or more of the following measures must be undertaken by regulated entities:

- request documents and additional information in order to establish the identity of the client and of the beneficial owner;
- perform additional measures in order to verify or certify the documents supplied or the request of a certification from a credit or financial institutions which is under the obligation of preventing and combating money laundering and terrorist financing, equivalent to the standards provided for in Law 656/2002 and the regulations issued under that law;
- request that the first operation to be performed through an account opened on the name of the client to a credit institution which is subject to the obligations related to the prevention and combating money laundering and terrorist financing, equivalent to the standards provided for in Law 656/2002 and the regulations issued under that law.

741. Enhanced due diligence also applies when the occasional transactions or the business relationships are with politically exposed persons who are resident in another Member State of the European Union or in the European Economic Area or in a third state (see the text below at Recommendation 6 for the measures to be adopted).

742. Under article 15(2), regulated entities are also required to apply enhanced due diligence measures of customers in other cases than those specified in article 15(1) which, by their nature, pose a high risk of money laundering or terrorist financing.

CSA

743. Article 5(2) of the ISC Order states that entities must have mechanisms, as well as implementation measures, which, on the basis of risk indicators, allow the identification of categories of clients, products and services, operations and transactions which entail potential higher risks. Under article 5(3) entities must prepare risk-based review procedures and subsequently classify clients into at least three classes of risk.

744. Under article 18, in addition to standard risk-based due diligence measures, entities must apply some enhanced due diligence measures in all cases which by their nature entail higher money laundering and terrorism financing risk. Enhanced due diligence measures are mandatory at least in the following situations.

745. In the case of persons who are not physically present at the performance of operations, entities must apply one of the following measures, without this limiting the measures that might be taken:

- request documents and additional information in order to establish the identity of the client and beneficial owner;
- fulfil additional measures for checking and verification of supplied documents or request a certification from a credit or financial institution which is under the obligation of preventing and combating money laundering and terrorism financing equivalent to the standards provided for in Law 656/ 2002 and the AML/CFT Regulation (Government Decision 594/2008).
- request that the first operation to be performed through an account opened in the name of the client with a credit institution which is subject to obligations for prevention and combating money laundering and terrorism financing equivalent to the standards provided for in Law 656/2002 and the AML/CFT Regulation (Government Decision 594/2008).

746. Enhanced due diligence also applies when the occasional transactions or the business relationships are with politically exposed persons who are resident in another Member State of the European Union or in the European Economic Area or in a third state (see the text below at Recommendation 6 for the measures to be adopted).

747. Article 21 of the Order requires entities to also apply enhanced due diligence measures in cases other than those referred to in article 18 which, by their nature, entail higher money laundering or terrorist financing risk.

CSSPP

748. Under article 13 of the CSSPP Norms, in addition to standard customer due diligence measures, administrators/marketing agents are obliged to apply enhanced customer due diligence measures on a risk based approach in all the situations that, by nature, may present a high risk of money laundering or terrorism financing. Article 13(2) goes on to say that administrators/marketing agents must also apply enhanced customer due diligence measures in other cases than the one stipulated in article 12(1) of Law 656 of 2002, which by nature present a high risk to money laundering and terrorism financing acts.

749. Article 14 provides that administrators/marketing agents must hold the following information on clients that present a high risk:

- the origin country of the client;
- the public position or the prominent position held;
- the activity type performed by the client;
- the origin of the client's funds;
- other risk indicators.

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

ALL

750. Articles 7 to 9 of the AML/CFT Regulation (Government Decision 594/2008) define the categories of low-risk customers, services and transactions, for which reporting entities may choose to apply simplified due diligence measures, as follows:

- **Under Article 7**[115]: a) life insurance policies below certain thresholds; b) insurance policies for pension schemes; c) transactions in electronic money, as defined in Governmental Emergency Ordinance 99 (2006) for specific products below certain thresholds. Hence, the provision establishing an option of simplified CDD in case of insurance policies for pension scheme falls short of further detailing that such option is practicable only if there is no surrender clause and the policy cannot be used as collateral.
- **Under Article 8**[116]: a) companies whose securities are admitted to trading on a regulated market in one or more Member States and listed companies from third countries which are subject to disclosure and transparency requirements consistent with Community legislation; b) beneficial owners of the transactions performed through pooled accounts administrated by notaries and other independent legal professions from Member States or from third countries imposing requirements equivalent to those laid down in the Law 656/2002 and the Government Decision 594/2008 and supervised for compliance with those requirements; c) domestic public authorities; d) customers, which are considered a low AML/CFT risk and are communitarian public authorities, have publicly available identity, transparent activities and accountable evidence etc.
- **Under Article 9**[117] : a) products offered on basis of a written contract; b) operations performed through an account opened with credit institutions from Member States or from third countries imposing requirements equivalent to those laid down in the Law 656/2002 and the Government Decision 594/2008; c) products or connected operations, which are nominatives and according to their nature allow a proper application of standard CDD measures; d) the value of the product is below EUR 15.000; e) the beneficiary of products or connected operations cannot be a third person, excepting death, invalidity, predetermined ages or other similar situations; f) products or connected operations allow investments in financial assets or debts, provided that the benefits are materialized just on a long term, the product or the connected operations cannot be used as guaranty (assurance), and that there are no surrender clauses.

751. At that, except for Article 7, Paragraph 1, Letter (a)[118], which defines that obliged entities "**shall apply** simplified customer due diligence measures" where the customer is a credit or financial institutions from a Member State or from a third country imposing requirements equivalent to those laid down in the Law 656/2002 and supervised for compliance with those requirements, all other derogations in this regulation from standard CDD requirement use the wording "**may**

[115] This is a transposition of Article 11, Paragraph 5 of the Directive 2005/60/EC
[116] This is a transposition of Article 11, Paragraph 2 of the Directive 2005/60/EC
[117] This is a transposition of Article 3, Paragraph 3 of the Directive 2006/70/EC, and the respective criteria are to be met cumulatively meaning that
[118] This is a transposition of Article 11, Paragraph 1 of the Directive 2005/60/EC

apply simplified customer due diligence measures", which means that the provision under Article 7, Paragraph 1, Letter (a) is rather a requirement than an option.

752. As compared to the provisions of the AML/CFT Regulation (Government Decision 594/2008) above, Article 17 of the Law 656/2002 provides somewhat a less detailed description of the categories of low-risk customers, services and transactions, for which reporting entities are entitled to apply simplified CDD measures.

753. At that, Article 10 of the AML/CFT Regulation (Government Decision 594/2008) specifies that, in the situations provided for in Articles 7 and 8, reporting entities shall obtain adequate information about their clients and shall permanently monitor their activity to establish whether they are framed within the category for which the respective derogation is provided (i.e. whether they can be considered low risk clients).

NBR

754. Moreover, Article 17, Paragraph 1 of the NBR Regulation 9/2008 defines that simplified CDD measures are established by reporting entities on a risk basis, in a manner allowing them observation of all dispositions of the Law 656/2002, the Government Decision 594/2008 and the NBR Regulation 9/2008.

755. Article 17, Paragraph 2 of the NBR Regulation 9/2008 requires that simplified CDD measures include gathering sufficient information about the customers in order to support customer categorization decisions of reporting entities, enable monitoring their operations for detecting suspicious transactions and establishing a procedure, which would allow review of the information held on the customers to ensure that they are assigned to appropriate risk categories.

NSC

756. Under article 14 of the NSC Regulation regulated entities may apply simplified customer due diligence measures under the circumstances mentioned in article 17 of Law 656/2002 republished as well as in other cases and conditions which have low risk as regards money laundering and terrorist financing provided for in the law or regulations issued under the law. Regulated entities are therefore allowed significant discretion when to apply simplified customer due diligence.

CSA

757. Under article 17 of the ISC Order entities may apply simplified due diligence measures in the cases referred to in article 17 of Law 656/2002 republished as well as the cases referred to in articles 7 to 9 of the AML/CFT Regulation.

758. Article 17 [1] specifies specific cases. Entities shall apply simplified due diligence measures in the cases of non-life insurance policies when the insurance premium is lower or equal to the equivalent of 2,500 euro. In addition, entities shall apply simplified due diligence measures in cases of life insurance policies where the insurance premium or the annual instalments are lower or equal to the equivalent of 1,000 euro or if the single insurance premium paid is up to the equivalent of 2,500 euro. If the periodic premium instalments or the annual premiums are or are to be increased in such a way as to be over the limit of the equivalent of 1,000 euro or 2,500 euro respectively, standard customer due diligence measures on customers' identification must be required. In the case of life insurance business, the identity of the beneficiary of the life insurance policy must be verified whenever such beneficiaries change during the term of the insurance contract. Entities which apply simplified due diligence measures must obtain

adequate information about their clients and permanently monitor their activity in order to establish if they are framed within the category for which simplified due diligence measures are being applied. The evaluation team notes that in some instances simplified customer due diligence is compulsory.

FSA – CSSPP

759. Article 12 of the CSSPP Norms states that administrators/marketing agents shall apply simplified customer due diligence measures on the acts of adhesion to pension funds, as well as in other cases or conditions which present a low risk for money laundering and terrorism financing, stipulated as such by the law or any implementing regulations.. For clients who have been allocated to a private pension fund, simplified customer due diligence measures shall apply based on the identification references submitted by the evidencing institution.

760. Simplified customer due diligence measures should include obtaining sufficient information on clients, where applicable, identity references which shall ensure administrators/marketing agents of the legality of the clients' inclusion in the low risk category for money laundering and terrorism financing according to the legislation. It also includes monitoring of their operations in order to detect suspicious transactions and of the establishment of a procedure that will allow the updating and the adequacy of the information held on clients in such a way that administrators/marketing agents can rest assured on the fact that these clients are maintained in the relevant client category.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

ALL

761. The exemptions from the requirement to apply standard CDD measures, as set forth in the Law 656/2002, and the AML/CFT Regulation (Government Decision 594/2008), do not directly allow application of simplified CDD measures for customers in or from countries with known failure to comply with the FATF Recommendations. Moreover, these legal acts contain provisions which, by varying level of comprehensiveness, allow simplified CDD measures with counterparts from third countries only if they impose requirements equivalent to those laid down in the mentioned legal acts of Romania. This means that third country compliance with AML/CFT requirements either for allowing simplified CDD or for requiring enhanced CDD is measured not against the FATF requirements, but against some of the applicable Romanian legislation.

762. On a related note, Article 11 of the AML/CFT Regulation (Government Decision 594/2008) establishes that simplified CDD measures cannot be applied in case of clients such as credit institutions, financial institutions or companies whose securities are traded on a regulated market of third countries, if the European Commission adopted a decision in this regard[119].

Risk – simplified/ reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

ALL

763. Article 13, Paragraph 1, Letter (c) of the Law 656/2002, as well as Article 4, Paragraph 1, Letter (c) of the AML/CFT Regulation (Government Decision 594/2008) establish that reporting entities are obliged to apply standard CDD measures when there are suspicions of money

[119] This is a transposition of Article 12 of the Directive 2005/60/EC.

laundering or terrorist financing, regardless of value operation, or any derogation from the obligation to apply standard CDD measures as provided for in the law.

764. Moreover, Articles 7 to 9 of the AML/CFT Regulation (Government Decision 594/2008), which define the categories of low-risk customers, services and transactions, for which reporting entities may choose to apply simplified CDD measures, do not enable that such measures are applied in the presence of suspicions of money laundering or terrorist financing.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

ALL

765. A number of instruments have been issued by financial institution supervisors, which contain information on the risk based application of CDD. There are the NSC Regulation, the ISC Order, the CSSPP Norms and the Office Norms. The Office has also issued in September 2010 a Manual on the Risk Based Approach and Indications of Suspicious Transactions.

NBR

766. Article 5, Paragraph 1 of the NBR Regulation 9/2008 requires reporting entities to establish, through their KYC norms, procedures and measures to be implemented for the compliance with applicable AML/CFT requirements so as to be able to satisfy the National Bank of Romania that they efficiently manage the risk of money laundering or terrorism financing. According to Article 7 of the same regulation, such norms should be submitted for the NBR's review within 5 days from their approval, and the NBR is empowered to request modification/ amendment of the norms under Article 25, Letter (a) of the regulation.

767. The authorities advised that such system of *ex post* review of the reporting entities' norms on the application of the risk-based approach is meant to ensure that the extent of CDD measures determined by reporting entities is consistent with the relevant requirements of the regulator in the area. Also, the assessment team was informed that some meetings were organised, at credit institutions' request, through the Romanian Banking Association, to clarify certain issues concerning the application of the FATF Risk based approach guidance and the guidance issued by the FIU.

Timing of verification of identity – general rule (c.5.13)

ALL

768. Article 5, Paragraph 6 of the AML/CFT Regulation (Government Decision 594/2008) requires financial institutions to verify the identity of the customer and of the beneficial owner before establishing a business relationship or conducting transactions for occasional customers. .

NSC

769. Article 4(3) of the NSC Regulation states that regulated entities shall identify, verify and record the identity of clients and beneficial owners before concluding any business relationship or performing transactions on behalf of their client/beneficial owner.

770. Article 8(2) specifies that regulated entities shall apply standard customer due diligence measures to all new customers based on the risk as soon as possible. The evaluation team notes that this provision does not apply to customers subject to simplified customer due diligence measures. It does apply to customers subject to enhanced customer due diligence measures as regulated entities must apply standard customer due diligence and then enhanced customer due diligence. Article 9 provides that, when the amount is not known while the transaction is

accepted, the regulated entity is obliged to establish the customer's identity and proceed to the customer's identification as soon as possible, when it is informed about the transaction value and when it has ascertained that the minimum limit provided for in article 8(1)(b) of the Regulation has been reached.

CSA

771. Article 5(8) of the ISC Order specifies that entities must establish, verify and record the identity of clients and beneficial owners before entering into any business relationship or performing any transactions in the name of the client/beneficial owner.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

ALL

772. Under Romanian legislation, it is not permitted to complete the verification of the identity of the customer and the beneficial owner after starting the business relationship.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

ALL

773. Article 5, Paragraph 4 of the AML/CFT Regulation (Government Decision 594/2008) establishes that when reporting entities are unable to a) identify the customer and verify the customer's identity on basis of documents and information obtained from reliable and independent sources; b) identify, where applicable, the beneficial owner and take risk-based and adequate measures to verify the beneficial owner's identity, and c) obtain information on the purpose and intended nature of the business relationship, they may not perform the transaction, start the business relationship or shall have to terminate the business relationship, and report this issue as soon as possible to the ONPCSB.

CSA

774. Article 11(3) of the ISC Order states that, when the identification of clients in accordance with the provisions of the order is not feasible, supervised entities shall not initiate operations, conduct transactions or shall prohibit any operations or shall terminate business relationships and report such termination to the Office and the CSA.

THE OFFICE

775. Under article 15, if the suspicions referred to in article 12 (which include situations such as (but not limited to) when the customer mandates a person who obviously has no close relationship with the customer to perform operations; or when the amount of funds or assets involved in an operation ordered by a customer is disproportionate compared to the regulated person's knowledge of the customer's financial situation) persist and cannot be removed through additional clarifications, the regulated entity can refuse to start a relationship with the respective customer or to perform the operation requested.

Existing customers – (c.5.17 & 5.18)

ALL

776. Article 14 of the Law 656/2002 requires that reporting entities apply standard CDD measures both to new customers and, as soon as possible, on a risk-sensitive basis, to existing customers

(supposedly, also to those with regard whom Criterion 5.1 applies). While there are no time-limits set out in the AML/CFT Law, some, but not all of the sectorial implementing regulations have included a time limit. The authorities have considered that the requirements related to on-going monitoring and periodicity of updating files would have led to the expected result. The evaluation team does not share a similar view in that it considers that such an approach does not meet fully the requirements set out under criterion 5.17 & 5.18.

NBR

777. Article 20 of the NBR Regulation 9/2008 establishes that, in the case of existing customers passing from one category to another with a higher associated risk, all due diligence measures established by the reporting entity for the newly determined category should be taken. Moreover, Article 28 of the same regulation requires that reporting entities apply the due diligence measures imposed by the Law 656/2002, the AML/CFT Regulation (Government Decision 594/2008) and the NBR Regulation 9/2008 to all existing customers as soon as possible, on a risk-sensitive basis, but not later than 18 months after the approval of the KYC norms elaborated in accordance with Chapter II of that regulation.

778. The authorities advised that the regulatory solution was to permit the institutions to apply, on a risk base basis, the new CDD requirements at the moment the customers' request for the provision of a service (the industry along with the supervisor considered that the 18-months period would be sufficient for this first contact with the client after the implementations of the new norms enacted since 2008).

NSC

779. Article 8(2) of the NSC Regulation states that regulated entities shall apply standard customer due diligence measures to existing clients as well as to new customers based on risk as soon as possible. NSC Executive Order 2/2011 introduced clear timeframes for updating clients' identification data for intermediaries and asset management companies.

Effectiveness and efficiency (R. 5)

780. All institutions met by the evaluation team had customer due diligence provisions in place which prevented anonymous accounts from being opened.

781. Representatives of commercial banks met on-site demonstrated adequate knowledge and understanding of customer due diligence requirements, risk-based classification of customers, transactions and business relationships, on-going monitoring and other obligations under Recommendation 5.

782. Representatives of non-bank financial institutions and, to a lesser extent, payment institutions met by the evaluation team have shown somewhat limited knowledge and understanding of CDD and related requirements, basically perceived as their obligation to identify and verify the identity of their customers assuming that other, more in-depth measures are to be taken by banks, with whom the absolute majority of customers contact before becoming their clients. The NBR Supervision Department indicated that, according to their findings in most cases of on-site supervisions, the current practice of the non-bank financial institutions and payment institutions is to apply correctly legal procedures related to CDD, according to their status.

783. During discussions with credit and financial institutions supervised by the NBR, it was however clear that the implementation of the beneficial owner requirements remained challenging, particularly in cases requiring identification of ultimate beneficial owners of legal entities registered in various off-shore territories and "tax havens".

784. Other financial institutions met by the evaluation team generally had an understanding of the obligations under Recommendation 5. Business is mostly face to face. Institutions do not enter into business relations unless customer due diligence is complete. In the investment sector, non-Romanian customers attract more attention although customers based in the EU provide greater comfort than those outside the EU. A customer which is a financial institution in the EU was described as being subject to standard customer due diligence whereas financial institutions based outside the EU would need to provide more information. In the investment sector there was an understanding of the need to verify beneficial ownership information for companies. One institution advised that a customer relationship was not commenced due to lack of identification information on the beneficial owner. Annual monitoring was not uncommon. Monitoring was undertaken by some institutions based on triggers such as unusual transaction amounts or changes in the pattern of trading. One firm routinely checked active customers as these were seen to present higher risk. However, one firm in the investment sector had not undertaken any formal risk grading of customers. The evaluation team also had the impression that some investment institutions relied on banks.

785. The Bucharest Stock Exchange is covered by the NSC Regulation. The Stock Exchange noted that the application of the Regulation had to be modified in practice from its perspective. The evaluation team is of the view that much of the Regulation in areas such as customer due diligence (and also similar requirements in the Regulation made under Law 656/2002) as drafted cannot apply to the Stock Exchange (and presumably other market and system operators in Romania in any meaningful way).

786. Overall, the interviews with the financial institutions confirmed that the understanding of the requirements, as set out in the Law and various regulations/decisions (some of which not necessarily adequately harmonized or consolidated, or which merely appeared to be quoting the law itself rather than interpreting it and providing guidance) resulted in uneven implementation. There remain concerns on the effectiveness of implementation and understanding of certain CDD concepts, in particular the beneficial owner and the risk based approach.

Recommendation 6 (rated NC in the 3rd round report)

787. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a NC rating for Recommendation 6 based on the following underlying factors:

- The requirement to identify a PEP is currently too restrictive and only refers to identifying a customer's "public position held";
- The requirement to identify a PEP's source of wealth is not clearly stated (beyond those applicable to all customers); the nature and extent of enhanced CDD measures related to PEPs are not clearly stated;
- No provisions for senior management approval to establish a relationship with a PEP;
- No provision for senior management to continue business relationship where the customer subsequently is found to be or becomes a PEP.

Risk management systems, senior management approval, requirement to determine source of wealth and funds and on-going monitoring (c. 6.1- c. 6.4)

ALL

788. The definition of politically exposed persons (PEP) is provided under Article 3, Paragraph 1 of the Law 656/2002, as the "*individuals who work or have worked with important public*

functions, their families and persons publicly known to be close associates of individuals acting in important public functions". Hence, this definition includes both domestic and foreign PEPs.

789. However, other relevant instruments, as shown below, appear to categorize PEPS as foreign PEPs only. Paragraph 2 of the same article defines the list of the natural persons entrusted, for the purposes of the law, with prominent public functions[120], and Paragraphs 4 and 5 provide the definitions of family members[121] and close associates[122]. The PEP definition does not fully "important political party officials", who are listed as an example under the standard. However, it is noted that they are usually captured due to their participation in either government or Parliament.

790. Article 3, Paragraph 3 of the Law 656/2002 establishes that the categories of natural persons entrusted with prominent public functions shall not include middle ranking or more junior officials, and that they shall include, where applicable, positions at [European] Community and international level.

791. Paragraph 6 of the same article further details that, with due regard to the application, on the basis of a risk assessment, of enhanced CDD, where a person has ceased to be entrusted with a prominent public function for a period of at least one year, he or she shall not be considered as a politically exposed person.

792. Article 18, Paragraph 1, Letter (c) of the Law 656/2002, as well as Article 12, Paragraph 1, Letter (c) of the AML/CFT Regulation contain identical texts requiring that enhanced CDD measures are applied to the "occasional transactions or business relationships with politically exposed persons, which are resident in another European Union Member State or European Economic Area member state, or a third country". Hence, the legislation does not require application of enhanced CDD measures to foreign PEPs which are resident in Romania.

793. Article 12, Paragraph 4 of the AML/CFT Regulation (Government Decision 594/2008) further details that, in case of occasional transactions or business relations with [foreign] politically exposed persons, reporting entities should apply the following measures:

- Have in place risk based procedures enabling identification of the clients within this category;
- Obtain executive management's approval before starting a business relationship with a client within this category;
- Set up adequate measures in order to establish the source of income and the source of funds involved in the business relationship or the occasional transaction – in relation to this, the provision falls short of requiring that obliged entities take reasonable measures to establish the source of wealth and source of funds of customers and beneficial owners identified as PEPs (as opposed to the "source of funds involved in the business relationship");

[120] The list defines the following persons/ positions: a) Heads of state, heads of government, members of parliament, European commissioners, members of government, presidential councillors, state councillors, state secretaries; b) Members of constitutional courts, members of supreme courts, as well as members of the courts whose decisions are not subject to further appeal, except in exceptional circumstances; c)Members of account courts or similar bodies, members of the boards of central banks; d) Ambassadors, charges d'affaires and high-ranking officers in the armed forces; e) Managers of the public institutions and authorities; f) Members of the administrative, supervisory and management bodies of State-owned enterprises.

[121] Family members include: a) the spouse; b) the children and their spouses; c) the parents; the definition does not comprise the "partner" as specified under the Directive 2006/70/EC.

[122] Close associates are defined as: a) any natural person who is found to be the real beneficiary of a legal person or legal entity together with any of the persons included in the list or having any other privileged business relationship with such a person; b) any natural person who is the only real beneficiary of a legal person or legal entity known as established for the benefit of any person included in the list.

- Carry out enhanced and permanent monitoring of the business relationship – in relation to this, Article 16, Letter (e) further defines that additional CDD measures set up by obliged entities include implementing adequate IT systems enabling, *inter alia*, effective monitoring of customer transactions.

NBR

794. In relation to the first bullet point in the paragraph above, Article 10 of the NBR Regulation 9/2008 further requires that customer identification and identity verification procedures are accordingly applied for the purpose of identifying beneficial owners, whereas Article 8, Paragraph 1 of the same regulation establishes that such procedures include checking whether the (potential) customer holds a prominent public position in another country.

795. In relation to the second bullet point in the paragraph above, Article 20 of the NBR Regulation 9/2008 further requires that when existing customers pass from one category to another (e.g. are found to be or become a PEP), obliged entities should apply all CDD measures established for that category of customers.

NSC

796. Article 15(1) of the NSC Regulation requires enhanced due diligence to be undertaken in relation to occasional transactions or business relations with PEPs who are resident in another Member State of the European Union or in the European Economic Area or in a third state. In these situations regulated entities must:

- have in place risk based rules and procedures which shall allow the identification of the customers that are PEPs;
- obtain written approval from the executive management of the regulated entity before establishing a business relationship with a customer. When a client was accepted and subsequently is identified or becomes a PEP, written approval from the executive management of the entity is also required in order to continue business relationship with the client.
- adopt adequate procedures and measures in order to establish the source of income and of the funds involved in the business relationship or the occasional transaction.
- carry out enhanced and permanent monitoring and surveillance of the business relationship.

797. The requirements do not extend to potential customers and beneficial owners which are PEPs, senior management approval is not required once an existing client becomes a PEP (C.6.2.1), and there is no requirement to (c. 6.1) establish the sources of funds and wealth in relation to beneficial owners (c. 6.3). In addition, enhanced due diligence is required only with respect to PEPs residing in a foreign jurisdiction; foreign PEPs residing in Romania are not subject to enhanced due diligence.

CSA

798. Article 1 of the ISC Order defines PEPs as natural persons who hold or held high level public positions, members of their families, as well as persons publicly known as persons with close links with the natural persons who hold high level public positions. This definition is supplemented with the provisions of Law 656/2002 and article 12 of the underlying regulation.

799. Article 18(3)(b) of the ISC Order requires enhanced due diligence measures to be undertaken in relation to occasional transactions or business relations with politically exposed persons who

are resident within another Member State of the European Union or of the European Economic Area or within a foreign state. In these situations supervised entities must:

- have in place risk based procedures which allowed the identification of the clients within this category;
- obtain executive management's approval before starting a business relationship with a client within this category; When clients are accepted and are subsequently classified as politically exposed persons, the written approval of the management of the entity is also mandatory in order to continue the business relationship with the same clients;
- set up adequate measures in order to establish the source of income and the source of funds involved in the business relationship or the occasional transaction;
- carry out an enhanced and permanent monitoring of the business relationship.

Additional elements

Domestic PEP-s – Requirements

800. Although the definition of political exposed persons under Article 3, Paragraph 1 of the Law 656/2002 includes domestic PEPs, the measures established in compliance with the requirements of Criteria 6.1-6.4 are not applicable to them.

Ratification of the Merida Convention

801. Romania signed the Merida Convention on December 9, 2003 and ratified it on November 2, 2004.

Effectiveness and efficiency (R 6)

802. The banks and, to a certain extent, non-bank financial institutions met during the on-site visit reported that, although the legislation requires application of enhanced CDD measures for foreign PEPs only, the usual practice for many of them is that both foreign and domestic PEPs are subject to comprehensive scrutiny at the establishment and in the course of business relationships. Payment institutions did not appear to be well aware of PEP requirements and considered themselves to be less exposed to potential risks due to the size of their operations/ transactions.

803. The institutions in sectors other than banks and non-bank financial institutions have very few foreign PEPs which are customers. It is common for customer take-on forms to ask the customer to confirm whether or not it is a PEP. Generally, there was awareness of the requirement to undertake enhanced customer due diligence. In one meeting there was a difference of opinion as to whether or not domestic PEPs are subject to the AML/CFT framework. In a scenario tested in another meeting there was a little uncertainty around whether an individual might be a foreign PEP (and one firm suggested that it might not undertake full enhance due diligence) although, perhaps given the nature of the client base of firms, this might not be surprising. One firm's monitoring had discovered that an individual had changed status to become a PEP. Institutions in the investment sector appeared to have monitoring procedures but it was not uncommon for a year potentially to pass by before a person's change in status to being a PEP might be discovered. There was very significant reliance on one external data provider and some reliance on banks' use of data provider software. The evaluation team notes that the nature of the customer base of Romanian financial institutions significantly mitigates PEP risk currently.

Recommendation 7 (rated PC in the 3rd round report)

804. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a PC rating for Recommendation 7 based on the following underlying factors:

- No obligation to require senior management approval when opening individual correspondent accounts;
- No obligation for financial institutions to document respective responsibilities of each institution;
- No specific obligations with respect to "payable through accounts".

Require to obtain information on respondent institution & Assessment of AML/CFT controls in Respondent institutions (c. 7.1 & 7.2)

805. Article 18, Paragraph 1, Letter (b) of the Law 656/2002 requires that enhanced CDD measures are applied to "correspondent relationships with credit institutions from states that are not European Union's Member States or do not belong to the European Economic Area". Article 12, Paragraph 1, Letter (b) of the AML/CFT Regulation (Government Decision 594/2008) contains a somewhat similar provision requiring application of enhanced CDD measures to "correspondent relations with credit institutions within third states" [123]. Hence, credit institutions in/from EU member states or within EEA are not covered by this requirement, which means that none of the measures stipulated for correspondent relationships are applied to them. This approach does not meet the FATF standard, since correspondent banking is considered a high risk activity that requires enhanced due diligence in all cases.

806. Article 12, Paragraph 3 of the AML/CFT Regulation (Government Decision 594/2008) establishes that reporting entities should apply the following enhanced CDD measures with respect to correspondent relationships:

a) Gather sufficient information about the credit institution from a third country for fully understanding the nature of its activity and for establishing, based on publicly available information, its reputation and the quality of supervision; and
b) Assess the control mechanisms implemented by the credit institution from a third country in order to prevent and combat money laundering and terrorism financing.

807. Hence, 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 money laundering or terrorist financing investigation or regulatory actions, and ascertaining that the respondent institution's AML/CFT controls are adequate and effective.

Approval of establishing correspondent relationships (c.7.3)

808. Article 12, Paragraph 3, Letter (c) of the AML/CFT Regulation (Government Decision 594/2008) establishes that, within the framework of enhanced CDD measures applied to correspondent relationships, reporting entities should obtain approval from executive management before establishing a new correspondent relation.

[123] In Romanian legislation, the terms "third states" and "third countries" are interchangeably used for countries other than those of the European Union plus Iceland, Liechtenstein, and Norway (jointly referred to as the European Economic Area [EEA-EFTA] countries).

Documentation of AML/CFT responsibilities for each institution (c.7.4)

809. Article 12, Paragraph 3, Letter (d) of the AML/CFT Regulation (Government Decision 594/2008) establishes that, within the framework of enhanced CDD measures applied to correspondent relationships, reporting entities should "establish, based on documents, the liability of each of the two credit institutions". The authorities advised that this assumes laying down the responsibilities of each bank to carry out applicable due diligence measures.

Payable through Accounts (c.7.5)

810. Article 12, Paragraph 3, Letter (e) of the AML/CFT Regulation (Government Decision 594/2008) establishes that, within the framework of enhanced CDD measures applied to correspondent relationships, in case of a correspondent accounts directly accessible for the clients of a credit institution from a third country, reporting entities should ensure that the "institution has applied standard customer due diligence measures for all the clients who have access to these accounts, and that it is able to provide, upon request, information on the clients, data obtained following the enforcement of the respective measures".

811. The authorities advised that in practice Romanian banks do not open or operate payable-through accounts for credit institutions from third countries.

NSC, CSA, CSSPP AND THE OFFICE

812. In relation to footnote 14 of the FATF Methodology, none of the standards applying outside the banking sector contain requirements or guidance on relationships similar to correspondent relationships.

Effectiveness and efficiency (R. 7)

813. The banks met during the on-site visit confirmed that for correspondent relationships with credit institutions in/from EU member states or within EEA no specific (enhanced CDD) measures are taken. As far as the relationships with credit institutions from third countries are concerned, the usual practice is exchanging what is called *AML Questionnaire* reflecting on compliance of each institution with applicable AML/CFT requirements.

3.2.2 Recommendations and comments

814. As a general point, which is relevant beyond Recommendation 5 to other Recommendations and the AML/CFT framework as a whole, Romania should:

a. clarify and consolidate the AML/CFT legislation, notably by making appropriate amendments to the AML/CFT Law (and as a result subsequently update the AML/CFT Regulation, as well as other sectorial implementing norms) to ensure that the requirements are specified once rather than for regulated/supervised entities to have to meet similar requirements couched in different language in more than one place. These requirements should be adequately clarified in secondary legislation. Examples of this include when to take customer due diligence measures, how to verify the beneficial owner and provisions on PEPs. This would also assist institutions and facilitate the application of sanctions for failure to adequately meet the requirements.

b. consider undertaking a domestic ML/TF risk assessment in order to have a national understanding of the risks facing the country that allows a proper verification of the risk based approach in place.

Recommendation 5

815. 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.

816. 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.

817. For sectors other than those under NBR's supervision, revise the AML/CFT 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.

818. 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.

819. 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/CFT requirements against the FATF requirements (for allowing simplified CDD or for requiring enhanced CDD).

820. 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.

821. 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.

822. Issue guidance in addition to the current text of the manual on the risk based approach and suspicious transactions indicators in order to demonstrably address the risks perceived by the supervisors and responses from industry.

Recommendation 6

823. Revise the definition of PEPs to cover "important political party officials".

824. Revise PEP enhanced CDD requirements to ensure that they extend to foreign PEPs resident in Romania.

825. Extend PEP requirements to establish the source of wealth and the source of funds of customers and beneficial owners identified as PEPs.

826. Take measures to build-up awareness among payment institutions concerning PEP requirements.

Recommendation 7

827. Provide for applicability of the requirements under Recommendation 7 to financial institutions in/from EU member states or within EEA.

828. Revise the measures required for establishment of cross-border correspondent relationships to explicitly provide for: a) determining whether the respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory actions, and b) ascertaining that the respondent institution's AML/CFT controls are adequate and effective.

3.2.3 Compliance with Recommendations 5, 6, and 7

	Rating	Summary of factors underlying rating
R.5	**PC**	• 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). **Effectiveness** • (1) Limited knowledge and understanding of CDD and related requirements by non-bank financial institutions and payment institutions; (2) Uneven understanding and implementation of certain CDD concepts, in particular the beneficial owner and the risk based approach, in respect of R.5.
R.6	**PC**	• 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. **Effectiveness** • 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.
R.7	**LC**	• 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.

3.3 Third Parties and Introduced Business (R.9)

3.3.1 Description and analysis

Recommendation 9 (rated PC in the 3rd round report)

829. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a PC rating for Recommendation 9 based on the following underlying factors:

- Financial institutions are not explicitly required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29);
- An explicit obligation should be introduced that requires all financial institutions relying upon a third party to immediately obtain from the third party the necessary information concerning certain elements of CDD process;
- In determining in which countries the third party that meets the conditions can be based, competent authorities only take into account to certain extent information available on whether those countries adequately apply the FATF Recommendations.

Background information

830. Article 6, Paragraph 5 of the AML/CFT regulation (Government Decision 594/2008) requires that, in case of outsourcing or agent relationships, reporting entities ensure application of the provisions of the Law 656/2002 and the Government Decision 594/2008. In compliance with the requirements of Recommendation 9, parties to these relationships are not considered as third parties[124].

Requirement to immediately obtain certain CDD elements from third parties; availability of identification data from third parties (c.9.1 & 9.2); Regulation and supervision of third party (c.9.3)

ALL

831. Article 2, Paragraph 1, Letter (d) of the AML/CFT Regulation (Government Decision 594/2008) defines third parties as credit and financial institutions situated in Member States or in third countries, which: a) are subject to mandatory professional registration for performing of the activity recognized by law; b) apply customer due diligence and record keeping requirements as laid down in the Law 656/2002 and the Government Decision 594/2008, and their compliance with the requirements of these acts is supervised in accordance with the Law 656/2002[125].

832. Paragraph 2 of the same article establishes that, in the meaning of this article, "specialized entities which perform services regarding money remittance and foreign currency exchange are not considered third parties". The authorities advised that, in accordance with this article, money remittance and foreign currency exchange service providers are not recognized as a permitted source of CDD information for credit and other financial institutions.

[124] For banks, such relationships are regulated by Chapter V of the NBR Regulation 18 (2009).
[125] This is a transposition of Article 16 of the Directive 2005/60/EC

833. Hence, the legislation in force does not explicitly require credit and financial institutions to 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, as stipulated under Criterion 9.3. To arrive at this conclusion, the assessment team also considered the ascertained reality that the way Romanian legislation implements CDD, record-keeping and supervision-related provisions in certain significant aspects falls short of the requirements under FATF Recommendations in c.9.3.

834. Article 6, Paragraph 1 of the AML/CFT regulation (Government Decision 594/2008) establishes that, for the application of standard CDD measures, reporting entities may use information on customers obtained from third parties, even if the respective information is obtained on basis of documents in form different from those used internally. Paragraph 2 goes on to say that liability for compliance with standard customer due diligence measures is on the persons who use the information obtained from the third party. Paragraph 3 of the same article requires that "the third party from Romania, which intermediates the contact with the client, shall submit to the person who applies standard due diligence measures all the information obtained within own identification procedures", so that the standard CDD requirements are met. Hence, the legislation in force does not explicitly require credit and financial institutions to immediately obtain from the third party the necessary information concerning certain elements of the CDD process.

835. Article 6, Paragraph 4 of the AML/CFT regulation (Government Decision 594/2008) defines that "copies of the documents based on which the identification and the verification of the client's or, by case, beneficial owner's identity was accomplished, will be immediately sent by the third party from Romania, by request of the person to whom the client has been recommended". Hence, the legislation in force does not explicitly require credit and financial institutions to 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.

836. The assessment team notes that the provisions of Article 6 of the AML/CFT regulation (Government Decision 594/2008) establish requirements for Romanian (but not foreign) third parties to provide CDD information and related documentation; and that the provisions of Article 5 Paragraph 4 of the same regulation require that reporting entities abstain from conducting transactions/ establishing business relationships whenever they cannot complete CDD measures. However, in the assessment team's opinion, this does not amount to requiring that credit and financial institutions relying on intermediaries proactively pursue to take measures for meeting the requirements under Criteria 9.1 and 9.2 in relationships with both Romanian and foreign third parties.

NSC

837. Article 13 of the NSC Regulation provides that a regulated entity may use the information about the customer obtained from a third party in order to apply standard customer due diligence measures.

838. The third party who intermediates the contact with the customer shall submit all the information obtained within its own identification procedures to the person who applies the standard customer due diligence measures, in order to meet the requirements in Section II of the Regulation. Section II contains articles 7 to 13, which cover standard customer due diligence measures. Copies of the documents on which the identification and the verification of the identity of the client or of the beneficial owner achieved must be submitted immediately by the third party, upon the request of the person to whom the client has been recommended.

CSA

839. Article 16 of the ISC Order provides that for the purpose of applying standard due diligence measures, entities may use information provided by third parties. When the third party acts as an intermediary, it shall provide the entity which applies standard due diligence measures with all the information which would have been derived in the direct identification process, so that to observe the requirements set out in these Regulations. Copies of the documents on the basis of which the identity of the client or of the beneficial owner, as appropriate, that has been established and verified shall be submitted immediately by the third party at the request of the person to whom the client was recommended.

Adequacy of application of FATF Recommendations (9.4)

ALL

840. Article 6, Paragraph 6 of the AML/CFT regulation (Government Decision 594/2008) establishes that, for application of standard CDD measures, reporting entities shall not use [the outcomes] of such measures "applied by a third party from a third country, on which the European Commission adopted a decision in this purpose". At that, it is not clear whether the purported decision of the European Commission would be adopted specifically to permit/prohibit using [the outcomes] of CDD measures of third parties, or whether this provision is an approximation with Article 12 of the Directive 2005/60/EC prohibiting simplified CDD for certain entities pursuant to a EC decision.

841. Hence, the legislation in force does not explicitly require that, in determining in which countries the third party that meets the conditions can be based, competent authorities should take into account information available on whether those countries adequately apply the FATF Recommendations[126]. Nonetheless, as articulated under the analysis for c.21.3, there are some practical measures in place for building awareness and using information on countries not sufficiently applying FATF Recommendations .

842. The evaluation team was provided with a series of Government Decisions, dating to 2008, which approve a list of third countries which enforce requirements equivalent to those provided for in Law 656/2002. The latest list was approved by Government Decision 989 in October 2012.

Ultimate responsibility (c.9.5)

ALL

843. Article 6, Paragraph 2 of the AML/CFT Regulation (Government Decision 594/2008) defines that, should reporting entities decide to use information on customers obtained from third parties for application of standard CDD measures, "the liability for the compliance with all standard customers due diligence measures is on to the persons who use the information obtained from the third party".

NSC

844. Article 13(4) of the NSC Regulation states that the final responsibility for fulfilling all standard customers due diligence measures belongs to the persons who use the third party.

[126] Referring, *inter alia*, to reports, assessments or reviews concerning AML/CFT that are published by the FATF, FSRBs, the IMF or World Bank

CSA

845. Article 16(4) of the ISC Order states that the ultimate responsibility for the application of all standard due diligence measures shall lie with the persons who use the information provided by the third party.

Effectiveness and efficiency (R 9)

846. Credit and financial institutions met on-site confirmed that, for institutions constituting a part of larger international groups or networks, there is a practice of sharing/ using CDD and related information at group level. Decisions on the acceptance of third parties based on the country of their domicile are usually based on what is called a *White List* of equivalent countries established by the Common Understanding between Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC) issued in June 2012[127].

847. Use of third parties from countries other than those in/from EU member states or within EEA was not reported to be a usual practice.

848. Reliance in the context of Recommendation 9 appeared to be rare in the investment sector. This was confirmed by the NSC. The NSC noted that customer contracts normally require information to be provided immediately and that there was a legal obligation to notify contracts to the NSC. In addition, entities regulated by the NSC have to provide it with a form providing information on contracts with intermediaries. One institution in the investment sector advised that it did not obtain information in relation to the beneficial owner; proactive steps in relation to c.9.2 and seeking to ensure that copies of relevant documentation would be made available from the third party upon request without delay had not been undertaken. Other firms considered that reliance in the context of Recommendation 9 could not take place in practice because of the need for the customer to sign their application forms.

3.3.2 Recommendations and comments

849. Introduce an explicit requirement for credit and financial institutions to:

- 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.

850. Introduce an explicit 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.

[127] This Common understanding has been implemented in Romania by the Government Decision 1437 (2008) and further amended by the Government Decisions 885 (2011) and 989 (2012)

	Rating	Summary of factors underlying rating
R.9	**PC**	• No explicit requirement for credit and financial institutions to: o 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; o Immediately obtain from the third party the necessary information concerning certain elements of the CDD process; o 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. **Effectiveness (positive aspects):** • 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.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

Recommendation 4 (rated C in the 3rd round report)

851. In the 2008 report, Recommendation 4 was rated 'Compliant'.

Ability of competent authorities to access information they require to properly perform their functions in combating ML or FT

852. The FIU has wide-ranging powers to obtain and access information it may require to properly perform its functions. The legal basis for the FIU's access to information is found under Article 7(1) of the AML/CFT Law and Article 5(c) of the FIU Regulation. Pursuant to Article 7(1), the FIU may require financial institutions, DNFBPs and competent institutions to provide the data and information necessary to perform the functions attributed to it by law. In terms of Article 5(c), the FIU has the power to request any financial institution, DNFBP and public authority and institution to provide data and information they hold which is necessary for the accomplishment of its objectives. Requests for information made by the FIU override any provisions dealing with professional and banking secrecy (Article 7(3) of the AML/CFT Law).

853. Article 34 of the AML/CFT Law lifts the application of banking and financial secrecy in the context of ML/FT criminal proceedings. Prosecutorial bodies (or criminal investigation bodies when authorised by the prosecution) and courts of law may request data and information from any person when investigating and prosecuting ML/FT offences.

Banks

854. Article 113(1) of Government Emergency Ordinance 99/ 2006 specifies that banking secrecy shall not hinder the NBR from performing its supervisory tasks at an individual, consolidated or sub-consolidated level. Additionally, in terms of Article 113(2), information that is subject to banking secrecy may be disclosed at the written request of other authorities or institutions or *ex officio*, if such authorities or institutions are entitled by a special law to require and/or receive such information to perform their functions. Such authorities include the NBR, fiscal authority, FIU etc. The request must clearly indicate the information required, the legal grounds justifying the request, the identity of the customer concerned, the category of the requested data and the purpose for which the information is required. In the case of criminal proceedings or at the written request of the prosecutor or of the court or, as the case may be, of criminal investigation bodies with the authorization of the prosecutor, credit institutions shall provide information subject to banking secrecy.

855. Article 23 of the NBR Regulation requires credit institutions to provide timely access to the NBR and other authorities, according to law, to all records and documents regarding customers and performed operations. This applies to all authorities with designated responsibilities in the AML/CFT field (NBR, FIU).

Non-bank financial institutions

856. For the non-banking financial institutions registered in the Special Register, "Non-banking financial institutions must ensure, in accordance with the provisions of the law, the access of the authorities competent in the field of investigating and incriminating criminal offences and of the supervision authorities to the entire documentation concerning the clients and the relationship maintained with them, including any assessment that the non-banking financial institution has made to identify the unusual or suspicious transactions or to determine the degree of risk associated to a transaction which it is engaged in."

Investment services providers

857. The NSC may request information and have access to any document, in any form, from and on any person or entity under its supervision. (Article 7 of GEO 25 of 2002). This power is supplemented by Article 21 of the NSC Regulation which states that during the monitoring process, the NSC may request regulated entities to provide any relevant information or documents.

858. Additionally, Law no. 297/2004 on Capital Market states that professional secrecy cannot be opposed to NSC in exercising its legal powers. The provisions of Art. 3 of the NSC Regulation stipulates that regulated entities are required to provide any relevant information or documents, and that disclaimers, the laws or provisions concerning professional secrecy shall not be brought as an argument for limiting the ability of regulated entities to report suspicious transactions.

Insurance companies

859. Pursuant to Article 4 of Order 24 of 2008, the CSA may request any relevant information or documents for supervisory and control purposes. Additionally, Art. 27 stipulates, "*The*

confidentiality contracts, legislation or provisions related to professional sector cannot be invoked for restriction of regulated entities capacity to report suspicious transactions".

Private pensions

860. Article 18 of Norms 9/2009 stipulates: "*The confidentiality contracts, legislation or provisions related to professional sector cannot be invoked for restriction of regulated entities capacity to report suspicious transactions*".

Sharing of information between competent authorities, either domestically or internationally

861. As mentioned previously the FIU may request any authority in Romania to provide information pursuant to Article 7(1) of the AML/CFT Law and Article 5(c) of FIU Regulation. The FIU is required to submit information to law enforcement authorities, upon their request, in the course of a ML/FT investigation in terms of Article 8(5) and (6) of the AML/CFT Law. There are also provisions allowing supervisory authorities to request information from the FIU (Law 127/2011 on the activity of issuing e-money, Government Emergency Ordinance 113/2009 on payment services as amended).

862. The ability of the competent authorities to share information internationally is dealt with under Recommendation 40.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

863. Article 25 (4) permits financial institutions to exchange information with other financial institutions. In particular, paragraph (b) permits credit and financial institutions to exchange information subject to secrecy when they (1) are within the same group, (2) are situated in the EU, the EEA or a third state which imposes similar AML/CFT requirements (3) apply CDD and record-keeping measures which are equivalent to those under the AML/CFT Law and (3) are subject to AML/CFT supervision. Credit and financial institutions may also exchange information subject to secrecy, even when they are not within the same financial group, if (1) they are situated in the EU, the EEA or a third state which imposes similar AML/CFT requirements (2) the information relates to the same client and transaction (3) they are within the same business category (4) are subject to similar secrecy and protection of data requirements.

Effectiveness and efficiency

864. There is no inhibition on FATF Recommendation 4. The competent authorities have powers to collect information and share it domestically, as shown by the data on exchanges of information that they have provided (and which shows an increasing trend). They reported that they have never come across instances where information was not provided due to provisions relating to secrecy.

865. There appear to be no provisions in legislation that prevent the sharing of information by financial institutions in Romania with other financial institutions, whether or not the receiving institution is within Romania, where this is required by FATF Recommendations 7 or 9 or by Special Recommendation VII. Use of the reliance allowed by Recommendation 9 was rare but the NSC had noted at least one case where the Romanian institution was disclosing information to a group entity outside Romania.

866. The authorities considered that, although Law 656/2002 provides that the reporting of suspicion overrides all confidentiality, this is not widely accepted as a practice within the profession. The Office has not been able to dedicate resources to addressing this issue. It has, however, devoted

more attention to training the legal sector than any other sector but attendance by lawyers has been low.

867. The UNBR stated that strict confidentiality is important to the legal profession, that it works in favour of the customer and that only the customer can waive confidentiality. Paragraph 3 of article 7 of Law 656/2002 was considered as providing professional secrecy which was not opposable and could not be challenged by the Office. The evaluation team has concluded that there is a disconnect between the Office and the UNBR on the meaning of the reporting and confidentiality provisions in Law 656/2002, despite the legislation being clear on this issue. It is nevertheless recommended to consider taking additional measures, with the UNBR specifically, to ensure that there is an adequate understanding of the confidentiality provisions in the AML/CFT legislation.

3.4.2 Recommendations and comments

868. Romania has taken measures implementing the requirements of R.4.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	

3.5 Record Keeping (R.10)

3.5.1 Description and analysis

Recommendation 10 (rated PC in the 3rd round report)

869. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a PC rating for Recommendation 10 based on the following underlying factors:

- Apart from capital market there is no requirement of keeping transaction records for a longer period, even if requested by a competent authority in specific cases;
- Criterion 10.1.1 is not fully met with reference to the insurance sector;
- Apart from the capital market there was no provision of keeping identification data, account files and business correspondence for longer than 5 years if necessary. For financial institutions registered in the General and Evidence Register, as well as for the insurance sector the record keeping requirements do not cover account files and business correspondence. The requirement to ensure that all customer and transaction records and information are available to domestic competent authorities "on a timely basis" as required in Criterion 10.3 is not met.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1; Record keeping of identification data, files and correspondence (c.10.2)

ALL

870. Article 19, Paragraph 1 of the Law 656/2002 requires that reporting entities obliged to identify their customers "keep a copy of the document, as an identity proof, or identity references[128], for a minimum of five-year period, starting with the date when the relationship with the client comes to an end". Paragraph 2 of the same article goes on requiring that reporting entities "*keep the secondary or operative records and the registrations of all financial operations arising from the conduct of a business relationship or occasional transaction, for a minimum of five-year period, starting with the date when the business relationship comes to an end, respectively from the performance of the occasional transaction, in an adequate form, in order to be used as evidence in justice*". The same requirement with similar wording is established under Article 14 of the AML/CFT Regulation (Government Decision 594/2008).

871. With reference to C.10.1, entities supervised by the NBR, the NSC and the CSA are subject to a requirement in the AML/CFT standards to which they are subject to maintain all necessary transaction records for longer than five years after the transaction if requested by a competent authority (although the lists of authorities differ between the instruments issued by these authorities). In addition, the ISC Order refers to appropriate records being maintained. In addition, financial institutions are subject to Law 82/1991 on accountancy, Order of MFP 3512/2008 on financial accounting documents, Law 571/2003 on adopting the Fiscal Code. This legislation requires all records, including transaction records, to be kept for at least ten years.

872. With reference to C.10.1.1, there appears to be an overarching requirement in the Law and the Government Decision for transaction records to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. In addition,: the NBR Regulation refers to records being kept in adequate form to be used as evidence in court: the NSC Regulation contains reference to records being sufficient to permit reconstruction and the need for them to provide evidence for prosecution: the ISC Order echoes the NSC Regulation.

873. The authorities advised that the terms "secondary or operative records" and "registrations of financial operations" effectively encompass all forms of records stipulated by the Romanian legislation. Further information provided by the authorities showed that other laws/ regulations (such as Law 82/1991 on accountancy, Order of MFP 3512/2008 on financial accounting documents, Law 571/2003 on adopting the Fiscal Code etc.) defining details of the documents and information to be maintained by economic entities effectively amount to requiring that "account files" (and much more than just accounting-related data) are kept for at least 10 years. Hence, the only missing element from those required under R.10 is the "business correspondence", which was told to be something void of legal effect and, therefore, of practical importance in Romania. .

NBR

874. Article 22, Paragraph 1 of the NBR Regulation 9/2008 defines that, for the application of CDD measures, reporting entities shall "keep at least the copies of the identification documents of the customers natural persons and copies of the incorporation documents for the legal persons or entities without juridical personality, as for example the incorporation act and the proof of incorporation in the public register". The authorities advised that, for credit and financial

[128] The authorities advised that "identity references" applies to the forms of identity documents other than Romanian ID cards (relevant for non-residents).

institutions supervised by the NBR, this comes in addition to the requirements defined by respective articles of the Law 656/2002 and the Government Decision 594/2008.

875. Paragraph 2 of the same article further establishes that reporting entities shall, "at the express request from the National Bank of Romania or from other authorities according to the law, keep, in adequate form in order to be used as evidences in court proceedings, the identification data of the customer, the secondary or operational documentation and the records of all the financial operation that occur in a business relationship, for a time longer than five years from the ending of the business relation with the customer. The request of the authority shall clearly indicate the transactions and/or customers and also, the extended amount of time the institution is to keep the relevant information and documents".

NSC

876. As noted in the analysis of compliance with Recommendation 5, articles 11 and 12 of the NSC Regulation contain requirements for regulated entities to record customer due diligence information.

877. Article 18(2) states that regulated entities must keep all documents and records related to all customer transactions and operations for at least 5 years since the transaction was concluded or even longer, at the request of the Office or of other authorities, irrespective of whether the account has been closed or the relationship with the customer has been terminated . These records must be sufficient to allow reconstruction of individual transactions, including the amount and type of currency, in order to provide evidence in court if necessary.

878. Article 18(1) of the NSC Regulation requires regulated entities to keep all information about customer due diligence measures for at least 5 years, starting with the date when the relationship with the client is concluded.

CSA

879. Under article 24(2) supervised entities shall maintain appropriate secondary or operational records of all financial operations conducted by the client for a period of at least 5 years, or more at the request of the Office or of other authorities, as of the date when each operation was conducted, irrespective whether the insurance contract expired, or the insured event took place, or the insurance contract was revoked, terminated or cancelled. The evidence must be sufficient to allow tracing of each individual transaction, including the amount and type of currency, in order for it to be used as evidence in court when appropriate.

880. Under article 24(1) of the ISC Order supervised entities shall maintain all the information concerning client identification for a period of time of at least 5 years, as of the date when the relationship with the client was terminated.

CSSPP

881. Article 16 of the CSSPP Norms specifies that for the purpose of article 13(1) of Law 656/2002, legal person administrators/marketing agents are obliged to keep at least copies of clients' identification documents, or identification references in case of the random allocation procedure of participants. Legal person administrators/marketing agents are obliged to have internal procedures and systems that would allow the prompt submission, at the request of the Office, Commission and law enforcement bodies, of information on the identity and nature of the relationship for the clients specified in the request and with whom they are involved in a business relationship, or with whom they had a business relationship in the last 5 years prior to

the request. Information must be kept in an adequate form for a period of 5 years from the performance of each operation.

THE OFFICE

882. Article 4(k) of the Office Norms requires regulated entities to keep secondary or operative evidence and the records of all financial operations performed by the customer for a period of least 5 years, starting from the date of the performance of the operations in order to be able to be used as proof in relation to justice.

Availability of Records to competent authorities in a timely manner (c.10.3)

ALL

883. Law 656/2002 and the AML/CFT Regulation (Government Decision 594/2008) do not contain overarching provisions on records being available on a timely basis.

NBR

884. Article 23 of the NBR Regulation 9/2008 requires that reporting entities "ensure the access …for the National Bank of Romania and for other authorities according to the law, at all the records and documents regarding the customers, the operations performed for them, including any analysis made by the institution for the detection of the unusual or suspect transaction or for the evaluation of the risk level associated to a transaction or customer, by providing them in a timely manner the documents/information".

NSC

885. Article 18(3) of the NSC Regulation specifies that regulated entities are required to have internal procedures and systems which enable the prompt submission of information about the identity and the nature of the relationship for the customers specified in the request with whom they are in a business relationship or have had a business relationship for the last 5 years, at the request of the Office, NSC and/or criminal investigation bodies. This language does not include transactions.

CSA

886. Article 24(3) of the ISC Order specifies that supervised entities must have in place internal procedures and systems which allow the immediate transmission at the request of the Office or CSA and/or judicial bodies of the information concerning the identity and the nature of the business relationships which are currently conducted or have been conducted in the past 5 years. This language could usefully be revised to refer to transaction records to require regulated entities to ensure the records and information are available rather than only to have procedures and systems in place.

887. The NSC Regulation and the ISC Order contain provisions on the timelines on the provision of information, albeit couched by referring to have internal procedures and systems to enable the prompt submission of information, although the information referred to does not include the transaction records specified in C.10.3. No specific provisions on C.10.3 appear to apply to entities supervised by the CSSPP and the Office.

Effectiveness and efficiency (R 10)

888. All credit and financial institutions met on-site reported to have implemented accounting and record-keeping software, in the majority of cases provided by the headquarters/ parent company, enabling appropriate record-keeping arrangements. The authorities have also indicated that the fiscal requirements do impose keeping all necessary documentation for 10 years generally.

889. Records are kept either in electronic or paper form with some regulated/supervised entities scanning their customer files. Records are typically kept for longer than the minimum prescribed periods. It appeared to the evaluation team that the credit and financial institutions it met understood the importance of keeping records. Generally, the Office was content that both customer and transaction records had been provided in a timely manner. The NSC had imposed sanctions for poor record keeping.

3.5.2 Recommendation and comments

Recommendation 10

890. Consider legislatively defining the terms "secondary or operative records" and "registrations of financial operations" (specifically for AML/CFT purposes).

891. Introduce an 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.

892. Clarify in legislation that all customer and transaction records held by entities supervised by the NSC, the CSA, the CSSPP and the Office should be available on a timely basis to domestic competent authorities.

3.5.3 Compliance with Recommendation 10

	Rating	Summary of factors underlying rating
R.10	**LC**	• 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.

Unusual and Suspicious transactions

3.6 Monitoring of Transactions and Relationship Reporting (R. 21)

3.6.1 Description and analysis[129]

Recommendation 21 (rated NC in the 3rd round report)

893. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a NC rating for Recommendation 21 based on the following underlying factors:

- Insufficient requirements to give special attention to business relationships and transactions with persons from countries which do not or insufficiently apply FATF Recommendations;
- No enforceable requirements in place to ensure that financial institutions are advised of weaknesses in AML/CFT systems of other countries;
- No specific enforceable requirements for financial institutions to examine the background and purpose of such transactions and to make written findings available to assist competent authorities;
- No mechanisms to apply countermeasures.

Special attention to countries not sufficiently applying FATF Recommendations (c. 21.1 & 21.1.)

ALL

894. Article 12 (5) of the AML/CFT Regulation provides that reporting entities shall pay special attention to transactions and products that by their nature favour anonymity or may have a connection to money laundering or terrorist financing. The evaluation team, however, is of the view that the language of the Regulation does not amount to requiring financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations.

NBR

895. Article 11 of the NBR Regulation 9/2008 requires that, for implementation of the obligation to apply enhanced CDD measures in other cases posing a higher risk of ML/FT as defined under Article 18 of the Law 656/2002[130], reporting entities establish categories of customers and transactions representing high risk, "using risk parameters such as …the reputation of the home country". Article 12 of the same regulation further defines that reporting entities "shall apply increased attention to customers and transactions in and/or from jurisdictions, which do not require implementation of know-your-customers rand record keeping requirements equivalent to those laid down in Law 656/2002, the Government Decision 594/2008 and this regulation, and in which the implementation of those requirements is not supervised in an equivalent manner.

896. The authorities advised that this provision requires to apply enhanced customer due diligence measures and, as such, covers more than the "special attention" defined under Criterion 21.1.

[129] The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

[130] Article 18, Paragraph 2 of the Law 656 (2002) requires that reporting entities "apply enhanced due diligence measures for other cases than the ones provided by Paragraph 1, which, by their nature, pose a higher risk of money laundering or terrorism financing", whereas the said Paragraph 1 requires application of enhanced CDD measures in case of non-face to face relationships, correspondent relationships with low-performing countries in terms of AML/CFT, and relationships with PEPs.

Nonetheless, 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.

NSC

897. Article 17(1) of the NSC Regulation states that regulated entities shall pay increased attention to business relationships and transactions with persons from jurisdictions which do not benefit from adequate systems for the prevention and control of money laundering and terrorist financing. The language of c.21.1 of the FATF methodology also extends to persons in jurisdictions as well as from jurisdictions.

898. Article 2 of Executive Order 8/2010 requires regulated entities to have and update a web page which includes public statements issued by MONEYVAL and the FATF, warnings referring to any news in relation to AML/CFT acts and links to the web pages of the FATF and the Office. The requirement to have and update websites can be achieved by creating a link to the NSC's website. In addition, article 4 requires entities to acknowledge public statements and warnings published by the NSC on its website; they are also required to identify and take special care in relation to business relationships with persons and financial institutions in the jurisdictions specified in the relevant documents. The NSC therefore goes further than the other supervisory authorities in relation to the entities it supervises. It would be helpful for there to be a direct explicit link between the requirements of article 17 and the public statements and warnings placed on the NSC's website.

CSA

899. Article 18(1) of the ISC Order states that supervised entities must monitor more closely business relationships and transactions with persons based in jurisdictions which do not have in place adequate systems to prevent and control money laundering and terrorist financing. The language of the ISC Order goes some way towards meeting c.21.1. It does not necessarily capture all persons covered in c.21.1 and does not refer to the FATF Recommendations.

CSSPP

900. Article 15 of the CSSPP Norms requires administrators/marketing agents to pay special attention to transactions with persons from jurisdictions which do not have adequate systems for the prevention and combat of money laundering and terrorism financing. This language meets some but not all of the language of c.21.1 – it does not include reference to business relationships or persons in countries which do not or insufficiently apply the FATF Recommendations.

Examination of transactions with no apparent economic or visible lawful purpose from countries not sufficiently applying FATF Recommendations (c 21.2)

ALL

901. There is no explicit requirement in the AML/CFT Law or AML/CFT Regulation 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.

NBR

902. Article 21 of the NBR Regulation 9/2008 defines that "institutions provide the National Bank of Romania, at its request, with reports regarding the customers and the operations performed for them, including any analysis performed by the institution for the detection of the suspect transaction or for the evaluation of the risk level associated to a transaction or customer". Article 23 of the same regulation further establishes that that reporting entities should ensure "the access for …the National Bank of Romania and for other authorities according to the law … [to the findings of the] analysis made by the institution for the detection of the unusual or suspect transaction or for the evaluation of the risk level associated to a transaction or customer".

903. Article 2, Letter (d) of the Law 656/2002 defines suspicious transactions as "*the operation which apparently has no economical or legal purpose…*".This provision in conjunction with the provisions of Articles 21 and 23 of the NBR Regulation 9 (2008) might be interpreted as a requirement to occasionally conduct analysis for detecting transactions without an apparent economic or visible lawful purpose. However, there is no explicit requirement that credit and financial institutions examine, as far as possible, the background and purpose of such transactions.

NSC

904. Article 17(2) of the NSC Regulation requires regulated entities to pay special attention to all complex, unusual transactions or unusual patterns of transactions, including those that do not seem to have an economic, commercial or legal purpose. The background and scope of such transactions should be examined as soon as possible by the regulated entity, including on the basis of customer additional documents requested to justify the transaction. The findings of the verification carried out must be set out in writing and be available for subsequent verification or for the competent authorities and auditors for a period of at least five years. Although this article is not limited to the context of FATF Recommendation 21 it appears to meet c.21.2 of the FATF Methodology.

Ability to apply counter measures with regard to countries not sufficiently applying FATF Recommendations (c 21.3)

ALL

905. The authorities refer to Article 16 of the AML/CFT Regulation (Government Decision 594/2008), which states that "for the customers and transactions representing higher risk, established according to Articles 11 to 14, in addition to the standard customer due diligence measures, institution will set up additional customer due diligence measures". At that, the said Articles 11 to 14 recognize as high risk non-face to face relationships, correspondent relationships with low-performing countries in terms of AML/CFT, and relationships with PEPs, and provide for application of enhanced CDD measures in case of these recognized high-risk categories of business relationships and transactions. Hence, provisions of Article 16 are not applicable to business relationships and transactions with persons (other than banks to have correspondent accounts with) from or in countries, which do not or insufficiently apply the FATF Recommendations.

906. The authorities advised that, apart from enhanced CDD measures specified under Articles 11 to 14 of the AML/CFT Regulation (Government Decision 594/2008), there are no legally defined counter-measures applicable to countries which do not apply or insufficiently apply the FATF Recommendations. Nonetheless, the Office has advised that, each time the FATF updates its lists (including the language attached to the lists) of high risk and non-cooperative jurisdictions,

it translates them into Romanian and sends them to the supervisory authorities in Romania. These authorities are asked to report to the Office on what they have done with the information. The Office confirmed that the authorities place these advisories on their websites. Furthermore, the NBR department for supervision of banks advised that they circulate the updates received from the Office to their respective obliged entities. This, in effect, amounts to certain practical countermeasures that Romania is able to apply with regard to countries not sufficiently applying FATF Recommendations.

Effectiveness and efficiency (R 21)

907. The assessment team was advised that, as soon as the NBR's AML/CFT Supervision Division becomes aware of any information related to weaknesses in the AML/CFT systems of other countries, such information is immediately disseminated within the entire banking sector in order to enable the institutions to take appropriate measures. This encompasses both the FATF statements and other publications occasionally appearing in mass media. However, no such measures were reported to be taken for advising non-bank financial institutions and payment institutions.

908. Commercial banks met on-site demonstrated relevant knowledge and understanding of the requirements for exercising extra caution in relation to countries with significant weaknesses in their AML/CFT systems. The sample set of internal norms received from a commercial bank comprises a document titled *Sanctions Management Rules*, which recognize the FATF definition of uncooperative countries and classify them into the group representing significant risk and subject to what is called *"enhanced controls"*.

909. Representatives of non-bank financial institutions and, to a lesser extent, payment institutions showed somewhat limited knowledge and understanding of high-risk countries, basically perceived as their obligation to match the names of their customers with the ones included in the "black lists" (without a clear indication what exactly are those lists about) provided by the national FIU or, in some cases, by the parent company (headquarters), and to report any positive matches to the FIU.

910. Investment sector institutions were aware of the need to monitor the NSC's website and to apply extra caution in relation to countries with weaknesses in AML/CFT systems. The insurance sector was conscious of the need for screening in relation to weaknesses. As a general point, the evaluation team noted that at least some of the institutions outside the banking sector had to review files manually as electronic systems were not available.

3.6.2 Recommendations and comments

Recommendation 21

911. Bearing in mind the better position of the NSC, introduce an explicit requirement to:

- 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 (already met by the NSC).

912. Introduce legally defined mechanisms enabling application of appropriate counter-measures to the countries, which continue not to apply or insufficiently apply the FATF Recommendations.

913. Take measures for advising non-bank financial institutions and payment institutions about countries which do not or insufficiently apply the FATF Recommendations.

3.6.3 Compliance with Recommendation 21

	Rating	Summary of factors underlying rating
R.21	**PC**	• No overall explicit requirement to: o Give special attention to business relationships and transactions with persons in/from countries which do not or insufficiently apply the FATF Recommendations; o 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. **Effectiveness** • No measures taken for advising non-bank financial institutions and payment institutions about countries which do not or insufficiently apply the FATF Recommendations.

3.7 Suspicious Transaction Reports and Other Reporting (R. 13, 14, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13 (rated NC in the 3rd round report) & Special Recommendation IV (rated NC in the 3rd round report)

Requirement to Make STRs on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

914. The requirement to submit ML/FT STRs derives from a combination of provisions in the AML/CFT Law. Article 5(1) requires reporting entities to notify the FIU immediately where they have a suspicion that an operation, which is to be executed, has a money laundering or terrorism financing purpose (*ex-ante* reporting). The suspicion must be based on a reasonable motivation. Article 6(2) provides that where it is ascertained that an operation or several operations carried out on the account of a customer are atypical for the activity of such customer or for the type of transaction in question, the reporting entity shall notify the FIU immediately where suspicions arise that the atypical nature of the operation(s) has a money laundering or terrorism financing purpose. In terms of Article 6(3), reporting entities are required to notify the FIU immediately where they suspect that the funds used in an operation or several operations carried out on behalf of a customer have a money laundering or terrorism financing purpose (*ex post* reporting). In Articles 5(1), 6(2) and 6(3), the term 'operation' appears to refer to a 'transaction', since Article 2(d) provides a definition of a 'suspicious transaction' as an operation which apparently has no economical or legal purpose or an operation that by its nature and/or its unusual character in relation to the activities of the customer raises suspicions of money laundering or terrorist financing.

915. The reporting requirement is predicated on the existence of a transaction/operation or a series of transactions/operations and therefore falls short of the requirement under criterion 13.1, which provides that financial institutions should be required to report suspicions that funds are the proceeds of a criminal activity. Under the AML/CFT Law, reporting entities are required to report (1) a prospective transaction which is suspected to have a ML/FT purpose or (2) an executed transaction(s) which involves funds that are suspected to have a ML/FT purpose. Both

reporting requirements refer to a transaction, whereas under criterion 13.1, financial institutions are required to report the existence of funds that are suspected to derive from the proceeds of criminal activity irrespective of whether a transaction is to be or has been carried out. It should be noted however that in practice, the reporting entities understand and report suspicions that funds are the proceeds of criminal activities. The authorities have provided statistics on such reporting.

916. The *ex-ante* reporting requirement (Article 5(1)) is subject to an exception. In terms of Article 6(1), a reporting entity may carry out a transaction which is suspected to have a ML purpose before notifying the FIU, where (1) the transaction must be carried out immediately or (2) where the non-performance of the transaction could prejudice efforts to identify the beneficiaries of the ML operation. The reporting entity is required to report the transaction to the FIU immediately, and in any case not later than twenty four hours, after the transaction is performed. The reporting entity is also required to specify the reasons for not reporting the transaction before it was executed. The evaluators consider the first condition under Article 6(1), i.e. 'where the transaction must be carried out immediately', to be too wide in its scope. A large majority of transactions conducted within the financial, and especially the banking, sphere are required to be carried out immediately. Most transactions would therefore benefit from the exemption, thereby undermining the application of the requirement under Article 5(1). Statistics indicate that, indeed, very few suspicious transactions are reported to the FIU prior to being performed (see table below). The exception to Article 5(1) should only be permitted where it is 'impossible' to refrain from conducting the suspicious transaction[131]. It is also to be noted that Article 6(1) does not cover transactions suspected of involving FT.

917. A number of inconsistencies and minor deficiencies were identified by the evaluators in the manner in which the reporting requirement is articulated in the AML/CFT Law. Article 5(1) does not specify whether the execution of a suspicious transaction is to be suspended by the reporting entity before or after notifying the FIU, which is the logical course of action to be undertaken in such circumstances. It is unclear why Article 6(3)(*ex post* reporting) requires the reporting of a suspicion that funds used in a transaction have a ML/FT purpose, whereas Article 5(1)(*ex-ante* reporting) requires the reporting of a suspicion that a transaction has a ML/FT purpose. Furthermore, it is unclear what the purpose of Article 6(2) is, since the requirement therein is covered under Article 6(3), which is couched in more generic terms.

918. While Articles 5(1), 6(2) and 6(3) refer to suspicious operations, Article 2 does not provide a definition of a suspicious "operation" but a definition of a suspicious "transaction" (which refers to suspicious operations). Moreover, the definition of a suspicious transaction includes an operation which apparently has no economical or legal purpose. This could result in the reporting of operations that are simply unusual rather than involving ML/FT. Additionally, the definition provides that an operation is suspicious if by its nature and/or its unusual character in relation to the activities of the customer raises suspicions of money laundering or terrorist financing. This definition is almost identical to the reporting requirement itself under Article 6(3), which is supposed to refer back to definition in Article 2(d).

919. It is the view of the evaluators that these inconsistencies and minor deficiencies may give rise to ambiguity and have an impact on the understanding of reporting requirements by financial institutions.

920. The FT reporting requirement is also implemented through Article 5(1), 6(2) and 6(3). As such, it does not include all the circumstances set out under criterion 13.2 (and IV.1). For instance, criterion 13.2 requires reporting of funds that are linked or related to, or to be used for terrorism terrorist acts, or by terrorist organizations, in addition to those who finance terrorism. This

[131] This would be in line with Article 24(2) of Directive 2005/60/EC.

deficiency was also identified by the evaluators in the 2008 MER and appears not to have been addressed.

Reporting under sectorial implementing regulations and norms

NSC

921. Under article 3(2) of the NSC Regulation the NSC is responsible for monitoring operations performed by regulated entities for the purpose of identifying suspicious transactions. Under article 3(5) the NSC must immediately inform the Office when data it receives raises suspicion of money laundering, terrorist financing or breaches of provisions in Law 656/2002.

922. Article 19 of the Regulation requires regulated entities to identify suspicious transactions or types of suspicious transactions performed on behalf of their clients. When a regulated entity suspects that an operation is to be performed for the purpose of money laundering or terrorist financing, it shall immediately submit a suspicious transaction report to the Office and the NSC.

923. Article 21 specifies that contracts of confidentiality, legislation or provisions concerning professional secrecy shall not be invoked in order to restrict the ability of the regulated entity to report suspicious transactions.

924. Article 22 provides that regulated entities are required to use reporting forms developed by the Office.

925. Article 23 of the Regulation states that breaches of the provisions of the Regulation represents a contravention. The application of sanctions is specified as being in accordance with the provisions of the Title X of Law 297/2004 on the capital market and of the NSC Statute.

CSA

926. Article 4(1) of the ISC Order states that the CSA shall supervise and control the entities under its supervision in order to ensure they apply and observe legal provisions concerning the reporting of suspicious transactions, as well as the preparation and implementation of procedures and the training of personnel. Under article 4(4) the CSA is entitled to monitor the operations conducted by the entities for the purpose of identifying suspicious transactions. Under article 4(5) the CSA shall immediately inform the Office when data received raise suspicions of money laundering, terrorism financing or infringements of the provisions laid down in Law 656/2002.

927. Article 18 of the ISC Order provides that entities, which identify that a transaction or several transactions carried out for the account of a customer are atypical for the activity of the customer or for the type of the transaction in question, shall immediately notify the Office if there are suspicions that these abnormalities have the purpose of money laundering or terrorist financing. The article goes on to suggest a series of red flags in order to assist entities.

928. Under article 25 entities must have procedures in place to identify suspicious transactions or types of suspicious transactions conducted in the name of their clients. When suspicions arise that an operation is sought for money laundering or terrorism financing purposes, the entity must provide the Office and CSA with a suspicious transaction report within no more than 24 hours.

929. Article 27 provides that confidentiality agreements, as well as legal provisions concerning professional secrecy, shall not be used to limit the capacity of entities to report suspicious transactions.

930. Article 28 requires supervised entities to use only the reporting forms prepared by the Office.

931. Breaches of the provisions laid down in the Order are deemed to be a contravention and shall be sanctioned in accordance with the provisions set out in article 39 of Law 32/2000 on insurance undertakings and insurance supervision. The evaluation team has not been provided with a copy of this law.

CSSPP

932. Under article 17 of the CSSPP Norms administrators/marketing agents must identify the transactions or types of suspicious transactions performed on behalf of their clients. If they have suspicions that an operation which is about to be carried out has money laundering or terrorist financing as a purpose they must immediately submit suspicious transaction reports to the Office and to the CSSPP. Administrators/marketing agents have an obligation not to disseminate, outside the conditions stipulated by law, information held on money laundering or terrorism financing and not to tip off the involved clients or other third parties about the fact that a suspicious transaction or information related to it were/will be forwarded to the Office and the CSSPP.

933. Article 18 provides that confidentiality provisions stipulated by contracts, legislation or professional secrecy provisions may not be invoked for the purpose of restricting the administrators/marketing agents' obligation to report suspicious transaction.

934. Article 19 specifies that administrators/marketing agents are obliged to use the reporting forms issued by the Office.

No Reporting Threshold for STRs and Attempted Transactions (c. 13.3 & c. SR.IV.2)

935. Reporting entities are required to submit a STR regardless of the amount involved in a suspicious transaction. Reporting of attempted transactions is covered by Article 5(1), which requires reporting entities to notify the FIU of suspicious transactions which are to be performed.

Making of ML/FT STRs regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

936. The ML/FT reporting requirement applies irrespective of whether the suspicious transaction(s) involves tax matters. Figures provided by the authorities indicate that a large majority of STRs (approximately 75%) relate to tax evasion.

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

937. The reporting requirement refers to transactions having a ML purpose. The definition of money laundering in Article 29 of the AML Act refers to property derived from offences.

Effectiveness and efficiency R.13

938. All financial institutions interviewed on-site were aware of their reporting obligations, albeit to varying degrees. This is undoubtedly the result of the FIU's active involvement in awareness-raising initiatives and training programmes (see Table below), which, according to the authorities, generally focus on STR reporting. Training provided by the FIU is supplemented by guidance on the identification of suspicious transactions which is available in the FIU's Manual on Risk-based Approach and Suspicious Transactions Indicators. Financial institutions appeared

to be aware of and refer to this manual in their daily operations. During interviews on-site, financial institutions indicated that they were satisfied with guidance provided by the FIU on reporting. The manual provides an overview of the ML/FT vulnerabilities of each sector. It also contains a list of indicators, typologies and ML/FT methods. The manual is a very effective tool in assisting reporting entities in understanding and complying with their reporting obligations. The FIU is to be commended for undertaking such initiatives.

Table 35: Training sessions provided by the FIU on reporting

	Year 2008	**Year 2009**	**Year 2010**	**Year 2011**	**Year 2012**	**01.01-01.03.2013**
Number of training sessions	31 sessions	39 sessions	30 sessions	24 sessions	22 sessions	1 session
Number of participants	1.100 persons	1.300 persons	1.500 persons	970 persons	826 persons	30 persons
Categories of entities	seminars for credit institutions (12), non-banking financial institutions (5), insurance and reinsurance companies (2), casino (1), exchange offices (2), associations and foundations (2), money remittance agents (1), public notaries (1), lawyers (1), natural and legal persons providing fiscal advisory and accountants (3) real estate agents (1).	9 seminars for credit institutions, 7 seminars for insurance / reinsurance companies, 2 seminars for realtors, 3 seminars for non-banking financial institutions, 2 seminars for financial investment companies, 3 seminars for casinos, 3 workshops for private pension funds companies, 2 seminars for lawyers, 2 seminars for auditors and authorized accountants, 2 seminars for associations and foundations, 1 seminar for exchange offices, 1 seminar for money remittance agents, 1 seminar for public notaries and 1 seminar for auditors.	sessions for credit institutions, representatives of the insurance companies and private pension funds companies, notaries and lawyers, brokers operating on the stock market or marketing agencies, non-banking financial institutions, accountants, fiscal consultants, auditors, real estate agents, casinos.	sessions for credit institutions - 5 seminars, auditors - 1 seminar, casinos - 1 seminar, financial investment companies - 2 seminars, private pension funds managers - 2 seminars, insurance / reinsurance companies - 2 seminars, fiscal advisors - 2 seminars, non-banking financial institutions - 2 seminars, public notaries - 1 seminar, lawyers - 2 seminars, auditors and accountants - 2 seminars, payment service providers and exchange houses - 2 seminars	sessions for credit institutions - 2 seminars, auditors - 2 seminars, casinos - 1 seminar, securities brokers - 2 seminars, private pension funds administrators - 2 seminars, insurance / reinsurance companies - 2 seminars, auditors and accountants - 2 seminars, non-banking financial institutions - 4 seminars, public notaries - 1 seminar, lawyers - 2 seminars, real estate agents - 2 seminars	Session addressed to credit institutions– 1 seminar

939. Despite the fact that all reporting entities are aware of their reporting obligation, the level of implementation varies. Banks are the main contributors of STRs, as evident in Table below. The number of STRs submitted by banks has followed an uninterrupted positive upward trend in the period under review.

Table 36: STR reports received by the FIU from all reporting entities and institutions

STRs by sector/ and notifications from institutions	**2008**	**2009**	**2010**	**2011**	**2012**	**01.01-31.07. 2013**
Banks	1545	1877	1915	2149	2794	1707
Non-bank financial institutions	0	19	11	4	4	16
Leasing companies	5	0	7	1	1	4
MVTS	17	43	711	324	324	354
Currency exchange offices	1	0	1	0	0	3
Insurance companies	5	8	11	10	10	23

Investment intermediaries	3	4	0	0	0	0
Asset management companies	0	0	0	0	0	2
Investment funds	0	0	0	0	0	0
Financial markets	0	0	0	0	0	0
Pension funds	0	0	0	0	0	1
Corporate marketing agents	0	0	0	0	0	0
Casinos	11	10	3	2	2	3
Auditors	2	0	1	1	1	3
Public notaries	230	202	109	135	61	68
Lawyers	2	1	2	2	3	2
Real estates	2	1	0	0	0	0
NGOs	2	0	2	0	3	0
Other natural or legal persons trading goods and/or providing services/traders	53	96	160	387	57	13
Prudential supervision and financial control authorities	191	191	219	382	186	100
Law enforcement authorities	221	263	296	343	431	209
Other notifications (from institutions and natural/legal persons)	48	56	29	376	263	23

Table 37: Reports received by FIU Romania containing information in which is specified that the funds represent proceeds of crime

Year	No. of reports
2008	1467
2009	1883
2010	1919
2011	2141
2012	2654
01.01-31.07.2013	1411

940. Reporting by other financial institutions, bar money/value transfer services (MVTS), is negligible by comparison. Certain reporting entities have never reported any STRs. In explaining the discrepancy in reporting patterns, the authorities cited the level of financial business conducted by banks, which by far outweighs business conducted by other financial institutions. It was also stated that the type of investment and insurance products offered in Romania are traditional in nature and as such do not generally present high risks of ML/FT. The difference in reporting by MVTs, in particular the decrease registered in 2011 (324 STRs) compared with 2010 (711 STRs) was explained by the authorities as reflecting the migration flows of citizens for work purposes, the changes in frequency of sending back money to Romania and the increase of the MVT knowledge on their customers businesses which impacted on the reporting levels. While the explanations provided by the authorities may justify the low number of STRs to a limited extent, the evaluators remain concerned that the level of reporting by most financial institutions in Romania, other than banks, is very low.

941. The FIU has conducted in the past a thorough review of the STRs reported by the banks in order to assess the level and quality of reporting by banks, and has addressed this issue in their discussions with the banks. The FIU also indicated that it analyses periodically the quality of

STRs, per categories of reporting entities. The results are presented during training sessions to the reporting entities, with anonymised examples of STRs containing added-value information, STRs which require additional data, etc.

942. The level of reporting by banks appears to be satisfactory. However, figures provided by the authorities indicate that the large majority of cases analysed by the FIU relate to ML connected to tax evasion (65% of the cases in 2010, 79% in 2011 and 74% in 2012). This suggests that banks mainly submit suspicious transaction reports where clear links exist between a predicate offence and the ML suspicion.

943. The low number of reported attempted transactions (see Table below) 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. In such cases the FIU would not be in a position to postpone the transaction, if necessary, and for the seizure mechanism to be applied to the funds in question.

Table 38: Reports on unperformed transactions suspected of ML/TF

Year	Reports on unperformed transactions suspected of ML/TF
2008	3
2009	5
2010	12
2011	10
2012	23
01.01-15.03.2013	5

944. The authorities have taken action in several instances and have suspended several transactions, as set out in the table below.

Table 39: Statistics on non-performed transactions, including suspicions of ML/TF

Year	Reports on unperformed transactions suspected of ML/TF	No. decisions of suspension taken by FIU	Out of the total number, the decisions of suspension for TF suspicions	Amounts subject to suspension	Amounts seized by GPOHCCJ
2008	3	3	0	198.420 euro	87.000 euro
2009	5	5	1	1.329.598 euro	1.290.077 euro and 42.622 USD
2010	12	6	1	829.171 euro and 234.104 RON	654.000 euro and 234.104 lei (in addition, the National Agency for Fiscal Administration applied seizure measure for 170.871 euro)
2011	10	4	1	5.102.128 euro	5.010.289,70 euro
2012	23	6	0	1.480.980 euro, 100.000 USD and 29.580 lei	1.380.980 euro 600.000 USD
01.01-	**20**	**7**	**1**	**9.646.920 euro**	**40.525.448 lei**

31.07.2013				**40.525.448 lei 72.750 USD**	**9.550.000 euro**

945. The FT reporting requirement seems to be widely understood by the reporting entities met on-site as referring only to the implementation of the international sanctions regime. Below are the STRs received related to FT.

Table 40: Transaction reports on terrorism financing

Year	No. of STRs on TF
2008	8
2009	10
2010	12
2011	13
2012	13
2013	12

946. The CSA suggested that the reporting obligation might not be completely understood within the insurance sector; it considered that, while the sector had a basic understanding of what a report of suspicion means, further reports could have been made. The NSC considered that the investment sector understood the reporting obligation. A few investment institutions considered the obligation to be very subjective and the evaluation team's understanding is that there was some reliance on banks to report suspicion.

947. A number of private sector representatives have indicated the need for receiving case specific feedback and sector-specific typologies.

Recommendation 14 (rated PC in the 3rd round report)

948. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a PC rating for Recommendation 14 based on the following underlying factors:

- The "safe harbour" provision in the AML/CFT Law does not include explicitly directors, officers and employees (permanent and temporary);
- The AML/CFT Law does not explicitly prohibit the disclosing to a third person of the fact that a report has been made to the ONPCSB.

Protection for making STRs (c. 14.1)

949. Article 5, Paragraph 1 of the Law 656/2002 defining the rules for *ex ante* reporting of suspicious transactions, establishes that "as soon as [the relevant employee of the reporting entity] …has suspicions that a transaction, which is on the way to be performed, has the purpose of money laundering or terrorism financing, he shall inform [the compliance officer], who shall notify immediately [the FIU]. The [compliance officer] shall analyse the received information and shall notify [the FIU] about the reasonably motivated suspicions".

950. Article 6, Paragraph 1 of the Law 656/2002 defining the rules for *ex post* reporting of suspicious transactions establishes that reporting entities "*which know that an operation that is to be carried out has as purpose money laundering, may carry out the operation without previously notifying [the FIU], if the transaction must be carried out immediately or if by not performing it, the efforts to trace the beneficiaries of such money laundering suspect operation*

could be hampered.…[and] shall compulsorily inform [the FIU] immediately…also specifying the reason why they did not inform [the FIU] according to the Article 5"[132] .

951. Paragraph 2 of the same article further establishes that reporting entities "*which ascertain that a transaction or several transactions carried out on the account of a customer are atypical for the activity of such customer or for the type of the transaction in question, shall immediately notify [the FIU] if there are suspicions that the deviations from normality have as purpose money laundering or terrorist financing*". Moreover, Paragraph 3 of the same article requires reporting entities "to immediately notify [the FIU], when they find out that regarding to an operation or several operations which were carried out on behalf of a customer there are suspicions that the funds have as purpose money laundering or terrorism financing".

952. Article 9, Paragraph 1 of the Law 656/2002 establishes that the application in good faith, by the natural and/or legal persons, of the provisions of the law regarding suspicious transaction reporting "may not attract their disciplinary, civil or penal responsibility". The authorities advised that the term "natural and/or legal persons" is meant to cover both the credit and financial institutions and their directors, officers and employees, as stipulated under Criterion 14.1.

953. Hence, 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).

Prohibition against tipping off (c.14.2)
ALL

954. Article 25, Paragraph 2 of the Law 656/2002 establishes that reporting entities and their employees "*must not warn the customers about the notification sent to [the FIU]*". The language of this provision, although 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.

NSC

955. Under article 19(3) of the NSC Regulation regulated entities, directors, administrators, representatives and their staff have the obligation not to transmit, "out of the legal conditions", the information held about money laundering and terrorist financing and not to warn the involved customers or other third parties about the fact that a reporting about a suspicious transaction or the related information were/will be submitted to the Office and the NSC.

CSA

956. Under article 25 of the ISC Order the directors/members of the supervisory board, managers, representatives and personnel of the entity shall not provide the information concerning money laundering or terrorism financing operations in the absence of the conditions set out in the law

[132] This is a transposition of Clause 30 of the preamble to the Directive 2005/60/EC

and shall not warn the clients involved or the third parties with respect to the issuing or foreseen issuing of a suspicious transaction report to the Office and CSA.

THE OFFICE

957. Article 4(l) of the Office Norms obliges regulated entities not to disclose information connected with money laundering or terrorism financing and to not inform the customers on the notifications submitted to the Office except in relation to conditions provided by law.

Additional element – Confidentiality of reporting staff (c.14.3)

958. Article 7 of the Law 656/2002 establishes that, while the ONPCSB may require reporting entities to provide the data and information "*necessary to fulfil the attributions provided by the law*", such information "*connected to the notifications received [in the framework of ex ante and ex post STR reporting, as well as that of filing over-threshold and cash transaction reports, shall be] processed and used within [the FIU] under confidential regime"*.

Effectiveness and efficiency (R 14)

959. Representatives of the private sector met during the on-site visit did not express any concerns about potential threats or hostile actions supposedly related to the implementation of their STR reporting obligation. There was a uniform perception, however, that should a customer be refused immediate implementation of a transaction order (subject to *ex ante* reporting to the FIU), this would inevitably "hint" him or her about the potential reporting action. Among others, this was told to be one of the reasons for obliged entities to prefer *ex post* reporting to the FIU.

Recommendation 25(c. 25.2 – feedback to financial institutions on STRs (rated NC in the 3rd round report)

960. According to Article 5 of the Law 656/2002, reporting entities provide three types of reports to the national FIU: a) Suspicious transactions reports (both *ex ante* and *ex post* reporting) as defined under Paragraph 1; b) cash transaction reports on transactions above the equivalent of EUR 15.000 as defined under Paragraph 7; and c) cross-border transaction reports on transactions above the equivalent of EUR 15.000 as defined under Paragraph 8. For suspicious transaction reports, the FIU is required to provide acknowledgment of the receipt to the reporting entity. Further specific feedback is provided for under Article 8, Paragraph 9 of the Law 656/2002, requiring the ONPCSB to provide credit and financial institutions "whenever possible, under a confidentiality regime and through a secured way of communication, with information about clients, natural and/or legal persons, who are exposed to risk of money laundering and terrorism financing".

961. Available guidance aimed at assisting credit and financial institutions to meet their reporting obligations includes certain enforceable means, such as the ONPCSB Decisions 674 (2008) and 962 (2010) on the form and content of reports, and Decisions 673 (2008) and 964 (2010) on the rules for their submission, as well as some consultative documents such as the *Manual on the Risk Based Approach and Suspicious Transaction Reports* published in 2010, which represents a useful tool for compliance officers in their decision-making processes. Annual reports of the ONPCSB convey information on legislative and institutional developments in the national AML/CFT framework, general statistics on the number and breakdown of reports filed with the FIU and on the results of analysis, and the ONPCSB involvement in relevant international initiatives.

962. In addition, feedback and awareness events for financial institutions have been held periodically. These events have been led by the ONPCSB and are well regarded.

Effectiveness and efficiency (R 25.2)

963. Many representatives of the private sector met during the on-site visit stressed the importance of getting feedback on the status of reported STRs and on the outcomes of cases. Such feedback would help the obliged entities to improve their performance both in terms of making better decisions in relation to STR reporting and in terms of improving customer classification procedures in relation to the proper assessment of pertinent risks.

3.7.2 Recommendations and comments

Recommendation 13 and Special Recommendation IV

964. It is recommended to :

- 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.
- Ensure that the reporting requirement includes all the circumstances referred to in criterion 13.2 under the FT reporting requirement[133].
- The FIU should undertake further efforts to increase reporting entities' understanding of ML/FT reporting requirements and ensure that suspicious transactions are reported promptly to the FIU.

Recommendation 14

965. It is recommended to :

- Provide for protection of reporting entities and their staff, if they report suspicions unrelated to money laundering or terrorist financing.
- Extend the prohibition of tipping off to encompass all possible forms and ways of disclosing the fact that a STR or related information is being reported or provided to the FIU.

Recommendation 25/c. 25.2 [Financial institutions and DNFBPS]

966. Competent authorities are recommended to undertake a dialogue with all reporting institutions on how best to address their need for further feedback, as this would also contribute to enhance the effectiveness of the reporting system.

3.7.3 Compliance with Recommendations 13, 14, 25.2 and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• 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;

[133] As indicated under SR II the majority of these deficiencies in the criminalisation of FT appear to have been addressed by the new FT offence, which entered into force as of February 2014.

		Effectiveness: • (1) Low number of STRs by financial institutions other than banks; (2) uneven understanding of the reporting requirement in all sectors; (3) Inconsistencies in articulation of reporting requirement may have an impact on its effective implementation.
R.14	**PC**	• 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.
R.25	**LC**	**Effectiveness:** • Feedback not regarded as sufficient by the private sector, in particular as regards specific feedback.
SR.IV	**PC**	• The FT reporting requirement does not include all the circumstances set out under criterion 13.2 and IV.1. **Effectiveness** • 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.

Internal controls and other measures

3.8 Internal Controls, Compliance, Audit and Foreign Branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15 (rated PC in the 3rd round report)

967. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a PC rating for Recommendation 15 based on the following underlying factors:
- No general requirement that the compliance officer should be designated at the management level;
- No general legal obligation to secure the compliance officers direct and timely access to the relevant data;
- No specific provisions on employee screening.

Internal AML/CFT procedures, policies and controls (c. 15.1)

ALL

968. Article 20, Paragraph 1 of the Law 656/2002 requires that reporting entities designate "one or several persons with responsibilities in applying the present law, whose names shall be communicated to the Office, together with the nature and the limits of the mentioned responsibilities'. Paragraph 2 of the same article establishes that "credit institutions and financial institutions are obliged to designate a compliance officer, subordinated to the executive body, who coordinates the implementation of the internal policies and procedures, for the application of the present law". Similar provisions can be found in Article 15 of the AML/CFT Regulation. The Romanian authorities consider that "subordinated to executive

body" is subordinate to the Chief Executive Officer, thus at management level. In practice such officers are at the level of directors.

969. Article 20, Paragraph 6 of the Law 656/2002 establishes that "the persons designated in accordance with Paragraphs 1 and 2 shall have direct and timely access to the relevant data and information necessary to fulfil their obligations under this law".

970. While article 20 can be construed as giving access to any information required, the evaluation team considers that it sets out a too wide statement and as such it does not address adequately the requirements under criterion 15.1.2.

NBR

971. Article 3 of the NBR Regulation 9/2008 establishes that, to ensure compliance with the requirements of the Law 656/2002, the Government Decision 594/2008 and the NBR Regulation 9/2008, credit and financial institutions shall issue internal KYC norms conceived to prevent the misuse of the institution for ML/FT. Article 4 of the same regulation requires that the said norms are "drawn up so as to correspond with the nature, volume, complexity, and the area of its activities and shall be adapted to the risk level related to the customer categories for which the institution provides financial or banking services, and to the degree of risk related to the products/services offered".

972. Article 5, Paragraph 1 of the regulation further details that KYC norms, procedures and measures have to be implemented so as to enable satisfying the National Bank of Romania that the institutions efficiently administrate the risk of ML/FT. For that purpose, these norms should "*include, at least, the following elements: …c) details of standard, simplified and enhanced customer due diligence measures; d) procedures for the on-going monitoring of operations performed by the customers for the purpose of unusual and suspect transactions detection; … f) adequate drawing up and record-keeping procedures and regarding the access to these records; …i) reporting procedures, internal and to the competent authorities*".

973. Article 6 of the regulation establishes that KYC norms are approved by the institution's management and are reviewed whenever necessary and at least annually, and requires that they are communicated to the entire staff with KYC responsibilities for the purpose of preventing money laundering or terrorism financing. The authorities explained that the term "staff with KYC responsibilities" covers all relevant employees involved in implementation of AML/CFT requirements.

NSC

974. Article 4 of the NSC Regulation states that regulated entities are required to prepare, establish and implement adequate policies, procedures and mechanisms in terms of customer due diligence, reporting, record keeping, internal control, assessing and managing risks, compliance and communication management, to prevent and hamper the involvement of regulated entities in suspicious activities of money laundering and terrorist financing. These requirements are to ensure adequate training of employees. Article 6(1) of the NSC Regulation provides that regulated entities will communicate to all employees the policies and procedures to prevent and combat money laundering and the financing of terrorism.

975. Article 5(1) of the NSC Regulation provides that regulated entities must designate by an internal act one or more persons who have responsibilities in implementing the legal provisions on preventing and sanctioning money laundering and terrorist financing, whose names must be transmitted to the Office and the NSC, together with their responsibilities, limits and extents. The internal act must also be submitted to the Office and the NSC. In addition, regulated

entities are required to appoint a compliance officer subordinated to executive management, who coordinates the implementation of policies and internal procedures.

CSA

976. Article 5(1) of the ISC Order states that entities shall develop and implement adequate policies, procedures and mechanisms for due diligence purposes, as well as in order to report, keep records, ensure adequate internal control, assess and manage risks, and to prevent their involvement in operations which raise suspicions of money laundering and terrorism financing, at the same time ensuring the adequate training of their own personnel as well as of personnel providing services on a contract basis. Under article 7(3) entities shall communicate to all such personnel the procedure concerning the prevention and control of money laundering and terrorism financing.

977. Article 6(1) requires entities to appoint one or several persons among their own personnel to have responsibilities in the application and observance of the legal provisions in force concerning money laundering and terrorism financing. Article 6 goes on to specify that these persons shall be adequately trained in the field of the prevention and control of money laundering and terrorism financing. They must have direct and permanent access to the management of the relevant entity as well as to all relevant records prepared in line with the provisions laid down in the Order and the relevant legislation.

CSSPP

978. Article 5 of the CSSPP Norms provides that customer due diligence policies and procedures issued by legal person administrators/marketing agents must correspond to the nature, volume, complexity and extent of their activity and must be adapted to the risk level associated with the categories of clients they provide services for. The policies and procedures must contain a number of defined elements. These include monitoring of clients; the content of standard, simplified and enhanced customer due diligence measures; permanent monitoring procedures; the modalities of dealing with transactions and clients in/and or from within jurisdictions that do not impose customer due diligence and record keeping procedures equivalent to those provided by Law 656/ 20002 and the underlying regulations; modalities for the preparation and keeping of, and access to, records; procedures for the verification of the implementation of policies and procedures; employment and training programmes; and internal report procedures.

979. Article 8(2) of the Norms states that legal person administrators/marketing agents shall communicate to all employees the policies and procedures established for the prevention and combating of money laundering and terrorism financing acts. The language of the Norms does not extend to controls.

980. Under article 6 legal person administrators/marketing agents are obliged to designate, by an internal document, one or several persons with responsibilities in enforcing the legal provisions on the prevention and combating of money laundering and terrorism financing acts. There is no requirement for this person to be at management level. Article 7 specifies that the persons designated in accordance with article 6 are responsible for completing the tasks established in Law 656/2002 and of the Norms. For the purpose of completing their tasks, the designated persons will have direct and permanent access to all the records of the administrators/ marketing agents, in accordance with the provisions of the Norms and of the other incidental legal provisions.

THE OFFICE

981. Articles 4(a) and (b) of the Office Norms specify that the obligations of regulated entities include drawing up customer due diligence procedures and appointing one or more persons under article 14 of Law 656/2002. Article 4(c) adds the obligation of elaboration of procedures and appropriate methods of internal control in order to prevent and combat money laundering or terrorist financing.

982. Under article 27 of the Office Norms each regulated entity shall elaborate appropriate policies and procedures in order to implement an efficient due diligence programme. The management of regulated entities or, if necessary, appointed persons have responsibilities regarding the establishment and maintenance of an adequate and efficient system of internal control. The objectives of internal control, taking into consideration the Office Norms, consist of verification and the provision of plausible, relevant and complete information to the structures involved in making decisions within the regulated entity and the external users of information. This provision is not restrictive. In order to achieve the objectives regarding internal control, regulated entities shall organize an internal control system (without being limited) comprising the following elements:

a) the role and the responsibilities of the persons appointed bearing in mind the relationship with the Office;
b) the identification and assessment of significant risks;
c) control activities and the separation of responsibilities;
d) the periodic supervision of information, systems and control management;
e) information and communication;
f) a strategy for training the personnel in the field of due diligence standards.

983. Regulated entities shall ensure that personnel are not charged with responsibilities which can lead to a conflict of interest. Possible conflicts of interest must be identified and monitored independently by persons not involved directly in the relevant activities.

984. Article 17 requires each regulated entity to establish its own programme of due diligence, which corresponds to the nature, size, complexity and limits of its activity and adapted to the level of risk associated with the categories of customers for which it is performing operations/transactions. The due diligence programme must consider all the transactions/operations of the regulated entity and, without limitation, include:

a) a policy for accepting the customer;
b) identification procedures and procedures for placing the customer in the corresponding category of customers;
c) keeping the corresponding records;
d) monitoring operations performed in order to detect the suspicious transactions and the reporting procedure;
e) the modalities of analysing transactions/operations in and/or from jurisdictions in which there are not adequate rules on preventing and combating money laundering and terrorism financing;
f) modalities of analysing transactions/operations which do not fit the normal pattern or which involve risk factors;
g) procedures and systems for checking the implementation of programmes and for the evaluation of their efficiency;
h) training programmes for personnel in the due diligence area.

985. Article 18 provides that the due diligence programme of regulated entities must be in written form, known by all personnel and reviewed periodically for appropriate adjustment.

Independent Audit Function (c. 15.2)

NBR

986. Article 5, Paragraph 2, Letter (g) of the NBR Regulation 9/2008 requires that KYC norms "include, at least …procedures and control systems of the know-your-customer program's implementation and of their efficiency assessment, inclusive through the external audit".

987. Article 50, Paragraph 1 of the NBR Regulation 18 (2009) establishes that credit institutions shall have an independent, permanent and effective internal audit function charged with: a) ensuring that policies and processes of credit institutions are complied with, within all activities and structures; b) reviewing the existing policies, processes and control mechanisms so these remain sufficient and appropriate for the business. Paragraph 2 of the same article defines that the bodies performing management functions at credit institutions are responsible for ensuring an adequate internal audit activity appropriate to the size and nature of their operations.

988. There is no legislative requirement for the internal audit to conduct sample testing in order to test compliance of credit institutions with the existing policies, processes and control mechanisms. However, both the authorities and the representatives of commercial banks advised that sample testing is among the tools usually used for performing the internal audit function.

989. However, there is no similar requirement as set out in article 50 requiring non-bank financial institutions, payment institutions and electronic money institutions maintain an adequately resourced and independent audit function to test compliance (including sample testing) with applicable AML/CFT procedures, policies and controls.

NSC

990. Under article 5 of the NSC Regulation, if the regulated entity is required to set up an internal control department for monitoring compliance with legislation, the persons designated in accordance with article 5(1) may be placed in the internal control department. The evaluation team notes that this provision might lead to a lack of independence of the internal audit function as envisaged by c.15.2 of the FATF Methodology.

CSA

991. The ISC Code does not contain provisions in relation to internal audit.

992. Art 39 - Order 18/2009 covers the principle for organizing internal audit and risk management & internal audit function for insurance.

CSSPP

993. The CSSPP Norms do not contain provisions in relation to internal audit.

THE OFFICE

994. Article 30 of the Office Norms specifies that the control and/or internal audit procedures of the regulated entity shall include an independent assessment of its policy and procedures on due diligence, including compliance with the legal requirements and other applicable norms. The efficiency of procedures and policy must be assessed periodically. This includes the

professionalism of personnel, proposals for addressing deficiencies and monitoring the modality of implementation of conclusions and proposals [Romania – do you mean proposals or policies?]. The responsibilities of internal control and/or internal audit personnel must include the permanent monitoring of compliance with internal norms and the review of reports on uncommon cases in order to give notice to the management of regulated entities about cases where it is considered due diligence procedures are not respected. Management of regulated entities shall assure that the control and/or internal audit department includes personnel having experience in such policy and procedures.

Employee Training (c. 15.3)

ALL

995. Article 20, Paragraph 2 of the Law 656/2002 specifies that reporting entities shall designate one or several persons with responsibilities in applying the law, including ensuring the proper training of employees.

NBR

996. Article 24, Paragraph 2 of the NBR Regulation 9/2008 requires that credit and financial institutions "ensure the permanent training of the staff, in such a manner so the persons with responsibilities in the field of know-your-customer for the purpose of preventing and combating money laundering and terrorism financing to be adequately trained. The training program shall include information about the requirements of the legal framework in this field and also practical specific aspects, especially in order to enable the staff to recognize suspect transactions related to the money laundering and terrorism financing operations and also in order to adopt adequate measures. The staff will be periodically trained and tested in order to ensure the knowledge of its responsibilities and to ensure its updating with the latest developments in the field". The training requirements do not extend to ensuring that employees are kept informed of new developments.

997. The authorities advised that banks develop an annual training plan specifying the topics, periods, and participants of training events. The plan and the related budget are approved by senior management. Available modes of training include dedicated training sessions for relevant staff (also for that of branches), train-the-trainer courses, e-learning facilities, on-job training and self-training arrangements.

NSC

998. Article 6(2) of the NSC Regulation requires that regulated entities must ensure proper training for employees on the prevention and combating of money laundering and terrorist financing. Under article 6(3) training programmes should ensure that employees:

a) have adequate knowledge on the laws, regulations, rules, policies and procedures on preventing and combating money laundering and terrorist financing;

b) have the necessary competencies to adequately analyse the transactions in order to identify money laundering and financing of terrorism operations;

c) fully meet reporting requirements.

999. These provisions are rather general and do not require on-going training, and do not cover ensuring that employees are kept informed of new developments, including information on current money laundering and financing of terrorism techniques, methods and trends.

CSA

1000. Article 7(2) of the ISC Order requires supervised entities to ensure the training of their own personnel as well as of personnel providing services on a contract basis with respect to the prevention and control of money laundering and terrorism financing. Training programmes shall ensure that the relevant persons:

- are aware of the laws, rules, regulations and procedures concerning the prevention and control of money laundering and terrorism financing;
- are competent enough to review in an adequate manner all transactions to the purpose of identifying money laundering and terrorism financing operations;
- are fully aware of reporting requirements.

1001. These provisions are rather general and do not require on-going training, and do not cover ensuring that employees are kept informed of new developments, including information on current money laundering and financing of terrorism techniques, methods and trends.

CSSPP

1002. Article 8 of the CSSPP Norms states that legal person administrators/marketing agents must ensure the proper training of personnel regarding the prevention and combating of money laundering and terrorism financing acts.

THE OFFICE

1003. Article 4(c) of the Office Norms specifies that the obligations of regulated entities include that of ensuring employees are trained to recognise operations which may be connected to money laundering or terrorist financing and for taking appropriate measures in such situations.

1004. Article 31 states that regulated entities shall develop an on-going training programme for personnel, so that the personnel involved in relations with customers are trained adequately. The training programme and its content shall be adapted to the requirements and be specific to each regulated entity.

1005. The training requirements shall be focused differently for new employees, personnel working within the control and/or internal audit department and personnel involved in relations with new customers. Newly employed personnel shall be trained on the importance of due diligence programmes and on the minimum requirements of the regulated entity in this area. Personnel shall be trained periodically at least once a year and when it is considered necessary so as to ensure that personnel know their responsibilities to keep them up to date with new progress in the field and to ensure consist implementation of programmes.

Employee Screening (c. 15.4)

NBR

1006. Article 24, Paragraph 1 of the NBR Regulation 9/2008 requires that credit and financial institutions "impose high standards for the employment of the staff, inclusively regarding the reputation and honorability and to verify the information supplied by the candidates". The authorities advised that the term "honorability" refers to honesty and integrity standards, and the requirement is that all employees have certain experience, professional certification, clean criminal and tax records.

NSC

1007. Article 6(1) of the NSC Regulation provides that regulated entities have an obligation to implement procedures (screening) to ensure high standards when persons are hired.

CSA

1008. Article 8 of the ISC Order provides that supervised entities shall implement screening procedures for the purpose of ensuring high standards for their own personnel and for the natural/legal persons empowered to act on their behalf, when appropriate.

Additional elements (c. 15.5)

1009. The authorities advised that compliance units of banks are immediately subordinated to the senior management, and the head of the compliance unit is entitled to directly report to the board of directors. The NBR verifications also revealed that the responsibilities allocated to the compliance unit do not interfere with the business lines of the institutions.

Effectiveness and efficiency (R 15)

1010. The representatives of credit and financial institutions met on-site were well aware of the requirement to have KYC norms reflecting, *inter alia*, on various AML/CFT-related aspects such as CDD, record keeping, detecting and reporting of suspicious transactions. The sample set of internal norms received from a commercial bank comprises a document titled *Know Your Customer Rules*, which articulates internal arrangements for the mentioned issues.

1011. Staff training appears to be a common practice in banks, with planning and implementation of various types of training events. However, the assessment team was not provided with any information on whether such arrangements are in place in non-bank financial institutions, payment institutions and electronic money institutions. Training appeared to be generally good within the investment sector, with on-going training being provided (although it is possible that there might be over reliance on training initiatives sponsored by the AML/CFT authorities) but in the case of one institution it was clear that the training programme was insufficient.

1012. Main training for non-bank financial institutions is provided by the FIU according to the authorities. The supervisory authorities indicated that in practice on-going training is covered, and the scope and comprehensiveness of the training is verified during onsite supervision. Authorities: please provide any relevant information on sanctions applied in respect of training obligation non-compliance, if any.

Recommendation 22 (rated PC in the 3rd round report)

1013. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a PC rating for Recommendation 22 based on the following underlying factors:

- No specific requirements on the financial institutions to require the application of AML/CFT measures to foreign branches and subsidiaries beyond customer identification;
- There is no requirement to pay special attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply FATF Recommendations
- Provision should be made that, where minimum requirements of the host and home countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. the host country) laws and regulations permit.

Consistency of the AML/CFT measures with home country requirements and the FATF Recommendations (c. 22.1 & 22.2)

ALL

1014. Article 13, Paragraph 4 of the Law 656/2002 defines that credit and financial institutions should "apply customer due diligence and record keeping measures to all their branches from third countries", and "these must be equivalent at least with those provided for in the present law". Article 20, Paragraph 5 of the same law establishes that "credit and financial institutions must inform all their branches in third states about the policies and procedures established accordingly with Paragraph 2", whereas the mentioned Paragraph 2 refers to "adequate policies and procedures on customer due diligence, reporting, secondary and operative record keeping, internal control, risk assessment and management, compliance and communication management".

1015. Similarly, Article 13, Paragraph 1 of the AML/CFT Regulation (Government Decision 594/2008) defines that "financial and credit institutions apply, according to the situation, in their branches [in] other third states, customer due diligence and record keeping measures, equivalent at least with those provided for by the Law 656/2002 and the present regulation". Article 15, Paragraph 5 further requires that the institutions "inform all their branches [in] third states about the policies and procedures set up in accordance with Paragraph 2, whereas the mentioned Paragraph 2 refers to "adequate politics and procedures on customer due diligence, reporting and record keeping of secondary and operative evidence, assessing and managing the risks, conformity management and communication".

1016. Hence, branches of credit and financial institutions in EU member states or within EEA are not covered by the requirements of the Law (2002) and the 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[134] and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit. The evaluation team also notes that article 13 of the law refers only to customer due diligence and record keeping whereas c.22.1 of the FATF Methodology refers to AML/CFT measures (i.e. c.22.1 is wider) while article 20 refers only to informing branches and that this is in the context of procedures.

1017. There is no specific provision requiring credit and financial institutions to 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.

1018. Article 13, Paragraph 3 of the AML/CFT Regulation (Government Decision 594/2008) defines that "when the legislation of the third state does not allow for customer due diligence measures to be applied, the credit and financial institutions shall apply the necessary customer due diligence measures, in order to efficiently cope with the money laundering or terrorism financing risk". In relation to this provision, it is not clear: a) how foreign branches and subsidiaries of Romanian credit and financial institutions would apply "the necessary customer due diligence measures", if the legislation of the third state does not allow application of such measures; b) how does this provision amount to requiring 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.

[134] For details of the Romanian approach to assess equivalence, see the section "*Verifying equivalence of AML/CFT framework of third countries*".

1019. Article 13, Paragraph 2 of the AML/CFT Regulation (Government Decision 594/2008) establishes that "when the legislation of the third state does not allow for such equivalent measures to be applied, the credit and financial institutions shall inform the competent Romanian authorities".

NSC

1020. Article 4(4) of the NSC Regulation provides that regulated entities shall ensure that policies and internal procedures are applied by secondary premises, including those located abroad. Under article 4(5) regulated entities are required to inform all branches and subsidiaries located in third countries on the policies and procedures issued in accordance with Law 656/2002.

CSA

1021. Article 5(9) of the ISC Code provides that internal policies and procedures shall be applied by supervised entities at other operating offices, including those based in the European Economic Area or in non-member states as well as in the headquarters and other operating offices of legal person insurance agents. Article 9(3) states that entities shall ensure that all standard due diligence measures are applied in other operating offices, including those based in the European Economic Area or in non-member states, as well as at headquarters and other operating offices of legal person insurance agents.

Additional elements (c. 22.3)

1022. The assessment team was not provided information on whether credit and financial institutions subject to the Core Principles are required to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.

Effectiveness and efficiency (R 22)

1023. Representatives of the private sector advised that only one bank operates a branch in Cyprus, which has to comply with both Cypriot and Romanian legislation. 1 investment firm has opened a subsidiary. No payment institution has overseas branches/subsidiaries.

3.8.2 Recommendation and comments

Recommendation 15

1024. Romania should:

- Clarify the requirements in the AML/CFT Law to ensure that they cover adequately the requirements under criterion 15.2.
- While basic internal audit requirements apply to entities supervised by the NSC, introduce an explicit requirement for financial institutions which are not banks to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with applicable AML/CFT procedures, policies and controls.
- Introduce more detailed training requirements for entities supervised by the CSSPP and the Office, and for all entities, introduce a requirement for training to be on-going (except the Office which already has an on-going training requirement) and for supervised entities generally to cover new developments (including information on current ML and FT techniques, methods and trends).

- Introduce a requirement for entities supervised by the CSSPP and the Office to put in place screening procedures.
- Ascertain availability of appropriate training arrangements in non-bank financial institutions under NBR's supervision, payment institutions and electronic money institutions.

Recommendation 22

1025. It is recommended to:

- Provide for applicability of the requirements under Recommendation 22 (AML/CFT measures as a whole and also not limited to policies and procedures) to branches of credit and financial institutions in EU member states or within EEA as well as outside the EU and EEA , including introducing explicit requirements for 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.
  - 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. In order to put this recommendation in context, at the time of the onsite visit, it should be noted that Romanian financial institutions had very few foreign branches and subsidiaries.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• 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; • Entities subject to supervision by the CSSPP and the Office are not required to have screening procedures. **Effectiveness** • 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.
R.22	**PC**	• 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: o 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; o 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; o 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.

Regulation, supervision, guidance, monitoring and sanctions

3.9 The Supervisory and Oversight System - Competent Authorities and SROs / Role, Functions, Duties and Powers (Including Sanctions) (R. 23, 29, 17 and 25)

3.9.1 Description and analysis

1026. Until 1st May 2013, several supervisory authorities had responsibility for the oversight of the AML/CFT framework in relation to financial institutions, namely the NBR, the NSC, the CSA, the CSSPP and the Office. By virtue of the new Financial Services Act which came into force in May, the NSC, the CSA and the CSSPP were amalgamated in a new supervisory authority, the FSA, although the three authorities constituting the FSA continue to exist operationally, working from their premises. The legislation establishing the FSA and the effectiveness of the FSA's oversight could not be assessed by the evaluation team.

Authorities/SROs roles and duties & Structure and resources

Recommendation 23 (23.1, 23.2) (rated PC in the 3rd round report)

1027. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a PC rating for Recommendation 23 based on the following underlying factors:

- Supervision of exchange offices lack a clear delineation between the NBR and the ONPCSB;
- More resources should be dedicated to the ONPCSB or the distribution of supervisory responsibilities among authorities involved in AML/CFT should be reconsidered;
- AML/CFT supervision of insurance licensees by their respective supervisory authority need to be developed further. Currently the inspections appear to be purely formal;
- No registration or licensing procedures for money remittance service providers;
- No adequate and sufficient supervision of MVT service providers (including those that operate through postal services and independently) due to limited resources for on-site inspection within the ONPCSB;
- Although there is an obligation to report suspicion of terrorist financing, there appears to be a lack of supervision for this issue, especially for exchange offices and MVT service providers;
- The overall effectiveness of the AML/CFT systems in the financial institutions also needs to be checked.

Regulation and Supervision of Financial Institutions (c. 23.1); Designation of Competent Authority (c. 23.2)

ALL

1028. Article 24, Paragraph 1 of the AML/CFT Law 656/2002 defines the framework for verification and control of reporting entities compliance with the provisions of the law, through the following authorities and structures:

a) **Prudential supervision authorities** – for the persons that are subject to their supervision, including the branches of foreign legal persons that are subject to a similar supervision in their country of origin;

b) **The Financial Guard** (as well as any other authorities with tax and financial control attributions) – for the entities performing foreign exchange, except for those supervised by the prudential supervision authorities as provided for in Letter (a) above;

c) **The leading structures of independent legal professions** – for the persons referred to in Article 10, Letters (e) and (f) of the AML/CFT Law 656/2002; i.e. auditors, accountants; public notaries and lawyers;

d) **The ONPCSB** – for all reporting entities except for those supervised by the prudential supervision authorities as provided for in Letter (a) above.

1029. Paragraph 2 of the same article establishes that the ONPCSB may perform joint checks and controls together with the authorities provided for in Letters (b) and (c) above. It has joint supervision responsibilities for DNFBPs and has no part in the supervision implemented by prudential supervision authorities, which bear full responsibility for AML/CFT supervision in their respective areas of competence.

1030. Apart from its mandate for AML/CFT supervision, the National Bank of Romania is the sole competent authority for the regulation, licensing and prudential supervision of:

- *Credit institutions*, as defined under Article 3 of the Government Emergency Ordinance 99 (2006), comprising banks, credit cooperative organizations, savings banks for housing, and mortgage banks[135];
- *Other financial institutions*, as defined[136] under Article 7, Paragraph 1, Clause 14 of the Government Emergency Ordinance 99 (2006), comprising:
  - *Non-bank financial institutions*, as defined[137] under Article 5, Letter (c) of the Law 93 (2009)[138], with Article 14 of the same law defining the activities permitted for those institutions such as granting of various forms of credits, factoring and forfeiting operations,

[135] Article 4, Paragraph 1 of the Government Emergency Ordinance 99 (2006) establishes that "the National Bank of Romania is the competent authority for the regulation, licensing and prudential supervision of credit institutions".

[136] Other financial institutions are defined as undertakings other than credit institutions, "the principal activity of which is to acquire holdings or to pursue on one or more of the activities listed in Article 18, Paragraph 1, Letters (b) to (l) and (n^1)"; which listing is in line with that of the FATF recommendations for an enterprise to qualify as a financial institution.

[137] Non-bank financial institutions are defined as "entities performing lending activities on a professional basis as provided by the present Law".

[138] Articles 43 and 44 of the Law 93 (2009) establish that "the National Bank of Romania monitors the non-bank financial institutions registered in the General Register, mainly based on the information supplied by these entities through the reports submitted. National Bank of Romania may also perform, whenever considered necessary, on-site inspections at the non-bank financial institutions' headquarters and at their branches", and that "the National Bank of Romania supervises the non-bank financial institutions registered in the Special Register, both based on the information supplied by these entities through the reports submitted, and through on-site inspections at the non-bank financial institutions' headquarters and at their branches.

issuing of guarantees, lending in exchange of goods for safekeeping (i.e. pawnshops), and granting of credits within a setup of mutual benefit societies[139];

- *Payment institutions*, as defined[140] under Article 5, Paragraph 16 of the *Government* Emergency Ordinance 113 (2009)[141], with Article 8 of the same ordinance defining payment services as those enabling cash placement and withdrawal from account, execution of payment transactions, issuance of payment instruments, and money remittance;
- *Electronic money institutions*, as defined[142] under Article 4, Paragraph 1, Letter (e) of the Law 127 (2011)[143], with Article 21 of the same law defining *that*, apart from issuing electronic money, these institutions are permitted to engage in activities such as provision of payment services and operation of payment systems.

1031. It should be mentioned that non-bank financial institutions (NBFI) are registered in one of the three registers opened and maintained by the National Bank of Romania. Those are:

- The **General Register** for NBFIs with a minimum share capital of the RON equivalent of EUR 200.000 (for NBFIs granting mortgage credits, respectively, EUR 3 million);
- The **Special Register** for NBFIs meeting the criteria provided through the regulations of National Bank of Romania respective to the volume of their turnover, volume of credits, indebtedness, total assets, and shareholders' equity;
- The **Entry (Evidence) Register** for entities performing lending activities exclusively from public funds or funds granted based on intergovernmental agreements, as well as for NBFIs organised as pawnshops and mutual benefit societies.

1032. The authorities advised that the NBR has regulatory and supervisory competence for the entities registered in both the General Register and the Special Register, meaning that the entities registered either in the Entry (Evidence) Register or only in the General Register are subject to regulation/supervision by the national FIU. Such division of regulatory and supervisory responsibilities has been done from the standpoint of financial stability, on basis of perceived systemic risk (including the AML/CFT aspect) posed by these entities due to their size, market share, volume of transactions and other descriptors[144].

1033. The assessment team was also advised that for branches of credit and financial institutions incorporated in another EU Member State, providing financial services in Romania, while the prudential supervision competences are assigned to the Home competent authority (the conditions to perform business being basically the same with those in Romania, considering that all Member

[139] Non-bank financial institutions are also permitted to perform currency exchange operations related to their permitted activities.

[140] Payment institutions are defined as "a legal person that has been granted authorisation in accordance with title II in order to provide services in the territory of the European Union and in the EEA".

[141] Article 62 of the Government Emergency Ordinance 113 (2009) establishes that "the National Bank of Romania is the competent authority responsible for supervision of the compliance with this Title and regulations issued for its application" and that "the National Bank of Romania shall supervise the authorized payment institutions, Romanian legal persons, including the provision of payment services through branches and agents".

[142] Electronic money institutions are defined as "a legal person that has been granted authorisation under Chapter II to issue electronic money".

[143] Article 61 of the Law 127 (2011) establishes that "the National Bank of Romania is the competent authority responsible for supervision of the compliance with this Chapter and the regulations issued for its application" and that "the National Bank of Romania shall prudentially supervise the authorized electronic money institutions, Romanian legal persons, including the activity regarding electronic money issuance and provision of payment services through branches and agents".

[144] For example, NBFIs in the General Register are entered also into the Special Register (and thus become a subject of the NBR regulation and supervision) when the volume of their lending activity exceeds for three consecutive trimesters the limit established by NBR. Until this happens, the entities registered in the General or Entry registers are subject to mainly monitoring regime of surveillance, based on regular reports submitted to the NBR.

States have to implement the same EU legislation), the AML/CFT supervision is based on the territoriality approach, meaning that the competences are assigned to the Host competent authority, i.e. the NBR (on the same conditions as for Romanian legal persons).

1034. Branches of credit institutions registered in third countries (outside EEA) and branches of NBFIs from non-EU Member States registered also in the Special Register that provide financial services in Romania are supervised, both form the prudential and AML/CFT perspectives, by the NBR, under the same regime as for Romanian legal persons.

1035. The assessment team was also advised that, as a principle, the reporting requirements applicable to Romanian branches of credit and financial institutions having their head offices in non-Member States are similar to those applicable to the domestic credit and financial institutions. As regards the reporting requirements applicable to Romanian branches of credit institutions and financial institutions having their head offices in EU Member States, they are more flexible than those applicable to the domestic credit and financial institutions.

NSC, CSA AND CSSPP

1036. The NSC is an independent administrative body regulating and supervising the capital market and the specific operations and entities thereof. Its core objectives include the protection of the operators and the investors against unfair practises, the prevention of manipulation, the avoidance of systemic risk generation and transparency of the market. The NSC has issued the NSC Regulation, Regulation 9/2009 on supervision of the enforcement of international sanctions in the capital market, Executive Order 8/2010 on on-going information concerning AML/CFT issues and Executive Order 2/2011 on the obligation to update the identification data of clients.

1037. Under article 3 of the NSC Regulation, the NSC must monitor regulated entities to ensure they comply with the legal provisions in force regarding the identification, verification and recording of clients and transactions, the reporting of suspicious transactions and cash transactions, and the implementation of a programme to comply with all these requirements and the employees' training in this respect. It must also monitor operations with financial instruments performed by regulated entities for the purpose of identifying suspicious transactions. The NSC has the right to review the policies and procedures issued by regulated entities regarding the prevention and sanctioning of money laundering and terrorist financing. It is entitled to require modification of policies and procedures issued by regulated entities when they do not reflect the prudential measures of the Regulation. The NSC may request regulated entities to provide any relevant information or documents. It is not clear that information and documents can be required by the NSC. Another point is that the reference to seeking modification of policies and procedures as opposed to requiring remediation seems limited in that changes to policies and procedures look forward to future actions rather than requiring remediation of current problems.

1038. The electronic surveillance system of the NSC includes alerts for unusual price movements which take into account public information, reports by issuers and market entities, and the characteristics of the issuer and market.

1039. The Bucharest Stock Exchange is not an AML/CFT supervisor. It is subject to the NSC's AML/CFT framework and a reporting entity although, as specified at the beginning of this section, the NSC Regulation cannot apply meaningfully to the Exchange. Its responsibilities are to ensure the services necessary to support the capital market and access to broker/dealers. It is the main link between the exercise by the NSC of its responsibilities for publication of Romania's legislative response to international sanctions and the broker/dealers. It also provides a link between the Office and broker/dealers. All information from the NSC and the Office to broker/dealers is transmitted via the Exchange. In addition, the exchange is a conduit to

broker/dealers when the Office wishes to organise training initiatives. The Exchange considered the last training initiative held in 2010. The Exchange does not monitor the United Nations website and does not itself possess software to monitor customer transactions against persons listed for the purposes of meeting international sanctions. However, the Exchange can send information to the broker/dealers.

1040. The Exchange considers its main risk as not having the ability to undertake surveillance of customers of broker/dealers. The exchange investigates unusual activity in a security when an issuer reports such activity or when such activity is observed by the Exchange during its own monitoring. It also monitors transactions by checking announcements, media reports and automatically generated alerts by its systems in relation to price movements and volumes. Four or five cases of potential insider dealing or market abuse have been detected by the Exchange and reported to the NSC. The Exchange is not aware of any prosecutions for these offences. Two other cases of unusual trading patterns have also been reported to the NSC. No feedback was provided on one of these two cases. The Exchange is also not aware whether any sanctions applied by the NSC are the result of information passed to it by the Exchange. In light of market abuse and insider dealing being considered to present the greatest risks of potential money laundering by the NSC, the evaluation team is of the view that better feedback should be provided by the NSC to the Exchange and that analysis ought to be undertaken so as to form conclusions as to whether or not opportunities are being missed by the authorities in relation to prosecution of market abuse, insider dealing and money laundering offences and the application of administrative sanctions. Appropriate actions should be taken based on the conclusions of the analysis.

1041. Requests for information are received from the NSC and the directorate for investigating organised crime almost every day. The Exchange no longer possesses individual customer information in all cases because of the existence of global accounts. Upon receipt of a request for information the Exchange obtains the underlying customer information in connection with global accounts from the depositary.

1042. The Exchange obtains customer due diligence information on broker/dealers, which must in any case be approved by the NSC. The Exchange does not conduct its own investigation into the owners of the broker/dealers. The Exchange does not undertake on-site inspections to, or otherwise check compliance by, broker/dealers with standards on AML/CFT or international sanctions although it is of the view that customer due diligence is strict.

1043. The CSA is an independent administrative body supervising the insurance market, insurers and insurance intermediaries. It has issued the ISC Order.

1044. Under article 4 of the ISC Order the CSA must supervise and control the entities referred to under article 2 of the Order in order to ensure they apply and observe the legal provisions in force concerning the identification, verification and recording of clients and transactions, the reporting of suspicious transactions, cash transactions and external transactions, and the preparation and implementation of procedures to observe all the requirements as well as the training of the personnel in this respect. The CSA is entitled to verify the internal procedures/regulations concerning the prevention and control of money laundering and terrorism financing issued by supervised entities. It is entitled to request the amendment of the internal procedures/regulations when they are not in line with the prudential requirements laid down in the Order. The CSA is also entitled to monitor operations with financial instruments conducted by supervised entities for the purpose of identifying suspicious transactions. In addition, the power to request the amendment of policies and procedures seems limited (see text in relation to the NSC above) In its supervision and control process, the CSA is entitled to request information or documents. It is not clear that information and documents can be required by the CSA.

1045. The CSSPP is an independent administrative body supervising voluntary and non-voluntary pension funds, and their administrators, marketing agents and depositaries. It has issued the ISC Order, which applies to administrators and marketing agents.

1046. Under article 4 of the CSSPP Order, the CSSPP has the right to verify the policies and procedures of supervised entities issued under article 3 of the Order. The Commission is entitled to request the modification of policies and procedures issued by legal person administrators/marketing agents, when these instruments do not reflect the provisions of the Order and of legislation. The reference to policies and procedures is limiting in the context of the effectiveness of the regime administered by the CSSPP. In addition, the power to request modification of policies and procedures also seems limiting (see text in relation to the NSC above). The CSSPP Norms do not contain a specific provision on requesting or requiring information.

THE OFFICE

1047. Article 23 of Law 656/2002 specifies that the licensing and/or registration of entities performing foreign exchange in Romania, other than those subject to the NBR, will be undertaken by the Ministry of Public Finance through the Commission for authorization of foreign exchange activity. The composition of the Commission shall be determined by the Minister of Public Finance, the Minister of Administration and Interior and the president of the Office. This provision was the result of an amendment to the law in 2012. Article 24 of the law states that the Financial Guard has responsibilities for the entities performing foreign exchange except for those supervised by the prudential supervision authorities. However, in practice it has been the Office which has undertaken the AML/CFT supervision of foreign exchange offices. Article 24 also states that the implementation modality of the provisions of the law is verified and controlled by the Office for persons not subject to the verification and control of the prudential supervision authorities.

1048. Article 14 of Government Decision 1599/2008 sets out the main functions of the Supervision and Control Directorate of the Office. These include the elaboration and implementation of a supervisory programme for entities listed in article 10 of the AML/CFT Law which are not subject, under the law, to any prudential supervision of any public authority. The Office is able to request from institutions, in cases as set out in legislation, data and information necessary for performing risk- based supervision and control activities. This power to request information seems limiting. It can also perform operative and unforeseen inspections of such entities, on the basis of an activity order of a permanent nature, which has been issued by the President of the Office. It establishes when contraventions are committed and applies legal sanctions through a contravention's sanctioning report (record or inspection report) according to the legal provisions, through specifically designated agents of the Office.

1049. The evaluation team was advised during its visit to Romania that the role of the Office as supervisor of foreign exchange offices is not clearly defined in legislation in the context of currency exchange offices. In this context, the evaluation team has noted that article 24 of the Law 656/2002 states that the Financial Guard is the AML/CFT supervisor.

1050. No on-site inspections have been undertaken to currency exchange offices since 2012.

Recommendation 30 (all supervisory authorities) (rated LC in the 3rd round report)

1051. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a LC rating for Recommendation 30 based on the following underlying factors:

- ONPCSB is understaffed with on-site supervisors in comparison to the very large number of diverse supervised entities (an enormous number of non-banking financial institutions, MVT service providers and all other entities that do not have a supervisory authority);
- More resources should be provided to the authorities, which investigate ML/FT, especially concerning financial investigations.

Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)

1052. On a general note, the evaluation team would like to point out that 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, senior management and highest officials, detailing also the rules regarding incompatibilities and conflicts of interest, evidence of procedures in place and checks conducted on integrity behaviour before recruitment/nomination, and respectively during the period of service; disciplinary sanctions applied during the evaluation reference period if any) did not enable the evaluation team to draw firm conclusions that criteria 30.1 and 30.2 are fully met in respect of all supervisory authorities . The newly adopted legislation establishing the FSA and the effectiveness of the FSA's oversight, given its recent establishment, could not be assessed by the evaluation team.

NBR

1053. As advised by the authorities, the National Bank of Romania is an independent authority, which, according with the provisions of the Law 312 (2004), does not request and does not accept instructions from public institutions or other institutions or authorities. Within the Supervision Department of the National Bank of Romania, there is since 2009 a specialized division titled Monitoring of International Sanctions Enforcement, Prevention of Money Laundering and Terrorist Financing (hereinafter: the **AML/CFT Supervision Division**), which provides for the NBR's obligations related to the enforcement of international sanctions, as well as to the prevention of ML/FT in relation to credit institutions (i.e. banks) as defined under the Government Emergency Ordinance 202 (2008), the AML/CFT Law 656/2002, and the Government Decision 594 (2008). The structure of the division comprises the head of division, 1 expert, and 11 inspectors.

1054. Another division within the Regulation and Licensing Department of the National Bank of Romania, which has AML/CFT control competencies, is the Division for Regulation of Financial Activities and Non-Bank Financial Institutions (hereinafter: the **NBFI Supervision Division**), which has competence for regulation and both prudential and AML/CFT supervision of non-bank financial institutions, payment institutions and electronic money institutions. The structure of the division comprises the head of division and 3 experts.

1055. In their status of structural divisions of the National Bank of Romania, both divisions with AML/CFT responsibilities are reported to have adequate funding and technical resources necessary for performing their respective functions. Professional (including educational) standards, integrity and confidentiality requirements are reflected in relevant internal acts of the NBR (such as the Collective Labor Agreement, the Internal Regulation, job descriptions etc.).

1056. Staff training at the NBR is organised through vocational development programs developed according to the Romanian Labor Code in force, the Government Decision 875 (2005) on the approval of the short term and medium strategy regarding the permanent vocational development and the National Bank of Romania collective labor agreement approved by the executive management. Statistics provided by the authorities show that, in addition to several

training events organised by the National Bank annually on issues related to ML/FT risks, implementation of national AML/CFT framework and international sanctions, the training program also utilizes relevant offers from international institutions, central banks etc.

NSC

1057. According to article 1 of its statute, the NSC is an autonomous administrative authority. The NSC appears to have operational independence and autonomy. Under article 13 the NSC is financed by a range of quotas on placements, offers and transactions amongst other "supra budgetary revenues". The NSC has 230 employees with vacancies of 30 staff in May 2012 and 30 staff at the time of the visit by the evaluation team. The Authorization Directorate includes twelve employees and is responsible for the authorization and registration of regulated entities. The Monitoring and Investigation Directorate of eight employees is responsible for supervision. The Electronic Surveillance Office monitors transactions and includes AML/CFT in its role. The twelve employees in the Office for Monitoring Regulated Entities are responsible for off-site supervision. Decisions to apply sanctions are taken based on analysis of facts. The NSC has advised that no decision to proceed with a sanction has been taken on cost grounds. The NSC was satisfied that it would be able to deal with complex and contested AML/CFT cases. The NSC's income in 2012 was 47 million RON. No upgrades to information technology systems are planned. The NSC was content that the size and quality of its premises do not adversely affect AML/CFT supervision. With regard to staff, the NSC recruits staff based on specific skills and expertise. Evaluations of staff are performed twice a year.

1058. Article 11 of the NSC statute requires members and employees of the NSC to observe professional secrecy except in relation to elements of article 6 on international cooperation when cooperating with competent authorities in EU Member States and, in the negotiation or performance of international agreements, providing assistance, particularly exchanging information, in investigation activities. The release of information can also be achieved by signature of the President of the NSC or persons empowered to this effect in circumstances similar to article 6. Professional secrecy does not apply in relation to criminal prosecution bodies and the courts. Under article 7, the obligation to keep secrecy does not apply to the NSC in the exercise of its duties under the law.

1059. AML/CFT training is provided to NSC employees. Its focus is on professional training in priority fields. The NSC has pointed to an international conference it organised in 2009 on capital market development, enforcement and oversight and seminars organised by the Office. Nine staff attended training events in 2011 with two staff attending events in 2012. Some half of the training events which have taken place since the beginning of 2010 have been joint events provided by the Office and the NSC. Other training has been provided by the Broker's Association, the Office and bilateral exchanges of experience with third parties. Relatively small numbers of staff attend these events. For example, two individuals have received training since the beginning of 2012. In discussion the NSC advised that there is intense internal training on on-site inspections – it is important to the NSC that there is consistency of approach.

CSA

1060. The CSA is an autonomous administrative authority with legal personality. Its revenue derives from insurers and brokers. There are 26 officers in the CSA's Supervision and Control Directorate. On-site inspections, which include AML/CFT are undertaken by some 5 to 7 staff. The number of on-site inspections to brokers has reduced from some 87 in each of 2010 and 2011 to some 50/60 in 2012. The total number of on-site inspections by the CSA has reduced from 128 in 2010 to 59 in 2012 (with a reduction in the application of sanctions during the period from 65 to 13). This might be the consequence of a reorganization within the CSA. The money laundering prevention and combating unit has one person. This appears to be small

number in light of the number of supervised entities and the importance of AML/CFT. The evaluation team considers that the CSA would benefit from additional resources being applied in connection with AML/CFT responsibilities.

1061. The CSA has advised that under article 4(29) of Law 32/2000 on insurance activity and insurance supervision its specialized personnel include economists, legal advisors, accounting experts, actuaries, statisticians, mathematicians, engineers, computer experts, physicians and persons qualified in insurance business and finance. The CSA has advised that in its Organisation and Functioning Regulation (a copy of which has not been provided to the evaluation team) there are rules on confidentiality.

1062. The CSA has referred in particular to training on on-site controls in 2009. In discussion the CSA advised that significant training had been undertaken since the last MONEYVAL evaluation. A training event was held in 2009 with two events being held annually since then. The office played a major role in this training. A guidebook about inspections has also been introduced. In 2009 the management of the CSA was trained in AML/CFT supervision. Management has now been trained at least twice.

CSSPP

1063. The CSSPP had an income of 14.5 million Ron in 2012. It has eight dedicated staff in relation to pension supervision. All eight participate in on-site inspections. The total staff complement of the CSSPP is 91 persons; the CSSPP has reported that it had 58 vacancies at the time of the visit by the evaluation team and 57 in May 2012. In complex contested cases the CSSPP might notify the Office, which the CSSPP suggests is the entity qualified to investigate and apply sanctions. The evaluation team considers that such a gap in staff numbers is likely to have an effect on AML/CFT supervision. The CSSPP's information technology systems are not sufficiently developed to supervise private pension system entities for AML/CFT obligations. It requires improved information technology systems. The size and quality of the CSSPP's premises do not appear to affect AML/CFT supervision. The CSSPP has advised that the level of funding has no influence on AML/CFT activity and that, when applying sanctions, the authority takes facts rather than funding into consideration. The CSSPP appears to have operational independence and autonomy.

1064. Article 11 of GEO 50/2005 states that the specialized staff of the CSSPP must have a good professional background and experience in one of the following fields: economics, financial-accounting, pensions, insurance, investment, business management, actuarial sciences or judicial sciences. Under article 12 of the GEO members of the Commission Board and specialized staff of the CSSPP must observe the strict confidentiality of any piece of information until two years after they have left their position. It appears to the evaluation team that c.30.2 of the FATF Methodology is not met in light of the limitation to specialized staff and the limited period for maintaining confidentiality.

1065. The CSSPP has an annual plan of professional training. Since 2008 all employees have attended courses to develop their professional activity. Since the beginning of 2012 one person has attended two seminars. This level of training suggests that a more systematic AML/CFT training programme should be developed.

THE COMMISSION and THE OFFICE (as AML/CFT supervisor)

1066. Article 23 of Law 656/2002 was amended in 2012 to state the Commission is responsible for the licensing and registration of currency exchange offices and that it shall comprise at least one representative of each of the Ministry of Public Finance, the Ministry of Internal Affairs and the Office. The secretariat which undertakes the Commission's work consists of ten people. These resources did not exist when the law was changed and a team therefore had to be created to

undertake the Commission's work. The team was selected primarily on their investigative expertise and AML/CFT knowledge. Most of the secretariat came from the tax authority and the Financial Guard. The head of the secretariat considered that its staff resources are adequate. It appeared to the evaluation team that the Commission and its secretariat operated with operational independence and autonomy.

1067. The Office undertakes AML/CFT supervision in connection with a wide range of institutions and businesses in addition to currency exchange offices. It has 14 officers (including two administrative officers) although not all positions are filled. The main criteria for selecting members of the team are expertise, with a minimum skill of knowledge of AML/CFT, and experience. Most on-site inspections are undertaken within Bucharest. Twenty six on-site inspections to currency exchange offices took place in 2012 but none has been carried out in 2013. The Office has advised that it does not have sufficient staff to undertake the detailed analysis that it considers necessary of the currency exchange sector based on the substantial information available to the Commission. The Office will require more inspectors and an increase in financial resources to match these resources to allow adequate supervisory activity throughout the entirety of Romania.

Authorities powers and sanctions

Recommendation 29 (rated LC in the 3rd round report)

1068. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a LC rating for Recommendation 29 based on the following underlying factor:

- Complex AML/CFT on-site inspections including the review of policies, procedures and sample testing are missing, particularly in the insurance sector.

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1)

ALL

1069. The description and analysis at Criteria 23.1 and 23.1 should be noted. As articulated in the analysis for Criteria 23.1 and 23.2, Article 24, Paragraph 1 of the AML/CFT Law 656/2002 establishes that prudential supervision authorities bear full responsibility for AML/CFT supervision in their respective areas of competence. Hence, the National Bank of Romania is the sole competent authority the monitoring and supervision of credit institutions (i.e. banks), as well as other financial institutions including non-bank financial institutions, payment institutions, and electronic money institutions for compliance with AML/CFT requirements. By the same token the NSC is responsible for enforcing compliance with the investment sector, the CSA is responsible for enforcing compliance with the insurance sector and the CSSPP is responsible for enforcing compliance with the pensions sector. Article 24 of the Law states the Financial Guard has responsibility for entities performing foreign exchange although, in practice, it is the Office which is AML/CFT supervisor for these entities. This responsibility can only come by virtue of the provision of article 24 of the law that states it is responsible for verification and control of entities not verified or controlled by prudential supervisors. Powers of sanction are described in relation to FATF Recommendation 17.

1070. Article 24 of Law 656/2002 provides power for supervisory authorities to verify compliance with the law. Under article 3 of the NSC Regulation the NSC is able to require modification of the policies and procedures of regulated entities when they do not reflect the prudential measures of the Regulation. The CSA has a similar authority under article 4 of the ISC Order as does the CSSPP under the CSSPP Norms. The powers are concerned with looking forward and it is not clear that

there is specific legal authority to require regulated/supervised entities to remediate AML/CFT failures. More analysis is contained in c.23.1 and 23.2.

Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2)

NBR

Credit institutions

1071. Article 169 of the Government Emergency Ordinance 99 (2006) establishes that "the monitoring of fulfilment by credit institutions, Romanian legal entities, of prudential and other requirements provided for by this emergency ordinance and by the applicable regulations, shall be carried on by the National Bank of Romania on the basis of reports provided by credit institutions and on-site inspections at the head offices of credit institutions and of their branches in Romania and abroad".

1072. Article 171 of the same ordinance further defines that "credit institutions, Romanian legal entities, are compelled to allow the staff of the National Bank of Romania and other persons authorized to carry on the inspection, to examine their reports, accounts and operations and to provide all the documents and information related to the activity performed, as they are requested".

Non-bank financial institutions

1073. Article 44 of the Law 93 (2009) establishes that the National Bank of Romania supervises the non-bank financial institutions registered in the Special Register "both based on the information supplied by these entities through the reports submitted, and through on-site inspections".

1074. Article 45 of the same law further defines that "non-bank financial institutions shall allow the empowered staff of the National Bank of Romania to examine their records, accounts and operations, providing, for this purpose, all the documents and information regarding the administration, internal control and operations of the non-bank financial institutions, in the manner they are requested".

Payment institutions

1075. Article 63, Paragraph 2 of the Government Emergency Ordinance 113 (2009) defines that the inspections at payment institutions "shall be undertaken by the National Bank of Romania authorised personnel or by third persons[145] authorized by National Bank of Romania". Paragraph 3 of the same article further establishes that "in order to check compliance, the competent authorities shall be entitled …to carry out on-site inspections at the payment institution, Romanian legal person, at any agent or branch of the payment institution, or at any entity to which activities are outsourced".

1076. Article 63, Paragraph 4 of the same ordinance further defines that "payment institutions shall allow the persons empowered by National Bank of Romania to examine their records, accounts and operations, for that purpose providing all documents and information regarding the their governance, internal control and operations, as requested by National Bank of Romania".

[145] The authorities advised that, albeit this provision in the law, it is not a practice in Romania to authorize third persons for inspection of credit and financial institutions.

Electronic money institutions

1077. Article 62, Paragraph 2 of the Law 127 (2011) defines that that the inspections at electronic money institutions "shall be undertaken by the National Bank of Romania authorized personnel or by financial auditors or experts[146] appointed by the National Bank of Romania". Paragraph 3 of the same article further establishes that "in order to exercise its supervision function, the National Bank of Romania shall be entitled to …carry out on-site inspections at the electronic money institution Romanian legal person, at any of its agents or branches or at any entity to which activities were outsourced, including distributors".

1078. Article 62, Paragraph 4 of the same law further defines that "electronic money institutions shall allow the personnel empowered by the National Bank of Romania and the financial auditors or experts appointed by the National Bank of Romania to examine their records, accounts and operations, for that purpose providing all documents and information regarding their governance, internal control and operations, as requested by these persons".

NSC

1079. Article 24 of Law 656/2002 provides that the implementation modality of the provisions of the law is verified and controlled by a number of authorities within their professional attributions, including the NSC. This is considered to provide the authorities with power to conduct on-site inspections. Article 3 of the NSC Regulation provides the NSC with power to monitor regulated entities, to monitor operations with financial instruments, to examine policies and procedures, and to require the provision of relevant information. Article 2(5) of Law 297/2004 states that, in order to perform its supervisory activity, the NSC may require information and documents from issuers subject to public offers or which have been admitted to trading on a regulated market or are traded on an alternative trading system. In addition, the NSC may conduct controls at the premises regulated and supervised by it, and hear any person in connection with the activities conducted by the entities regulated and supervised by the NSC. Article 7(3) of the NSC Statute provides that the NSC has the right to request information and access any document in any form from and about any entity under its supervision for the exercise of its objectives under article 2. The Romanian authorities have pointed out that article 7 of the Statute also provides power to undertake an on-site inspection. .

CSA

1080. Article 24 of Law 656/2002 provides that the implementation modality of the provisions of the law is verified and controlled by a number of authorities within their professional attributions, including the CSA. This is considered to provide the authorities with power to conduct on-site inspections. Under article 4 of the ISC Order the CSA is responsible for supervising and controlling entities it supervises in relation to listed aspects of AML/CFT. It may verify internal procedures and monitor financial instruments operations and request any relevant information and documents. The Romanian authorities advise that article 38(1) of Law 32/2000 on insurance undertakings and insurance supervision contains powers to carry out on-site inspections and review customer files. The Romanian authorities have also advised that articles 14(1)(f), 20(3)(e) and (i) and article 39(2)(a), (f) and (l) provide it with power to undertake an on-site inspection if the supervised entity refuses entry. In addition, they have stated that articles 14(1)(f) and 20(3)(i) allow the CSA to receive customer files at its offices. A copy of the legislation has not been provided to the evaluation team.

[146] See the footnote above

CSSPP

1081. Article 24 of Law 656/2002 provides that the implementation modality of the provisions of the law is verified and controlled by a number of authorities within their professional attributions, including the CSSPP. This is considered to provide the authorities with power to conduct on-site inspections. Article 4 of the CSSPP Norms states that the CSSPP has the right to verify policies and procedures issued by supervised entities. In the wider context of Recommendation 23 the Romanian authorities have pointed to GEO 50/2005 on the setting up, organization and operation of the CSSPP. A copy of this GEO has not been provided to the evaluation team but the Romanian authorities have advised that article 21 requires the CSSPP to regulate, coordinate, supervise and control the activity of the private pension system. Article 23 provides the CSSPP with main attributions. Article 25 states that the CSSPP shall check entities at least once a year. This article provides a range of powers including the right to obtain information on activities; to access registers, documents, files or other records; to obtain the release of copies of registers, files or other records; and to access and check the headquarters of administrators, employers, depositaries, and, as the case may be, other entities involved in the management of private pensions. If a supervised entity refuses to allow the CSSPP to undertake an on-site inspection and review customer files, the Romanian authorities have pointed to articles 22 and 23 of the law as allowing the CSSPP to resolve this. Article 22 specifies the CSSPP's purpose as being to protect contributors' and beneficiaries' interests by securing the efficient functioning of the private pension system and information on the system. Article 23 states that the CSSPP's main attributes are to adopt any measures against administrators or their management bodies in order to fix any situations that might harm the interest of participants and beneficiaries.

1082. The Romanian authorities also point to powers in Norm 3/2010 to the operation of supervised entities and documents, which allow the CSSPP to monitor AML/CFT off-site or on-site. The evaluation team has not been provided with a copy of the Norm but the authorities advise that article 7 provides that methods of control depend on the purpose, object and nature of the activity, that supervision can be done by a random method by selection of the operations and documents to be checked, and that selection of the operations and documents to be checked is made by designated persons (inspectors) undertaking control measures depending on the share and relevance of these documents in the verified entity's activity. Other persons such as IT specialists may be included within the inspection team. Article 8 provides that the CSSPP may exercise its control at its office or the offices of the entity.

THE OFFICE

1083. The Romanian authorities point to article 24 of Law 656/2002 as providing the Office with authority to undertake on-site inspections. That article gives power to the Office to verify and control implementation of the Law for those entities for which it is responsible. It also gives authority to the Office to consult documents and to retain copies to determine the circumstances regarding suspicions of money laundering and terrorist financing. This provision limits the ability of the Office to retain documents.

Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1)

NBR

1084. Article 23 of the NBR Regulation 9 (2008), which is applicable to all credit and financial institutions controlled by the NBR, requires these institutions to "ensure the access …for the National Bank of Romania and for other authorities according to the law, at all the records and documents regarding the customers, the operations performed for them, including any analysis made by the institution for the detection of the unusual or suspect transaction or for the evaluation of the risk level associated to a transaction or customer, by providing them in a timely manner the

documents/information". At that, the legislation in force does not predicate the access of the NBR to relevant information and documents on the need to require a court order.

NSC

1085. Article 24 of Law 656/2002 and article 3(6) of the NSC Regulation provide that, during the monitoring process, the NSC may require regulated entities to provide any relevant information or documents. The text and accompanying queries to the Romanian authorities in relation to compliance with c.29.1 and 29.2 are relevant to compliance with c.29.3.

1086. The Romanian authorities advise that there are no legal obstacles for the NSC in having access to information and documents.

CSA

1087. Article 24 of Law 656/2002 and article 4(6) of the ISC Order provide that, during the supervision and control process, the CSA may require any relevant information or documents from supervised entities.

1088. The Romanian authorities have also advised that Law 32/2000 on insurance undertakings and insurance supervision requires supervised entities to provide the CSA with all reports, documents, situations and information requested by them. However, a copy of the law has not been provided to the evaluation team. The authorities also advise that a judicial order is not needed to exercise its control attributes. The text and accompanying queries to the Romanian authorities in relation to compliance with c.29.1 and 29.2 are relevant to compliance with c.29.3.

CSSPP

1089. Powers to obtain information are not contained in the CSSPP Norms. Article 24 of Law 656/2002 provides the authority to obtain information in conjunction with other legislation. The Romanian authorities have pointed to powers in GEO 50/2005 on the setting up, organization and operation of the CSSPP. Article 25 provides that individuals authorized by the CSSPP Board have the right:

- to obtain from the entities they check, from the members of their management bodies or from persons in charge of controlling the entities any information regarding their activities and private pension fund assets;
- to access any registers, documents, files or other records regarding private pension fund assets and the activity of entities and persons stipulated by paragraph a above;
- to obtain the release of copies of any registers, documents, files or other records regarding private pension fund assets and the activity of entities and persons stipulated by paragraph a above;
- to access and check the headquarters of administrators, employers, depositaries, and, as the case may be, other entities involved in the management of private pensions, including other companies and administrators who have subcontracted private pension attributions.

1090. The evaluation team has not been provided with a copy of the GEO.

1091. The authorities have also provided a translation of article 18 of CSSPP Norms 3/2010. This provides "persons empowered to control" with rights to: access business premises and locations where documents and IT systems are stored for data processing; carry out verifications at any business premises of the entity; and require the presence at the CSSPP of individuals to provide information and documents.

1092. The Romanian authorities advise that a court order is not needed for the CSSPP to exercise its surveillance and control.

THE OFFICE

1093. Under article 24(4) of Law 656/2002, in exercising the Office's powers of verification and control the appropriate representatives of the Office may consult documents prepared or held by persons subject to its control and retain copies of such documents to determine the circumstances regarding suspicions of money laundering and terrorist financing. It would appear that the Office has the ability to access all relevant records but this provision would appear to limit the power of the Office to retain copies of documents. Articles 5 and 14 of Decision 1599/2008 provide that the Office is entitled to require data and information, as set out in the Law, from subject entities which are necessary to carry out its supervisory functions.

1094. The Romanian authorities also point to the activity of article 24 being performed under GO 2/2001. A copy of this Order has not been provided to the evaluation team.

1095. The Romanian authorities advise that "the condition in c.29.3.1 is not stipulated by law" (i.e. a court order is not required to compel production of or to obtain access to all records).

Powers of Enforcement & Sanction (c. 29.4)

ALL

1096. Detailed analysis on the sanctioning regime and practices is presented in the analysis for the relevant criteria under Recommendation 17.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

1097. NBR supervisors met during the assessment visit did not express any concerns with the possible inadequacy or irrelevance of their powers to monitor and control activities of financial institutions, including the powers related to the prevention of money laundering and terrorist financing. The representatives of the private sector, in turn, demonstrated full recognition and appreciation of the supervisory functions and empowerments exercised by the supervisors. The private sector representatives had no doubts as to the identity of the supervisory authority responsible for monitoring and enforcing AML/CFT compliance in their sectors. The supervisors undertook on-site inspections and there appeared to have been no difficulties with the vires for these or the ability to obtain information and documents.

1098. Overall, the current situation of the supervisor for credit and financial institutions in terms of adequacy of technical resources, professional standards and staff integrity, as well as of training appears to be on an acceptable level. Outside the NBR the evaluation team noted a number of shortfalls in resources.

Recommendation 17 (rated PC in the 3rd round report)

1099. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a PC rating for Recommendation 17 based on the following underlying factors:

- Sanctions which may be proportionate and dissuasive are available for AML breaches by the ONPCSB and financial supervisors, but the effectiveness of the overall sanctioning regime, at present, is questioned;

- Fines are generally low to have a dissuasive effect;
- All supervisory bodies should consider greater utilization of proportionate sanctions to raise compliance amongst poor performing and high risk sectors;
- To increase the dissuasive effect, it is recommended that Romanian authorities consider a clear channel for publicly communicating all sanctions.

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

ALL

1100. The sanctioning regime for intentional involvement in ML and FT is covered by relevant analysis for R 2 and SR II. Hence, the analysis for R 17 covers the sanctions, which are available in respect of reporting entities, both natural and legal persons, for enforcing their compliance with the requirements of the national AML/CFT framework.

1101. Article 27 of the AML/CFT Law 656/2002 establishes that the violation of the provisions of the law shall bring about, as appropriate, civil, disciplinary, contravention or penal responsibility. Article 28, Paragraph 1 of the same law specifies the acts, committed either by natural persons or by legal entities, which "constitute contraventions (minor offence), if not committed under such circumstances as to constitute offenses", as follows:

- Failure to meet with the obligations referred to in Article 5, Paragraphs 1, 7, and 8, and Article 6 – these contraventions are sanctioned by a fine ranging between RON 10.000 and RON 30.000;
- Non-compliance with the provisions stipulated in Article 5, Paragraph 3 (third sentence), Article 7 Paragraph 2, Articles 11, 12, 13, 14, and 15, Article 18, Paragraph 1, Article 19-21, and Article 24 – these contraventions are sanctioned by a fine ranging between RON 15.000 and RON 50.000.

1102. For legal persons, besides the fines specified above, one or more of the following additional sanctions may be applied pursuant to Article 28, Paragraph 4 of the AML/CFT Law 656/2002:

- Confiscation of the goods designed, used or resulted from the violation;
- Suspending the note, license or authorization to carry out an activity or, by case, suspending the economic agent's activity, for a period of one month up to 6 month;
- Taking away the license or the authorization for some operations or for international commerce activities, for a period of one month up to 6 month or definitively;
- Blocking the banking account for a period of 10 days up to one month;
- Cancellation of the note, license or authorization for carrying out an activity;
- Closing the facility.

1103. The authorities advised that, from the list of additional sanctions stipulated by the above article, those under Letters (a) and (d) practically are not applicable to legal persons, since the failure of obliged entities to take the AML/CFT preventive measures established by the law can by no means issue in "goods designed, used or resulted from the violation" to be confiscated (as defined under Letter (a)) or "blocking the banking account" to be imposed on an obliged entity (as defined under Letter (d)).

1104. Article 31 of the AML/CFT Law 656/2002 establishes that, as far as the obliged entities are concerned, the failure to meet certain obligations defined in Article 25 of the same law shall

represent an offence punishable by imprisonment with a term from 2 to 7 years. The said obligations set out in Article 25 relate to customer tipping off (Paragraph 2), using received information in personal interests (Paragraph 3), and exchange of information with foreign counterparts from low-performing countries in terms of AML/CFT as decided by the European Commission (Paragraph 5).

1105. Article 19, Paragraph 1 of the Annex to the AML/CFT Regulation (Government Decision 594 (2008))further specifies the acts, committed by obliged entities as defined under the AML/CFT Law 656/2002, constituting infringements; particularly the violation of the dispositions of Article 6, Paragraphs 3 and 4, Article 10, Article 13 Paragraphs 2 and 3, and Article 16, which are sanctioned by a fine ranging between RON 10.000 and RON 30.000. Article 19(2) also refers to the dispositions of article 22 of paragraphs (3) to (5) of Law 656/2002 being applicable in accordance.

NBR

1106. Article 26 of the NBR Regulation 9 (2008) defines that infringement of its provisions and non-observance of the measures requested by the NBR represent contraventions and are sanctioned as per Article 28 Paragraph 2 (last thesis) of Law the 656 (2002), i.e. by a fine ranging between RON 15.000 and RON 50.000.

NSC

1107. Article 23 of the NSC Regulation states that a breach of the regulation is a contravention. Contraventions and the application of sanctions are specified as being in accordance with the provisions of Title X of Law 297/2004 on the capital market and of the NSC Statute. Article 6 of NSC Executive Order 8/2010 contains a similar provision, also pointing to Title X of Law 297/2004. Sanctions for AML/CFT breaches are issued under Law 297/2004 and the NSC Statute.

1108. In its response to the questionnaire at c.17.4, the Romanian authorities noted that article17(2) of the NSC Statute (GEO 25/2002) states that the NSC may apply administrative sanctions in the form of written warnings, fines, suspension of authorisations and withdrawal of authorisation for the failure to comply with the laws governing the capital markets, the regulated commodity markets and financial derivative instruments, the undertakings for collective investment, as well as with its regulations. The NSC may also demand that the prosecution bodies be notified in the event that the perpetrated deed is considered to be a criminal offence.

1109. Also in relation to the questionnaire response for c.17.4, the Romanian authorities advised "According to art. 273 Para 1 and Para 4 of the Law no. 297/2004 (as amended by GEO 32/2012), the contraventions shall be sanctioned as follows: [...] b) the offenses referred to in art. 272 [...] Para. (2) letter a), b), d), f) and g):(i) a fine of 10.000 RON to 100.000 RON for individuals; (ii) a fine of from 0.1% to 10% of the total turnover in the preceding financial year, sanctions depending on the seriousness of the offense, for legal persons. [...] (4.) NSC may impose the following additional sanctions applied, as appropriate: 1.suspension of license; 2.withdrawal of the authorization; 3. prohibition for a period of between 90 days and five years of the right to occupy a position, to engage in any activity or to provide a service that requires authorization under this law.". A range of sanctions was also available before the coming into force of GEO 32/2012. These sanctions included warnings, fines, suspension of authorisation, withdrawal of authorisation and temporary prohibitions form carrying out certain activities or services.

1110. Following liaison with the Romanian authorities immediately prior to the evaluation team's visit to Romania, article 17(2)(d) of the NSC Statute was described as providing the power to withdraw an authorisation. Article 273(4) point 3 was described as allowing restriction of an authorisation by permitting the NSC to prohibit the right to hold a position, to carry out an activity or to perform a service for a period of between ninety days and five years. Suspension of authorisation was described as permitted by article 17(2)(c) of the NSC Statute and article 273(4) paragraph 1 of Law 297/2004. The NSC also confirmed that fines for legal persons ranged from 0.1% to 10% of total turnover in the financial year prior to the sanction. For a newly established legal person whose turnover cannot be ascertained the fine ranges from 10,000 RON to 1,000,000 RON for some contraventions and from 15,000 RON to 2,500, 000 RON for other contraventions. Written warnings were confirmed as being available (article 273 of Law 297/2004). Directors and senior managers can be fined up to 100,000 RON. Sanctions have been applied against individuals.

CSA

1111. Article 30 of the ISC Order states that a breach of the provisions of the Order is a contravention and shall be sanctioned in accordance with the provisions set out in article 39 of Law 32/2000 on insurance undertakings and insurance supervision. Article 31 provides that the Order will be supplemented with the other provisions laid down in the legislation concerning money laundering and terrorism financing. Sanctions for AML/CFT breaches are issued under Law 32/2010.

1112. The Romanian authorities describe article 39 as containing the following sanctions:

- a written warning;
- limitation of the scope of business;
- fine given to: insurance undertakings from 5,000 Ron to 100,000 Ron; to intermediaries from 2,500 Ron to 50,000 Ron; and to members of the management board, executive management, persons appointed to specific insurance management positions from 2,500 Ron to 50,000 Ron;
- a temporary or permanent prohibition to carry out insurance and/or reinsurance business, either in part or in full, for insurance and/or reinsurance undertakings, for one or several insurance classes; for insurance and/or reinsurance brokers, temporary or permanent prohibition to pursue activity;
- withdrawal of the authorisation granted to significant persons.

1113. Sanctions will be in line with the social impact of the offence. Warnings concern the social impact of the offence. Warnings apply to minor offences. The following levels of fine apply:

- For insurance or reinsurance undertakings: from 0.5% to 1% of share capital;
- For insurance and or reinsurance intermediaries incorporated as joint-stock companies: from 3% to 6% of share capital;
- For insurance and/or reinsurance brokers incorporated as limited liability companies: from 10% to 20% of share capital;
- For legal person insurance agents incorporated as limited liability companies: from 5,000 lei (RON) to 100,000 lei (RON);
- For natural person insurance agents, subagents and captive agents and lecturers: from 2,500 lei (RON) to 50,000 lei (RON);
- For the managers of entities which organize training, development and specialization courses: from 5,000 lei (RON) to 10,000 lei (RON);

- For members of the Board of Directors and/or management board and/or supervisory board, members of the executive management, the heads of life and non-life businesses in the case of composite insurance undertakings, the persons appointed as managers of insurance related businesses, in accordance with the provisions of the norms issued for the implementation of Law no. 32/2000, as amended and supplemented, the manager or, as appropriate, the executive management of legal person insurance and/or reinsurance intermediaries, the members of the Managing Committee of the Road Traffic Victims Protection Fund: between 1 to 6 net salaries or remunerations as awarded in the month prior to the month when the relevant offence was established.

1114. The CSA has also advised that neither criminal sanctions nor civil sanctions are available in the context of breaches of FATF Recommendations 5 and 10. It has confirmed that a licence can be withdrawn under article 14(1) of Law 32/2000, a licence restricted under article 39(3)(b), a licence suspended under article 39(3)(d). It has also confirmed that fines can be applied to insurers of between 5,000 and 10,000 RON while fines of 2,500 to 50,000 RON can be applied to brokers. Maximum fines of up to 50,000 RON can be applied to directors and senior managers under article 39(3)(c) of the law. Other administrative penalties are described as including written warnings; limitation of the scope of business; fines to reinsurers, reinsurance brokers, insurance agents, individuals and subagents; and temporary or permanent prohibitions to carry on business.

1115. A copy of Law 32/2000 has not been provided to the evaluation team.

CSSPP

1116. Article 23 of the CSSPP Norms provides that failure to comply with the provisions stipulated by the Norms shall be sanctioned in accordance with the legal provisions in force, namely "art. 81(1) letter c), art. 140 para (1), art. 141 para (1), letter g) and art. 141 para (2)-(4) and para (6) –(10) of the Law no. 411/2004 and of art. 38 letter c), art. 120 para (1), art. 121 para (1) letter k) and art. 121 para (2)-(4) and art. (6)-(10) of the Law no. 204/2006, if it is the case, as well as in accordance with the provisions of Law. No. 656/2002.". AML/CFT breaches would be sanctioned under Laws 411/2004 and 204/2006.

1117. The CSSPP has noted that the maximum penalty for a criminal offence under article 145(3) of Law 411/2004 in relation to administered pension funds is 15 years. The same penalty is pointed out as applying in relation to voluntary pensions under Law 204/2006. In responding to a query on sanctions in connection with FATF Recommendations 5 and 10 the Romanian authorities advised that article 140 of Law 411/2004 specifies that breaches of that law entail civil or criminal responsibility as the case may be. Article 120 of Law 204/2006 is described as having a similar provision. The authorities describe administrative penalties as being specified in article 140 of Law 411/2004 and article 120 of Law 204/2006. Article 83 of Law 411/2004 and article 38 of Law 204/2006 are described as providing power to withdraw a licence in a range of situations. Article 91 of Law 411/2004 and article 55 of Law 204/2006 are specified as allowing the CSSPP to restrict a licence in order to decrease risk and ensure pension fund recovery to protect the interests of participants and beneficiaries when controls are deficient. The authorities have stated that article 98 of Law 411/2004 and article 58 of Law 204/2006 give the CSSPP the ability to suspend a licence in specified circumstances to preserve the value of pension fund assets and to limit losses. Fining powers are described as being between 0.5% and 5% of the share capital of legal persons and between 1,000 and 100,000 RON for individuals. Other administrative penalties in Law 411/2004 and Law 204/2006 are specified as being written warnings, fines, cancellation or temporary suspension of voting rights of significant shareholders, withdrawal of an approval or opinion, and a prohibition of between 90 and 180 days of the ability to carry out activities under the law.

1118. In response to questions on the location of the legal provisions on sanctions for directors and senior managers, article 141 of Law 411/2004 and article 121 of Law 204/2006 were specified as permitting the CSSPP to impose fines on individuals who are administrators, legal representatives or in law or fact exercise a professional activity regulated by the law. Fines are specified as being between 1,000 RON and 100,000 RON.

1119. The Romanian authorities have also advised that under Law 411/2004 and Law 204/2006 failure to apply AML/CFT measures can be sanctioned by warnings, fines and withdrawal of the authorization of the administrator/marketing agent.

Copies of Law 411/2004 and Law 204/2006 have not been provided to the evaluation team. It is also not clear what is meant by the reference to Law 656/2002 in article 23 of the Norms.

THE OFFICE

1120. Article 28 of Law 656/2002 gives power to the Office, inter alia, to apply pecuniary sanctions, prohibitions up to six months and to suspend and cancel authorisations. Article 28(7) of the law provides that the Office can apply sanctions under GO 2/2001. The maximum fine that can be applied is 100,000 RON in relation to AML/CFT breaches and applies to both individuals and legal persons. At the time of the on-site element of the evaluation, the Office had not considered that it powers of sanction in relation to the Office Norms (the Office had treated the Office Norms as unenforceable).

CONCLUSIONS

1121. Hence, whereas the above-mentioned legal acts establish certain administrative and criminal sanctions for incompliance of reporting entities with the requirements of the national AML/CFT framework (also taking into account the fact that, due to repeated texts in the AML/CFT Law 656/2002 and the AML/CFT Regulation (Government Decision 594 (2008)), violation of some provisions can be interchangeably sanctioned with reference to the relevant requirement in either legal act), the sanctioning regime has the following shortcomings:

- There are no sanctions provided for the failure of meeting some important requirements, such as the reporting of STRs through SROs[147], minimal required composition of identification data[148], application of enhanced CDD in certain cases posing a higher ML/FT risk[149], rejection/ termination of transactions and business relationships when unable to conduct CDD[150], verification of the identity of the client and of the beneficial owner before establishing the business relationship or carrying out the occasional transaction[151], unacceptability of using CDD information supplied by certain third parties[152]; unacceptability of applying simplified CDD measures to certain entities[153], paying special attention to the transactions which may favour anonymity or be linked to ML/FT[154];
- The sanctions provided under the AML/CFT Law 656/2002 and the AML/CFT Regulation (Government Decision 594 (2008)) do not appear to be proportionate in terms of the gravity of violation; for example, exchanging information with foreign counterparts from low-performing countries in terms of AML/CFT is punished by imprisonment with a term

[147] As defined under Article 5, Paragraph 11 of the Law 656 (2002)
[148] As defined under Article 16 of the Law 656 (2002) and Article 5, Paragraph 2 of the Annex to the Government Decision 594 (2008)
[149] As defined under Article 18, Paragraph 2 of the Law 656 (2002)
[150] As defined under Article 5, Paragraph 4 of the Annex to the Government Decision 594 (2008)
[151] As defined under Article 5, Paragraph 6 of the Annex to the Government Decision 594 (2008)
[152] As defined under Article 6, Paragraph 6 of the Annex to the Government Decision 594 (2008)
[153] As defined under Article 11 of the Annex to the Government Decision 594 (2008)
[154] As defined under Article 12, Paragraph 5 of the Annex to the Government Decision 594 (2008)

from 2 to 7 years, whereas the failure to meet the STR reporting (both *ex ante* and *ex post*) obligation is sanctioned by a fine ranging between RON 10.000 and RON 30.000;

- Some of the sanctions provided under the AML/CFT Law 656/2002, specifically those established under Article 28, Paragraph 4, Letters (a) and (d) as additional sanctions to be imposed on legal persons, due to their nature and coverage are not practicable to the intended subjects;
- The NBR Regulation 9 (2008) does not provide for an explicit categorization framework based on the gravity of violation, and the general provision under Article 26[155] that any infringement of its requirements would be sanctioned by a fine ranging between RON 15.000 and RON 50.000 would not create predictable expectations in case of incompliance and, overall, enable availability of effective, proportionate and dissuasive sanctions;
- The amounts of the sanctions provided under the AML/CFT Law 656/2002 and the AML/CFT Regulation (Government Decision 594 (2008)) do not appear to be dissuasive in comparison with those applicable elsewhere in the financial sector for the breaches of sector-specific legislation (for banks a fine ranging between 0.05% and 1% of its share capital, for payment and electronic money institutions a fine ranging between RON 5.000 and RON 50.000 etc.).

Designation of Authority to Impose Sanctions (c. 17.2)

ALL

1122. Article 24, Paragraph 1 of the AML/CFT Law 656/2002 establishes that prudential supervision authorities bear full responsibility for AML/CFT supervision in their respective areas of competence. Paragraph 4 of article 24 establishes the same responsibility for the Office. Article 28, Paragraph 5 of the same law establishes that "when the supervision authorities carry out the control, the infringements are ascertained and the sanctions are applied by the representatives, authorized and specifically designated by those authorities". Article 28 gives the same responsibility to the Office or other authority competent by law to carry out the control.

NBR

1123. Hence, the NBR acts as the designated authority empowered to apply the sanctions established under applicable AML/CFT legislation.

NSC

1124. For the same reason the NSC is designated to apply sanctions. As indicated in the analysis dealing with c17.1 and 17.4, the NSC would appear to be the only body which can administer the sanctions framework in the NSC Regulation.

CSA

1125. Also for the same reason the CSA is designated to apply sanctions. The CSA would appear to be the only body which can administer the sanctions framework in the ISC Order.

[155] In fact, the said Article 26 has never been applied due to perceived contradiction with the provisions of Article 25, which provides for only three types of corrective measures available to the NBR in cases when obliged entities violate the requirements of this regulation; these measures include the request to modify KYC norms, to revise the risk category of a customer/product/transaction, and to request replacement of managers.

CSSPP

1126. Again, for the same reason, the CSSPP is designated to apply sanctions. The CSSPP would appear to be the only body which can administer the sanctions framework in the CSSPP Norms. Laws 411/2004 and 204/2006 would appear to give power to the CSSPP to impose administrative sanctions. The Romanian authorities have also advised that GEO 50/2005, the statutory law of the CSSPP, is relevant although a copy of this law has not been provided to the evaluation team.

THE OFFICE

1127. During the on-site element of the evaluation the Office advised that it could not impose sanctions in relation to breaches of the Office Norms.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

ALL

1128. Some of the sanctions provisions of Law 656/2002 apply to individuals such as directors and senior management. The sanctions in article 19 of the underlying regulation apply to the persons referred to in article 8 of the Law. It is unclear who in practice is subject to sanctions in the regulation. Article 8 deals with situations where there are solid grounds for the existence of money laundering or the financing of terrorism and the blocking of accounts. Article 8(3) of the Law refers to the person or persons designated under article 20 of the Law with responsibility for applying the Law. Articles 8(8) and (9) refer to the provision of information by the Office to persons covered by article 10 (persons who must apply the Law.

NBR

1129. Strictly speaking, the sanctions for violations of prudential legislation do not seem to be available for infringements of AML/CFT requirements, with the following reasoning:

- Article 228 of the Government Emergency Ordinance 99 (2008) empowering the NBR to sanction credit institutions and their management defines that such power can be exercised in case of "a) infringement of any of the provisions of this Government Emergency Ordinance, of the regulations issued for its enforcement …in the fields governed by this Government Emergency Ordinance", as well as in other cases unrelated to that of infringing AML/CFT requirements;
- Article 59 of the Law 93 (2009) empowering the NBR to sanction non-bank financial institutions and their management defines that such power can be exercised in case of "a) infringement of the law hereof, of the regulations issued by the National Bank of Romania for the application of this law" , as well as in other cases unrelated to that of infringing AML/CFT requirements;
- Article 67 of the Government Emergency Ordinance empowering the NBR to sanction payment institutions and their management defines that such power can be exercised in case of "breaching of this Title or the regulations issued for its application" , as well as in other cases unrelated to that of infringing AML/CFT requirements;
- Article 70 of the Law 127 (2011) empowering the NBR to sanction electronic money institutions and their management defines that such power can be exercised in case of "a) breaching of any provision of this Chapter or the regulations issued for its application", as well as in other cases unrelated to that of infringing AML/CFT requirements.

1130. The provision set out in Article 28, Paragraph 6 of the AML/CFT Law 656/2002 establishing that "in addition to the infringement sanctions, specific sanctioning measures may be applied by the supervision authorities, according with their competencies, for the deeds provided for by Paragraph 1" is not specific enough to ensure that the sanctions defined under sectorial laws for the violation of the provisions of those laws can be and are effectively imposed for the violations of the AML/CFT requirements.

1131. Hence, the only sanction available in relation to the management of credit and financial institutions for the breaches of AML/CFT legislation appears to be that stipulated under Article 25 of the NBR Regulation 9 (2008) establishing that, for the purpose of eliminating noticed deficiencies and their causes, the National Bank of Romania may request the reporting entities "replacement of the persons responsible for the occurrence of the deficiencies noticed".

NSC

1132. The sanctions in article 23 of the NSC Regulation apply to breaches of the Regulation. The Regulation imposes burdens on regulated entities and, as a consequence, the evaluation team cannot see how sanctions can be applied to individuals under the article even though the NSC has stated that legal representatives, or de jure or de facto managers who carry out by means of their profession activities regulated by the law, may be held responsible for an offence because they could have and should have prevented the offence but did not. As indicated above the precise powers of sanction under other legislation are unclear.

CSA

1133. The sanctions in article 30 of the ISC Order apply to breaches of the Order. The Order imposes burdens on supervised entities and, as a consequence, the evaluation team cannot see how sanctions can be applied to individuals under the article. As indicated above the evaluation team has not been provided with relevant other legislation and the evaluation team is not certain how the sanctions in that legislation apply in practice for AML/CFT breaches when the requirements in the Order apply to supervised persons.

CSSPP

1134. As indicated above the precise powers of sanction are unclear. The points made above in relation to the NBR also apply here.

THE OFFICE

1135. The Office's powers of sanction in article 28 of Law 656/2002 apply to individuals. The Office does not have powers of sanction in relation to the Office Norms (the Office has treated the Office Norms as unenforceable).

Market entry

Recommendation 23 (rated LC in the 3rd round report)

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

NBR

1136. Various provisions of applicable laws and regulations contain provisions aimed at preventing criminals or their associates from entering the financial market either as significant shareholders or as holders of management functions. There are clearly defined rules and procedures for evaluating directors and senior management of financial institutions on basis of "fit and proper" criteria.

1137. Articles 25 of the Government Emergency Ordinance 99 (2006) requires that "any proposed acquirer shall prior notify, in writing, the National Bank of Romania with respect to any proposed acquisition, indicating the targeted threshold for equity holding and providing the relevant information …". Article 26 further establishes that "the National Bank of Romania apprises the suitability of the proposed acquirer …against all of the following criteria …the reputation of the proposed acquirer, respectively its integrity and professional competence; the reputation and experience of any person performing management and/or running responsibilities of the credit institution … whether there has been committed an offence or an attempt of offence on money laundering or terrorist financing". Moreover, Article 108 requires that "the members of the board of administration and the directors …shall be of good repute and have sufficient experience to match the nature, size and complexity of the business of the credit institution and of the entrusted responsibilities and shall conduct the activity according to a sound and prudent banking practice".

1138. Article 109 of the same ordinance consummates these requirements by establishing that "the National Bank of Romania is vested with the power to analyse to what extent the minimum requirements of this emergency ordinance and of the regulations issued for its application are observed, to assess all circumstances and information regarding the activity, reputation, moral integrity and background of each person mentioned under Article 108 and to decide whether the respective person fulfils the requirements laid down both at the individual and joint level".

1139. Different provisions of the NBR Regulation 11 (2007) provide further details of verifying the criminal background, expertise and integrity of shareholders and managers of credit institutions.

1140. Other applicable laws and regulations, such as the Law 93 (2009) and the NBR Regulation 20 (2009) for non-bank financial institutions, the Government Emergency Ordinance 113 (2009) and the NBR Regulation 21 (2009) for payment institutions, the Law 127 (2011) and the NBR Regulation 8 (2011) for electronic money institutions define requirements and procedures equivalent to those established for market entry of credit institutions in terms of ownership and management.

NSC

1141. The Romanian authorities have advised that the legislation in place in the Romanian capital market sector is in compliance with the European Directives in the area of preventing criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc. in a financial institution supervised by NSC.

1142. The NSC monitors how regulated entities fulfil the requirements of Romania's capital market legislation. The NSC's authorisation activity concentrates on the authorisation and registration of regulated entities and approval of market operators. The NSC authorises a number of changes to the organisation and operation of financial institutions, including changes to the membership of the Board of Directors, the management structure, the structure of the internal control function, and the shareholders' structure.

1143. Under article 5 of the Capital Market Law (Law 297/2004) investment firms must be authorised by the NSC. Article 8 lays down conditions for authorisation. Shareholders who have qualifying holdings must meet the criteria established by the NSC on rules of procedure and criteria for the prudential assessment of acquisitions and increase in holdings in a financial investment company. The criteria under article 8 of Regulation 2/2009, in which the NSC appraises the suitability of the proposed acquirer and the financial soundness of the proposed acquisition, include the reputation of the proposed acquirer, the reputation and experience of any person who will direct the business, the financial soundness of the proposed acquirer, whether the investment firm will be able to meet prudential requirements on capital adequacy and whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing is being or has been committed or attempted or that the proposed acquisition could increase the proposed risk thereof. Under article 10 of the Regulation if persons in significant positions hold those positions indirectly through third parties (beneficial owners) all such persons in the chain must be evaluated. In addition, the qualification, expertise and integrity of managers, directors, auditors and employees within the internal control department must comply with provisions set out in NSC Regulations. Article 9 requires authorized firms to comply with the conditions for authorization, with prudential requirements laid out in the law and with NSC Regulations. Firms must notify the NSC or first submit to the NSC for authorization, as the case may be, any change in its organization or functioning in compliance with NSC Regulations

1144. During the process of assessment of a potential acquisition of a direct or indirect qualifying holding in a regulated entity the NSC appraises the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against different criteria including the reputation of the proposed acquirer; the reputation and experience of any person who will direct the business of the investment firm as a result of the proposed acquisition; the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and envisaged; whether the investment firm will be able to comply and continue to comply with the prudential requirements regarding capital adequacy; and whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money laundering or terrorist financing within the meaning of Law 656/2002 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

1145. Under article 10 of tNSC Regulation 2/2009, if the qualifying holdings are to be held indirectly through one or more third parties, all persons in the chain will be evaluated according to the criteria above. The type of information required from the acquirer is influenced by the particularities of the acquirer (for example, whether it is a legal or natural person, whether it is a supervised financial institution, whether or not the financial institution is supervised in the EEA or an equivalent third country, or the size of the holding). The following documents are required

to be provided to the NSC: curriculum vitae including details of professional experience; copy of identity documents; legalized copy of graduation documents; original legally valid criminal record or its legalized copy; original tax record or a legalized copy issued no earlier than fifteen days prior to the request for authorization; statement of accountability proving company and investment service legal provisions have not been breached, and holdings of 10% of share capital or voting rights.

1146. The senior management of the applicant should comply with the following requirements. They should be of good repute to ensure the sound and prudent management of the entity. They should not have been convicted by means of a final court decision for fraudulent management, breach of trust, forgery, use of forgery, fraud, embezzlement, giving and accepting bribes, or for other economic crimes. They should not be subject to the sanctions laid down in article 273(1)(c) of Law 297/2004 or other similar sanctions applied by the NBR, the CSA or by other supervisory and regulatory bodies in the economic and financial field. They should have at least 3 years' professional experience in a field related to finance, banking, capital markets or asset management. The NSC has advised that the same approach applies to managers.

1147. Under article 10 of the law the NSC has the right not to grant an authorisation to a firm for the provision of investment services if:

- insolvency proceedings are in place, in compliance with the law;
- any of its significant shareholders, members of the Board or managers:
  - are incompatible according to NSC regulations or hold a significant position in a company referred to in the provisions laid out in subparagraph a);
  - have been charged with mismanagement, breach of trust, forgery, use of forgery, fraud, embezzlement, false swearing, giving or receiving bribe, as well as with other economic crimes (according to articles 152 and 247 of Law 187/2012, as of February 1, 2014 (the date of entry into force of Law 286/2009 on the Criminal Code), point 2 will read as follows: "is incapable or was convicted of crimes against property by disregarding trust, corruption, embezzlement, crimes of forgery of documents and tax evasion offenses under Law no. 656/2002 on preventing and sanctioning money laundering and to establish measures to prevent and combat terrorist financing, republished, or those provided by this law);
  - it has been sanctioned by the NSC, the NBR, the CSA or by any other financial market regulator, by being prohibited from exercising any professional activity, for the period during which the prohibition is in force.
- the NSC acknowledges that the legal provisions, the regulations issued for their enforcement as well as the administrative regulations of the non-Member State, which govern the status of the persons with close links with the firm, or that difficulties in their implementation prevent the effective exercising of prudential supervision functions or that the supervision by the non-Member State of a foreign intermediary which has applied for authorisation for a subsidiary, are insufficient;
- the NSC has not been informed of the identity of shareholders, natural or legal persons, which directly or indirectly hold significant positions within the firm or of the amounts of these holdings;
- the NSC acknowledges that the shareholders, natural or legal persons, which directly or indirectly hold significant positions within the firm, do not comply with the requirements of ensuring sound and prudent management of the firm.

1148. Under article 12 the NSC has the right to withdraw the authorization, amongst other circumstances, if the firm no longer complies with the conditions of authorisation; or if the firm or its agents do not

comply with NSC Regulations. The authorization can be cancelled if it has been granted on false or misleading statements or information.

1149. The NSC has noted that under its internal AML/CFT procedures when considering authorisation it considers the existence/absence of reasonable grounds to suspect the incidence of money laundering operations or terrorist financing and pays attention to all persons that are beneficial owners (persons who exercise ultimate effective control).

1150. In discussion the NSC confirmed that it checks the fitness and propriety of beneficial owners, directors and managers. For beneficial owners it obtains information such as the certificate of incorporation, a certificate from the trade registry, and other official documents such as a declaration by a legal representative. For directors and senior managers it checks experience, criminal records, sanctions by other regulators, and certifications. It liaises with other supervisors in carrying out checks. Applications by individuals have been turned down due to lack of fitness and properness and in one case for AML/CFT reasons a person was suspended and a licence was withdrawn by the NSC. The Romanian authorities have advised that Chapter II of GEO 32/2012, which amended Law 297/2004 on investment firms contains similar fit and proper requirements.

CSA

1151. Law 32/2000 on insurance business and insurance supervision and regulation state the main conditions for granting licences to insurance/reinsurance undertakings, insurance intermediaries and approvals for shareholders and significant persons.

1152. Under article 12 of Law 32/2000 applications for authorisation must be submitted to the CSA in the format and accompanied by the documents required by the regulations. The CSA may request additional information. The competent authorities mentioned in articles 43 and 44 must be consulted by the CSA for the assessment of shareholders and the reputation and experience of the significant persons engaged in the management of another body from the same group. The CSA may ask these authorities to provide any relevant information about the shareholders of an insurer/reinsurer or about the reputation and the experience of its significant persons at any stage. The persons mentioned in the annex of GEO 159/2001 for the prevention and control of the use of the financial system for the purpose of financing terrorism and the list drawn up according to the provisions of "article 5 from the present Emergency Ordinance", cannot be direct and/or indirect shareholders or significant persons of an insurer or reinsurer.

1153. Under article 3 of the regulations enacted by Order 16/2012 on the authorisation and activity of insurers the process of becoming a significant shareholder by a future acquirer to an insurer involves two stages:

- the assessment of the proposed acquisition and approval of a possible acquirer's intention to become a significant shareholder of an insurer by the CSA;
- achievement of the proposed acquisition and approval of the new significant shareholder of the insurer by the ICSA.

1154. Approval of the proposed acquisition does not guarantee the approval of the new significant shareholder of the insurer; the process of becoming a significant shareholder is completed only after obtaining the approval as a significant shareholder from the CSA.

1155. Under article 5, in assessing founder shareholders, amongst other matters the CSA considers the source of the funds to be used in the share capital and transparency of the source of those funds; previous partnership in financial-banking activities and in other commercial activities; the

integrity and reputation of the in the business environment; shares in other entities; when the founding shareholder is to be a company based in a Member State, supervised by a competent body, the authority's statement that it does not oppose the founding shareholder's intention.

1156. Article 6 specifies who cannot be a shareholder. These persons include:

- legal entities non-profit organizations, as well as the associative and participatory types that do not submit financial statements as required by Romanian legislation in force or by the home state ;
- legal bodies or other entities registered in countries with which Romania does not have diplomatic relations or in jurisdictions that do not establish mandatory accounting records and/or publication of financial statements, evidence of trade records and/or that allow secrecy of the shareholders/members and administrators;
- persons who justify the source of the funds through loans or income derived from activities in countries or jurisdictions referred to in point b);
- those persons or group of persons acting in concert who, during the last 10 years, have been subject to investigation or criminal or administrative proceedings which led to penalties or prohibitions which could lead to the conclusion that they would not constitute sound and prudent management of the insurer.

1157. The CSA assesses the adequacy of the quality of the possible acquirer of an insurer, and its financial soundness in relation to the proposed acquisition, based on the following criteria:

- the reputation and integrity of the proposed acquirer;
- the reputation and experience of any person who will manage the business of an insurer as a result of the proposed acquisition;
- the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued and the activity to be pursued in the future by the insurer/reinsurer referred to;
- the insurer's ability to comply with prudential requirements;
- whether there are reasonable grounds to suspect that money laundering or terrorist financing has been attempted or committed or that the proposed acquisition could increase the risk thereof;
- the assessment criteria applied to founder shareholders according to article 5 are applied to potential acquirers as well.

1158. The CSA must consult the competent authorities of other Member States when carrying out the assessment of a potential acquirer if the potential acquirer is an insurer authorised in another Member State; a parent undertaking of an insurer authorised in another Member State; or controlled by the same natural person or legal body who controls an insurer/reinsurer authorised in another Member State. The CSA must consult the competent authorities supervising credit institutions or investment and financial services firms or pension companies from a Member State, when carrying out the assessment of a potential acquirer if the potential acquirer is a credit institution or a financial services and investment firm or a pension company authorised in the European Union; a parent undertaking of a credit institution or a financial services and investment firm or a pension company, authorised in the European Union; controlled by the same natural person or legal body, controlling a credit institution or a financial services and investment firm authorised in the European Union.

1159. Under article 23 of the regulations enacted by Order 16/2012, in order to be granted CSA approval, natural persons proposed to be appointed by an insurer have to fulfil the following

conditions. Members of the Board of Directors or of the supervisory body cannot be shareholders, associates or significant persons of an insurance broker; have been condemned for fraudulent management, abuse of trust, forgery and use of forgery, etc.; have been considered bankrupt or to have not been part of a firm that did not met its obligations after it had ceased activity. In addition, they cannot be a member of persons and groups of persons acting in concert, controlling one or more insurers and deemed also to control also an insurer seeking authorisation as a Romanian legal body; or a member of persons and groups of persons acting in concert that have been subject to inquiries, administrative or legal procedures in the last ten years, which ended in sanctions or other interdictions suggesting that the conditions for sound and prudent management are not fulfilled. Directors and members of the supervisory board must also file documents showing them to be persons of good repute and honesty; to have professional experience appropriate to the nature, size and complexity of the business and of the responsibilities to be assigned to them; and to have knowledge concerning insurance sector legislation.

1160. Members of the executive management of an insurer must also comply with the foregoing provisions. They must also have at least five years of experience in insurance sector, of which at least three years must have been in a managing position. Alternatively, seven years in the financial or banking sector with at least five years in a managing position is required. They cannot exercise a similar activity for another Romanian or foreign legal body while being involved with the insurer and can be appointed only to one position by the insurer.

1161. Managers of insurance activities must also meet the standards for the Board of Directors. They must also have at least four years' experience in the insurance sector out of which at least two years must have been in a managing position.

1162. Article 25 of the law provides that, after authorisation has been granted, any change to the documents provided or conditions underlying the authorisation can be made only with the prior approval or advice of the CSA.

1163. With reference to insurance brokers, the Romanian authorities have advised that article 33(10) of Law 32/2000 requires persons appointed as administrators or executive managers to observe the same criteria and conditions as significant persons of insurance and reinsurance intermediaries.

1164. Under article 2 of regulations enacted by Order 15/2010 on insurance/reinsurance broker authorisation and the conditions for maintaining authorisation (a copy of which has not been provided to the evaluation team), in order to be granted authorisation as a broker, the applicant must comply with a series of conditions. It must evidence that it is not or will not be a direct or indirect shareholder of an insurer/reinsurer, insurance/reinsurance agent, a broker assistant and that it is not engaged through any such shareholding in the management of an insurance agent Associates, significant shareholders, executive management and managers must not have a criminal record for crimes against public wealth or crimes provided for in financial and fiscal legislation. Also, they must not have been deleted from the Insurance and Reinsurance Intermediaries Register as a result of their own misconduct when pursuing insurance or reinsurance intermediation. Conditions and documents required from the associates and significant shareholders are applied to the natural persons and legal bodies who will acquire this quality from the insurance/reinsurance broker. Conditions and documents required from the executive managers and administrators are applied for the natural persons and legal bodies proposed, who will acquire this quality from the insurance/reinsurance broker. After authorisation has been granted by the CSA all the conditions of the law must continue to be fulfilled by the insurance/reinsurance broker. Article 14(6) specifies that persons appointed to significant positions cannot exercise their duties unless they have first been granted approval by the CSA.

1165. Executive managers and administrators with executive powers in a managing position must have at least three years' experience in the insurance sector or five years in the financial, banking or private pensions sector. Managing positions include heads of unit/department, whose activity is relevant to the insurance, reinsurance and banking sector, as well as managers of an agency or branch operating in these sectors. Executive managers and administrators must be persons of good repute and honesty.

1166. In discussion the CSA advised that it means EU standards with regard to fitness and propriety.

CSSPP

1167. In responding to c.23.3 the CSSPP noted that it checks the way administrators/marketing agents fulfil their obligations under AML/CFT legislation.

1168. Laws 411/2004 and 2004/2006 require the following checks for senior managers. They should have professional experience of at least three years in the investment, financial, juridical, banking or insurance sectors; to have the respectability required by the position they are about to hold; to have not been sanctioned by Romanian or foreign authorities with an interdiction to carry out activities in the financial area or at the time of the application with a temporary interdiction; to have not held the position of administrator of a Romanian or foreign commercial company in course of juridical re-organization or bankruptcy within the last 2 years; to have not been involved in the management of a company which did not comply with financial liabilities on the date when the company ceased to function; to have clean criminal and fiscal records.

1169. Under article 29(1) of Norms 12/2010 (a copy of which has not been seen by the evaluation team) members proposed for the Board of Directors or supervisory board, the director/administrator leaders must have professional training and experience necessary for the function and complexity of the work to be performed; have relevant experience in senior positions in investment, financial, legal, pension fund management, banking and insurance; have at least 5 years' professional experience in investment, financial, legal, pension fund management, banking or insurance; have good repute for the position; not have been sanctioned by the Romanian or foreign banking authorities with permanent interdiction, or at the time of the application for administration authorization with temporary interdiction for activities in the banking system; have no criminal record, particularly in relation to the crimes referred to in article 7(2) or in tax; not have served as a director of a Romanian or foreign company, which is in reorganization or has not been declared bankrupt in the previous 2 years prior to the onset bankruptcy proceedings; not have been part of a company's leadership when the company has not met material and financial obligations with third parties "when close up the respective company"

1170. Persons nominated for the position of director or member of the board office or "leader position" must demonstrate a solid knowledge of pension private legislation.

1171. In discussion the CSSPP confirmed that beneficial owners and directors are checked in connection with their fitness and properness; information in relation to fiscal and criminal histories is obtained along with information on their experience. Approval from the CSSPP must be sought before any change of beneficial owner or director. All directors, senior managers and managers are interviewed and must pass an exam. As part of the checks being made enquiries had been made by the CSSPP to competent authorities in other jurisdictions. Enquiries are often made to the other authorities in Romania. Lack of experience has led to a person not being approved.

THE COMMISSION/OFFICE

1172. Order 664/2012 provides for the authorisation and/or registration of entities which carry out currency exchange activities in Romania other than those which are under the surveillance of the NBR. The Order came into force in May 2012. Under annex 1 the authorisation and/or registration of currency exchange offices is the responsibility of the Commission of authorisation of currency exchange activity. This is described as an inter-ministerial structure which performs its activity at the seat of the Ministry of Public Finance. The activities of the Commission are undertaken through the Ministry's speciality directorate, which has "prerogatives in the specific regulatory field". The Commission includes a representative of the Office, which undertakes AML/CFT supervision in relation to the currency exchange offices subject to Order 664/2012. The Commission is responsible for administering the Order.

1173. Under article 5 of annex 2 applicants for authorisation must provide evidence of a police opinion on all directors, significant shareholders or associates. If directors, significant shareholders or associates are legal persons it is necessary for approval to be given to all individuals that directly or indirectly control or own such persons. If the entity is administered by a collective body the police opinion must be provided for each member of the body. If the administering entity is a legal entity the police opinion must be provided for all directors and legal representatives of the operator. When the operator who manages the entity is administered in turn by a collective body, the police opinion should be provided for each member of the body.

1174. Each director should submit a statement proving that the entity has not been convicted by a final judgment for which rehabilitation has not yet occurred, and that staff are not in a state of incompatibility with the law and have adequate theoretical and practical knowledge of the activities to be undertaken by the entity. A statement must also be provided of all legal representatives identifying each director, significant shareholder or associate of the entity seeking authorisation. If directors, significant shareholders or members are legal persons, the individuals who control or ultimately own the legal entities directly or indirectly must be identified.

1175. No authorisation will be granted under a series of specified circumstances. These circumstances include when the legal representatives or significant shareholders or associates of the entity are the subject of a final judgment of conviction for an offence committed with intent, resulting in imprisonment where there was no rehabilitation in Romania or in a foreign state. Authorisation is also not granted when directors, significant shareholders or members of the entity have been convicted for money laundering, terrorism or terrorist financing. If directors, significant shareholders or members are legal persons, account is taken of situations where individuals that control or ultimately own the legal persons have been convicted of such crimes directly or indirectly. Another example is where significant shareholders/associates as well as directors or legal representatives held/hold these roles for an entity whose foreign exchange licence has been cancelled or revoked by the Commission in the last five years. Authorisation is also not granted when the entity and/or associates, significant shareholders or their legal representatives have committed offences punishable by tax, financial or customs laws, as well as those involving financial discipline where the facts are included in the tax record. Under article 17 the Commission must be notified of changes to directors, significant shareholders or associates. Where these persons are legal entities the requirement applies to the individuals who control or ultimately own these legal persons directly or indirectly

1176. Annex 3 covers the documents required to be provided by applicants in order to obtain authorisation. These include criteria and procedures for customer identification measures, record keeping, client identification and reporting of operations under Law 656/2002. The police opinions referred to above must also be provided. In addition, a criminal record

certificate or other document issued by a competent authority is required for each legal representative showing that the legal representative has not received a final judgment of conviction for an intentional offence for which rehabilitation occurs in Romania or in a foreign country. Directors must also make a statement showing that the entity has been not convicted by a final judgment of conviction for which rehabilitation occurs and that all of the legal provisions applicable to currency exchange activity are fulfilled for the individuals in the currency exchange offices. A list of directors, significant shareholders or associates of the entity seeking authorisation must also be provided. If directors, significant shareholders or members are legal persons the list must identify all individuals that control or ultimately own the legal entities directly or indirectly. The list shall be provided in the form of an affidavit signed and stamped by the legal representative of the entity. The tax record issued by the tax authority for all associates and directors of the entity seeking authorisation. Another preliminary test is related to the source of funds used for exchange activity. It is necessary to prove the origin of this amount on a notarised declaration attaching the relevant supporting documents. The Commission may also require other evidence relating to the declaration.

1177. Annex two also includes specified circumstances of when the Commission may revoke an authorisation. These circumstances include when the police opinion on the directors, significant shareholders or associates has been withdrawn; a definitive judgement of conviction has been delivered against the entity and rehabilitation has not occurred; the directors, significant shareholders or associates are incompatible with the initial conditions of authorisation for longer than thirty days (this provision also applies to the direct and indirect owners or controllers of directors, significant shareholders and associates which are legal entities); failure to observe any of the conditions of authorisation; and failure to report within ten business days amendments to the date provided in the application for authorisation and/or failure to provide documents on changes which have occurred. The Commission may also revoke or annul an authorisation at the request of the Office for failure to comply with AML/CFT legislation.

1178. Under annex 4 documents must also be provided to the seat of the county section or the Financial Guard. The documents include a declaration from a director or the legal representative that staff are not incompatible with the law and have been trained according to the applicable legal provisions. The declaration must also include proof that the criminal record of staff employed or to be employed have not received a final judgment of conviction for intentional offences in Romania or a foreign country for which rehabilitation has not occurred.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

NBR

1179. Apart from credit institutions (i.e. banks), which are permitted to engage in money or value transfer and currency exchange activities in accordance with Article 18, Paragraph 1 of the Government Emergency Ordinance 99 (2006), there are two other types of financial institutions with similar permission – payment institutions in accordance with Article 23, Paragraph 1 of the Government Emergency Ordinance 113 (2009), and electronic money institutions in accordance with Article 21, Paragraph 1 of the Law 127 (2011). All these institutions are subject to appropriate licensing and registration requirements as articulated in the analysis for Criterion 23.1.

1180. Article 2, Letter (g) of the AML/CFT Law 656/2002 defines "postal offices and other specialized entities that provide fund transfer services and those that carry out currency exchange" as a separate type of financial institution, which, according to Article 10 of the law, are also designated as reporting entities.

THE COMMISSION/OFFICE

1181. Article 23 of Law 656/2002 was amended in 2012 to state that these entities performing foreign exchange other than those subject to the NBR will be licensed or registered by the Ministry of Public Finance through the Commission for authorisation of foreign exchange activity. The Commission will be determined by a joint order of the Minister of Public Finance, the Minister of Administration and Interior and the President of the Office. The Commission will include at least one representative of each of the two Ministries and the Office. The law goes on to state that the procedure for licensing and/or registration shall be established by Order of the Minister of Public Finance. Prior to the revision to the law there was no AML/CFT framework in place for the currency exchange providers which are now the responsibility of the Commission.

1182. As mentioned above in relation to c.23.3 and 23.3.1, Order 664/2012 provides for the authorisation and/or registration of entities which carry out currency exchange activities in Romania other than those which are under the surveillance of the NBR. The Order came into force in May 2012. Under annex 1 the authorisation and/or registration of currency exchange offices is the responsibility of the Commission of authorisation of currency exchange activity. This is described as an inter-ministerial structure which performs its activity at the seat of the Ministry of Public Finance. The activities of the Commission are undertaken through the Ministry's speciality directorate, which has "prerogatives in the specific regulatory field". The Commission includes a representative of the Office, which undertakes AML/CFT supervision in relation to the currency exchange offices subject to Order 664/2012. The Commission is responsible for administering the Order.

1183. At the beginning of section 3 of this report the evaluation team has queried to what extent money exchange business is covered in the AML/CFT framework and whether or not Order 664/2012 covers all necessary currency exchange activity as it appears to be concerned with authorising currency exchange offices dealing with individuals.

1184. The Commission's activity is at a preliminary stage. Its activity is undertaken by the speciality secretariat. Pre-licensing checks are undertaken in order to check the conditions of authorisation are fulfilled. All documents received are required to be notarised as it is an offence under the Penal Code to include deliberate inaccuracies in notarised documents. Reports from the Financial Squad and opinions issued by the police arc considered. Checks on the owners, directors and senior managers of the currency exchange providers are undertaken and the shareholder structure considered. A notarised affidavit on the source of funds for the applicant is considered against the other information in the application. Databases available to the Commission such as police databases are interrogated. After all checks have been completed the secretariat completes a report for consideration by the Commission. The Commission has required additional information from some applications.

1185. Applications for authorisation needed to be made by 13 May 2013. One hundred and fifty seven entities have been authorised. One hundred and sixty four applications are being analysed by the speciality directorate or the Commission; these currency exchange offices are operating under transitional provisions. These applications were expected to have been completed within two and a half months – there appear to be only small issues which remain to be resolved. A further 147 entities were expected to make an application by 13 May but had not done so; they are committing an offence if they are undertaking business. The Commission has taken steps to ascertain if these entities are carrying on foreign exchange activity. A number of applications have been rejected where those involved with the currency exchange operation were not considered to be fit and proper.

1186. The Office undertook three on-site inspections to currency exchange offices in 2008, two in 2009 and one in 2010. The main programme of inspections took place in 2012 with 26 being

undertaken in that year in Bucharest, near Bucharest or in other major centres. No inspections had been undertaken in 2013 prior to the evaluation team's visit to Romania. The Office has a comprehensive risk profiling process and analysis of the risks of 289 of the currency exchange offices informed the Office's on-site programme in 2012. The inspections are wide ranging, covering fiscal registration, AML/CFT and other economic crime issues and ownership. They also cover compliance with international sanctions. The main issues found in relation to AML/CFT were in overall lack of customer identification, failure to profile customers, failure to report suspicion of ML/TF, failure to appoint a compliance officer and failures in procedures. A significant number of sanctions have been issued by the Office. Sanctions led to improved AML/CFT standards. The on-site inspections also included an element of training by the Office. On the basis of risk the Office does not consider the currency exchange sector needs to be subject to further inspections in 2013 – it is addressing risk in other areas as a greater priority.

1187. The Commission and the Office consider the next step to be detailed analysis of the information available to them. This work has begun and it was noted that the Office did not have sufficient resources to carry out all of the analysis it felt was necessary; resources were being used elsewhere from within the Commission's structure.

Licensing of other Financial Institutions (c. 23.7)

1188. The Romanian authorities have not drawn the attention of the evaluation team to the licensing or registration, regulation, and supervision or oversight of other financial institutions based on risk envisaged by c.23.7. The evaluation team noted that the framework covers general insurers and reinsurers and investment market infrastructure entities such as Stock Exchanges, which go beyond the FATF description of financial institution.

On-going supervision and monitoring

Recommendation 23 & 32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4); Statistics on On-Site Examinations (c. 32.2(d))

ALL

1189. Criterion 23.4 requires that, for financial institutions subject to the Core Principles[156], the regulatory and supervisory measures applied for prudential purposes and also relevant to ML/TF should apply in a similar manner for anti-money laundering and terrorist financing purposes. With regard to this, the Government Emergency Ordinance 99 (2006) covers all requirements related to: a) licensing and structure, b) risk management processes, c) on-going supervision and d) consolidated supervision of credit institutions. With regard to the investment sector, the key regulatory legislation is Law 297/2004 regarding the capital market and GEO 32/2012 on undertakings for collective investment in transferable securities and investment management companies. Law 32/2000 covers insurance business and insurance supervision and regulation.

1190. Adequacy of the regulatory and supervisory measures is also assessed in consideration of the supervisory approach and techniques (including planning procedures and methodologies for both off-site surveillance and on-site inspections) as defined by the Core Principles and relevant guidance on the risk based approach, and contrasted to the factual performance in terms of the available off-site surveillance measures, coverage and frequency of on-site inspections, identified irregularities, and imposed sanctions.

[156] That is banks, insurance undertakings and collective investment schemes and intermediaries.

Supervisory Approach and Techniques

1191. An effective supervisory system requires that supervisors develop and maintain a thorough understanding of the operations of financial institutions. It consists of off-site surveillance and on-site inspections, for which the strategy and procedures applied by the supervisors are considered[157]. At that, the methodology adopted by supervisors to determine allocation of resources should cover the business focus, the risk profile and the internal control environment of supervised entities. It will need updating on an on-going basis so as to reflect the nature, importance and scope of the risks to which individual financial institutions are exposed. Consequently, this prioritization would lead supervisors to pay more intense attention to financial institutions that engage in activities assessed to be of higher ML/FT risk[158].

1192. 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[159]. This means that key risk factors influencing the risk of ML/FT in the country, such as the size, composition and geographical spread of the financial services industry, corporate governance arrangements in financial institutions and the wider economy, types of products and services offered by financial institutions etc. have not been comprehensively assessed and contrasted against critical indicators of ML/FT risks such as the types of predicate offences, amounts of illicit money generated/ laundered domestically, sectors of the legal economy affected etc.

NBR

1193. Coming to other important principles for implementing the risk-based approach in AML/CFT supervision, such as the design of the supervisory framework supportive for the application of the risk-based approach, the *"Procedure on the credit institutions, non-banking financial institutions, recorded in the Special Register kept by the National Bank of Romania, payment institutions, electronic money institutions' compliance with the applicable law with regard to the monitoring of international sanctions enforcement, prevention of money laundering and terrorist financing"* (hereinafter: the NBR Compliance Procedure) was issued by the National Bank of Romania and approved by the First Deputy Governor decision IV/6/13104 (2009). The NBR Compliance Procedure is meant to ensure checking compliance of credit and financial institutions with certain provisions of the AML/CFT Law 656/2002 and the Government Decision 594 (2008).

1194. Whereas the NBR Compliance Procedure does not provide for checking compliance with some requirements of the mentioned legal acts, such as, for example, those on filing STRs on conducted suspicious transactions (*ex post* reporting stipulated under Article 6 of the AML/CFT Law 656/2002), rejecting transactions and terminating business relationships in case of failure to conduct CDD (stipulated under Article 5, Paragraph 4 of the Annex to the Government Decision 594 (2008)), it is completely silent on checking compliance with many laws, government ordinances, NBR regulations and other legal acts comprising the national framework for combating ML/FT. The authorities advised that the NBR Compliance Procedure is an old (out-dated) document, which has not been revised to reflect current practices of the

[157] See: BCBS, "Core Principles for Banking Supervision" (October 2006)

[158] See: FATF, "Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing" (June 2007)

[159] Although certain elements of a national risk assessment (such as launching a national strategy for the prevention of ML/FT in 2010) have been implemented, the assessors note the lack of a uniform understanding and perception of the level of ML/FT risks among the authorities involved in the prevention of ML/FT and the reporting entities.

NBR supervision, and that in practice, all verifications required by law are being performed in due manner. However, the assessment team was not in a position to conclude on the veracity of this statement given the incomplete and complex structure/ contents of data provided by authorities on the outcomes of supervision.

1195. In addition, the assessment team was also provided with a *" Checklist of Objectives to be Verified Relating to Know Your Customer"*, which contains a few questions about AML classification of clients, keeping of copies of identity documents, STR and ETR reporting etc. The assessment team was advised that this document is used by the Division for Regulation of Financial Activities and Non-Bank Financial Institutions for inspection of NBFIs and payment institutions.

1196. Other than the documents mentioned above, the assessment team was not provided with any other manuals, instructions, guidelines or other internal acts regulating risk-based planning and implementation (including risk profiling and resource prioritization/ allocation) used by the National Bank of Romania for off-site surveillance and on-site inspections of credit and financial institutions.

1197. It should be noted that previously, AML/CFT supervision was undertaken as part of the prudential supervision. The NBR has established since 2009 a specific division responsible for AML/CFT supervision. Since its establishment, the policy of the division has been to conduct AML/CFT specific supervision in all banks to attain a clear picture of their compliance with applicable legislation. Hence, the authorities say to have adopted rule-based supervisory approach (as opposed to the risk-based one), which is considered by the authorities to be a more comprehensive and restrictive surveillance regime. This explains the absence of the tools and techniques for the risk-based supervision in the sector. The authorities also advised that, once they collect sufficient information for a database that would help to rate the banks, it would enable in future to differentiate surveillance missions in terms of objectives and frequency.

1198. However, given the limited nature of the NBR's supervisory (human and other) resources, as well as the fact that, for example, in case of non-bank financial institutions the coverage ratio of on-site inspections in 2012 constituted only 40% (meaning that less than half of supervised entities were inspected for prudential and/or AML/CFT purposes in that year), the assessment team is not of the opinion that such approach is relevant and would enable to attain a thorough understanding of the risk profile of individual supervised entities, to assess the importance and scope of the risks to which they are exposed, and to confirm their compliance with (prudential) regulations and other legal requirements at all times, as required by the Core Principles.

NSC and CSA

1199. The NSC does not require procedures to be provided for its review prior to authorising an entity. It uses a detailed thematic document rather than a checklist during its on-site inspections. Inspections cover all AML/CFT themes. Customer files are reviewed during inspections, with an average of 10% to 15% of the customer base being selected depending on the volume of activity at the licensee. The NSC prepares an annual plan of its inspections, which it sees as the core element of its enforcement activity. Licensees are inspected every two or three years. In preparing the annual plan regulated entities are prioritized on the basis of the NSC's knowledge of entities such as information relating to complaints, capital requirements, and delays in or inaccurate reporting. The NSC monitors measures taken by regulated entities to resolve deficiencies by off-site work. Follow up on-site inspections have not been necessary to date although inspections do review compliance with the findings of the previous inspection and the action plan arising from those findings. AML/CFT findings during on-site inspections are followed up. The key department for off-site supervision in relation to AML/CFT is the Electronic Surveillance Office. It receives reports on cash payments and international money

transfers, which are reviewed, notifications of the appointment of compliance officers, and copies of AML/CFT procedures. In discussion the NSC added that for off-site supervisory purposes it also considers CTRs, STRs, and ETRs, market monitoring, and information it seeks from other authorities before carrying out an on-site inspection. During market abuse investigations the source of funds and beneficial ownership of assets is analysed.

1200. AML/CFT procedures are not required by the CSA as part of the licensing process although, since 2011, the CSA has reviewed every application for a licence from the perspective of AML/CFT. The CSA has reported that it forms a view as to when supervised entities should be subject to on-site inspection by analysing internal procedures provided by the entities. Inspections review all aspects of an entity's activity, including AML/CFT. CSA officials noted that the CSA had inspected a broker on the basis of concern about the number of transactions it has performed; the visit crystallised AML/CFT concerns, which had led to the broker being banned. The CSA officials engaged in on-site work use guidelines regarding the main aspects of entities' obligations in connection with AML/CFT. The CSA has confirmed that all aspects of AML/CFT are reviewed during an inspection; time spent on AML/CFT on inspections is significant. Entities are inspected every three to five years. During discussion one example sprang to mind where the CSA had undertaken an on-site inspection due to specific concerns relevant to both AML/CFT and wider prudential supervision. Findings during on-site inspections are followed up. There have been cases where the bulk of the findings have been related to AML/CFT. Sanctions are tailored to the inspection findings. In one case a sudden increase in cash was investigated; this was found to be suspicious. In 2010 the CSA revised its approach to include a risk based approach to its on-site regime in order to allow it to identify risk. The intention is to categorise supervised entities on the basis of risk and start the next round of inspections on that basis. With regard to off-site activity the CSA has advised that, based on reporting by supervised entities, it examines supervised entities' procedures, intra-group transactions, investments, sources of capital and growth from an AML/CFT perspective. It receives various reports from insurers and brokers. Indicators are reviewed from relevant supervisory perspectives, including AML/CFT. It is clearly moving in the right direction by moving to a more formal risk based approach. The authority would benefit from establishing a formal, written, methodology to both on-site and off-site supervision to be undertaken on the basis of ML/FT risk. Part of this methodology would involve treating AML/CFT as a discrete area (albeit still part of its wider supervisory responsibilities) in which AML/CFT resource and effort is targeted at ML/FT risk. Currently, for example, it appears on-site inspections are generally undertaken on the basis of wider risk considerations rather than focusing on ML/FT risk.

1201. In the discussions with the CSA the evaluation team noted that the CSA devote significant effort to ensuring that supervised entities are trained adequately. Since 2011 the CSA has tested each person applying for a licence from a AML/CFT perspective. Several training events have been put on for brokers. Each event ends with a test. A wider insurance qualification at certificate level has also been established for brokers – the certificate contains an AML/CFT element. Insurance brokers must be trained every three years; managers must be trained every two years. New staff must be trained within a specified period. The evaluation team was impressed by this focus on training. It was clear to the evaluation team that the CSA devoted considerable thought to AML/CFT.

CSSPP and the OFFICE

1202. Information about the CSSPP and the Office is included here for comparative purposes and so that all equivalent information is on one place.

1203. The CSSPP has stated that it reviews the AML/CFT procedures of applicants for a licence. The CSSPP considers it has legal authority for this activity under secondary legislation on private

pensions. If procedures are weak the CSSPP requests revisions. The CSSPP has a template which it uses to guide its on-site inspections. It has confirmed that it checks the appointment of the compliance officer, the existence of procedures and policies and notification of them to the CSSPP, staff training, customer documents, cases of suspicion and their reporting. Targeted on-site inspections covering specific themes are not undertaken. AML/CFT is not subject to its own inspections – AML/CFT forms part of wider inspections. With regard to forming a view as to when supervised entities should be subject to an on-site inspection this is achieved by "a thematic approved by…management and based on previous reports transmitted to the authority by the entity..". From 2012 all companies managing pension funds have been inspected annually. In discussion, the CSSPP advised that it sometimes visited an entity more frequently than this. The level of compliance has not necessitated the need for follow up inspections. With reference to off-site inspection, the CSSPP has pointed to the requirements of the CSSPP Norms for it to be advised of the name of the supervised entities' compliance officers and copies of the entities' procedures (and any changes to them). It also advised in discussion that it receives daily, weekly, monthly, quarterly, half yearly and annual reports. All entities have been graded as low risk. The CSSPP has provided statistics for on-site inspections for 2012. It undertook eight on-site inspections; AML/CFT deficiencies were found at two of the inspections and written warnings issued. The CSSPP advised that it routinely keeps statistics on the number of on-site inspections and findings.

1204. Information about the Office can be found in the analysis for c.23.5.

Factual Performance

NBR

1205. The table below contains statistical data on the on-site inspections conducted by two divisions of the NBR responsible for controlling compliance of credit and financial institutions with AML/CFT requirements:

Table 41: Number of on-site inspections conducted by the NBR

	Total number of supervised entities				**Total number of specific AML/CFT on-site visits**				**Total number of combined (prudential and AML/CFT) on-site visits**			
	2009	***2010***	***2011***	***2012***	***2009***	***2010***	***2011***	***2012***	***2009***	***2010***	***2011***	***2012***
Credit institutions[160]	42	42	41	41[161]	12	39	36	31	22	-	-	-
NBFIs	61	54	52	52	0	-	-	-	45	49	40	21
Payment institutions	-	-	-	3	-	-	-		-	-	-	3

1206. The authorities advised that the number of inspected entities always coincides with the number of those planned for inspection in the given year; in other words, there is 100% implementation of planned inspection activities. Given the fact that the assessment team was not provided any information on the procedures and practice for the (annual) planning of on-site inspection visits to obliged entities on one hand, and the assumption that any planned activity would reasonably be carried out with certain adjustments deriving from real-life developments (e.g. on-going risk-based assessment and prioritization of supervisory efforts) on the other hand, the assessment team is prone to conclude that the inspection planning practices do not precede a consistently implemented annual on-site inspection program.

[160] This title includes credit institutions – Romanian legal persons, branches of credit institutions – foreign legal persons, and one credit cooperative organization (Creditcoop)
[161] For the fourth quarter this number decreased to 40

1207. As one can see in the table above, the coverage ratio of on-site inspections varies from 76% to 93% for banks, from 40% to 91% for NBFIs, and it is 100% payment institutions; at that, this ratio has a decreasing tendency for NBFIs (i.e. the share of inspected NBFIs was 91% in 2010 and 40% in 2012), which does not appear to be based on previously defined and consistently implemented managerial decisions.

1208. The table below contains statistical data on the outcomes of on-site inspections and on supervisory measures taken on basis of the findings of inspections[162]:

Table 42: Outcomes of on-site inspections

	Credit institutions				**NBFIs**			
	2009	***2010***	***2011***	***2012***	***2009***	***2010***	***2011***	***2012***
Total number of inspections	34	39	36	31	45	49	40	21
Inspections identified AML/CFT infringements	34	39	36	31	8	9	9	9
Written warnings	0	0	1	0	5	5	6	8
Number of fines	1	10	3	6				
Amount of fines (RON)	10.000	155.000	45.000	135.000				

1209. The authorities advised that irregularities discovered due to on-site inspections related to the infringement of the requirements of the AML/CFT Law 656/2002, the AML/CFT Regulation (Government Decision 594 (2008)), the NBR Regulation 9 (2008) and the Regulation No 1781/2006 of the European Parliament and of the Council. The analysis of statistical data on the numbers of ascertained facts of incompliance by banks reveal that, for example, the inspections carried out in 2012 resulted in establishing 182 cases of violating various provisions of the above-mentioned legal acts (an average of 4-5 detected violations per inspection). At that, fines as a supervisory measure were applied only to 6 banks, and in the other cases the supervisor proposed a plan of actions or a recommendation letter for the reporting entity to remedy/ correct the violation. The authorities advised that fines were applied mainly for the failure to report suspicious transactions to the FIU and for the transferring of funds without having or requesting information on the payer (EC Regulation 1781/2006), while other violations of the law were treated differently according to their severity.

1210. Nonetheless, it is not clear how could it happen that ascertained infringements of certain legislative provisions such as those requiring to apply standard due diligence measures to customers, to retain copies of identification documents, to obtain and maintain information on the originator of the wire transfer etc. have not had resulted in imposition of sanctions as stipulated by legislation for those specific types of sanctions. Also, there is uneven application of sanctioning measures insofar as the violation of the same legal provision has resulted in imposition of fines on certain banks and submission of a recommendation letter on others.

1211. Moreover, the lack of information about the number (both total and per inspection) of ascertained violations, as well as the absence of any ascertained irregularities in the majority of NBFI inspections raises concerns about the quality, particularly the required level of scrutiny and depth of inspections.

1212. Then, the available statistics show that, with the amount of the average fine varying within the range from RON 10.000 to RON 22.500, fines as a supervisory measure are very rarely applied to

[162] The authorities advised that the presented data covers only the on-site inspection, whereas banks that do not appear in the table were verified off-site considering that: i) some are banks with a special profile (housing banks, credit cooperatives) that due to the limited products offered have a minimum ML risk, and ii) others are subsidiaries of Member States banks that are supervised by the parent banks as well, therefore an annual inspection on-site is not justified. This reinforced the assessment team's uncertainty as to whether the NBR has adopted the risk-based or rule-based approach to supervision.

banks and never applied to NBFIs, which definitely undermines their role as a means to dissuade obliged entities from incompliance with applicable legislation[163]. Other supervisory measures, such as removal of managers/ compliance officers or withdrawal of the license have never been applied to any obliged entity, which is indicative of the impracticability of these measures.

1213. Bearing in mind that in practice it is barely possible for around 100 credit and financial institutions operating in the country to have never violated the requirements of certain key AML/CFT regulations (as far as NBFIs are concerned), and taking into consideration the obviously low level of sanctions applied to banks for whatever irregularities as compared with the range of applicable monetary sanctions provided under the legislation, the assessment team could not arrive at a well-grounded conclusion that on-site inspections and subsequent supervisory measures taken by the NBR are efficient to ensure compliance of obliged parties with the requirements of the AML/CFT framework.

1214. The table below contains statistical data on on-site inspections conducted by the NSC and the CSA. Coverage by the NSC was 34% to 40% range during 2009 to 2012. Coverage by the CSA falls significantly in 2012.

Table 43: Number of on-site inspections conducted by the NSC

	Total number of supervised entities				**Total number of specific AML/CFT on-site visits**				**Total number of combined prudential and AML/CFT on-site visits**			
	2009	***2010***	***2011***	***2012***	***2009***	***2010***	***2011***	***2012***	***2009***	***2010***	***2011***	***2012***
NSC	114	102	97	91	0	0	0	0	42	40	36	31
CSA	NA	NA	NA	NA	NA	NA	NA	NA	NA	128	118	59

1215. Review of AML/CFT measures forms part of wider on-site inspections by the NSC and the CSA (and the CSSPP). Inspections which cover only AML/CFT are not carried out. Both the NSC and the CSA carry out planned inspections and spontaneous inspections which might be undertaken for example in light of supervisory concerns or the request of another supervisory authority. The Office is an AML/CFT supervisor and its inspections cover AML/CFT and international sanctions compliance.

1216. The tables below contain statistical data on the outcomes of on-site inspections and on supervisory measures taken on the basis of the findings of the inspections.

Table 44: Outcomes of on-site inspections

Investment				
	2009	**2010**	**2011**	**2012**
Total number of inspections	42	40	36	31
Inspections identified AML/CFT deficiencies	11	11	8	18
Written warnings	6	13	9	33
Number of fines	39	21	25	35
Amount of fines (RON)	865,779	85,500	32,500	63,000
Removal of manager/compliance officer	3	4	0	4
Withdrawal of licence	3	1	0	1
Temporary interdiction to perform activities	6	4	0	3

Note: the sanctions mentioned in the table above refer to cases where at least one AML/CFT infringement occurred among the breaches.

[163] For comparison, the sanctions applied by the national FIU to exchange bureaus and DNFBPs within the same period exceed RON 2 million, which, given the differences in the size of these subjects on one hand and credit/financial institutions on the other hand, is indicative of the NBR unwillingness to impose sanctions.

Table 45: Outcomes of on-site inspections

Insurance				
	2009	**2010**	**2011**	**2012**
Total number of inspections		128	118	59
Inspections identified AML/CFT deficiencies		65	77	13
Written warnings				
Number of fines		18	16	2
Amount of fines (RON)		350,000	242,500	5,000
Removal of manager/compliance officer				
Withdrawal of licence				
Temporary interdiction to perform activities				

1217. The NSC has advised that the most common failings by licensees are deficiencies in AML/CFT procedures; applying customer due diligence measures in relation to new clients, existing clients, PEPs and beneficial owners; delays in reporting; deficiencies in training and incomplete AML/CFT information on websites. The average fine applied by the NSC is lower than for the NBR (being 1,800 RON in 2012,) although the NSC also imposes sanctions on a greater number and proportion of licensees which it regulates and it imposes a wider range of sanctions. This would suggest a different approach to sanctions by the NSC compared with the NBR.

1218. The CSA has advised that the most common failings by licensees are inappropriate internal procedures, inadequate procedures for classification of clients into risk groups and inadequate customer due diligence measures. The average fine applied by the CSA is also lower than for the NBR (being 2,500 RON in 2012, although it was over 15,000 RON in 2011 and over 19,000 RON in 2010). There is a marked reduction in the number of on-site inspections undertaken by the CSA in 2011, the number finding AML/CFT deficiencies and the number and amount of fines.

1219. The CSSPP has advised that the most common failings are insufficient training for staff and failure to perform verification for customers and beneficial owners.

1220. The most common failings found by the Office are specified above in the text for c.23.5.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

1221. For credit institutions (i.e. banks), as well as for payment institutions and electronic money institutions permitted to engage in money or value transfer and currency exchange activities pursuant to respective sector-specific laws and regulations, the monitoring and supervision function is performed by the National Bank of Romania as articulated in the analysis for Criterion 23.4.

1222. For "postal offices and other specialized entities that provide fund transfer services and those that carry out currency exchange" defined as financial institutions under Article 2, Letter (g) and designated as reporting entities under Article 10 of the AML/CFT Law 656/2002, the monitoring and supervisory function is performed by the ONPCSB on basis of Article 24, Paragraph 1, Letter (d) establishing that implementation of the provisions of that law shall be verified and controlled by "[the FIU] for all [reporting entities] except those, for which the implementation modality of the provisions of the present Law is verified and controlled by the [prudential supervision] authorities and structures".

1223. Information on the monitoring and supervision of currency exchange services by the Commission and the Office is provided in the analysis for c.23.5 and 23.6.

Supervision of other Financial Institutions (c. 23.7)

1224. General insurers are subject to on-site inspections by the CSA. Investment market infrastructural bodies market and system operators such as Stock Exchanges have also been subject to on-site inspections by the NSC. As already mentioned, the evaluation team is of the view that a proportion of the AML/CFT requirements as written do not apply meaningfully to Stock Exchanges.

Statistics on On-Site Examinations (c. 32.2(d), all supervisors)

1225. Statistics on on-site inspections have been included in the analysis of c.23.5 for the NBR, the NSC, the CSA and the CSSPP. The statistics for the NBR and the NSC in relation to inspections are complete – they include the number of inspections and sanctions applied since 2009. The statistics for the CSA back to 2010 and the number of some but not all sanctions has been specified. The CSSPP has provided information on 2012. The Office has provided the figures for on –site inspections since 2009 for currency exchange offices but the number and level of sanctions for such offices. The Office's material has been categorized by year in relation to all the entities for which it is AML/CFT supervisor.

1226. The evaluation team was not made aware of how the statistics have been incorporated in any review of the effectiveness of the AML/CFT frameworks of particular authorities or of the Romanian framework as a whole except in certain respects. The exception was the Office, which had considered the number of on-site inspections and the totality of sanctions applied, although the evaluation team noted that no inspections had taken place in 2013. The team considers that more work needs to be carried out by the Romanian authorities in maintaining and using statistics.

Effectiveness and efficiency (market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

1227. Market entry rules, including those on "fit and proper" criteria for the management of credit and financial institutions subject to the Core Principles, appear to be in place and applied in a consistent manner by the individual supervisory authorities. On-site inspections are undertaken by all five supervisory authorities although the Office has not undertaken any inspections during 2013. Of the authorities other than the NBR, the evaluation team spent more time with the NSC, the CSA and the Office than the CSSPP. It was made clear to the team during the discussions with all the authorities that the inspections cover all AML/CFT measures but, while there is some kind of document (for example, a template not provided to the evaluation team) in place to guide inspections, it is the discussion rather than documentation on which the evaluation team has formed a conclusion about the scope of the inspections. The NSC's knowledge of the AML/CFT frameworks of regulated entities was impressive.

1228. On-going supervision and monitoring of obliged parties lacks internal guidance/procedures by the NBR regulating risk-based planning and implementation (including risk profiling and resource prioritization/ allocation) of off-site surveillance and on-site inspections of credit and financial institutions. Other supervisory authorities have also not provided guidance/procedures except for the Office, which has provided a description of its approach to risk. The Office has a comprehensive approach to risk-based supervision but, while the NSC and, in particular, the CSA are moving towards risk based supervision there is some way to go. In this context, the evaluation team noted the relative absence of statistics by competent authorities and review of effectiveness of them.

1229. Supervisory practices of the NBR also need to be improved as far as controlling compliance of obliged entities with applicable AML/CFT requirements is concerned. The small number of ascertained irregularities, the low level and uneven application of sanctions, and the absence of

other applied supervisory measures do not appear to be efficient enough to ensure compliance of obliged parties with the requirements of the AML/CFT framework. With regard to other supervisory authorities the evaluation team noted the diminished number of on-site inspections by the CSA (in particular) in 2012 and the reduced number of sanctions in that year. The team also noted the absence of on-site inspections to currency exchange offices in 2013. At the time of the evaluation not all such offices had been licensed.

1230. As indicated in Recommendation 17, 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. The Romanian authorities have advised that the establishment of the FSA enables a more active approach towards use of sanctions.

1231. Overall, based on the analysis of the supervisory approach, techniques and factual performance, the assessment team concluded that supervisory activities of the NBR do not provide for fully ascertaining efficient implementation of applicable AML/CFT requirements by obliged parties. As indicated above, the evaluation team is also of the view that, although the CSA has adopted a more in-depth approach to AML/CFT on-site supervision than was the case during the last mutual evaluation, implementation measures since the beginning of 2012 has not been as strong as they should have been.

Guidelines

Recommendation 25 (c. 25.1 – guidance for financial institutions other than feedback on STRs)

1232. In addition to the Government Decision 594 (2008), which is the next important legal act after the AML/CFT Law 656/2002 setting forth the architecture and components of the national AML/CFT framework, there is another enforceable piece of legislation, i.e. the NBR Regulation 9 (2008), which provides further details on key KYC policies and procedures applicable by credit and financial institutions. Key requirements are also contained in the NSC Regulation, the ISC Order, the CSSPP Norms and the Office Norms. Generally, outside the banking sector these documents contain relatively little new information than is contained in Law 656/2002 and the Government Decision. The evaluation team did however note red flags provided in the ISC Order.

1233. Non enforceable or consultative guidance aimed to assist reporting entities to implement and comply with their respective AML/CFT requirements comprises the Manual on the Risk based Approach and Indicators of Suspicious Transactions, published in 2010, which reflects on theoretical and practical aspects of, *inter alia*, the obligations of reporting entities under legislation in force, the methods of money laundering and terrorist financing, the indicators for detection of suspicious transactions etc. The authorities advised that dissemination of this manual since its publication was arranged through 6 training seminars organised at the territorial level for reporting entities, with participation of FIU experts as lecturers.

1234. The assessment team was informed that the National Bank of Romania, through the Romanian Banking Association, in cooperation with ONPCSB organizes, periodically or upon request, AML/CFT training sessions, which aim to support credit institutions on approaching specific circumstances, detecting suspicious transactions and addressing issues in this field. Apart from these programs, upon credit institutions request, the National Bank of Romania organizes and conducts debates on specific issues which credit institutions face during their activity and expresses points of view regarding the way specific cases should be approached so as to be consistent with AML/CFT regime and to ensure that the risks are adequately addressed and effectively mitigated.

1235. The assessment team was advised that such guidance in form of training sessions, round tables and other communication is not available for NBFIs, payment institutions and electronic money institutions.

1236. Training events are also held by the ONPCSB with the NSC and the CSA in attendance. The evaluation team noted that the ONPCSB was held in high regard in connection with its training. The NOPML has also provided outreach to the currency exchange office sector.

Effectiveness and efficiency (R 25.1)

1237. Representatives of the private sector met during the on-site visit did not raise any specific concerns about the guidance provided by relevant authorities to assist them in implementing and complying with their respective AML/CFT requirements.

3.9.2 Recommendations and comments

Recommendation 23

- Consider conducting a comprehensive national/sectorial risk assessment so as to understand and appropriately respond to the threats and vulnerabilities in the system.
- Review the role of the Office in legislation in relation to currency exchange offices and remedy lack of clarity in legislation.
- Complete the authorization of currency exchange offices supervised by the Commission and reinforce programme of on-site inspection based on risk
- Introduce licensing/registration and regulation of activities of the Post Office
- Revise/ improve NBR inspection manuals (both for examining banks and NBFIs) to provide for checking obliged entities' compliance with all essential requirements of the national framework for combating ML/FT
- The NBR should formally decide on the supervisory approach (risk-based vs. rule-based) and correspondingly revise, systematize, and improve inspection planning practices (including the definition/ implementation of the supervisory cycle under the chosen supervisory approach);
- The NBR should modify the current level of scrutiny and depth of the AML/CFT inspections to ensure that it is adequate under the chosen supervisory approach and that it enables the NBR to be satisfied that financial institutions are effectively implementing the AML/CFT requirements.
- Provide for reasonable and even application of supervisory measures (including fines as a supervisory measure with dissuading effect) by the NBR and by the other supervisory authorities now included in the FSA, as appropriate
- Re-establish momentum for on-site inspections by the CSA and the Office. In addition, 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.

Effectiveness concerns:

- The NSC should provide better feedback to the Bucharest Stock Exchange 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
- Take measures to ensure that supervisory activities of the NBR provide for fully ascertaining efficient implementation of applicable AML/CFT requirements by obliged parties

Recommendation 17

- Romania should review the legal framework covering all sanctions applicable for AML/CFT violations and ensure that its scope covers all relevant requirements[164], that they are clearly applicable to all natural and legal persons covered by the FATF Recommendations, and ensure that they are proportionate and dissuasive.
- The Office's powers of sanction in relation to the Office Norms should be clarified and the Office should ensure that it applies sanctions appropriately in relation to breaches of the Norms.
- Harmonize the levels of sanctions with those applicable elsewhere in the financial sector
- Given different approaches to and practices in sanctioning, the supervisory authorities should review their policies and practices to date and ensure that they make an adequate, consistent and full use of their powers of sanction.

Recommendation 25(c. 25.1 [Financial institutions])

- The authorities should review the guidance issued and ensure that it includes more detailed information assisting to implement the AML/CFT requirements, rather than the same text of the general legislation, and provides also updated assistance notably on the nature of AML/CFT risks in Romania.
- Provide guidance in form of training sessions, round tables and other communication for NBFIs, payment institutions and electronic money institutions.

Recommendation 29

- Clarify that the authority of the NSC, the CSA and the CSSPP extends to requiring remediation
- The Office should clarify its powers of sanction in relation to the Office Norms and ensure that it applies sanctions in relation to breaches of the Norms.
- Though this appears not to be an issue in practice, the limitation on the Office to take away records only when determining the circumstances regarding suspicion of ML/FT should be explicitly removed

Recommendation 30 (all supervisory authorities)

- Given that the evaluation team could not review the FSA legal framework, Romania should demonstrate that it indeed complies with the requirements set out in R.30, and

[164] See the "Conclusions" under the analysis for R 17

notably as regards confidentiality and integrity aspects and that those are adequately implemented[165].

- Furthermore, the re-organisation process of the new supervisory authority should take into account the need for the FSA to be adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform its functions. This includes the need for sufficient operational independence and autonomy to ensure freedom from undue influence or interference.
- Staff training programmes for the NSC, the CSA and the CSSPP should be reviewed and enhanced, and comprehensive data should be maintained on this.
- Considering the overall conclusion on the adequacy of resources of supervisory authorities, Romania should undertake a comprehensive review of the adequacy of staff resources of supervisory authorities devolved to AML/CFT supervision, and notably of resources at the CSA and the Office, and take appropriate action to increase resources so that these can adequately perform their functions.
- Enhance the CSSPP's information technology systems.
- Amend the confidentiality framework to which the CSSPP is subject.

Recommendation 32

- The authorities should collect more comprehensive and detailed data by sector and by year, on the use of their inspection and enforcement powers with respect to AML/CFT aspects and the nature of breaches identified, and sanctions applied, so that they can use such data to develop their understanding of ML/TF risks, to review whether the action taken in this area is indeed appropriate and effective, and be in a position to take any remediating action as appropriate.

3.9.3 Compliance with Recommendations 23, 29, 17 & 25

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**PC**	• 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. **Effectiveness**: • (1) Fines as a supervisory measure are very rarely applied to banks and never applied to NBFIs, thus undermining their dissuading effect; (2) sanctions not applied in relation to the Office Norms; (3) Other supervisory measures have never been applied and appear to be impracticable for AML/CFT purposes.
R.23	**PC**	• 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

[165] The evaluation team has noted from public information available that several criminal investigations related to corruption, organised criminal group and abuse of power have been opened by the DNA in February 2014, involving several high level members of the FSA, including the President of the FSA.

		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. **Effectiveness** • (1) small results of inspections for some supervisory authorities raise questions about ; the quality and depth of inspections ; (2) 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; (3) 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; (4) NBR inspection manuals do not provide for checking obliged entities' compliance with all essential requirements of the national AML/CFT framework; (5) NBR inspection planning practices fail to stem from a consistently implemented annual on-site inspection program; (6)thoroughness of planning practices by other supervisory authorities not demonstrated through documentation .
R.25	**LC**	• 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.
R.29	**LC**	• 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.

3.10 Money or value transfer services (SR. VI)

3.10.1 Description and analysis

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

1238. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a NC rating for Recommendation SR VI based on the following underlying factors:

- No registration or licensing procedures in place for money remittance service providers;
- Deficiencies identified under R 5-11, 13-15 and 21 are equally valid for money or value transfer services;
- No information on on-site controls having been conducted at postal offices;
- No information on on-site controls of MVT operator that has its own network and operates independently;
- Concerns regarding the effectiveness of the supervision due to the limited resources of experts for on-site inspections with the ONPCSB compared to the number of MVT working offices.

Designation of registration or licensing authority (c. VI.1), adequacy of resources – MVT registration, licensing and supervisory authority (R. 30)

1239. In accordance with article 2 of Government Emergency Ordinance 113/2009, the only entities which are allowed to perform payment services (including MVTs) are credit institutions, payment institutions, e-money institutions and the Post Office.

1240. As required by the assessment methodology, availability of a licensing/ registration system and of a designated authority is not considered in respect of money remitters, which are already licensed/ registered as financial institutions, permitted to perform MVT services under the terms of their license/ registration and already subject to the full range of applicable obligations under the FATF Recommendations. In Romania, such entities are credit institutions (i.e. banks), payment institutions and electronic money institutions. Therefore, under the analysis for SR VI these institutions have been considered only for the purposes of Criterion VI.4, that is the availability of the current list of agents.

1241. Licensing/registration requirements do not apply to the Post office in relation to the services they provide. The Romanian authorities have confirmed orally that, for the purposes of SR VI, the Post Office acts as an SRB/SRO. The status of SRB has been awarded by means of a protocol signed between the Post Office and the NOPCML. The Post Office does not, therefore, have the status of an SRB by means of legislation. It is also an obliged entity, subject to AML/CFT requirements. It is responsible for monitoring its own AML/CFT compliance (including compliance by the numerous branches), which, in assessors' opinion, cannot be considered sufficient to meet the requirement of c.VI.1. Further information has not been provided.

1242. Details on inspections and adequacy of resources are given in the section on supervision.

Application of the FATF 40+9 Recommendations (applying R. 4 – 11, 13 – 15 & 21 – 23 and SR IX (c. VI.2))

1243. As noted above, MVT services are subject to the full range of applicable obligations under the FATF Recommendations. Deficiencies noted earlier in respect of the involved recommendations apply also in this context.

Monitoring MVT services operators (c. VI.3)

1244. It has not been demonstrated that there is any system in place for monitoring AML/CFT compliance by the Post Office..

Lists of agents (c. VI.4)

1245. The availability of the current list of agents has been considered for credit institutions, payment institutions and electronic money institutions. The registers are available on the NBR websites.

Credit institutions

1246. Credit institutions are entitled to outsource their activities, including that through engagement of agents. According to Article 211 of the NBR Regulation 18 (2009), outsourcing of significant activities of credit institutions is subject to preliminary notification to the National Bank of Romania. However, as advised by the authorities, the current legislation does not stipulate for the approval or registration of credit institution agents. Subsequently, there is no requirement for banks to maintain a current list of their agents readily available for the designated competent authority.

Payment institutions and electronic money institutions

1247. Article 41, Paragraph 1 of the Government Emergency Ordinance 113 (2009) establishes that "payment institutions intending to provide payment services through an agent shall communicate to the National Bank of Romania an application…", and Article 42, Paragraph 1, as well as Article 57, Paragraph 2 of the same ordinance define that "payment institutions may provide payment services through agents only after the agents are registered into the register maintained by the National Bank of Romania[166]. Articles 56 and 58 of the ordinance apply the same requirements to payment institutions for them to provide payment services through agents in Member States and third countries, respectively.

1248. Article 61, Paragraph 1 of the ordinance establishes that the National Bank of Romania "organizes and manages the register of payment institutions in which are evidenced the payment institutions, Romanian legal persons …as well as the agents of the payment institutions, Romanian legal persons".

1249. Article 48, Paragraph 1 of the Law 127 (2011) establishes that "electronic money institutions may provide payment services through agents in accordance with the provisions of Section 4, Title II and Articles 56-58 …of Government Emergency Ordinance 113 (2009) on payment services", and Article 60 of the same Law defines that "the National Bank of Romania organizes and manages the register of electronic money institutions in which are evidenced the electronic money institutions, Romanian legal persons …as well as the agents of the electronic money institutions Romanian legal persons".

1250. Hence, as far as payment institutions and electronic money institutions – **Romanian legal persons** – are concerned, the legislation requires that these institutions register with the National Bank of Romania their agents involved in payment services. This means that in effect these institutions would always have a current list of their agents readily available to the designated competent authority. The authorities advised that payment institutions and electronic money institutions **registered in a third country** (i.e. a country outside the European Economic Area, EEA) are not permitted to perform business in Romania unless they are established as a Romanian legal person. In accordance with Article 10 paragraph 1 of the Emergency Ordinance 113/2009, payment services can be provided only by licensed institutions which can be a) a Romanian legal person (article 10 (2)) or b) payment institutions established in other Member States (art.49)). Similar provisions apply for e-money institutions (articles 7 and 57 of Law no. 127/2011).

1251. Concerning payment institutions and electronic money institutions **in/from EU member states or within EEA**, the authorities refer to the Directive 2007/64/EC, particularly to its Article 13, which requires that Member States "establish a public register of authorized payment institutions, their agents and branches, as well as of natural and legal persons, their agents and branches …that are entitled under national law to provide payment services. They shall be entered in the register of the home Member State". Such registers are required to be publicly available for consultation, accessible online, and updated on a regular basis.

Post Office

1252. Criterion VI.4 is not met for the Post Office (although it should be noted that the Romanian authorities have advised orally that the Post Office cannot appoint agents – the evaluation team has not been provided with any legislative provisions to this effect).

[166] A similar requirement is articulated under Article 25 of the NBR Regulation 21 (2009).

Sanctions (applying c.17 – 1 – 17.4 & R. 17 (c. VI.5))

1253. Since credit institutions (i.e. banks), payment institutions and electronic money institutions, as well as the Post Office and the other defined types of financial institutions permitted to engage in money/ value transfer are designated as obliged entities under Article 10 of the AML/CFT Law 656/2002, the sanctioning regime available for obliged entities as described under the analysis for Recommendation 17 is applicable to them.

1254. Pursuant to article 183 of Government Emergency Ordinance 113/2009, the provision on a professional basis of payment services by a person who is not a licensed payment service represents a crime and is punished with imprisonment from 1 months to 1 year and with a penalty of RON 1000 up to 15.000 (approx. up to 3300 Euros). If the crime is committed by a legal person, the penalty is from RON 5000 up to RON 200.000 (approximately up to 45,000 Euro).

Additional elements – applying Best Practices paper for SR. VI (c. VI.6)

1255. It has not been demonstrated that the measures set out in the Best Practices Paper for SR.VI have been implemented.

Effectiveness and efficiency (SR VI)

1256. Payment institutions met during the on-site visit did not appear to be well aware of agent registration/ licensing requirements. One of the payment institutions, Westaco SRL, which provides MVT services under the brand name *Westaco Express*, reports to have one agent only – the OMV company – which operates a large network comprising more than 160 gas stations in the country. The assessment team was not provided any information on registration of the sales points at these stations as agents and on the arrangements, if any, to monitor their compliance with applicable AML/CFT requirements.

1257. Other payment institutions, such as Meridiana Transfer de Bani SRL and Smith & Smith SRL also report to have agents (25 and 5, respectively); however, no information has been made available on their compliance with the requirements of SR VI. The authorities have indicated after the visit that each of the payment institutions have presented to the NBR, in the process of authorization, documentation related to AML/CFT, for their agents.

1258. The limited information presented and made available during the onsite visit did not enable the evaluation team to form a comprehensive view on the effectiveness of implementation of requirements set out in SR.VI.

3.10.2 Recommendations and comments

- The authorities should establish licensing/registration requirements for the Post Office and its branches in relation to money and value transfer services provided by them and ensure that they are subject to adequate AML/CFT supervision and application of sanctions.
- The authorities should review the position of the Post Office as a SRB. It is not appropriate for an obliged entity to be appointed as a SRB in relation to its own AML/CFT compliance.
- Romania should establish a requirement of agent registration for the Post Office (unless there is clear legal language prohibiting involvement of agents by the Post Office).
- Romania should revise the sanctions framework in line with recommendations made in Recommendation 17 in relation to the obligations under SR VI, also as far as sanctioning for provision of non-licensed payment services by individuals is concerned

- Romania should take measures to build-up awareness among payment institutions concerning agent registration/ licensing requirements.
- Romania should take measures to ensure an effective and efficient implementation of the obligations under the AML/CFT Law of MVTs and Post Office.

3.10.3 Compliance with Special Recommendation VI

	Rating	Summary of factors relevant
SR. VI	**PC**	• 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. **Effectiveness** • Insufficient awareness of agent registration/licensing requirements by payment institutions; lack of information on their compliance with the requirements of SR VI.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

1259. The main preventive measures for DNFBPs are set out in the AML/CFT Law 656/2002 as amended and the AML/CFT Regulation. With minor variations, as discussed in the relevant sections, the preventive measures are the same for DNFBPs and financial institutions. Comments made in section 3 in relation to the AML/CFT Law, the AML/CFT regulation, sectorial regulations and Office Norms will apply in this section, including comments made in respect of the strengths and weaknesses of the general CDD and record keeping regime, and comments and recommendations there apply equally to DNFBPs unless indicated otherwise.

1260. The scope of the businesses and professions subject to AML/CFT preventive measures generally follow the FATF definition. Article 10 of the AML/CFT Law provides that the provisions of the law are applied to the following natural or legal persons: […]

d) casinos;
e) auditors, natural and legal persons providing tax and accounting consultancy;
f) public notaries, lawyers and other persons exercising independent legal profession, when they assist in planning or executing transactions for their customers concerning the purchase or sale of immovable assets, shares or interests or good will elements, managing of financial instruments or other assets of customers, opening or management of bank, savings, accounts or of financial instruments, organization of contributions necessary for the creation, operation, or management of a company, creation, operation, or management of companies, undertakings for collective investments in transferable securities, other trust activities or when they act on behalf of and their clients in any financial or real estate transactions;
g) service providers for companies or other entities, other than those mentioned in paragraphs (e) or (f), as are defined in article 2 letter j);
h) persons with attributions in the privatization process;
i) real estate agents;
j) associations and foundations;
k) other natural or legal persons that trade goods and/or services, provided that the operations are based on cash transactions, in RON or foreign currency, whose minimum value represents the equivalent of 15000 euro, indifferent if the transaction is performed through one or several linked operations.

1261. Article 2(k) of the AML/CFT Law 656/2002 states that service providers for legal persons and other entities or legal arrangements means any natural or legal person which, by way of business, provides any of the following services to third parties:

1. forming companies or other legal persons;
2. acting as or arranging for another person to act as a director or manager of a company, or acting as associate in relation with a company with sleeping partners or a similar quality in relation to other legal persons;
3. providing a registered office, administrative address or any other related services for a company with sleeping partners or any other legal person or arrangement;
4. acting as or arranging for another person to act as a trustee of an express trust activity or a similar legal operation;
5. acting as or arranging for another person to act as a shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements in conformity with Community legislation or subject to equivalent international standards.

1262. It is not clear how "companies, undertakings for collective investments in transferable securities, other trust activities or when they act on behalf of and their clients in any financial or real estate transactions" in paragraph f) of article 10 incorporates the whole of the language "legal persons or arrangements, and buying and selling of business entities" in the final bullet point in paragraph d) of the FATF description of DNFBP as the FATF language appears wider.

1263. The main instruments setting AML/CFT standards to be followed by DNFBPs are Law 656/2002 and the underlying regulation enacted by GD 594/2008.The Office Norms also apply in this context. The main AML/CFT supervisor is the Office although article 24(1)(c) of Law 656/2002 states that "the leading structures of the independent legal professions" are responsible for the verification and control of the "implementation modality" of the law.

1264. In addition, there is a separate supervisory authority for entities undertaking gambling, the National Office for Gambling (NOG)[167], which commenced operations at the time of the evaluation team's visit to Romania. NOG reports to a Committee established by the Ministry of Public Finance (not met by the evaluation team), which was formerly responsible for the day to day activity of supervision of entities undertaking gambling and remains responsible for taking decisions relating to licensing. Legislation has been enacted by Romania on the licensing and operation of gambling entities, including casinos.

1265. The Romanian authorities have stated that there are a number of other supervisors and self-regulating bodies relevant to DNFBPs, namely 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 (not met by the evaluation team) and the Chamber of Financial Auditors of Romania. The SRBs met by the evaluation team have issued AML/CFT standards but copies of these have not been provided to the team with the exception of Norms issued by the Union of Public Notaries of Romania. These Norms provide guidance. Hence, the analysis below concentrates on Law 656/2002, the underlying regulation and the Office Norms. The Romanian Association of Organizers of Casinos, the National Union of Real Estate Agencies and the Real Estate Investment Romanian Association (not met by the evaluation team) are listed as associations by the Romanian authorities. Information on the perceptions of the bodies met by the evaluation team and how they see their roles is specified below.

1266. In terms of risk by sector, the Office considered real estate agents, accountants and auditors, and dealers in precious metals and precious stones to be lower risk than casinos, company service providers (it should be noted there is no category for company service providers in law), lawyers and notaries. Entities outside the FATF's list of DNFBPs covered by the Romanian AML/CFT framework include auditors, pawn shops and wholesale traders.

1267. The greatest risks of money laundering and terrorist financing in the casino sector were considered by the Office as being the possibilities afforded by significant numbers of individuals from individual countries using casinos for gambling; financing of gambling activity by loans; and the possibility that casinos, possibly with VIP customers, might not be registered. Money laundering through gambling, in particular, casinos has been an on-going concern of the authorities in Romania. As a result, over several years, especially during Romania's accession to the EU, specific legislation has been enacted, banning organisers of gambling from providing documents which prove winnings by participants (nationals of Romania and non-residents. The authorities have advised that the legislation enacted in 2009 strengthened verification measures and that the results have been positive. NOG was established in April 2013. The authorities

[167] Established by Emergency Ordinance 20/2013 regarding the establishment , organisation and functioning of the National Office for Gambling and modifying and supplementing the OUG 79/2009 regarding the organisation of gambling

affirmed that the prevention of money laundering is a permanent preoccupation of the Supervisory Committee and the NOG. The authorities considered that the progressive changes to gambling legislation and the regulatory framework has done a good job in addressing the risks. Customer due diligence measures and the appointment of compliance officers by casinos, the Office, the Supervisory Committee to which NOG reports, together with more thorough analysis and the existence of specialised inspectors at NOG are seen as creating a low risk of money laundering. There was a view amongst the authorities that the casino sector would be low risk for money laundering as no receipt is provided for winnings. The evaluation team has pointed out that, irrespective of this, launderers would be able to show that they had visited a casino through, for example, customer due diligence done by the casino and the casino industry's security measures.

1268. While the evaluation team was in Romania, the authorities advised that internet casinos are not prevented from being established in Romania and, in any case, they are not subject to the AML/CFT legislation. The Romanian authorities advised that it is planned to revise the legal framework to provide for the regulation of internet casinos during 2014. In a response provided after the on-site element of the inspection, NOG advised that legislation provides that a prerequisite to the granting of the right to organize through internet casinos is the existence of another operator or operators that work on dedicated monitoring and supervision in this area. NOG has mentioned that its powers will be doubled by the presence of a structure not only monitoring and supervising gambling through the internet but also monitoring and undertaking surveillance of operators.

1269. When discussing risk the NOG noted that casinos could not issue documents which show winnings. It added that dealers will monitor activity for chip dumping. The prohibition on the provision of documents evidencing winnings, coupled with careful and constant supervision of the verification of the way in which dealers act in casinos, including the handling of chips is seen by NOG as leading to the denial of improper gains. In this context, the authorities stressed that the establishment of the NOG has laid the groundwork for the establishment of a dedicated staff specialising in gambling, supervision and monitoring which will lead to continuous improvement.

1270. Five of the seven casinos in Romania are located in Bucharest. Revisions to the gambling legislation in 2009 led to tax increases of more than 400%. There is an average of some fifteen tables at each casino. Games include poker, blackjack, banco, and roulette. American poker is the most popular game. No types of poker are played where the game is between the players. If chips were to be passed between players it would have to be undertaken in the casino but casinos routinely have one inspector for each two tables to monitor such activity. The Casino Association advised that it is illegal for casinos to provide any evidence of winnings such as certificates to customers although they are also compelled by law to provide tax receipts in connection with winnings. Winnings are taxed at 25%, payable by players. Taxing players is difficult as casinos cannot be certain of the amount brought in to the casino by the customer. Examples of suspicious behaviour provided were where a customer asks for amounts of chips of a value such as 300 euro on several occasions and where players pass money or chips to other customers. By way of context, after the on-site element of the evaluation NOG provided the following information. Legislation in 2009 (OUG 77/2009) removed the limitation that a maximum of 10% of the tables in a casino could have games directly between participants. Games directly between participants must be supervised by staff and video surveillance. The obligation for casinos to retain a 25% share of winnings as income tax is being addressed in discussion with the Ministry of Finance. Under GEO 20/2013 the NOG is the competent authority regarding changes to gambling legislation while the Ministry of Finance has authority on legislation concerning taxation.

1271. The highest money laundering risks in casinos are considered by casinos to centre on poker and banco. Casino representatives do not consider casinos to be attractive to money launderers in light of the AML/CFT standards and level of training. In addition, the number of players has

reduced and the casinos know many of them. Some casinos run junkets. These are small operations. Casinos also have VIP rooms. Legislation prevents credit instruments such as credit cards from being used for gambling in Romania. NOG checks compliance with this prohibition.

1272. A view was put to the evaluation team during its time in Romania that robust enforcement of the tax law would have the effect of facilitating money laundering in casinos. The reason for this appeared to be that evidence of tax paid on winnings would, in practice, have the same effect as evidence of winnings.

1273. The National Union of Bar Associations of Romania (UNBR) stated that strict confidentiality is important to the legal profession, that it works in favour of the customer and that only the customer can waive confidentiality. Paragraph 3 of article 7 of Law 656/2002 was considered as providing professional secrecy which was not opposable and could not be challenged by the Office.

1274. Notaries receive transaction funds from clients. Notaries must be used when a property is purchased. Notaries are considered to occupy an important role because of the legal liability attaching to persons whose documents are being notarised. These documents may be used in court as evidence or used for enforcement purposes. For these reasons the Union of Public Notaries of Romania (UNNPR) considers there should be strict access to the profession and for there to be high standards of regulation. Reasons for suspicion in STRs include prices negotiated late in the course of a transaction, the return of moneys for loan contracts in order to renegotiate the loans, artificially low or high prices, successive sales of the same building with different prices. Almost all STRs made by notaries concern real estate. The UNNPR considered the greatest money laundering risks of notaries being used for money laundering were property transactions, including situations such as successive sales of the same property or chains of transactions.

1275. There has been significant discussion by the authorities about trust and company service providers. The evaluation team was advised that businesses providing company service provision in the context of the FATF Recommendations do not recognise that that they carry on such activity because, in turn, it is not recognised in the European Union's NACE framework. There is no registration or licensing system for trust and company service providers in Romania. The authorities do not know how many entities in Romania provide such business activities although the view was expressed by one source that, in practice, only one element of the FATF list would be undertaken, namely the activity of providing a registered office; business address or accommodation, correspondence or administrative address for a company partnership or any other legal person or arrangement. The Office notes instances of company service provision when it carries out on-site inspections to firms whose main business activities are in other areas covered by the AML/CFT framework. One view from another quarter provided to the evaluation team was that the activities of acting as a formation agent of legal persons and provision of a registered office are generally carried out by lawyers, while some management companies act as a director or secretary of a company or in similar positions in relation to other legal persons.

1276. The evaluation team was advised that the court has upheld the ability of the Office to apply sanctions but it has sometimes reduced the sanctions applied. It was suggested to the evaluation team that high risk in the company service provide context could potentially include not knowing the beneficial owner (in which case the customer is not accepted), customers outside the EU, the FSI sector and State projects, some customers with lots of external agents such as some telecommunications companies, and mutual funds.

1277. The Office has paid particular attention to accountants in light of their role as a gatekeeper. Some firms of accountants have spotted issues at clients who were dealers in precious goods. In general terms the Office is satisfied about the level of AML/CFT compliance by accountants and

auditors. The Chamber of Financial Auditors of Romania (CAFR) considered the greatest risks in connection with auditors to be hard to assess and advised that the greatest risk is members not assessing customers; auditors' customers are seen as the risk. Common findings during on-site inspections include failure to apply customer due diligence, failure to identify proxies and failure to spot cases of money laundering. Common failings found by the Body of Accounting Experts and Licensed Accountants in Romania (CECCAR) during on-site inspections to accountants are not keeping customer files and not completing risk questionnaires.

1278. The Office is aware of the number and identity of real estate agents through the trade registry. The Office sees real estate agents as low risk. Notaries are considered to be the key component in controlling risk in connection with real estate agents. Estate agents are not considered to have a real role in transactions from a money laundering perspective. They represent clients and have nothing to do with the funds for the transaction. Historically, pre-contracts for sale were concluded in the office of the real estate agent – this provided information which would facilitate reporting of suspicion. A social programme on home ownership was developed in 2008/2009 as a result of the economic and financial crisis. This included strict regulations on down payments and reimbursement to the bank. Payment now takes place in the office of a notary. Down payments are not made in cash (these stopped around 2009); the majority of payments are made through a bank. The price of real estate has dropped and the number of transactions is also low. In terms of particular risks, the National Union of Real Estate Agencies (NURE) speculated that failure to identify beneficial owners would be a risk (although, as mentioned above, it considered beneficial ownership information was obtained by real estate agents).

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

Recommendation 12 (rated NC in the 3rd round report)

Applying Recommendation 5(c. 12.1)

Anonymous accounts and accounts in fictitious names (c.5.1)

ALL

1279. The requirements set out in Article 15 Paragraph 1 of the AML/CFT Law prohibiting the opening and operation of anonymous accounts and accounts in fictitious names apply only to financial and credit institutions. Certain provisions of the AML/CFT regulation (Government Decision 594 (2008)) provide similar regulation for anonymous accounts. Particularly, Article 4, Paragraphs 4 to 6 prohibit opening and operation of anonymous accounts and establish that the "*use of any type of existing anonymous accounts and savings checks shall not be allowed unless after the application of standard customer due diligence*". The Romanian authorities have confirmed that, in practice, it is impossible for a DNFBP to open an anonymous account. The evaluation team did not see any evidence of anonymous accounts in practice.

1280. None of the texts above apply to DNFBPs. Thus criterion 5.1 is not met.

THE OFFICE

1281. The Office Norms include a range of provisions requiring due diligence measures to be undertaken on customers, including articles 4(a) and 5 which require identification of customers and to obtain all necessary information for establishing the identity of the beneficial owner. Article 19 states that regulated entities must obtain all information necessary for establishing the identity of each new customer.

When CDD is required (c.5.2)*

ALL

1282. The CDD measures described in section 3 apply to DNFBPs. (see comments made previously relating to Article 13 of the Law 656 (2002), as well as Article 4 of the AML/CFT Regulation (Government Decision 594 (2008), the concerns related to the definition of linked transactions.

THE OFFICE

1283. As explained in section 3, CDD measures are set out in Article 5 of the Office Norms, which includes a limitation in article 5 b) to cash operations, which is less expansive than the AML/CFT Law and AML/CFT Regulation. In this context, the evaluation team reiterates its previous findings that these Norms should be amended and brought in line with the changes introduced to the AML/CFT Law and AML/CFT Regulation to ensure that the requirements are adequately reflected or clarified for subject entities to which they apply.

UNNPR

1284. Under Article 3.1.1 of the UNNPR Norms standard customer due diligence measures shall apply in the following situations:

- when establishing a business relationship;
- when carrying out occasional transactions amounting to at least EUR 15 000 or its equivalent, whether the transaction is carried out in a single operation or in several operations which appear to be linked;
- when there are suspicions of money laundering or terrorist financing, regardless of the value of transaction or any derogation from the obligation to apply standard customer due diligence provided;
- when there are doubts about the validity or adequacy of previously obtained customer identification data;
- when the transaction amount is not known when establishing a business relationship, when the notary is informed about the value transaction and when it was ascertained that the minimum limit of EUR15,000 has been reached, the person obliged to establish the customers identity shall proceed to obtain the details in the earliest instance.

Identification measures and verification sources (c.5.3)*

ALL

1285. Article 11 of the Law 656 (2002) requires that, in order to combat money laundering and terrorism financing, reporting entities apply standard customer due diligence measures. Article 5, Paragraph 1, Letter (a) of the AML/CFT Regulation (Government Decision 594 (2008)) specifies that standard CDD measures include, *inter alia*, identification of the customer and verification of identity on the basis of documents and information obtained from reliable and independent sources.

1286. Article 16 of the Law 656 (2002), as well as Article 5, Paragraph 2 of the AML/CFT Regulation (Government Decision 594 (2008)) establish that the identification data of customers shall comprise at least: a) for natural persons – the data of civil status specified in the documents of identity provided by the law; and b) for legal persons – the data specified in the documents of registration provided by the law. The authorities advised that the notion of the "data on civil status" includes data regarding a natural person's name and surname, date and place of birth, the unique individual numerical code, the address (the residence, where applicable) and citizenship.

THE OFFICE

1287. Article 4(a) of the Office Norms states that the regulated entities have an obligation to identify their customers. Under article 5(1) regulated entities must also identify their customers. Article 8 provides that the identity of customers must be established based on an official document or an identification document. Article 5(2) provides that regulated entities must obtain all necessary information for establishing the identity of the beneficial owner. Article 19 provides that regulated entities shall establish a systematized procedure for checking the identity of new customers and of persons who act on behalf of other persons and for not entering into business relationships until the identity of a new customer has been verified accordingly. It goes on to state that regulated entities must obtain all information necessary for establishing the identity of each new customer.

1288. Article 10 states that, in the case of customers which are natural persons, regulated entities shall request and obtain, under signature, minimum specified information. This information is name and surname, and, where applicable , the pseudonym; domicile, residence or address where the person lives effectively (the complete address – street, number, block, entrance, floor, apartment, city, county/district, postal code, country); date and place of birth; the personal identification number or, if necessary, another similar unique element of identification (the equivalent for foreigners); the number and series of the identification document; the date of issuance of the identification document and the entity which issued it; citizenship; resident/non-resident status; and phone/fax numbers. Regulated entities must observe a requirement that the documents which are used to verify the customer's identity fall into the category of most difficult to be forged or obtained by illegal means under a false name, such as original identity documents issued by an official authority that include a photograph of the holder and a description of the person and his/her signature, for example, identity cards and passports.

1289. Regulated entities shall keep a copy of the identification document of the customer. Entities have an obligation to verify the information received from the customer on the basis of the primary documents received from the customer. In order to obtain an adequate placement into the customer categories established by regulated entities and ensure appropriate satisfaction of the reporting obligations, additional information which can be requested shall refer to the nationality or to the origin country of the customer, the public or political position and others.

1290. Article 11 specifies that, for legal persons and the entities without legal personality, regulated entities shall obtain minimum specified information from them. This information is the number, series and date of the incorporation certificate/incorporation document at the Trade Register Office or at similar or equivalent authorities; name; fiscal code or its equivalent for foreign persons; the credit institution and IBAN code; the complete address of the headquarters/central headquarters or, if necessary, of the branch; the telephone and fax numbers and, if necessary, e-mail address and website; the goal and the nature of the operations performed with the regulated entity. The customer, legal person or entity without legal personality shall present at least the following documents and the regulated entity shall on a case by case basis keep copies of them: incorporation certificate/incorporation document at the National Office of Commerce Register or at similar or equivalent authorities; and the mandate/power of attorney for the person who represents the customer if this is not the legal representative.

1291. Under article 7(1) the requirement for customer identification is not mandatory if it is established that the payment will be made by debiting an account opened in the name of the customer to a credit or financial institution from Romania, from a Member State of the European Union or from secondary premises situated in a Member State of the European Union belonging to a credit or financial institution of a third state. In addition, under article 7(2) customer identification is not mandatory if the customer is a credit or financial institution from Romania, from a Member State of the European Union or from a branch situated in a Member State of the European Union belonging to a credit or financial institution of a third state, which impose identification requirements similar to those provided by Romanian law. Article 7 militates against compliance with c.5.3 of the FATF Methodology.

1292. Under article 16, in the case of relationships started through correspondence or through modern telecommunication means (telephone, e-mail, internet), regulated entities must apply the identification procedures applicable to customers who are physically present. Regulated entities must refuse to start correspondent relationships or to continue this kind of relationship with entities that are incorporated in another jurisdiction where the entities do not have a physical presence (the activity's management and the records/books of the institution are not located in that jurisdiction). Special attention is required when the regulated entity continues a correspondent relationship with an entity located in another jurisdiction where there are no legal requirements on due diligence or where the jurisdiction has been identified as non-cooperative in combating money laundering and terrorist financing.

UNNPR

1293. Article 3.1.2 of the UNNPR Norms states that customer identification and verification must be based upon documents and information obtained from reliable independent sources. According to Article 3.1.2 of the UNNPR Norms, acceptable identification documents for natural persons include: identity card, temporary identity card, identity bulletin, registration certificate issued by the Romanian Immigration Office along with the passport or identity document issued by the state of origin, temporary residence permit issued by the Romanian Immigration Office, permanent residence permit issued by the Romanian Immigration Office and identification documents issued by the competent authorities of the EU member states for their citizens i.e. passports. For establishing the identity of natural persons in possession of an identity card issued by Romanian authorities, the system for checking validity used, according to the protocol between the UNNPR and INEP.

Identification of legal persons or other arrangements (c.5.4)

1294. As mentioned in Section 3, there are no provisions in the AML/CFT Law and Regulation referring to "verification" of **any** person acting on behalf of a customer (other than a person acting on behalf of a legal person) and "verifying" the identity of that person, nor a provision on the power to bind the legal person or arrangement. It was also noted that the applicable provisions are not sufficiently detailed to cover adequately the requirements under 5.4.b).

THE OPFICE

1295. Articles 5, 10 and 11 of the Office Norms lay down the basic obligations of identification. These are specified above.

1296. Article 5(3) provides that the regulated entity shall identify the natural persons who intend to act on behalf of the customer, legal person or entity without legal personality, according to the rules on the identification of the natural persons. They must analyse the documents in

which the persons are mandated to act on behalf of the legal person. This requirement does not appear to extend to persons other than natural persons whereas the FATF standard refers to any person. There also appears to be no language on verifying agents of persons other than legal persons. It also does not appear to cover verification that the person is authorized to act on behalf of the customer. In addition, the language of the Regulation does not make it clear that the identity of the authorized person must be verified.

1297. Article 11(1) requires regulated persons to obtain information on the legal status of the legal person or arrangement. For example, there is a requirement to obtain the number, series and date of the incorporation certificate/incorporation document of registration with the National Office of Commerce Register or at similar or equivalent authorities. Article 12(2) requires the legal person and entity without legal personality to present (and the regulated entity to keep copies on a case by case basis) the incorporation certificate/incorporation document at the National Office of Chamber Register or at similar or equivalent authorities and the mandate/power of attorney for the person who represents the customer if this is not the legal representative. It is unclear to the evaluation team how regulated entities can form satisfactory judgments as to when it is appropriate to keep documents on a case by case basis. The concept and activity of verification is not included in the article. The evaluation team is also of the view that article 12 does not clearly cover trustees of trusts and the provisions regulating the power to bind the legal person or arrangement.

UNNPR

1298. According to Article 3.1.2 of the UNNPR Norms on identification elements for legal persons, the following information shall be collated:

- data mentioned in the registration documents provided by the law;
- proof that the natural person conducting the transaction is legally representing the legal person, i.e. name, legal form, fiscal registration code, unique registration code, social headquarter and, if the case may be, the headquarter of the management centre, phone number, fax, e-mail, the activity type and nature, the identity of the persons which according to the constitutive acts and/or decisions of statutory bodies have the competence to lead and represent the entity;
- the name of the beneficial owner;
- the identity of the person acting on behalf of the legal person, as well as information to establish that the person is authorized / has the power of attorney for that purpose;
- updated statement from ONRC ; signatures of authorized persons able to represent the entity and justifying documents in that sense etc.

Identification of beneficial owner (c.5.5)

ALL

1299. Article 11 of Law 656/2002 specifies that persons subject to the law must on the basis of risk apply standard, simplified or enhanced customer due diligence measures, which allow them to identify, where applicable, the beneficial owner. Article 4 of the law contains a definition of beneficial owner as follows:

"(1) For the purposes of the present law, beneficial owner means any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly.

(2) The beneficial owner shall at least include:

- *in the case of corporate entities:*
  - *the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership over a sufficient percentage of the shares or voting rights sufficient to ensure control in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards. 2. A percentage of 25% plus one share shall be deemed sufficient to meet this criterion*
  - *the natural person(s) who otherwise exercises control over the management of a legal entity*
- *in the case of legal entities, other than those referred to in para (a), and other entities or legal arrangements, which administer and distribute funds:*
  - *The natural person who is the beneficiary of 25% or more of the property of a legal person or other entities or legal arrangements, where the future beneficiaries have already been determined;*
  - *Where the natural persons that benefit from the legal person or entity have yet to be determined, the group of persons in whose main interest the legal person, entity or legal arrangement is set up or operates;*
  - *The natural person(s) who exercises control over 25% or more of the property of a legal person, entity or legal arrangement."*

1300. It appears to the evaluation team that the definition does not encapsulate all persons who might exercise ultimate effective control over a legal person or arrangement through, for example, loan arrangements. This concept of effective control is included in the FATF definition of beneficial owner and also in c.5.5.2 of the FATF Methodology. In the context of c.5.5.2 it does not appear that the requirements in Romania would in all cases extend to the mind and management of companies and to all persons in relation to trusts (see example in the Methodology).

1301. Article 3 of the AML/CFT Regulation (Government Decision 594 (2008)) echoes article 11 of the law. Article 5, Paragraph 1, Letter (b) of the AML/CFT Regulation (Government Decision 594 (2008)) specifies that standard CDD measures include, *inter alia*, identifying, the beneficial owner and taking risk-based and adequate measures to verify his identity so that the reporting entity is satisfied and understands the ownership and control structure of the customer legal person. The recommendations formulated in Section 3 apply equally in this context.

THE OFFICE

1302. Article 5(2) of the Office Norms requires regulated entities to obtain all necessary information for establishing the identity of beneficial owners. As a minimum this includes a statement from the customer by which he/she shall declare the identity of the beneficial owner, as well as the source of funds, in accordance with the form provided by the Norms; the purpose and the nature of the operations/transactions performed with the entity; the title and the place of performing the activity/job; name of the employer or the nature of his/her own activity. These provisions might potentially leave entities subject to the Office Norms over reliant on the customer; it is possible that the provision might not help compliance with the more independent approach embodied in Law 656/2002. Article 9 provides that regulated entities shall perform all necessary diligence for checking the information provided by the customer within the identification procedures. Checking can be performed through on-site visits to the location indicated as the address, exchange of correspondence and/or accessing the telephone number provided by the customer.

1303. While the Office Norms contain a provision on identifying natural persons acting on behalf of the customer, they do not contain a provision on whether the customer is acting on behalf of another person.

CECCAR

1304. In their response to the questionnaire the Romanian authorities stated that CECCAR's AML/CFT guidelines stipulate that, in order to establish the identity of the beneficial owner, expert accountants and authorised accountants must obtain at least the following information:

- a declaration on their honour declaring the identity of the beneficial owner and the source of their funds (according to Annex 7 of the guidelines);
- the purpose and nature of the operations/transactions;
- the name and place of business/occupation;
- the name of the employer or nature of their own activities. In the case of foreign nationals ,a copy ("if exist the necessary office's equipment in the office of the authorised accountant or experts certified accountant, or shall be requested a copy that reproduces the document, which shall be notarised or sealed by local council secretary - art. 12 of the Law. 36/1995 of public notaries and notary activities" and page of the document with the visa to stay in Romania or the visa payment slip;
- Romanian legal persons shall be identified in the establishment document, the registration with the Trade Registry, fiscal code etc.. and with the documents for the appointment of legal representative;
- foreign legal entities shall be identified with documents resulting from the legal existence of the company, registered office, directors, acts issued by local Chamber of Commerce and respectively with the power of attorney. Romanian translations will be notarised. The copies of the documents which were requested in the identification process shall be kept in a form that can be used as evidence in court, together with their own or operative secondary evidence and records of all transactions, according to article 13 of Law 656/2002, for a period of 5 years (see also chapter XV of the guidelines).

UNNPR

1305. Article 3.1.2 of the UNNPR Norms lists the standard customer due diligence measures public notaries should apply. One such measure involves identifying, where applicable, the beneficial owner and undertaking risk-based checks on the customer's identity.

Information on purpose and nature of business relationship (c.5.6)

ALL

1306. Article 5, Paragraph 1, Letter (c) of the AML/CFT Regulation (Government Decision 594 (2008)) specifies that standard CDD measures include, *inter alia*, obtaining information on the purpose and intended nature of the business relationship. This implies that the requirement does not apply to situations where simplified measures are adopted.

THE OFFICE

1307. Under article 5(2) of the Office Norms in order to establish the identity of beneficial owners regulated entities must obtain information on the purpose and nature of the operations/transactions performed with the entity. In the context of legal persons and entities without legal personality

article 11 requires regulated entities to obtain information on the goal and nature of operations performed with the entity. Article 19 states that regulated entities must establish all information necessary for establishing the purpose and nature of the services operations which may be performed.

CECCAR

1308. As indicated by text on the CECCAR guidelines provided in connection with c.5.5, those guidelines point to the need for expert accountants and authorized accountants to know the purpose and nature of operations/transactions.

UNNPR

1309. Article 3.1.2 of the UNNPR Norms requires public notaries, as part of their standard customer due diligence, to obtain information on the purpose and intended nature of the business relationship.

1310. According to UNNPR norms a business relationship is, "the professional or commercial relationship which is connected with the professional activities of the institutions and persons covered by article 10 of Law 656/2002 and which is expected, at the time when the contact is established, to have an element of duration"

On-going due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

ALL

1311. Article 5, Paragraph 1, Letter (d) of the AML/CFT Regulation (Government Decision 594 (2008)) specifies that standard CDD measures include, *inter alia*, "*conducting on-going monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's or person's knowledge of the customer, the business and risk profile, including, where necessary, the source of funds and ensuring that the documents, data or information held are kept up-to-date*".

THE OFFICE

1312. Article 17 of the Office Norms specifies that regulated entities must establish a programme of due diligence corresponding to the nature, size, complexity and limits of its activity, adapted to the level of risk associated with the categories of its customers. It must consider all transactions/operations and, amongst other matters, the programme must include monitoring of operations performed in order to detect suspicious transactions and modalities of analysing transactions/operations which do not fit normal patterns or which involve risk factors.

1313. Article 21 specifies that monitoring of customers will be made as a minimum through the creation of a database on the identification of customers that will be permanently updated; permanent updating of the records on customers' identity; and the periodic assessment of the quality of the identification procedures applied by intermediaries and monitoring of the transactions/operations in order to detect and report suspicious transactions according to the internal procedures of the regulated entity. Article 22 adds that regulated entities shall update the database. Taking into consideration the evolution of the relationship with each customer regulated entities will re-rank them into the appropriate categories of customers. Further changes to the information provided must be checked and recorded accordingly. If frequent substantial changes appear concerning the structure of customers which are legal persons or entities without legal personality or its holders regulated entities must carry out further verification. The review

may take place when a significant transaction/operation is performed, when the documentation necessary for each customer is significantly modified or when there is a relevant modification concerning the modus operandi of the customer. Where there are gaps regarding the information available on an existing customer or when there are grounds or the regulated entity suspects that the information provided is not real, the entity must take all necessary measures in order that all relevant information to be obtained as soon as possible.

1314. Article 23 states that regulated entities must ensure the monitoring of the customer's activity through the monitoring of the transactions/operations performed by them, related to the level of risk associated to different categories of customers.

1315. Article 24 provides that the monitoring procedure must take into account the classification of the customers in several categories, having regard to factors such as the type of the transactions/operations; the number and the volume of transactions/operations; the risk of an illegal activity associated with the different types of transactions/operations.

1316. With reference to customers with higher potential risk, article 25 states that it is necessary to monitor the majority or, if necessary, all the transactions/operations performed. When establishing the persons who fall into this category, the regulated entity must take into consideration the customer's type – natural/legal person; country of origin; the public position or the importance of the position held; the specific activity performed by the customer; the source of funds; other risk indicators. Article 26 specifies that, for customers with a higher potential risk of money laundering and terrorism financing, regulated entities must have appropriate systems for the management of information in order to provide to management and/or control and internal audit staff information in due time necessary for the identification, analysis and effective monitoring of the customers. As a minimum, systems must point out the absence or insufficiency of appropriate documentation required at the beginning of the business relationship, unusual transactions/operations performed by the customer and the aggregate of all customer's relationships with the regulated entity. Management must know the personal circumstances of the customers and pay enhanced attention to the information received from third parties concerning these persons.

1317. Article 16 provides that, in the case of relationships started through correspondence or modern telecommunication means (telephone, e-mail, internet), regulated entities must apply the procedures for monitoring standards applicable to customers who physically present.

UNNPR

1318. Article 3.1.2 of the UNNPR Norms specifies that public notaries, as part of their standard customer due diligence measures, must conduct regular monitoring of business relationships. Public notaries shall monitor the operations of customers in order to detect suspicious transactions. In order to do so effectively, public notaries must ensure arrangements are made for establishing and maintaining adequate records and determining access to them.

Verifying equivalence of AML/CFT framework of third countries (states) and counterparties

ALL AND NBR

1319. Under the analysis for Criteria 5.8 and 5.9, as well as other FATF Recommendations, in particular Recommendations 9 and 21, implying risk-based classification of customers, transactions and business relationships, the assessment team examined legislative provisions available for verifying equivalence of the AML/CFT framework of third countries (states) and counterparties. The detailed analysis of this can be found in section 3 of this report.

1320. In cases when obliged entities are required to satisfy themselves that third countries (states) and counterparties 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, 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).

Risk – enhanced due diligence for higher risk customers (c.5.8)

ALL

1321. Article 18 of Law 656/2002 provides that enhanced due diligence measures must be applied in the following situations, which, by their nature, may pose a higher risk of money laundering or terrorist financing:

a) Persons who are not physically present when performing the transaction;
b) Correspondent relationships with credit institutions from states that are not EU Member States or which are not in the EEA;
c) Transactions or business relationships with PEPs which are resident in another EU Member State, in an EEA Member State or a third country;

1322. In addition, enhanced due diligence measures must be applied for other cases than the ones above which, by their nature, pose a higher risk of money laundering or terrorist financing.

1323. Article 3 of the AML/CFT Regulation (Government Decision 594 (2008)) specifies that reporting entities shall apply standard, simplified or enhanced customer due diligence based on risk. Article 12 of the same annex establishes that application of enhanced due diligence measures shall be mandatory at least in case of:

a) Persons who are not physically present for the performance of the operations;
b) Correspondent relations with credit institutions within third states[168];
c) Occasional transactions or business relations with the politically exposed persons who are resident within a Member State of the European Union or of the European Economic Area or within a foreign state.

UNNPR

1324. Article 3.2 of the UNNPR Norms states that individuals in charge with preventing and combating money laundering and terrorism financing are obliged to implement additional know your client measures and ensure:

- Permanent monitoring of clients with existing suspicions;
- Monitoring of the transactions performed by clients.

1325. According to article 3.2 of the UNNPR Norms, in instances where clients of suspicion have been identified, the person in charge with the implementation of Law 656/2002 republished must compile this information into a risk database which is categorized into 3 risk levels. Risk level 1 represents high risk clients and includes those who meet the following prerequisites;

[168] In Romanian legislation, the terms "third states" and "third countries" are interchangeably used for countries other than those of the European Union plus Iceland, Liechtenstein, and Norway (jointly referred to as the European Economic Area [EEA-EFTA] countries).

- Entities registered in off-shore areas;
- Entities registered in one of the countries included in the FATF/GAFI list on non-cooperative countries and territories;
- Natural persons residents in or citizens of one of the non-cooperative countries and territories;
- Persons exposed from a reputational point of view (natural or legal persons whose activity may generate increased risks from the legal, operational and reputational point of view; persons investigated by the Anticorruption National Directorate; police involved in acts of corruption, fiscal evasion, money laundering, deceit, false and use of false, embezzlement).

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

ALL

1326. Articles 7 to 9 of the AML/CFT Regulation (Government Decision 594 (2008)) define the categories of low-risk customers, services and transactions, for which reporting entities may choose to apply simplified due diligence measures, as follows:

- **Under Article 7**[169]: a) life insurance policies below certain thresholds; b) insurance policies for pension schemes; c) transactions in electronic money, as defined in Governmental Emergency Ordinance 99 (2006) for specific products below certain thresholds. Hence, the provision establishing an option of simplified CDD in case of insurance policies for pension scheme falls short of further detailing that such option is practicable only if there is no surrender clause and the policy cannot be used as collateral.
- **Under Article 8**[170]: a) companies whose securities are admitted to trading on a regulated market in one or more Member States and listed companies from third countries which are subject to disclosure and transparency requirements consistent with Community legislation; b) beneficial owners of the transactions performed through pooled accounts administrated by notaries and other independent legal professions from Member States or from third countries imposing requirements equivalent to those laid down in the Law 656 (2002) and the Government Decision 594 (2008) and supervised for compliance with those requirements; c) domestic public authorities; d) customers, which are considered a low AML/CFT risk and are communitarian public authorities, have publicly available identity, transparent activities and accountable evidence etc.
- **Under Article 9**: a) products offered on basis of a written contract; b) operations performed through an account opened with credit institutions from Member States or from third countries imposing requirements equivalent to those laid down in the Law 656 (2002) and the Government Decision 594 (2008); c) products or connected operations, which are nominatives and according to their nature allow a proper application of standard CDD measures; d) the value of the product is below EUR 15.000; e) the beneficiary of products or connected operations cannot be a third person, excepting death, invalidity, predetermined ages or other similar situations; f) products or connected operations allow investments in financial assets or debts, provided that the benefits are materialized just on a long term, the product or the connected operations cannot be used as guaranty (assurance), and that there are no surrender clauses.

[169] This is a transposition of Article 11, Paragraph 5 of the Directive 2005/60/EC
[170] This is a transposition of Article 11, Paragraph 2 of the Directive 2005/60/EC

1327. At that, except for Article 7, Paragraph 1, Letter (a)[171], which defines that obliged entities "**shall apply** simplified customer due diligence measures" where the customer is a credit or financial institutions from a Member State or from a third country imposing requirements equivalent to those laid down in the Law 656 (2002) and supervised for compliance with those requirements, all other derogations in this regulation from standard CDD requirement use the wording "**may apply** simplified customer due diligence measures", which means that the provision under Article 7, Paragraph 1, Letter (a) is rather a requirement than an option.

1328. As compared to the provisions of the AML/CFT Regulation (Government Decision 594 (2008)) above, Article 17 of the Law 656 (2002) provides somewhat a less detailed description of the categories of low-risk customers, services and transactions, for which reporting entities are entitled to apply simplified CDD measures.

1329. Nevertheless, the legislation is not specific enough to require that: a) a minimal set of measures – as opposed to those required for standard (or regular) customer due diligence purposes – to be taken in case of defined low-risk categories of customers, business relationships or transactions, and that b) such minimal set of measures is taken in respect of all (including non-defined) low-risk categories of customers, business relationships or transactions.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

ALL

1330. The exemptions from the requirement to apply standard CDD measures, as set forth in the Law 656 (2002) and the Government Decision 594 (2008) do not directly allow application of simplified CDD measures for customers in or from countries with known failure to comply with the FATF Recommendations. Moreover, these legal acts contain provisions which, by varying level of comprehensiveness, allow simplified CDD measures with counterparts from third countries only if they impose requirements equivalent to those laid down in the mentioned legal acts of Romania. This means that third country compliance with AML/CFT requirements either for allowing simplified CDD or for requiring enhanced CDD is measured not against the FATF requirements, but against some of the applicable Romanian legislation.

1331. On a related note, Article 11 of the AML/CFT Regulation (Government Decision 594 (2008)) establishes that simplified CDD measures cannot be applied in case of clients such as credit institutions, financial institutions or companies whose securities are traded on a regulated market of third countries, if the European Commission adopted a decision in this regard[172].

THE OFFICE

1332. There are no provisions in the Office Norms.

Risk – simplified/ reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

ALL

1333. Article 13, Paragraph 1, Letter (c) of the Law 656 (2002), as well as Article 4, Paragraph 1, Letter (c) of the Annex to the Government Decision 594 (2008) AML/CFT Regulation (Government Decision 594 (2008)) establish that reporting entities are obliged to apply standard CDD measures when there are suspicions of money laundering or terrorist financing, regardless of

[171] This is a transposition of Article 11, Paragraph 1 of the Directive 2005/60/EC
[172] This is a transposition of Article 12 of the Directive 2005/60/EC

value operation, or any derogation from the obligation to apply standard CDD measures as provided for in the law.

1334. Moreover, Articles 7 to 9 of the Annex to the Government Decision 594 (2008), which define the categories of low-risk customers, services and transactions, for which reporting entities may choose to apply simplified CDD measures, do not enable that such measures are applied in the presence of suspicions of money laundering or terrorist financing.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

THE OFFICE

1335. There are no specific guidelines in the Office Norms.

Timing of verification of identity – general rule (c.5.13)

ALL

1336. Article 5, Paragraph 6 of the AML/CFT Regulation (Government Decision 594 /2008) requires the verification of identity and of the beneficial owner before establishing a business relationships or conducting transactions for occasional customers.

UNNPR

1337. Article 3.2 of the UNNPR Norms specifies that the application of the KYC principle shall commences at the initial stage of forming a business relationship with a client. At this point all necessary information for client identification should be collated, this in turn forming the basis for customer due diligence and determining the attitude to be adopted by the notary in cases of suspicious transactions.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

ALL

1338. Under Romanian legislation, it is not permitted that institutions complete the verification of the identity of the customer and the beneficial owner after starting the business relationship.

THE OFFICE

1339. There are no provisions in the Office Norms on delayed completion of verification.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

ALL

1340. Article 5, Paragraph 4 of the AML/CFT Regulation (Government Decision 594 (2008)) establishes that when reporting entities are unable to a) identify the customer and verify the customer's identity on basis of documents and information obtained from reliable and independent sources; b) identify, where applicable, the beneficial owner and take risk-based and adequate measures to verify the beneficial owner’s identity, and c) obtain information on the purpose and intended nature of the business relationship, they may not perform the transaction, start the

business relationship or shall terminate the business relationship and report this issue as soon as possible to the ONPSCB.

THE OFFICE

1341. Under article 15, if the suspicions referred to in article 12 (which include situations such as (but not limited to) when the customer mandates a person who obviously has no close relationship with the customer to perform operations; or when the amount of funds or assets involved in an operation ordered by a customer is disproportionate compared to the regulated person's knowledge of the customer's financial situation) persist and cannot be removed through additional clarifications, the regulated entity can refuse to start a relationship with the respective customer or to perform the operation requested. In order to meet c5.15 of the FATF Methodology unambiguously the entity should be permitted to open the account, commence business relations or perform the transaction.

Existing customers – (c.5.17 & 5.18)

ALL

1342. Article 14 of the Law 656 (2002) requires that reporting entities apply standard CDD measures both to new customers and, as soon as possible, on a risk-sensitive basis, to existing customers (supposedly, also to those with regard whom Criterion 5.1 applies).

THE OFFICE

1343. There are no provisions in the Office Norms.

UNNPR

1344. Article 3.1.1of the UNNPR Norms specifies that standard customer due diligence shall apply to all new clients as well as, based on the risk, all existing customers.

Applying Recommendation 6

1345. The description and analysis of measures in place for financial institutions (section 3) also apply to all DNFBPs. See section 3.2 of this report for details and an analysis of these obligations.

UNNPR

1346. Furthermore, a definition of politically exposed persons is provided under Article II of UNNPR Norms as follows:

1347. "Politically exposed persons" include natural persons who are or have been entrusted with prominent public functions, immediate family of the aforementioned natural persons and finally individuals who are publicly known to be close associates.

1348. Natural persons that are entrusted, for the purposes of the law, with prominent public functions are:

- Heads of state, heads of government, members of parliament, European commissioners, members of government, presidential councillors, state councillors, state secretaries;

- Members of constitutional courts, members of supreme courts, as well as members of the courts whose decisions are not subject to further appeal, except in exceptional circumstances;
- Members of account courts or similar bodies, members of the boards of central banks;
- Ambassadors, charges d'affaires and high-ranking officers in the armed forces;
- Managers of the public institutions and authorities;
- Members of the administrative, supervisory and management bodies of State-owned enterprises.

1349. None of the categories mentioned above include middle ranking or more junior officials. The categories mentioned above shall, where applicable, include positions at European Community and international level. Immediate family members of the politically exposed persons are: the spouse, the children and their spouses, the parents. Persons publicly known to be close associates of the natural persons who are entrusted with prominent public functions, are natural persons well known for:

- the fact that together with one of the persons mentioned above, hold or have a joint significant influence over a legal person, legal entity, or legal arrangement or are in any close business relations with these persons;
- hold or have joint significant influence over a legal person, legal entity or legal arrangement set up for the benefit of one of the respective persons.

Applying Recommendation 8

1350. In line with the evaluation rules for the 4th round, reference is made to the analysis of compliance with Recommendation 8 given in the 3rd round assessment, when a "compliant" rating was given.

Applying Recommendation 9

1351. The description and analysis of measures in place for financial institutions (section 3) also apply to all DNFBPs. See section 3.3 of this report for details and an analysis of these obligations.

Applying Recommendation 10

1352. The description and analysis of measures in place for financial institutions (section 3) also apply to all DNFBPs. See section 3.5 of this report for details and an analysis of these obligations.

Applying Recommendation 11

1353. In line with the evaluation rules for the 4th round, reference is made to the analysis of compliance with Recommendation 11 given in the 3rd round assessment, when a "largely compliant" rating was given. The report had noted that there were 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 backgrounds of such transactions and setting forth their findings in writing, nor explicit requirement to keep the findings available for competent authorities and auditors for at least five years.

UNNPR

1354. Article IV of the UNNPR Norms states that public notaries are required to keep all information on KYC measures for a period of 5 years from the date when the relationship with the client ceased.

1355. All documents and records on all the clients' transactions and operations must be stored by the public notaries. Records must be sufficient enough to allow a reconstruction of the transaction in order to be used as evidence for prosecution of criminal activity. This includes the transaction amount and currency type.

1356. Article IV of the UNNPR Norms also require that public notaries must have the necessary internal procedures and systems in place to allow for a prompt transmission of information, at the request of the Office or the UNNPR and/or of prosecution bodies, regarding the identity and nature of transactions of clients, whom they have had a professional relationship with in the last five years.

Effectiveness and efficiency

1357. The evaluation team met representatives of the Office, NOG, the Casino Association, the UNBR, the UNNPR, CECCAR and CAFR in their capacity as supervisory authorities or SRBs. From an industry perspective it met representatives of the Casino Association, representatives of NURE and a firm of accountants. The team did not meet the SRB responsible for tax advisers nor any other industry representatives from DNFBPs. The team visited a casino. Other dialogue in Romania was also relevant to the evaluation. The team has not been provided with copies of the AML/CFT standards issued by the SRBs except for the Norms issued by the NURE. The effectiveness and efficiency could be evaluated to the extent enabled by these discussions and the questionnaire response.

1358. Casinos operate on the basis of customers bringing in cash, converting cash into chips, and converting chips into cash before leaving a casino. The casinos provide small denomination notes to customers. The time of the customer's departure is not recorded. Membership cards are issued in some but not all casinos. NOG has advised that membership cards are not regulated but the absence of cards does not mean customer due diligence is waived.

1359. Customers report to reception after entering the casino and provide identification issued by a government, which includes a photograph. The reception records this information. Names are checked against a list provided by the police and sanctions lists. Sanctions lists are graded by country of origin. New customers are considered more closely. Casinos consider terrorist financing from the perspective of the nationality of the customer. Lists of PEPs are not maintained. The internet is checked if a customer's name appears to be familiar. Casinos were aware of the lists of countries published by the FATF. It seemed that these lists were downloaded from the FATF's website and checked on a monthly basis. NOG added after the on-site element of the evaluation that "The problem of the existence of a list (possibly "black list") is not regulated, but it is acceptable to use an existing list within each casino". Play is tracked and pit bosses liaise where necessary. Identification is obtained where a player losses significantly and exchanges chips for cash.

1360. Meetings between notaries and customers are always face to face except when proxies are used. The proxy documentation is checked to ascertain whether it is authentic. All letters and powers of attorney are copied into a database maintained by the UNNPR. Letters of attorney are signed in front of a notary public. Where a notary authenticates a power of attorney it undertakes customer due diligence. Particular attention is paid to non-Romanians. Where the customer is a Romanian company the notary will obtain the articles of association and a copy of the board

decision to buy a property in Romania. On-line checks are also carried out with the trade registry of the jurisdiction of incorporation of the company. The UNNPR advised that beneficial owners are always identified.

1361. As regards accountants met by the evaluation team, the AML/CFT procedures in place appeared robust.

1362. It is in the interests of estate agents to establish the source of funds and the beneficial owner to ensure the transaction is completed and commission earned. The identity of the beneficial owner of a Romanian company can be obtained from the Trade Registry. Property is registered at the Land Registry. A copy of the decision of the board of the company to purchase or sell real estate is obtained by the agents. Certificates from the Land Registry and the tax authority containing no detrimental information are obtained by agents. If a property is not sold for its real price the contract may be void. The evaluation team was advised that contracts specify that customers must declare if they are acting for a third party - powers of attorney must be declared. One firm uses a firm in another country to check letters of attorney. Land and property cannot be sold to foreign companies. It is probable this position will be changed in 2014. In the meantime, non-Romanians wishing to hold property through a company must establish a Romanian company. Another possibility would be for a foreign person to reach an understanding with the Romanian owner of a property to circumvent the existing requirement.

1363. Most real estate transactions are for individuals. The practice is for customers to use only one real estate agency. Identification information must be obtained. The most pragmatic approach from an AML/CFT perspective is for listings to be exclusive and to act for the seller although in some cases the agent works for the buyer. The main obligation in these circumstances is for the agent to be transparent that it is representing both the seller and the buyer. Agents check the internet to ascertain whether or not an individual is a PEP.

4.1.2 Recommendations and comments

1364. Some of the remarks made in Chapter 3 of this report on the formal compliance of laws and regulations with Recommendations 5, 6, 9, 10 are also relevant to DNFBPs, since they are subject to the same statutory obligations as those applicable to financial institutions.

1365. Clarify the AML/CFT Law so that all of the FAFT language "legal persons or arrangements, and buying and selling of business entities" in relation to DNFBPs is covered.

Recommendation 5

1366. Introduce an explicit provision in legislation to prohibit anonymous accounts for DNFBPs.

1367. 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.

1368. 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.

1369. Revise the AML/CFT 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 DNFBPs 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.

1370. Include a requirement that DNFBPs 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.

1371. 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/CFT requirements against the FATF requirements (for allowing simplified CDD or for requiring enhanced CDD).

1372. 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.

1373. Issue guidance in addition to the current text of the manual on the risk based approach and suspicious transactions indicators in order to demonstrably address the risks perceived by the supervisors and responses from the professionals.

1374. Take measures to build-up awareness among DFNFBPs concerning CDD and related requirements.

1375. Take urgent measures to ensure that the full range of AML/CFT requirements are met by casinos.

Recommendation 6

1376. Revise the definition of PEPs to cover "important political party officials".

1377. Review PEP enhanced CDD requirements to ensure that they extend to foreign PEPs resident in Romania.

1378. Extend PEP requirements to establish the source of wealth and the sources of funds of customers and beneficial owners identified as PEPs.

1379. With reference to effectiveness, ensure casinos meet Recommendation 6 and that DNFBPs as a whole do not rely on one data source and become aware of a change of status of a customer or beneficial owner earlier than, potentially, annually.

Recommendation 9

1380. Introduce an explicit requirement for DNFBPs to:

- 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.

1381. Introduce an explicit 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.

Recommendation 10

1382. Consider legislatively defining the terms "secondary or operative records" and "registrations of financial operations" (specifically for AML/CFT purposes).

1383. Introduce an explicit requirement for DNFBPs to maintain business correspondence for at least five years following the termination of an account or business relationship.

1384. Clarify in legislation that all customer records and transactions held by DNFBPs should be available on a timely basis to domestic competent authorities.

Recommendation 11

1385. Regarding the application of enhanced due diligence obligations, the competent authorities should assist DNFBPs by providing adequate information on the circumstances in which the activities in which these professionals are engaged are likely to present greater risks and which require due diligence.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**[173]	• 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. **Effectiveness**: • (1) Casinos do not apply the full range of R.5 measures; (2) PEP provisions not met by casinos; (3) Potential delays in ascertaining change of status of individuals to PEPs; (4) Concerns about the adequacy of implementation of AML/CFT requirements by other DNFBPs.

4.2 Suspicious Transaction Reporting (R. 16)

Recommendation 16 (rated NC in the third round report)

Applying Recommendations 13-15

Requirement to Make STRs on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 and SR. IV to DNFBPs)

1386. The reporting requirements set out under the AML/CFT Law, which are applicable to financial institutions, apply in the same manner to DNFBPs. For an analysis of the reporting requirement applicable to DNFBPs, reference may be made to the text under Recommendation 13.

[173] 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.

UNNPR

1387. Article 10 letter (f) of Law no. 656/2002, stipulates that public notaries are obliged to report suspicious transactions and cash transactions, in instances where they provide assistance in drafting or concluding operations for their clients concerning the buying or selling of immovable goods, shares or social parts or elements of commerce funds; administer financial instruments or other goods of the clients; open or administer bank accounts; represent deposits or financial instruments; organize the process of contributions necessary for the establishment, functioning or administration of commercial companies; establish, administer and manage commercial companies, collective placement bodies in securities or other similar structures, according to the law, of other trust activities; and represent their clients in any financial operation or sale of immovable goods.

1388. Article IV of UNNPR norms states that in instances where a public notary suspects that an operation, which is to be performed, relates to money laundering or terrorism financing, a Suspicious Transaction Report must be sent to the Office immediately.

1389. Public notaries, according to Article IV of UNNPR norms, are obliged to use the STR, CTR and ETR report forms drafted by the Office, provided by the Board Decision no. 674/2008 and published in the Official Gazette no.451/17.06.2008.

Legal Privilege

1390. In terms of Article 5(9) of the AML/CFT Law lawyers, notaries, other independent legal professionals, auditors and natural and legal persons providing tax and accountancy consultancy are not required to report to the FIU information received or obtained from one of their customers during the process of determining the customers' legal status or in the course of defending or representing the customer in certain legal procedures, or in connection therewith, including while providing consultancy with respect to the initiation of certain legal procedures, according to the law, regardless of whether such information has been received or obtained before, during or after the closures of the procedures.

No Reporting Threshold for STRs (c. 16.1; applying c. 13.3 to DNFBPs)

1391. The reporting requirements set out under the AML/CFT Law, which are applicable to financial institutions, apply in the same manner to DNFBPs. For an analysis of the reporting requirement applicable to DNFBPs, reference may be made to the text under Recommendation 13.

Making of ML/FT STRs Regardless of Possible Involvement of Tax Matters (c. 16.1; applying c. 13.4 to DNFBPs)

1392. The reporting requirements set out under the AML/CFT Law, which are applicable to financial institutions, apply in the same manner to DNFBPs. For an analysis of the reporting requirement applicable to DNFBPs, reference may be made to the text under Recommendation 13.

Reporting through Self-Regulatory Organisations (c.16.2)

1393. Article 5(11) permits lawyers, notaries, other independent legal professionals, auditors and natural and legal persons providing tax and accountancy consultancy to report STRs through their Self-Regulatory Organisations (SROs). SROs are required to submit STRs received from their members to the FIU within three days of receipt. SROs may not modify the content of the STR.

1394. Article 22(1) of the AML/CFT Law requires SROs overseeing independent legal professions to enter into cooperation protocols with the FIU. Furthermore, in terms of Article 20(2), SROs are required to designate one or several persons with responsibilities for applying the provisions of the AML/CFT Law.

1395. In furtherance of the provisions of Article 22, the authorities indicated that the following protocols are in place with the National Union of Notaries Public from Romania, the National Union of Bars of Romania, the Body of Expert Accountant and Authorised Accountants, Tax Consultants Chamber and Chamber of Auditors.

1396. According to the Cooperation Protocol between the UNNPR (notaries) and the FIU, which was concluded in 2011, the UNNPR is responsible for receiving all STRs from notaries in Romania and submitting them to the FIU. The parties cooperate on an on-going basis, especially with respect to drafting new normative acts or to modify/supplement existing ones. In order to improve the Romanian legislation and to harmonise legislation with European and international standards, the UNNPR and the FIU exchange data and information on a confidential basis.

1397. Where accountants identify suspicious operations/suspicious, a report is sent to the management of the Body of Expert and Licensed Accountants of Romania and the FIU. To ensure a high degree of confidentiality and to facilitate the submission of the reports the FIU the data entry application which is only available to banks was made available to the subsidiaries of the Body of Expert and Licensed Accountants of Romania.

1398. Having regard to the Cooperation Protocol concluded in March 2007 between the Financial Auditors Chamber and the FIU, the institutions organised training seminars for auditors providing fiscal, accountancy or financial –banking consultancy services.

Legal Protection and No Tipping-Off (c. 16.3; applying c. 14.1 to DNFBPs) Prohibition against Tipping-Off (c. 16.3; applying c. 14.2 to DNFBPs)

ALL

1399. Article 25, Paragraph 2 of the Law 656 (2002) establishes that reporting entities and their employees "must not warn the customers about the notification sent to [the FIU]". The language of this provision, although 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 informing the customers or by taking other actions (such as performing CDD measures), which might eventually make the customers aware of the fact that an STR or related information is being reported to the FIU.

THE OFFICE

1400. Article 4(l) of the Office Norms obliges regulated entities not to disclose information connected with money laundering or terrorism financing and to not inform the customers on the notifications submitted to the Office except in relation to conditions provided by law.

UNNPR

1401. Article IV of UNNPR norms states that obligations, legislation and provisions which prohibit disclosure of information, should not be applicable to those notaries who report suspicions to the Office or to UNNPR.

1402. Article IV of UNNPR norms prohibits public notaries from providing information on money laundering and terrorism financing out of legal conditions and disclosing information to involved clients or third persons about suspicions or related information sent to the Office or to UNNPR. Violation of these provisions can be punished with administrative or judicial sanctions by the regulatory/supervision bodies.

Establish and Maintain Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.1, 15.1.1 & 15.1.2 to DNFBPS)

Internal AML/CFT procedures, policies and controls (c. 15.1)

ALL

1403. Article 20, Paragraph 1 of the Law 656 (2002) requires that reporting entities designate "one or several persons with responsibilities in applying the present law, whose names shall be communicated to the Office, together with the nature and the limits of the mentioned responsibilities'. Paragraph 2 of the same article establishes that "credit institutions and financial institutions are obliged to designate a compliance officer, subordinated to the executive body, who coordinates the implementation of the internal policies and procedures, for the application of the present law". Similar provisions can be found in Article 15 of the Annex to the Government Decree 594 (2008).

1404. Article 20, Paragraph 6 of the Law 656 (2002) establishes that "the persons designated in accordance with Paragraphs 1 and 2 shall have direct and timely access to the relevant data and information necessary to fulfil their obligations under this law".

THE OFFICE

1405. Articles 4(a) and (b) of the Office Norms specify that the obligations of regulated entities include drawing up customer due diligence procedures and appointing one or more persons under article 14 of Law 656/2002. Article 4(c) adds the obligation of elaboration of procedures and appropriate methods of internal control in order to prevent and combat money laundering or terrorist financing.

1406. Under article 27 of the Office Norms each regulated entity shall elaborate appropriate policies and procedures in order to implement an efficient due diligence programme. The management of regulated entities or, if necessary, appointed persons have responsibilities regarding the establishment and maintenance of an adequate and efficient system of internal control. The objectives of internal control, taking into consideration the Office Norms, consist of verification and the provision of plausible, relevant and complete information to the structures involved in making decisions within the regulated entity and the external users of information. This provision is not restrictive. In order to achieve the objectives regarding internal control, regulated entities shall organize an internal control system (without being limited) comprising the following elements:

- the role and the responsibilities of the persons appointed bearing in mind the relationship with the Office;
- the identification and assessment of significant risks;
- control activities and the separation of responsibilities;
- the periodic supervision of information, systems and control management;
- information and communication;
- a strategy for training the personnel in the field of due diligence standards.

1407. Regulated entities shall ensure that personnel are not charged with responsibilities which can lead to a conflict of interest. Possible conflicts of interest must be identified and monitored independently by persons not involved directly in the relevant activities.

1408. Article 17 requires each regulated entity to establish its own programme of due diligence, which corresponds to the nature, size, complexity and limits of its activity and adapted to the level of risk associated with the categories of customers for which it is performing operations/transactions. The due diligence programme must consider all the transactions/operations of the regulated entity and, without limitation, include:

- a policy for accepting the customer;
- identification procedures and procedures for placing the customer in the corresponding category of customers;
- keeping the corresponding records;
- monitoring operations performed in order to detect the suspicious transactions and the reporting procedure;
- the modalities of analysing transactions/operations in and/or from jurisdictions in which there are not adequate rules on preventing and combating money laundering and terrorism financing;
- modalities of analysing transactions/operations which do not fit the normal pattern or which involve risk factors;
- procedures and systems for checking the implementation of programmes and for the evaluation of their efficiency;
- training programmes for personnel in the due diligence area.

1409. Article 18 provides that the due diligence programme of regulated entities must be in written form, known by all personnel and reviewed periodically for appropriate adjustment.

1410. The Office Norms would not appear to cover the entirety of customer due diligence or the detection of unusual and suspicious transactions and the reporting obligation.

Independent Audit of Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.2 to DNFBPs)

Independent Audit Function (c. 15.2)

THE OFFICE

1411. Article 30 of the Office Norms specifies that the control and/or internal audit procedures of the regulated entity shall include an independent assessment of its policy and procedures on due diligence, including compliance with the legal requirements and other applicable norms. The efficiency of procedures and policy must be assessed periodically. This includes the professionalism of personnel, proposals for addressing deficiencies and monitoring the modality of implementation of conclusions and policies. The responsibilities of internal control and/or internal audit personnel must include the permanent monitoring of compliance with internal norms and the review of reports on uncommon cases in order to give notice to the management of regulated entities about cases where it is considered due diligence procedures are not respected. Management of regulated entities shall assure that the control and/or internal audit department includes personnel having experience in such policy and procedures. Article 30 does not cover the FATF language in relation to sample testing and, although the article talks about the internal audit department having experience in policy and procedures, it does not fully cover the adequacy of resourcing element of c.15.2 of the FATF Methodology.

On-going Employee Training on AML/CFT Matters (c. 16.3; applying c. 15.3 to DNFBPs)

Employee Training (c. 15.3)

THE OFFICE

1412. Article 4(c) of the Office Norms specifies that the obligations of regulated entities include that of ensuring employees are trained to recognise operations which may be connected to money laundering or terrorist financing and for taking appropriate measures in such situations.

1413. Article 31 states that regulated entities shall develop an on-going training programme for personnel, so that the personnel involved in relations with customers are trained adequately. The training programme and its content shall be adapted to the requirements and be specific to each regulated entity.

1414. The training requirements shall be focused differently for new employees, personnel working within the control and/or internal audit department and personnel involved in relations with new customers. Newly employed personnel shall be trained on the importance of due diligence programmes and on the minimum requirements of the regulated entity in this area. Personnel shall be trained periodically at least once a year and when it is considered necessary so as to ensure that personnel know their responsibilities to keep them up to date with new progress in the field and to ensure consist implementation of programmes. This does not cover the specific requirements of c.15.3.

Employee Screening Procedures (c. 16.3; applying c. 15.4 to DNFBPs)

Employee Screening (c. 15.4)

THE OFFICE

1415. The Office Norms do not contain provisions in relation to staff screening procedures.

Additional Element—Independence of Compliance Officer (c. 16.3; applying c. 15.5 to DNFBPs)

1416. There do not appear to be any provisions applicable to DNFBPs in relation to Recommendation 15.5.

Applying Recommendation 21

Special Attention to Persons from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBPS)

1417. There do not appear to be any provisions applicable to DNFBPs in relation to Recommendation 21.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.2 to DNFBPS)

1418. There do not appear to be any provisions applicable to DNFBPs in relation to Recommendation 21.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBPS)

1419. There do not appear to be any provisions applicable to DNFBPs in relation to Recommendation 21.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.4)

1420. Pursuant to Article 10(e) auditors are required to apply all AML/CFT preventive measures, including reporting.

Additional Elements – Reporting of All Criminal Acts (c. 16.5)

1421. The reporting requirement refers to transactions having a ML purpose. The definition of money laundering in Article 29 of the AML Act refers to property derived from offences.

Effectiveness and efficiency

1422. As shown by the statistics sent by the Romanian FIU (see table below), the level of reporting from the non-financial reporting entities is very low :

Table 46: Number of STRs from the non-financial reporting entities

STRs by sector	2008	2009	2010	2011	2012	01.01-31.07. 2013
Casinos /Accountants/tax consultants	11	10	3	2	2	3
Auditors	2	0	1	1	1	3
Public notaries	230	202	109	135	61	68
Lawyers	2	1	2	2	3	2
Real estates	2	1	0	0	0	0
Other natural or legal persons trading goods and/or providing services/traders	53	96	160	387	57	13
NGOs	2	0	2	0	3	0

1423. Some entities as auditors, natural and legal persons providing fiscal and accountant consultancy and real estate agents barely send any suspicious declaration reports to the FIU. What is surprising is the rather high number of STRs submitted by traders. The authorities have indicated that usually these reports refer to commercial operations, in which are involved funds having uncertain provenience.

1424. The number of STRs sent to the FIU by public notaries, lawyers and other persons of liberal legal profession is quite important, but it has decreased significantly between 2008 (227 STRs) and 2012 (64 STRs). The authorities have explained that the variations between the numbers of the STRs submitted by the notaries to the FIU are due to the fact that initially some notaries reported part of operations that exceeded 15.000 euro as STRs and not as CTRs. During the training workshops held by the FIU representatives with participation of notaries, it was explained that in case there is no suspicion of ML/TF, the operation exceeding 15.000 euro has to be reported as a Cash Transaction Report.

1425. STRs by lawyers were considered by the Office to be of very good quality although low in number. The UNBR suggested that, if a bank or notary reports suspicion to the Office, lawyers are

not also required to report suspicion in order to avoid duplication. The point was made that these entities are bound by the law and lawyers should be able to assume that everybody observes the law. It was also made clear to the evaluation team that lawyers wish to comply with the law and report suspicion required by the law.

1426. The UNBR considered the law to be relatively but not absolutely clear on the reporting of suspicion. As a whole the law was described as complex and bulky. The UNBR provides advice when requested to lawyers by providing advice on the legal obligations to report suspicion. Reports can be submitted on-line or in paper form to the Office. Special couriers must be used to abide by the confidentiality requirements. Lawyers can forward STRs to the UNBR; the UNBR forwards STRs to the Office without reading or filtering them.

1427. The Office considered the number and quality of STRs provided by notaries to be good. Reasons for suspicion in STRs include prices negotiated late in the course of a transaction, the return of moneys for loan contracts in order to renegotiate the loans, artificially low or high prices, successive sales of the same building with different prices. Almost all STRs made by notaries concern real estate. The number of STRs has also decreased because of the decrease in transactions resulting from the economic and financial crisis. The UNNPR was content that notaries are aware of the reporting requirement and the meaning of suspicion.

1428. Both CECCAR and CAFR advised that the reporting of suspicion had raised no issues from their perspectives.

1429. After the introduction of Law 656/2002 members of the NURE needed to be taught about STRs and how to file them. A national campaign was created on the war against illegal conduct in real estate business. The Office made a presentation at each event. The ability to make STRs on-line is considered to be very helpful. The NURE advised that real estate agents are familiar with the reporting requirements. The relatively low number of reports is ascribed to the nature of the market.

4.2.1 Recommendations and comments

Applying Recommendation 13

- Introduce a requirement to report suspicions that funds are the proceeds of criminal activity.
- Include all the circumstances referred to in criterion 13.2 under the FT reporting requirement.[174]
- The FIU and SROs should conduct an analysis to determine the reasons for the low number of STRs submitted by DNFBPs.
- Further efforts should be made to increase reporting entities' understanding of ML/FT reporting requirements.

Applying Recommendation 14

- Provide for protection of reporting entities and their staff, if they report suspicions unrelated to money laundering or terrorist financing
- Extend the prohibition of tipping off to encompass all possible forms and ways of disclosing the fact that a STR or related information is being reported or provided to the FIU

[174] As indicated under SR II the majority of these deficiencies in the criminalisation of FT appear to have been addressed by the new FT offence, which entered into force as of February 2014.

Applying Recommendation 15

- Make it clear that procedures, policies and controls should cover the detection of unusual and suspicious transactions and the reporting obligation
- Make it explicit that an AML/CFT compliance officer should be appointed at management level
- Introduce an 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.
- Introduce a requirement to have on-going training
- Introduce a requirement for training to cover new developments (including information on current ML and FT techniques, methods and trends)
- Introduce a requirement for on-going training to cover all and not just some aspects of AML/CFT laws and obligations (including CDD)
- Introduce an explicit requirement for training to ensure employees are kept informed of new developments (including information on current ML and FT techniques, methods and trends) and to cover all rather than some aspects of AML/CFT laws and obligations, including CDD
- Include requirement for staff screening

Applying Recommendation 21

- Introduce provisions to implement adequately the requirements of Recommendation 21.

4.2.2 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	*Applying Recommendation 13* • 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). **Effectiveness*:*** • 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. *Applying Recommendation 14* • 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. *Applying Recommendation 15* • 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. *Applying Recommendation 21* • No provisions implementing Recommendation 21.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

Recommendation 24 (rated NC in the 3rd round report)

Regulation and Supervision of Casinos (c. 24.1, c.24.1.1, 24.1.2 & 24.1.3)

1430. Article 10 of Law 656/2002 specifies that casinos are reporting entities. In addition to Law 656/2002 and GD 594/2008, casinos are subject to GEO 77/2009 on the organization and operation of gambling, GD 870/2009 approving the Methodological Norms for the application of GEO 77/2009 on the organization and operation of gambling, while Order 2398/2009, issued by Ministry of Finance/the Office, set up the institutional structure of a committee (the Commission for Authorization of Gambling in Romania) (COMGAM) established by the Ministry of Public Finance as responsible for the regulation of casino and other gambling businesses. A copy of the Order has not been provided to the evaluation team. As of 3 April 2013 COMGAM was replaced by an inter-ministerial Steering Committee. As a consequence, COMGAM ceased to exist. The new committee is organised under the general Secretariat of the Government and took over authorisation, inspection and monitoring tasks from the Ministry of Finance as well as responsibility for changes to gambling legislation. These changes were introduced by GEO 20/2013 (modifying GEO 77/2009) and GD 298/2013 (amending GD 870/2009).

1431. The day to day activity of COMGAM was undertaken by the Ministry of Finance General Directorate for the Management of Specifically Regulated Fields. COMGAM had seven members, including a representative of the Office. Other members included representatives of the tax and law enforcement authorities while the Financial Guard was a permanent guest

1432. The secretariat's role was to analyse applications so that COMGAM could make decisions properly. Members of COMGAM also had access to their own records and information networks, enabling information provided to be cross checked. Documentation reviewed by the secretariat and COMGAM included specific documents required of gambling entities by law such as incorporation documents and trading body certification, information from the police and fiscal information. Information provided included beneficial ownership information together with information on the general manager, the compliance officer and the legal representative. Fitness and propriety was a key part of the analysis and review of the secretariat and COMGAM. Criminal and fiscal records were considered in this context. Application documentation was notarised. The reduction in the number of casinos can be attributed not only to the economic and financial crisis but also in part to the stringency of regulation. As part of its role COMGAM issued rules on fair play.

1433. On 3 April 2013 amendments to GEO 77/2009 came into force and a new regulatory authority, the National Office for Gambling (NOG), was established. It is planned for NOG to have some two hundred staff. One hundred and sixty positions are occupied. It operates a separate office at the Ministry of Finance with leadership and staff separate to the Ministry. Its activity is coordinated by the Steering Committee, the members of which are different to COMGAM.

1434. The Office also had an active role in overseeing the sector, contributing to consideration at the application stage and operating training sessions annually.

1435. Under article 10(3) of GEO 77/2009 the economic activity represented by gambling games can be carried out provided that various principles are complied with. These include:

- protection of underage persons and prevention of their access to these types of gambling games;
- ensuring the integrity and transparency of operations carried out by and via the organisers of these gambling games, as well as a fair gambling system that is permanently monitored and checked with regard to the safety and correctness of the activities carried out;
- the prevention and combating of criminal activities that can be carried out via these types of gambling games;
- implementing an on-going process for updating regulations in order to reduce and limit the potential vulnerability of this economic sector to potential criminal activities, as well as to reduce exposure to the risk of money laundering and financing of terrorist activities**.**

1436. Under annex 2 of the Methodological Guidelines, casino operators making an application for a licence must submit a file that contains the following documents:

- approval of the police authorities granted to all legal representatives of the casino operator. If the legal representative is an economic operator, the approval granted by the police authorities to all their legal representatives must also be submitted;
- a self-declaration of the legal representative of the casino operator (if there are several legal representatives, a self-declaration from each of them) stating the following:
  - the economic operator has not been convicted by a final judgement of conviction without rehabilitation;
  - the legal representative is not in a situation of incompatibility with the law;
  - the legal representative has experience in the organisation and operation of gambling games;
  - the legal representative is familiar with the legislation in force;

- the legal representative/economic operator shall have specialised personnel who are trained and experienced in the field, and have at least 3 years' experience in information technology.
- a criminal record certificate or another document issued by competent authorities with jurisdiction over the last known domicile/registered office of the legal representative(s) stating that no final judgement of conviction without rehabilitation has been issued against them, in Romania or another state, for a crime stipulated by the emergency ordinance or for any other crime committed with intent for which a minimum sentence of 2 years in prison has been applied. If there are several legal representatives, the criminal record certificate or other document issued by the competent authorities must be submitted for each of them;
- a tax registration certificate issued by the competent tax authority responsible for the tax administration of the economic operator;

1437. Paragraph 15 of Annex 13 of the Methodological Guidelines also specifies that, as part of the authorisation process, criminal record certificates or other documents issued by the competent authorities with jurisdiction over the last known domicile/registered office must be provided, which demonstrate that no final judgement of conviction without rehabilitation has been issued against any of the legal representatives of the economic operator, in Romania or in any foreign state, for a crime stipulated by GEO 77/2010 or for any other crime committed with intent for which a minimum 2-year prison sentence has been applied. The Romanian authorities have confirmed that the administrators and staff of a casino must provide NOG, annually or when changes occur, with a criminal record issued by the Police or other competent authority of the country of origin of the person, together with a notice from the General Inspectorate of the Romanian Police. Without these documents no licence will be issued. The Romanian authorities have also confirmed that individuals who have been convicted will not receive a certificate from the Romanian Police and will not therefore be allowed to operate gambling in Romania.

1438. Article 15 of GEO 77/2009 specifies that, in order to obtain a licence to organise gambling games, it is compulsory that the economic operators prove that the organisation of gambling games is their main object of activity and that the police have issued their approval for the legal representatives of the legal entity. In addition, the legal representatives of the legal entity must submit a self-declaration stating that the economic operator has not been convicted by means of a final judgement of conviction without rehabilitation and that they are not in a situation of non-compliance with the law. The legal representatives of the legal entity must also submit criminal record certificates or other documents issued by the competent authorities with jurisdiction over their last known domicile/registered office demonstrating that no final judgement of conviction without rehabilitation has been issued against any of the legal representatives of the legal entity, in Romania or in any foreign state, for a crime stipulated by the GEO or for any other crime committed with intent for which a minimum 2-year prison sentence was applied.

1439. Article 1(4) of GEO 77/2009 provides that applications will be resolved in 30 days from the date of the submission of complete documentation. The evaluation team considers that this may be impractical as overseas checks on fitness and propriety of owners, controllers and managers may take longer than this and the deadline may place stress on NOG to issue the licence in the time frame specified in the GEO.

1440. Under article 74(1)(u) of the Methodological Guidelines casinos must comply with Law 656/2002 as well as instituting measures for the prevention and combating of terrorist financing. Failure to meet this requirement is subject to sanctions by way of fines of between 25,000 and 50,000 RON under article 75.

1441. Under article 17 of GEO 77/2009 a licence to organise gambling games can be revoked in any of the following situations, depending on their consequences:

- after the approval issued by the police authorities for the legal representatives of the legal entity has been withdrawn, the latter shall keep the respective position for a maximum period of 30 days from the date on which the withdrawal of the approval was communicated;
- a final judgement of conviction without rehabilitation has been issued against the legal entity;
- the legal representatives of the economic operator are in a situation of non-compliance for more than 30 days from the date on which the non-compliance occurred;
- any of the partners or legal representatives of a legal entity keep their position for more than 30 days when a final judgement of conviction without rehabilitation has been issued against the entity, in Romania or in a foreign state, for a crime stipulated by the GEO or for any other crime committed with intent for which a minimum 2 year prison sentence has been applied;
- finding any irregularities with regard to the way the winnings awarded have been recorded, withholding the related sums of money and not paying them, or paying them after a delay of more than 30 days, as well as with regard to failure to comply with any requirements for licensing and authorisation established by the guidelines for the application of the present emergency ordinance or other specific regulations;
- finding that gambling activities do not comply with the provisions of Law 656/2002.

1442. Article 25 of the GEO creates an offence for persons to deceive the authorities or to avoid licence revocation.

1443. The Office was also described as being entitled to revoke a casino licence on the basis of poor AML/CFT compliance such as when it had been notified of or found serious violations of the provisions of Law 656/2002 (article 17(4) of GEO 77/2009 refers). In addition, the supervisory authority was described as being able to suspend or revoke the licence at the request of the Office due to failure to comply with the provisions of the legislation regarding the prevention and control of money laundering and financing of terrorist activities as determined by administrative documents that have withstood the administrative appeal system or through court judgements that are final and irrevocable (see article 17(4) of GEO 77/2009).

1444. NOG was established by revisions to GEO 77/2009. It has powers and responsibilities over the Romanian gambling sector. NOG has been established as directly subordinate to Government. NOG has assumed all the powers and responsibilities which were held by the Ministry of Public Finance. NOG reports directly to the General Secretariat of the Government, all other regulations being amended accordingly and operates from Ministry of Finance property. Under article 3 of the amendment legislation NOG has attributions including analysing and solving applications, supervising activities in the field of gambling, controlling the application of specific legislation, applying sanctions and drawing up risk analysis. Article 7 establishes a Supervision Committee to take decisions. Under article 8 the Board is comprised of an executive president and vice president, a non-executive representative of the Office and six non-executive representatives of government departments. NOG is envisaged as having 200 posts, which will be used to supervise operators on fiscal/financial/technical issues, perform risk-based analyses in relation to financial/fiscal activities of operators, implement the supervisory framework, process requests for authorization and submit these requests to the supervisory committee. NOG will also set up a system for exchanging information with other responsible authorities. NOG saw clear advantages in day to day regulatory activity in relation to casinos being brought within one body.

1445. NOG suggested there had been some general problems as a result of legislation. Taxation is the biggest issue. NOG will seek to prevent the black market in casino gambling activity. Internet casinos are not prevented from being established in Romania and, in any case, they are not subject

to the AML/CFT legislation. An explicit legal provision preventing internet casinos from being established was taken out of legislation in 2009. The intention is to introduce new provisions on internet casino. It will be important for this legislation to not only regulate such casinos but also to bring them properly within the AML/CFT framework. NOG advised that on-line casinos are operating from within Romania and it proposes to commence work by addressing this activity. A large number of slot machines are being operated without a licence. Sporting poker can be operated without a licence. NOG envisages that Government will enact legislation to deal with the issues mentioned in this paragraph.

1446. Casino licences are issued for a five year period. Any changes within a casino such as the addition of a table or the movement of a slot machine must be notified to NOG at least five days' beforehand. (Article 12 of GEO 77/2009 refers). Article 2(3) of the Methodological Guidelines refers to authorisations to operate gambling games being issued for a period of twelve months.

1447. NOG advised that prior to its establishment the police had checked the criminal records of owners, managers and legal representatives. The Office also made this point. Criminal records from outside Romania had also been checked. In running through an example, NOG advised that it would check to ascertain whether an individual has a criminal record and ask the police to conduct checks with Interpol. Conversations with the authorities suggested that checks had been taken to prevent criminals from holding or being the beneficial owner of a significant or controlling interest, holding a management function in or being the operator of a casino (although any focus on beneficial owners was not apparent to industry – see below). However, the legislation concentrates on operators and legal representatives. It does not clearly refer to beneficial owners or managers. After consideration of an application, documents were provided to COMGAM for consideration (now the Steering Committee). Source of funds is not checked with regard to the establishment of a casino. NOG advised that it is possible for it to be notified up to two years after a beneficial owner has been convicted of a financial crime such as fraud. The evaluation team noted that article 12(3) of GEO 77/2009 specifies that any modification of initial data on which the licence of a casino operator is based must inform the Steering Committee within five working days from the date of its registration at the trade registry.

1448. NOG noted that on-line casinos were different to physical casinos. Its intention is to establish a separate department for on-line casinos, with adequate technological resources, in approximately six months to a year. With regard to staffing NOG proposes to look for individuals with good information technology skills and young people who are experts. NOG noted the audit trail for transactions as being an advantage of online casinos. NOG will seek to reach agreement with banks so that the banks will check transactions. It will be possible for pre-paid cards to be used; NOG will look at the introduction of procedures on the use of cards. Notwithstanding the view put forward by NOG that on-line casinos are different, the evaluation team is of the view that the scale of the difference and what effort and resources is underestimated by NOG.

1449. NOG confirmed it had no AML/CFT responsibilities and that the Office is the AML/CFT supervisor. The Office monitors the activity of casinos.

1450. The Office had a degree of uncertainty as to whether it would be the AML/CFT supervisory authority for internet casinos. It suggested there had been debate and the probability was that it would continue in the role not least because it considered this is what is provided for by Law 656/2002.

1451. The Office particularly reviews record keeping when it undertakes on-site inspections to casinos. Thirty four on-site inspections were undertaken in 2008, sixteen in 2010 and five during 2013 up to the evaluation team's visit to Romania. This approach to inspections, with significant gaps between batches of on-site inspections is not sufficiently systematic to be considered wholly

effective by the evaluation team. Casinos do not appear to have been part of the Office's off-site supervision programme.

1452. In 2010 six of the sixteen on-site inspections found AML/CFT infringements. As a consequence, the Office issued five private warnings and one fine of 15,000 RON. No sanctions were applied in 2011 or 2012. AML/CFT infringements were found in four of the five casinos inspected in 2013 until 29 March; six fines totalling 140,000 Ron were issued by the Office. The point made in section three of this report states that the sanctions available to the Office remain unclear apply here as well. Also, the only sanctions applied to casinos have been warnings and fines. The Office should therefore review whether or not stronger and more dissuasive sanctions should be imposed in the future. The number of sanctions arising from the number of on-site inspections suggests that stronger sanctions should, on occasion, be issued. The sanctions available to the Office are unclear.

1453. The weaknesses in the language of Law 656/2002, the underlying regulation and the Office Norms in relation to Recommendation 17 in section 3 of this report in relation to the Office's role for financial institutions also apply to AML/CFT failings by casinos.

1454. Article 77 of the Methodological Guidelines states that the Office has the right to carry out inspections in accordance with its competencies under the specific legislation in force for combating money laundering and terrorist financing.

1455. It was expected that the gambling legislation would be amended shortly after the evaluation team left Romania in particular to increase the AML/CFT requirements around beneficial ownership, financial data on clients and reducing the value of chips purchased to 1,000 RON when customer due diligence should be undertaken. At the time of completion of this report the legislation has not been enacted.

1456. Casinos have a positive view on the establishment of the NOG as it means that administration of governmental requirements in relation to casinos (for example, regulation and tax) will now be centred in one organisation; it was envisaged this would lead to a more coherent approach to casinos. The Office was considered to have worked cooperatively with casinos – it had organised a significant amount of training. It undertakes on-site inspections and checks AML/CFT procedures. The Office's Manual was considered to be useful and had been provided to staff at casinos. The Casino Association considers casinos are subject to a high degree of regulation.

1457. Casinos considered that there did not appear to have been focus on beneficial ownership of casinos by the authorities and that it had been banks which had requested beneficial ownership information. The casinos obtain police certificates on dealers. The Association also advised that casino managers and legal representatives need special approval from the police. The type of staff in casinos has changed in recent years so that they are now more multi-jurisdictional.

Monitoring and Enforcement Systems for Other DNFBPS-s (c. 24.2 & 24.2.1)

1458. In addition to the Office, there are a number of other supervisors and self-regulating bodies relevant to DNFBPs, namely the UNNPR, the UNBR, CECCAR, the Tax Consultants Chamber (not met by the evaluation team) and CAFR. The SRBs met by the evaluation team have issued AML/CFT standards but copies of these have not been provided to the team. Hence, the analysis below concentrates on information in the questionnaire response and meetings with the evaluation team.

1459. Under article 24 of Law 656/2002 "the leading structures of the independent legal professions" for the persons referred to in article 10(e) and (f) of the law (in broad terms auditors, tax and accountancy consultants, notaries and lawyers) have AML/CFT oversight responsibilities. Under

article 22 the management bodies of the independent legal professions must conclude cooperation protocols with the Office.

1460. The Office is an AML/CFT supervisory authority for DNFBPs (and some financial institutions) amounting to some 26,000 firms. It gathers and analyses substantial information so that it can focus its supervision on risk. Its off-site activity is not simply about establishing a programme of on-site inspections but also to understand money laundering and terrorist financing risks. Overall, its supervision is focussed on the riskier sectors and institutions. It estimated that training industry representatives of DNFBPs and financial institutions took some fifty days each year. Minor AML/CFT failings (for example, when parts of an obligation are not fulfilled and the entity has acted in good faith) are sanctioned with warnings; financial sanctions have been reserved for more serious breaches and lack of awareness of Law 656/2002.

1461. The table below lists the number of entities which have been considered under the Office's off-site supervisory processes. The pattern of supervision is not systematic within individual sectors or across DNFBPs, with a notable reduction of off-site supervision in 2013.

1462. The table below lists the number of entities which have been subject to on-site inspections by the Office.

Table 47: Number of entities subject to on-site inspections by the Office

OFF-SITE SUPERVISION FIU ROMANIA						
	2008	**2009**	**2010**	**2011**	**2012**	**2013**
NFIs	**–**	**1611**	**–**	**–**	**880**	**–**
Exchange offices	**–**	**–**	**–**	**–**	**289**	**–**
CSPs	**–**	**129**	**8537**	**3964**	**242**	**–**
Real estate	**990**	**–**	**–**	**744**	**–**	**–**
Gambling sector (all types)	**1329**	**–**	**–**	**–**	**–**	**–**
Accountants / Auditors	**1638**	**418**	**–**	**–**	**–**	**–**
DPMS	**–**	**–**	**–**	**–**	**220**	**–**
NPOs	**3338**	**111**	**–**	**212**	**–**	**–**
Others (wholesale traders)	**–**	**–**	**–**	**–**	**–**	**397 1541 (wp)**
TOTAL	**7925**	**2269**	**8537**	**4920**	**1631**	**397**
	25.679 entities					

NOTES:
1) The supervision of NFIs started from 2009, based on the National Bank's announcement that it will no longer supervise (AML/CFT issues) the NFIs that are not registered in the Special Register

At that moment, the FIU had introduced in the MAINSET System (off-site supervision) all the NFIs which were outside of the AML/CFT supervision of the National Bank.
2) The supervision of the gambling sector in 2008 included other forms of gambling operators than casinos. Starting from 2008 (GEO nr. 53/2008), only the casinos remained under the FIU supervision (as the provisions of 3rd AML Directive)
3) The off-site supervision of other categories than DNFBPs (performed in 2013) is based on the conclusions of an analytical process performed within the FIU (financial analyses/supervision) which followed specific trading areas with a high amount of cash transactions. Up to this moment, 397 wholesale traders were already introduced in the off-site system MAINSET 2, and a number of 1541 are in the working process.
4) The number of entities which were off-site supervised by the FIU is somehow lower in 2009 and 2012, because the FIU has concentrated all the resources for having a clear picture of the AML/CFT level of compliance of the NFIs) and of the currency exchange offices.
As mentioned above, the supervision of some categories of NFIs was introduced under the FIU's responsibility in last part of 2008, so it was needed to start a comprehensive supervision cycle (off-site/on-site) in 2009 of all these entities.
In 2011, by modification of the Law no. 656/2012 (r), a specific category of exchange offices were put outside of the AML/CFT supervision of the National Bank. Thus, the FIU started in 2012 again a comprehensive supervision cycle (off-site/on-site) in order to have a clear picture of the compliance degree of these entities with AML/CFT obligations.

Table 48: Number of on-site inspections carried out by the Office

ON-SITE SUPERVISION FIU ROMANIA						
	2008	**2009**	**2010**	**2011**	**2012**	**2013**
NFIs	**-**	**228**	**32**	**-**	**59**	**-**
MVTs	**-**	**3**	**-**	**-**	**-**	**-**
Exchange offices	**3**	**2**	**1**	**-**	**26**	**-**
CSPs	**-**	**43**	**98**	**254**	**80**	**72**
Real estate	**88**	**-**	**-**	**3**	**-**	**-**
Gambling sector (casinos)	**34**	**-**	**16**	**-**	**-**	**5**
Accountants / Auditors	**76**	**84**	**8**	**-**	**-**	**-**
DPMS	**-**	**-**	**-**	**-**	**24**	**-**
NPOs	**43**	**20**	**-**	**-**	**-**	**-**
Others	**-**	**12**	**8**	**3**	**3**	**3**
TOTAL	**246**	**392**	**163**	**260**	**192**	**80**
	275.000	**1.550.000**	**625.000**	**1.565.000**	**1.075.000**	**856.000**
SANCTIONS (aggregate values)	**app. 1.356.000 Euro**					
	5.976.000 RON					

Controlled entities	**1333**
Ratio between warnings and fines	**app. 57%/43% (472 warnings /373 fines)**

NOTES
1) the currency ratio is 1 Euro = app. 4.4 Ron (lei)
2) Up to 2009, the FIU was concentrating the supervision activity mostly on off-site activities. For controlling activities, the FIU submitted requests to Financial Guard, based on off-site supervision results. For example, in 2008, the FIU submitted 531 requests to FG. With the establishment of the Supervision and Control Directorate (within FIU), the on-site inspections were made mostly by FIU's financial analysts. The number of request was considerable lowered, this option being used only for territorial sectors (resources issues). For 2008-2012, the overall number of these type of requests exceeds 1300.

1463. The pattern of supervision indicates the Office's views on risk. The evaluation team considers that resources at the Office should be increased so that all DNFBP sectors subject to its supervision are subject to supervision routinely. This point echoes comments made in section 3 of the report; during the on-site element of the evaluation the Office indicated that it needed more resources. The limitation on the Office to take away records only to determine the circumstances of suspicions of ML/FT (see section 3 of the report) also applies in relation to DNFBPs.

1464. The Office clearly devoted significant time and effort for training DNFBPs. It received significant credit for this activity from a number of bodies met by the evaluation team in Romania.

Auditing companies & Licensed auditors

1465. CAFR has almost five thousand active members. Four thousand two hundred individuals and nine hundred and seventy three legal persons (of whom at least fifty one per cent of associates must be a certified auditor) are members of CAFR. Exams must be passed before anybody can become a certified auditor. Auditors must be members of CAFR.

1466. The Office made it clear that CAFR and the Office have joint supervisory responsibility for the auditing sector. The Office was content there was no overlap between their functions. The Office proposes that it should cease to have involvement as an AML/CFT supervisor when it is satisfied that CAFR has sufficient resources to allow this to happen. In general terms the Office is satisfied about the level of AML/CFT compliance by auditors. Hence, it has not undertaken on-site inspections recently (the evaluation team notes no on-site inspections have been undertaken to auditors by the Office since 2010 and that auditors have not featured in the Office's off-site inspection programme since 2009).

1467. CAFR sees itself as a professional body rather than a supervisory body. It has the ability to issue measures on quality controls and look into reports of money laundering by auditors. CAFR's department for monitoring and professional competence covers all monitoring/professional matters, including AML/CFT. It prepares an annual on-site inspection plan and has a rating score for each firm. Three or four hundred members are inspected each year, including companies and sole traders. Some of these focus on AML/CFT compliance. Sample files are reviewed. Sanctions in relation to AML/CFT have not been issued by CAFR. The material produced by the Romanian authorities, dating back to 2010, indicates that the Office has applied no sanctions during that period to auditors.

1468. A MoU with the Office was signed in 2007. The Office is invited to each training event sponsored by CAFR (the questionnaire response notes these are joint events). There are also meetings between CAFR, the Office and members of CAFR. CAFR takes part in all or almost all seminars organised by the Office. The organisation also issues a magazine.

1469. CAFR has issued an official decision on AML/CFT procedures, which is published on its website – national law has been incorporated in the procedures. Copies of the procedures have not been provided to the evaluation team. CAFR advised that the decision and the procedures contain requirements and obligations. All members must have procedures which will enable them to identify money laundering and terrorist financing. CAFR has provided some text from Decision 182/2010, which specifies that the objectives of CAFR include two matters, namely (1) documenting whether an audit firm has adopted specific audit procedures to provide evidence on the possibility that entities for which audit services has been provided had contacts with persons suspected of terrorism or terrorist financing; and (2) documenting whether, following procedures, the audit firm identified cases falling in paragraph one and, if so, whether the competent authorities and CAFR were informed in a timely way. Members must have procedures in relation to customers. Procedures must be more thorough if money laundering risk is higher. Members can determine whether or not to continue with a client relationship. Each member must have an appointed individual who liaises with the Office. If procedures are not in place auditors' letters of recommendation will refer to this fact. Audited firms also have an obligation to appoint a contact point for dealings with the Office. The CAFR noted that it has issued an AML/CFT guideline (which date to 2010) – the evaluation team has not received a copy of these guidelines.

1470. CAFR has provided a copy of Decision 91/2007. Under the terms of this Decision auditors must put in place procedures which take account of the possibility that companies being audited may have business contacts with terrorists or persons financing terrorism. Any contact must be brought to the attention of the competent authorities by the auditor and CAFR advised within five days. A similar approach is required in relation to money laundering or terrorist financing. Finally, when planning audit procedures in relation to a company, the auditor must take account of whether the internal rules have been adopted by reporting entities for enforcing rules on preventing and fighting money laundering, customer due diligence and internal control where the entities not subject to prudential supervision.

1471. It is not clear to the evaluation team whether it is compulsory for auditors to have AML/CFT training.

Lawyers

1472. The questionnaire response states that, under Law 51/1995, the profession of lawyer is practiced by lawyers registered on the current list of the Bar Association to which he/she belongs. All of the 42 Bar Associations must be members of the UNBR. There are 20,646 active senior lawyers, 2,538 lawyers active as interns and 931 active law firms. The UNBR's role includes the implementation of decisions of the Lawyers' Congress, to solve problems of interest to the legal profession except for those which are the exclusive jurisdiction of the Congress, exercise control over the decisions of the UNBR's Permanent Committee, organise exams to test foreign lawyers, organize and coordinate the activity of the National Institute of Lawyers' Training and adopt decisions on all matters concerning the professional training of lawyers.

1473. The UNBR clearly advised the evaluation team in Romania that it did not undertake specific AML/CFT activities. However, the questionnaire response notes that under article 17 of Law 656/2002 the UNBR is a control and supervision body for lawyers. While the evaluation team was in Romania it was clear the Office considered the UNBR to have responsibilities under Law 656/2002. The UNBR signed a MoU with the Office in 2005. This MoU contains provisions on reporting obligations.

1474. The UNBR has not issued any instructions or circulars on AML/CFT although it does promote the Office's training initiatives by informing the forty two Bar Associations about the training. At the request of the Office the UNBR posts activities undertaken by the Office on its website. Lawyers are encouraged to participate in the Office's events. Four or five training events had been

organised before 2012. One or two joint training events were held in 2012. The UNBR also acts as an intermediary by sending questions raised by lawyers to the Office. It works with these Associations rather than individual lawyers. It is these Associations which carry out inspections. The UNBR confirmed that the 42 Associations do not have AML/CFT responsibilities. The UNBR was not aware of any lawyer being subject to AML/CFT sanctions.

1475. The information provided in the questionnaire response shows that the legal profession has not been included in the Office's off-site supervisory processes in the period since 2008. In addition, the profession does not feature as having been subject to on-site inspections by the Office during the period since the same year. The Office has also not issued sanctions to lawyers for AML/CFT failings.

Notaries

1476. All notaries must be members of the UNNPR. Notary activity may only be performed by notaries. The UNNPR has strategic functions to implement legislation; to ensure representation domestically and internationally; and to guide, support and control notaries public.

1477. The UNNPR confirmed it has the right to undertake on-site inspections. There are two main kinds, first a general inspection and, second, an inspection in response to a complaint. Compliance with Law 656/2002 is always reviewed. Targeted inspections are also performed. Notaries' perception of reporting has positively and substantially changed over time. When the law first came into force reporting was considered in a negative light because of events in Romania's then recent history.

1478. An MoU was signed between the Office and the UNNPR in 2004. The UNNPR sees the MoU as important to ensure enforcement of Law 656/2002. The questionnaire response described the MoU as being signed with a view to exchange data and information and organising meetings, colloquiums and seminars on the prevention of money laundering. The questionnaire response points to frequent contact between the UNNPR and the Office and that, under the MoU, the UNNPR can elaborate internal norms on policies and procedures related to customer due diligence, reporting, record keeping, internal control, communication management and preventing and combating suspicion.

1479. The UNNPR has adopted AML/CFT regulations (a copy of these has not been provided to the evaluation team). Rules and circulars have been disseminated to the offices of notaries in order to raise awareness of money laundering and terrorist financing (the evaluation team has not seen copies of these). Material on the Office website has been a reference point for the preparation of these materials. It has established a reporting procedure in which it receives STRs, which it then forwards to the Office.

1480. A MoU has also been signed with the Ministry of Internal Affairs in order to allow access to the police public records database; this access allows notaries to cross check documents presented by lawyers. The signing of the MoU was motivated by a problem with some individuals claiming false identities with false identification documents.

1481. The UNNPR can apply sanctions for AML/CFT failings. It advised that no sanctions have been applied in connection with AML/CFT as it has not seen any AML/CFT failings. Notaries have been sanctioned for other reasons; these sanctions have included expulsion from the UNNPR. Suspension is also available as a sanction.

1482. The UNNPR works with the Office to provide training to notaries on an annual basis. The evaluation team was advised that the Office was doing its utmost and provided constant support to the UNNPR. The evaluation team concluded that the UNNPR was well informed.

1483. Notaries do not appear to have featured in the Office's off-site or on-site supervision programme in the period since 2008. No sanctions have been issued by the Office to notaries.

Intermediation in real estate transactions

1484. There is no registration or licensing framework for real estate agents. However, agents are required to register with the trade registry and the Office become uses that information. Eighty eight on-site inspections were carried out in 2008 and three in 2011. Seven hundred and forty real estate agents were included in the Office's off-site supervision in 2011 but, prior to that, agents had been included in the Office's off-site programme in 2008 and the sector has not been included since 2011. With regard to sanctions, some warnings were issued in 2008.

1485. The NURE is not an AML/CFT supervisory authority. It signed an MOU with the Office in 2003. The Association then developed training in conjunction with the Office. The view was expressed by the Association that, even if the real estate market no longer poses a money laundering challenge, cooperation between the Association and the Office will continue to be good. The Office will be providing input to the general assembly of the NURE in June 2013 in connection with customer due diligence and the reporting of suspicion. The NURE also noted that it had been promoting the introduction of a hoper for new law in order to provide for standards for real estate agents. The Office and banks were also described as being active in promoting the introduction of a law. The real estate agents met by the evaluation team had not been subject to on-site inspections.

Provision of accounting services

1486. Accountants must be members of CECCAR. There are over 41,000 active accounting professionals of which over 26,000 are accounting experts and over 4,600 active chartered accountants. CECCAR was established under GO 65/1994. It grants and withdraws the right to exercise the profession of chartered accounting expert and chartered accountant. It also has the right to control the competence and morality of its members, together with the services they provide. CECCAR has forty two regional offices. Responsibility has been transferred to those offices with only a hundred of CECCAR's staff being based in Bucharest. CECCAR considers itself to be a SRB. Members must observe standards issued by CECCAR and are subject to quality control inspections. Each branch of CECCAR is responsible for undertaking a quality audit programme although the programme must be agreed by a designated senior body within the organisation.

1487. The Office made it clear that CECCAR and the Office have joint supervisory responsibility for the accountancy sector. The Office was content there was no overlap between their functions. The Office proposes that it should cease to have involvement as an AML/CFT supervisor when it is satisfied that CECCAR has sufficient resources to allow this to happen. In general terms the Office is satisfied about the level of AML/CFT compliance by accountants. Hence, it has not undertaken on-site inspections recently (the evaluation team notes no on-site inspections have been undertaken to accountants by the Office since 2010 and that accountants have not featured in the Office's off-site inspection programme since 2009).

1488. In the response to the questionnaire, the Romanian authorities advised that, under article 122 of regulation 466/2008 on the organisation and functioning of CECCAR, CECCAR is empowered to sanction disciplinary misconducts of its members in relation to violations of the regulation, violations of CECCAR's ethical and professional code of conduct, and other Norms and decisions

of CECCAR. Sanctions are regulated by part 1 of this regulation, together with part 1 of Regulation 305/2007 for the organisation and functioning of the disciplinary commission by the subsidiary councils and by the Superior Council of CECCAR. The sanctions available are warnings, written notifications, and suspension of the right to perform the activity of accounting expert and licensed accountant from three months to one year. In addition, the questionnaire response states that sanctions can be applied to institutions, directors and superior management for AML/CFT failings.

1489. In the questionnaire response (Recommendation 15 in section 3 and c.24.2), the Romanian authorities advised that CECCAR performs its control functions through experts or licensed accountants to whom it delegates responsibility. These persons check AML/CFT implementation and compliance by members of CECCAR. Findings of non-compliance or violations are communicated in writing separately to CECCAR in order "to be followed the remediation and performance measures taken by it" Designated persons at the level of the subsidiary have competence to control compliance with Law 656/20022 at the subsidiary level and report monthly to the management of the subsidiary, and perform checks at their own initiative, the decisions of the subsidiary or at the request of CECCAR. The delegate also reports monthly to CECCAR although it also appears that the delegate must inform the management of CECCAR within 48 hours from finding an AML/CFT weakness in a firm. CECCAR subsidiaries must provide access to records and documents relating to clients and their operations, including analysis undertaken by the institution to detect unusual or suspicious transactions, to staff with responsibility for customer due diligence, including persons designated pursuant to article 14(1) of Law 656/2002, as well as the external auditor of CECCAR and other authorities according to the law

1490. CECCAR signed a MoU with the Office in 2004. After the MoU was signed CECCAR issued AML/CFT guidelines. The fourth edition of the guidelines was issued in 2012; differing opinions were proffered by CECCAR at the meeting with the evaluation team as to the enforceability of the guidelines. The team has concluded they are not enforceable based on this discussion. A copy of the guidelines is provided to every chartered accountant. A professional standard (number 38) on AML/CFT has also been issued.

1491. The need for accountants to complete AML/CFT training is found under CECCAR's requirements for the continuing professional development programme. CECCAR has its own body of trainers. Training is also carried out in conjunction with the Office. Training material produced by CECCAR is disseminated via its website and newsletters. The branches also undertake regional activities.

1492. Accountants are ranked by CECCAR. More than 1,000 members are inspected annually. The evaluation team was left with some uncertainty whether or not these inspections included AML/CFT. A questionnaire is used by CECCAR for the inspections. Future goals include concentration of customer due diligence and the development of a risk questionnaire. Members are required to complete a questionnaire on the risk of each customer.

Provision of tax advice

1493. As indicated above the evaluation team did not meet either the SRB for tax advisers or a firm providing tax advice. In addition, the team has not been provided with information about the powers or activities of the SRB or the contents of any AML/CFT standards it may issue.

Dealers in precious metals and precious stones

1494. In the period since 2008 twenty four dealers in precious metals and precious stones were subject to on-site inspection by the Office in 2012.

Other

1495. The Office has undertaken supervision of entities providing company service provision.

1496. Forty three such entities were subject to off-site and on-site supervision in 2009.

1497. In 2010 ninety eight entities engaging in company service provider activities were subject to the Office's off-site and on-site programme. Twenty four warnings were applied and twenty two fines amounting to 355,000 RON.

1498. In 2011 two hundred and fifty four company service providers were subject to off-site and on-site supervision. One hundred and thirty eight warnings and ninety one fines totalling 1.535 million RON were applied.

1499. In 2012 eighty firms providing company service provider activities were subject to the Office's off-site and on-site supervision. The Office issued thirty six warnings and twenty three fines amounting to 420,000 RON.

1500. Seventy two company service providers were subject to off-site and on-site supervision by the Office in 2013 prior to the evaluation team's visit to Romania. Thirty eight warnings and forty fines totalling 706,000 RON were applied.

1501. Wholesale traders are also subject to supervision by the Office. The Office considered such traders had made a large number of STRs

1502. In addition, the Office has also undertaken on-site inspections to pawn shops – customer contracts are very small.

General

1503. The evaluation team has not received copies of all of the standards issued by the SRBs referred to above. It has also not been provided with copies of legislation giving the SRBs power to obtain information and documents, issue AML/CFT standards, undertake on-site inspections and to apply sanctions (and whether the sanctions apply to their own standards, or Law 656/2002 and underlying regulation or all of these). Information on the number of on-site inspections is also not known to the team. The evaluation team has noted that no sanctions have been applied by the SRBs for AML/CFT failings. Looked at objectively, this fact would suggest that as a whole the systems for monitoring and ensuring compliance are not sufficiently intense. In this context the level of sanctions when the Office is conducting on-site inspections is notable. As sanctions are only applied when the Office is actively involved in on-site supervision and the Office's involvement is not systematic, the evaluation team is of the view that the sanctions framework is not sufficiently systematic to be dissuasive. Where there is an SRB, the sector subject to the supervision of the SRB is potentially subject to two AML/CFT monitoring frameworks, i.e. the SRB and the Office. Looked at overall this system appears not to be wholly effective in light of the differing expectations of the UNBR and the Office and the comparative lack of information on the way the SRBs undertake their roles.

Recommendation 25 (rated NC in the 3rd round report)

1504. The main architecture of the AML/CFT framework is Law 656/2002, the underlying regulation and the Office Norms. The UNNPR, CECCAR and CAFR have also issued AML/CFT standards to the sectors for which they are responsible. The Office's Manual on the Risk Based Approach and Indicators of Suspicious Transactions provides guidance to DNFBPs. There is also routine guidance provided by the Office in relation to AML/CFT. It was apparent to the evaluation

team that the Office devoted significant time and effort to the provision of guidance and training, and that the SRBs were also significantly involved in this activity. The UNNPR, CECCAR and CAFR are also active in arranging training in conjunction with the Office, while the UNBR promotes training put on by the Office. It was especially noteworthy to the evaluation team how much the Casino Association and NURE embraced the training initiatives of the Office.

Adequacy of resources supervisory authorities for DNFBPs (R. 30)

1505. The comments made in relation to the Office as a supervisory authority in section three of the report also apply here. The Office requires significant additional staff and resources to undertake a systematic programme of off-site and on-site supervision throughout Romania.

1506. It is envisaged that NOG will have some two hundred staff in six months to a year. At the time of the evaluation, when it came into being, it had a very small number of staff. From an assessment perspective therefore NOG is currently significantly under resourced in terms of staff. Careful attention will also need to be paid to the type of staff recruited to supervise internet casinos and also to the IT infrastructure to support such supervision. Inter alia, staff will be expected to have qualifications in economics, law and public administration.

1507. CAFR has thirty five employees. The department of monitoring and professional control has eleven staff. CAFR trains its own staff through attendance at seminars organised by the Office.

1508. Four staff within CECCAR are responsible for AML/CFT. On-site team members must be trained at least once a year

Effectiveness and efficiency (R. 24-25)

1509. Analysis of the effectiveness and efficiency of the AML/CFT framework in relation to Recommendations 24 and 25 has been captured in the descriptive analysis of those Recommendations.

4.3.2 Recommendations and comments

Recommendation 24

1510. Bring internet casinos, types of poker not already covered and any (other) black market casino activities into NOG's supervisory framework, and within the AML/CFT framework and subject to AML/CFT supervision.

1511. Revise legislation administered by NOG to include explicit reference so that criminals are prevented from being beneficial owners of a significant or controlling interest in casinos, and those holding a management function, and that changes to these persons and casino operators are provided in advance to NOG, providing NOG with an opportunity to prevent persons occupying these roles at any time. There should be appropriate sanctions for failure to provide prior notice of changes. The evaluation team also recommends that the references should be expanded so that the test to be met is more of a fit and proper test rather than merely an absence of apparent criminality.

1512. Revise the gambling legislation to remove or revise the 30 day time frame for dealing with applications.

1513. Introduce a registration and AML/CFT oversight framework for trust and company service providers.

1514. Resolve the disconnect on the role of the UNBR where it appears to meet none of its responsibilities under section 24 of Law 656/2002 so that it fulfils its responsibilities under the law

1515. Develop a framework for those sectors, such as the legal and accountancy sectors, where the Office and the SRBs have joint monitoring roles so as to demonstrably show both bodies in relation to a sector are meeting their responsibilities and do so in a coordinated way. The UNBR is dealt with above but it is not clear to the evaluation team how the other sectors meet their responsibilities under section 24 of Law 656/2002.

1516. Review the robustness of approaches by SRBs to sanctions in light of absence of any AML/CFT sanctions by SRBs and, in any case, ensure consistent approach to the issue of sanctions.

1517. Apply the recommendations on sanctions made in respect of Recommendation 17 in relation to all DNFBPs (and the recommendations in Recommendation 29 on the powers of the Office).

1518. Finally, the authorities should take any other additional measures as appropriate to ensure that the system for monitoring the AML/CFT compliance of DNFBPs as well as the sanctions regime are applied effectively.

Recommendation 25

1519. Romania should develop more detailed and tailored guidance to assist all designated professionals to understand and effectively implement their preventive obligations.

Recommendation 30

1520. Increase resources at NOG as planned (paying attention to internet casino supervision) so as to carry out its supervisory functions effectively.

1521. Increase resources significantly at the Office so as to enhance the programme of on-site and off-site supervision so that all DNFBP sectors subject to its supervision are subject to supervision routinely. This recommendation does not seek to remove a risk based approach - it reflects the view of the evaluation team that the Office has too few staff to supervise the number and type of entities for which it has responsibilities.

1522. Furthermore adequate supervisory activity should be undertaken throughout the territory of the country.

1523. Additional training should be provided to the legal profession, which is not engaged as attendance at training events is poor.

4.3.3 Compliance with Recommendations 24 and 25 (Criteria 25.1, DNFBPS)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	• 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 casino has been licensed; • 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; **Effectiveness** • (1) Approach to sanctions by SRBs not robust when compared to the Office; (2) Limited numbers of off-site and on-site supervision of DNFBPs raise serious concerns about the effectiveness of the supervisory action; (3) Adequacy of resources not demonstrated and this impacts on the supervisory function.
R.25.1	**PC**	• 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.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Non-profit organisations (SR.VIII)

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

Summary of 2008 factors underlying the rating

1524. The deficiencies identified in the third round were the following:

- Romanian authorities do not periodically review the NPOs with the object to assess terrorist financing vulnerabilities.
- Insufficient measures are in place to ensure that funds or other assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations.
- No effective implementation of the essential criteria VIII.2.
- No regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in TF and new protective measures.

1525. Since the third round evaluation some measures have been taken by the authorities to improve the overall mechanism to ensure that NPOs are not misused for FT purposes. In particular, the supervision of NPOs by the FIU has commenced. However, a number of deficiencies remain.

5.1.1 Description and analysis

Legal framework

1526. The non-profit sector in Romania is mainly governed by Government Ordinance No. 26 of 2000 (GO 26) and the AML/CFT Law. The entities that may be set up for a non-profit purpose are associations, foundations and federations.

1527. GO 26 defines an association as a legal entity set up by three or more associates who share their material contribution, knowledge and gainful activity with a view to carrying out activities of general interest, the local community interest or the personal non-profit interest of the associates. The activities of association are not carried out for the financial gain of the associates. An association acquires legal personality upon registration in the respective territorial (court) register of associations and foundations. The statutory deed of an association consists of a constitutive act and a statute, which contain, *inter alia*, details on the associates, the purpose of the association, the duration, the rights and duties of the associates and the responsibilities of the management bodies of the association.

1528. A foundation is defined as a legal entity set up by one or more persons who establish a patrimony with the purpose of pursuing an objective of general or community interest. A foundation may be set up by an act *inter vivos* or *causa mortis*. A foundation acquires legal personality upon registration in the respective territorial (court) register of associations and foundations. The statutory deed of a foundation consists of a constitutive act and a statute, which contain, *inter alia*, details on the founder, the purpose of the foundation, the duration and the responsibilities of the management bodies of the foundation.

1529. Two or more associations or foundations may establish a federation, which acquires legal personality upon registration. The provisions governing the setting up, management and

administration of a non-profit association shall apply *mutatis mutandis* to a federation. Foundations and associations that set up a federation maintain their separate legal status, including their patrimony.

1530. The organisation and functioning of associations and foundations are also set out in GO 26. The internal organs of an association are the general assembly, the board of directors and the internal auditor. The general assembly governs the activities of the association and comprises all the associates. It is in charge of establishing the strategy and general objectives of the association. The board of directors is the executive arm of the association and executes the decisions of the general assembly. The appointment of an internal auditor is not mandatory if the association is set up by fifteen associates or less. In such cases, one of the associates will act as the internal auditor. The members of the board of directors cannot act as internal auditor. The internal audit function is essential for the proper functioning of the association as it monitors the manner in which the assets of the association are being administered.

1531. A foundation is managed and administered by a board of directors (at least three members), which is appointed by the founder at the establishment of the foundation. The board is responsible for establishing the strategy of the foundation and other acts necessary for the proper management of the foundation. A foundation is also required to appoint an internal auditor.

1532. Associations, foundations and federations may be dissolved lawfully or by a decision of the court. Foundations and federations may also be dissolved by a decision of the general assembly. It is worth mentioning that associations, foundation and federations may be dissolved by a decision of the court where the purpose of their activity has become illicit or the purpose is accomplished by illicit means.

1533. In 2005, associations and foundations were made subject to the full range of requirements set out under the AML/CFT Law. As such, they are required to establish internal controls to prevent ML/FT, including CDD, record-keeping and reporting measures. The NPO sector reported 2 STRs in 2008 and submit regularly CTRs (2008: 4 CTRs, 2009: 6 CTRs, 2010: 7 CTRs, 2011: 87 CTRs, 2012: 257 CTRs).

1534. NPOs are not allowed, according to the law, to establish "business relationships", based upon speculation and materialized in obtaining profit. According to Article 2, letter h), of the Law no.656/2002, republished, by "*business relationship*" covers the professional or commercial relationship related to the professional activities of the subject person and which, at the time of initiation, it is considered to be of certain length. The founding members and administrators are considered to be the "beneficial owners" of NPOs and beneficiaries of funds spent by the organization, according to its constitution purposes and objectives, are considered "clients". The constitutive act and the NPO's statute has to include the identification of the founding members as well as those who manage the organisation.

1535. A centralised database of all NPOs is maintained by the Ministry of Justice. All territorial court registries are required to notify the Ministry of Justice within three days from the registration of an association or a foundation within their register.

Review of adequacy of laws and regulations (c.VIII.1)

1536. Since 2009, representatives from the Romanian Intelligence Service (RIS), the authorities have indicated that they have been meeting on a regular basis to review the activities, size and other features of the non-profit sector in Romania and determine whether it is at risk of being misused for FT purposes. These meetings are held in pursuance of the objectives set out in the National Strategy to combat ML/FT (for further details refer to Recommendation 31).

1537. The Action Plan on implementing the objectives of the National Strategy of Prevention and Combating Money Laundering and Terrorism Financing, which was concluded by a Protocol signed on September 2010 included a number of measures to mitigate these risks. The objectives set out under the action plan follow closely the requirements (ex. Objective 1 - Direction of Action 1 (Analysis of the legal framework on prevention and combating money laundering and terrorism financing and, by case, identification of measure for its improvement), the authorities have include an analysis of the legal framework on association and foundations, which can be used in money laundering and terrorism financing activities, including from perspective of the requirements of FATF Special Recommendation VIII). A working group, formed of representatives of the FIU Romania, Ministry of Justice, Romanian Intelligence Service, and any other institutions and public authorities if needed are responsible for its implementation. However, on the basis of the information available, it appears that the review of the adequacy of the domestic laws and regulations that relate to NPOs has not yet been carried out, possibly due to the major legal reforms related to the Codes that was undertaken by Romania.

1538. RIS has developed in 2011 a study on vulnerabilities of NGOs for terrorism financing purposes. The evaluation team could not access this material as it is classified. The authorities have shared the following risks and aspects identified:

- Engagement of individuals within NGOs (members, supporters or persons belonging to the representative echelons - management, administration, etc..) in actions which promote financial support for terrorist entities, also unwittingly - without those involved at primary level (raising funds) knowing the purpose or the final destination/ terrorist implications;
- The possibility for terrorist elements to use NGOs physical infrastructure (offices, places used for meetings, places of worship etc.), human (the followers) or virtual (websites, forums) does not certify a specific association between terrorist entity concerned and the beneficiary. Entities engaging in this line can only be the materialization of opportunities identified/exploiting by the terrorist entities for fundraising without NGO's directly involvement in terrorist financing;
- The association with extremist elements or terrorist phenomenon in financing or any other aspect is avoided constantly by Islamic NGOs in Romania, since they are unwilling to get the attention of the Romanian authorities and/or to endanger their position/status benefiting on the national territory.

1539. It is not clear whether there are periodic reassessments of the sector's potential vulnerabilities to terrorist activities.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

1540. Action 7 of the Action Plan under Objective 1 requires authorities to take measures to increase the level of knowledge and public awareness regarding associated risks to money laundering and terrorism financing". Measures foreseen include common training actions for associations and foundations, in order to enhance their awareness of risks for TF purposes and the dissemination of the manual on indicators of suspicious transactions for the associations and foundations sector.

1541. Several outreach activities have been undertaken in the period from 2008-2009 with a number of NGOs, as there have been made subject to the AML/CFT Law. Within the Twinning Project 2007/19343.01.14 "Fight against money laundering and terrorism financing", activities were organised with the purpose to ensure guidance and training to a large category of reporting entities, especially, the non-financial institutions, among which there were included associations and foundations.

1542. The authorities also referred to the FIU's special webpage available online, where general information related to the financing of terrorism has been posted. The Manual on Risk-Based Approach and Suspicious Transaction Indicators issued by the FIU in 2010 makes reference to the risk of FT associated with NPOs. Since foundations and associations are subject to the AML regime, they are expected to take into account the contents of the manual in their daily operations.

1543. The evaluation team noted that a number of activities were undertaken a few years ago, that the references in the manual to FT risk within the NPO sector are brief and are not sufficient to assist the sector to adequately understand the issues involved. Consequently, though some action has been undertaken, they consider that additional efforts are required in this field.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

Information maintained by NPOs and availability to the public thereof (c.VIII.3.1)

1544. According to Articles 6 and 16 of GO 26, associations and foundations are required to submit a constitutive act and a statute to the registry of associations and foundations in order to acquire legal personality. The constitutive act and the statute shall contain the following information:

- Identification data of all the associates and founders;
- The name of the association/foundation;
- Headquarters of the association/foundation;
- The period of duration of the association/foundation;
- Initial patrimony of the association/foundation;
- The composition of the various management and administration bodies;
- The persons mandated to acquire the legal personality of the association/foundation;
- The signatures of the associates/founders;
- The explicit purpose and goals of the association/foundation;
- The manner in which associate status can be acquired or lost;
- The associates' rights and obligations;
- The categories of patrimonial resources of the association/foundation;
- The attributions of the management and administration bodies;
- The destination of the assets in case of dissolution.

1545. Information on associations and foundations is publicly-available on the website of the Ministry of Justice. The categories of information which are uploaded on the website are mainly the following:

- Name of the association/foundation;
- The registration number in the registry of the Ministry of Justice;
- The registration number in the territorial registry;
- Registration data;
- Position;
- Current status;
- Number and date of the court's closure;
- Country;
- Associates/Founders;
- The purpose of the association/foundation;
- The members of the Board of Directors;
- Partnerships with other organisations.

1546. In addition to the information available on the website of the Ministry of Justice, information may also be accessed without charges on the database of the Ministry of Finance on the reporting

of financial indicators. This database contains detailed information on the tax paid, the balance sheet, income, expenses, profits and losses of each registered association/foundation.

1547. Modifications to the constitutive and statutory documents are required to be registered, though the legislation does not appear to include any time limit for such registrations. Thus it remains uncertain that information available and accessible is correct and updated in all cases.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

1548. The sanctioning regime set out in the AML/CFT Law for compliance with AML requirements applies to associations and foundations. An analysis of the sanctioning regime may be found under Recommendation 17.

1549. The FIU is responsible for the supervision of NPOs for AML/CFT aspects. Starting in 2008, the FIU initiated a comprehensive cycle of supervision (off-site/on-site) of the activity of the foundations, including the supervising off-site of 3.661 of foundations and associations (2008-2013). Also, the FIU carried out 63 control actions of the activity performed by the associations and foundations, without being identified a significant level of non-compliance with the AML/CTF legal obligations. Following these control actions, a total number of 41 sanctions were applied, respectively 2 fines and 39 warnings. The FIU indicated that it has elaborated and implemented in 2010 an analytical system used in the offsite supervision, with general and specific risk indicators, including also an analytical process in relation to the legal and physical persons which are connected to the initial entities which are supervised (shareholders / associates and administrators). This system was used for the supervision of the foundations and associations selected.

1550. The Ministry of Finance has also indicated that all active foundations were subject to off-site supervision to date. The Ministry of Finance is responsible for imposing sanctions in respect of breaches to the accounting legislation, which includes the requirements related to the documentation that needs to be kept in this context.

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

1551. As mentioned previously, NPOs are required to be registered with the court registry in the territory where they are set up. The task of the court registry is to ensure that the information provided by NPOs is accurate and reliable. The territorial court registries are required to notify the Ministry of Justice all registered NPOs. The Ministry of Justice maintains a consolidated national registry of all associations and foundations registered in Romania. Information on associations and foundations is publicly available on the website of the Ministry of Justice.

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

1552. As mentioned previously, NPOs are required to be registered with the court registry in the territory where they are set up. The territorial court registries are required to notify the Ministry of Justice all registered NPOs. The Ministry of Justice maintains a consolidated national registry of all associations and foundations registered in Romania. Information on associations and foundations is publicly available on the website of the Ministry of Justice.

1553. The Accounting law (article 1 of Law 82/1991 as amended and completed) requires all non-profit legal persons to organise and carry out financial accounting. Article 28 paragraph 6 requires that they prepare an annual financial statement, including a balance sheet and income account exercise. The Order of the Minister of Public Finance no. 1969/2007 on the approval of accounting regulations for the legal persons without patrimonial purpose provides further in art. 3

that legal persons without patrimonial purpose shall prepare annual financial statements including the balance sheet and exercise as well as explicative notes to the annual financial statements. All financial transactions must be based on supporting primary documents that must contain the following: a) the document name b) name and address of the legal entity carrying out the document, c) the number of the document and the date it was made, d) parties involved in commercial operation (where applicable) e) content of economic / financial operation (collection, payment) f) the quantity and value of the transaction undertaken); g) the full names and signatures of all persons who made the supporting documents h) other details to ensure complete recording of transactions. Political parties perform all financial transactions in the corporate chart of accounts for legal persons without patrimonial purpose, namely "Class I - capital accounts, contributions and reserves", "Class II - asset accounts", "Class III - Inventories and production in progress ", Class IV - party accounts", "Class V - treasury accounts", "Class VI - expense accounts", "Class VII - accounts of income", "Class VIII - special accounts". The level of details required under the legislation would cover the requirements of criterion VIII.3.4.

1554. According to art. 25 of the Accounting Law: (1) The compulsory account books and the documents in proof underlying entries in the financial accounting shall be kept in the archive for 10 years, starting from the date of the closing of the financial year during which they had been drawn up, except for payrolls, which shall be kept for 50 years. (2) By way of exception from the provisions of paragraph (1), an order of the ministry of economy and finance may establish, for well-grounded reasons, the account books and the documents in proof that must be kept for 5 years.

1555. Under the AML/CFT Law, the NGOs are considered reporting entities. They are thus also subject to the CDD and record keeping requirements set out under the law.

Measures to ensure effective investigation and gathering of information (c.VIII.4)

1556. The measures referred to under Recommendations 27 and 28 are of general application and are available to law enforcement authorities in the course of an investigation concerning an NPO.

Domestic co-operation, coordination and information sharing on NPO-s (c.VIII.4.1); Access to information on administration and management of NPO-s during investigations (c.VIII.4.2); Sharing of information, preventative actions and investigative expertise and capability, with respect to NPO-s suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

1557. The framework for cooperation and coordination between national stakeholders in the area of AML/CFT is provided through the National Strategy on Preventing and Combating Money Laundering and Terrorism Financing, a document approved by the Superior Council of State Defense's Decision 72 (2010). In September 2010, Romanian authorities with competences in this area signed the Protocol on Organization of Cooperation for Implementing the National Strategy of Prevention and Combating Money Laundering and Terrorism Financing, including the Action Plan annexed to it with measures, deadlines, responsible institutions and evaluation indicators.

1558. Cooperation on matters concerning NPOs involves the Romanian Intelligence Service, the FIU and the Ministry of Justice. As mentioned previously, these three authorities meet on a regular basis to discuss issues relating to NPOs and FT risk. In 2013, the authorities had 4 meetings covering these aspects. Detailed information on NPOs is publicly-available on the website of the Ministry of Justice and the Ministry of Finance.

1559. In terms of Article 8(1) of the AML/CFT Law, where following the analysis of a suspicious transaction, the FIU ascertains the existence of solid grounds of FT (including where a NPO is involved) it immediately notifies the General Prosecutor's Office attached to the High Court of Cassation and Justice (GPO) and the Romanian Intelligence Service. The FIU has made several

disseminations of cases involving NPOs (2008: 24; 2009: 9; 2010: 6; 2011:6; 2012 – 14; until July 2013: 12). One of the cases submitted in 2012 referred to an NPO involved in activities suspected of TF.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

1560. The FIU serves as a contact point to respond to international requests for information regarding NPOs, and in particular in respect of NPOs suspected of FT. Such requests are treated as urgent requests according to internal procedures in place. During 2012-2013, the Inter-Institutional Cooperation and International Relations Directorate, answered to 4 requests for information received from the foreign FIUs.

Effectiveness and efficiency

1561. During discussions on-site, the authorities pointed out that considerable information was available on NPOs in Romania. Nevertheless, it was difficult to review such information due to the large number of registered NPOs. This also created difficulties in their supervision. The authorities noted however that the off-site supervision conducted so far has not revealed any particular issues of concern. Overall, the authorities did not consider the NPO sector in Romania to be vulnerable to the risk of FT. This contrasts, to some extent, with accounts provided by the RIS of NPOs having potential links to terrorist groups outside of Romania.

5.1.2 Recommendations and comments

1562. Romania should review the adequacy of the legal framework applicable to NPOs to cover the requirements set out in SR.VIII and include adequate measures to ensure accountability and transparency, including measures that information on the identity of persons who own, control or direct NPOs activities (including senior officers, board members and trustees) is accessible and up to date.

1563. Romania should conduct period reassessments by reviewing new information on the NPO sector's potential vulnerabilities to terrorist activities.

1564. Romania should develop an effective outreach program with the NPO sector, including regular activities, and covering TF risks, awareness raising activities on the scope and methods of abuse of NPOs, typologies and emerging trends.

1565. Romania should ensure that it has mechanisms to undertake an effective supervision and monitoring of the NPO sector, including applying sanctions for violations. Such measures should particularly be taken in respect of NPOs which control significant portions of the financial resources of the sector and substantial shares of the sector's international activities.

5.1.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• 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; **Effectiveness** • Effectiveness of implementation not established in all cases, and partial oversight by supervisory authorities regarding this sector.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31 and R. 32)

6.1.1 Description and analysis

Recommendation 31 (rated LC in the 3rd round report)

1566. The report on the third round evaluation of Romania's AML/CFT system in 2008 produced a LC rating for Recommendation 31 based on the following underlying factors:
- In the AML field mechanisms of policy coordination of the key stakeholders should be further developed;
- Mechanism for cooperation and coordination in place but appear not to be effective in ensuring that all necessary cooperation and coordination happens in practice. Arrangements for supervision and sanctioning need greater coordination.

Effective mechanisms in place for domestic cooperation and coordination in AML/CFT (c.31.1)

1567. The framework for coordination between national stakeholders in the area of AML/CFT is provided through the National Strategy on Preventing and Combating Money Laundering and Terrorism Financing, a document approved by the Superior Council of State Defense's Decision 72 (28 June 2010). In September 2010, Romanian authorities with competences in this area signed the Protocol on Organization of Cooperation for Implementing the National Strategy of Prevention and Combating Money Laundering and Terrorism Financing, including the Action Plan annexed to it with measures, deadlines, responsible institutions and evaluation indicators.

1568. The national strategy provides a synthesis of the AML/CFT objectives to be achieved in Romania through policy and institutional measures. It also sets out the actions of each authority competent in the area of AML/CFT to ensure that a unitary approach is implemented by all concerned. The national strategy is the first of its nature in Romania for AML/CFT issues, having the aim of establishing a comprehensive and uniform approach to prevent and combat ML/FT.

1569. According to the national strategy, the FIU is the central body within the framework of cooperation concerning AML/CFT issues. The Romanian FIU receives notifications from reporting entities, prudential supervisory authorities, public institutions (Financial Guard, National Customs Authority, General Inspectorate of Romanian Police and General Inspectorate of Border Police), national bodies and other departmental intelligence structures and foreign FIUs. The FIU disseminates notifications to the Romanian Intelligence Service, as the body responsible for the prevention of terrorism, and the General Prosecutor's Office.

1570. The objectives set out in the national strategy are aimed at enhancing the national capacity to prevent and combat ML/FT, the optimization of tools used by law enforcement authorities, the strengthening of specialized skills needed in the area and the consolidation of Romania's role in the international sphere.

1571. With a view to executing the national strategy, an action plan was set out, which includes a series of measures to be taken, clear deadlines, responsibilities allocated to competent authorities and evaluation indicators. The action plan was approved by a protocol signed by the Ministry of Justice, the Public Ministry - General Prosecutor's Office by the High Court of

Cassation and Justice, the Ministry of Internal Affairs - General Inspectorate of Romanian Police, Romanian Intelligence Service, Foreign Intelligence Service, National Agency for Fiscal Administration, Financial Guard, National Bank of Romania, National Securities Commission, Insurance Supervisory Commission, Private Pension System Supervisory Commission, and the National Office for the Prevention and Control of Money Laundering. For the implementation and monitoring of the action plan, an Inter-Institutional Working Group was created, comprised of specialists appointed by relevant authorities. The Group meets half-yearly, at the invitation of the Romanian FIU, which also acts as the technical secretariat, or every time it is necessary, at the request of one of the signatories to the Protocol. On an annual basis the Working Group assesses the level of implementation of the action plan. The action plan elaborates further on the measures to be taken to implement the broad objectives contained in the national strategy. This includes strengthening mechanisms for cooperation between the various authorities involved in the prevention of ML/FT in Romania.

1572. Though it was indicated that the Group meets on a regular basis, the evaluation team had doubts as to whether the monitoring of the implementation of the action plan is indeed closely followed upon, particularly as some of the action points have not been implemented as provided for under the action plan.

FIU cooperation with other authorities

1573. The FIU signed cooperation protocols with law enforcement (and other public) authorities, supervisory authorities, intelligence services and professional associations representing reporting entities. The authorities have reported that these protocols enabled to develop cooperation covering the participation as partners/beneficiaries to the implementation of certain EU funded projects in the AML/CFT field, to perform common inspection plans, agree on a uniform interpretation of the AML/CFT legislation, and to agree upon the modifications to be made to the AML/CFT legislation in the reference period.

1574. The FIU indicated that it has been active in cooperating with judicial, prosecutorial and law enforcement authorities to achieve the goals set out in the action plan. The General Prosecutor's Office, as the main beneficiary of FIU disseminations, has been the focus of increased cooperation by the FIU. The FIU referred to a number of initiatives undertaken in conjunction with the GPO in order to improve the effectiveness of the dissemination process and the quality of analytical reports. A protocol of cooperation was signed in January 2009 by the General Prosecutor and the President of the FIU for the purpose of organising regional seminars on issues related to prevention of ML/FT. The purpose of the training was to explain the analytical process of the FIU, the type of information held by the FIU, the means by which law enforcement authorities may obtain information and to identify the problems encountered by prosecutors in the investigation of ML/FT offences. In addition, meetings were held on a regular basis between the FIU and the GPO to discuss money laundering typologies identified by the FIU and issues relating to specific cases notified to the GPO by the FIU. Notwithstanding the various endeavours undertaken by the FIU and the GPO in resolving the issues which have a negative impact on the dissemination process, it is evident, from the results, that further efforts are needed. During the on-site mission, it emerged that the synergy needed between the FIU and the GPO to achieve concrete results is lacking, although the reasons were unclear.

1575. With respect to cooperation with other law enforcement authorities, reference was made to the following activities:

- meetings were held with representatives of law enforcement authorities (General Prosecutor's Office by the High Court of Cassation and Justice, the General Inspectorate of the Romanian Police – Fraud investigation Directorate, Directorate for combating organised crime, Financial Guard) to discuss issues of a legal nature which hinder the

effective investigation and prosecution of ML/FT case, establish a common interpretation and application of the provisions of the AML/CFT Law, and improve the quality of information sharing;

- meetings with representatives of the law enforcement authorities to enhance cooperation with a view to increasing the number of indictments and convictions of ML/FT offences;
- the FIU established a specific database with typologies and financial investigative techniques used for documentation of ML/TF cases. In the second quarter of 2011, the conclusions were put at the disposal of the law enforcement authorities in order to speed up the finalisation of the cases submitted by the FIU to the GPO. Furthermore a common analysis was undertaken of the decisions taken on the basis of the FIU's notifications, in order to adapt the FIU's risk evaluation matrix and the methodology for operational analysis. This has translated into an increased quality of the notifications submitted by the FIU to the GPO and an increase in the number of responses to the requests formulated by the GPO to the FIU in order to assist in the ML investigations.
- participation by the FIU at projects implemented by law enforcement authorities (Ministry of Justice, General Prosecutor's Office by the High Court of Cassation and Justice, National Anticorruption Directorate, Ministry of Internal Affairs) to improve the internal procedural framework of the AML/CFT system and the creation of a legal and institutional framework on recovering the proceeds of crimes.
- bilateral programmes on the exchange of experience and good practices (National Agency of Integrity, National Commission of Securities, General Prosecutor's Office, General Inspectorate of Romanian Police, Financial Guard, National Agency of Fiscal Administration)

1576. The FIU cooperated with supervisory authorities and professional associations to increase reporting entities' awareness of AML/CFT obligations. Training sessions were organised regularly (in total 140) between the FIU and other supervisory authorities and professional associations to train reporting entities. Reference was made to meetings held on a regular basis between the FIU and other supervisory authorities to identify the difficulties faced by the financial sector in the implementation of AML/CFT measures and propose solutions to overcome such difficulties. The FIU also cooperated with the Chamber of Financial Auditors to produce two research studies entitled 'Study on risks of Terrorism Financing Risk' and 'Preventing and Combating Terrorist Financing and Money Laundering: Risk-based Approach'. The FIU and the Chamber of Financial Auditors held two seminars to present these studies to auditors. It was also mentioned that the regular meetings have led to an analysis of the sectorial norms drawn up by the supervisory authorities and professional associations and common analysis were made of the compliance aspects and requirements for training dedicated to areas of higher risk.

1577. The evaluators noted that despite the FIU's initiatives to enhance cooperation with supervisory authorities and professional associations to strengthen the supervision of financial institutions and DNFBPs for AML/CFT purposes, further efforts are needed. It was observed that supervisory authorities and professional associations were not always receptive to initiatives undertaken by the FIU and did not appear to always support measures proposed by the FIU. In particular, the sharing of information and on-going cooperation between the NBR and the FIU was found to be lacking in substance, despite the importance of the banking sector in Romania. As a result, an adequate understanding of the AML/CFT risks and vulnerabilities in the banking and non-banking sectors and the sectors' implementation of the AML/CFT framework in practice was found to be absent.

1578. It is also noted that the FIU has adopted an Operational Strategy for the Office for the period 2013-2016, which includes also various measures to strengthen the mechanism for cooperation

with law enforcement authorities, supervisory authorities and with the financial and non-financial institutions.

Supervisory authorities' cooperation with other authorities

1579. All financial supervisory authorities have signed a cooperation protocol with the FIU and are represented on the Working Group set up for the implementation of the national strategy's action plan. According to Article 5 of GEO No. 25/2002, the NSC can exchange information with the NBR, the Insurance Supervisory Commission and other public authorities and can conclude agreements with such entities to establish the modalities for the exchange of information. Pursuant to Article 29 of GEO No. 50/2005 the Private Pension System Supervisory Commission shall cooperate with other institutions and authorities. The law also empowers the Commission to enter into cooperation protocols with other institutions. The Insurance Supervisory Commission can exchange information with other authorities in terms of the provision of law No. 32/2000. Despite the existence of the legislative framework for national cooperation, there seems to be little cooperation and coordination between the supervisory authorities on a bilateral basis for the development and implementation of policies and activities to combat ML/FT.

1580. Professional associations representing certain DNFBPs (lawyers, notaries, accountants, auditors, and tax consultants) have all signed cooperation protocols with the FIU and are also represented on the Working Group.

1581. The evaluators also noted that there is scant coordination and cooperation between the various authorities involved in the supervision of casinos. It was noted that the changes brought by GEO no. 20/2013 (March 2013) shortly before the visit, and resulting on the establishment of the National Office for Gambling Activities set out new forms of cooperation for this sector which, if effectively in place, should address some of the concerns noted above.

Law enforcement authorities' cooperation with other authorities

1582. The General Inspectorate of Police signed a Memorandum of Understanding with the FIU, the National Bank of Romania, the National Customs' Authority, the Border Police General Inspectorate, the National Securities' Commission, the Romanian Association of Banks, the Insurance Supervision Committee.

1583. The measures undertaken by the General Inspectorate of Police aimed at strengthening cooperation were the following:

- regular meetings between the FIU, the Public Ministry and the Ministry of Administration and Internal Affairs, with a view to identifying the challenges in the investigation of ML cases and to propose measures for the improvement of the legislative and institutional frameworks;
- establishment of task forces involving prosecutors, police officers and FIU financial analysts to take timely decisions in ML cases.

Financing of Terrorism

1584. In addition to the national strategy, it is worth noting that the Centre for Anti-terrorist Operative Coordination (CCOA)(set up within the Romanian Intelligence Service) coordinates activity to prevent and combat terrorism in Romania. The authorities represented on the Inter-Institutional Working Group responsible for implementing the national strategy have each appointed a permanent representative within the CCOA. The CCOA was set up in 2005 and has the following tasks:

- to coordinate the activities carried out within the National System for Preventing and Combating Terrorism, through the appointed representatives of public authorities and institutions;
- to ensure the operative exchange of data and information amongst public authorities and institutions with respect to the terrorist activities;
- to integrate data and information, with a view to establishing and taking the necessary measures;
- to monitor terrorist activities and operatively inform the relevant authorities and institutions which are part of the National System for Preventing and Combating Terrorism;
- in cases of terrorist crisis, the CCOA shall ensure the logistical and operational support of the National Center for Anti-terrorist Action, which shall be functionally integrated in the component of the general crisis management mechanism and shall be organised in compliance with the legal provisions;
- to send data and information to public institutions and authorities which are part of the National System for Preventing and Combating Terrorism, to take the required measures in compliance with the law.

1585. With respect to international sanctions, the Inter-ministerial Council was set up in 2008 to establish the general cooperation framework for the application of international sanctions in Romania. The inter-institutional Council is made up of representatives of the Chancery of the Prime-Minister, the Ministry of Foreign Affairs, the Department for European Affairs, the Ministry of Justice, the Ministry of Internal Affairs, the Ministry of Defence, the Ministry of Public Finance, the Ministry of Economy, the Department of Foreign Trade which reports to the Ministry of Small and Medium Enterprises, Trade, Tourism and Liberal Professions, the Ministry of Communications and Information Technology, the Ministry of Transports, the Romanian Intelligence Service, the Foreign Intelligence Service, the National Agency for Export Control, the National Bank of Romania, the National Securities' Commission, the Insurance Supervision Committee, the Committee for the Supervision of the Private Pension System, the National Office for Preventing and Combating Money Laundering. Based on the nature of international sanctions, the Council may request other authorities or public institutions to be represented at its meetings.

1586. The Council is coordinated by the Ministry of Foreign Affairs, through the manager of the Office for the Implementation of International Sanctions, whereas the representatives of public authorities and institutions participating at the meetings of the Council shall be appointed by the managers of these institutions and shall have a license to access classified information, according to the level of classification of information used at the meetings of the Council, according to Law 182/2002 on the protection of classified information, with its subsequent amendments and supplements.

1587. The Council has the following tasks:

a) to ensure the consultation framework with a view to harmonizing the activities of the Romanian public authorities and institutions in the area of implementing international sanctions;
b) to ensure the consultation framework amongst Romanian public authorities and institutions to support Romania's position with respect to the adoption, amendment, suspension or end of international sanctions;
c) to develop and issue consultative opinions, at the request of the seized competent authority, to represent the basis for decisions related to the application of international sanctions;

d) to present to the Prime-Minister and the President of Romania recommendations on the feasibility of absorbing international non-binding sanctions in the national legislation;

e) whenever necessary, but at least once a year, to present information reports concerning the measures adopted by Romania with a view to implementing international sanctions to provide support to the reports of the Prime-Minister, provided under Article 6;

f) to ensure, whenever possible, the information of natural persons and legal entities owning or controlling assets, with respect to the imminent adoption of the international sanctions provided under Article 1, to enable their timely implementation right after their adoption.

1588. The Council is convened whenever necessary by the Ministry of the Foreign Affairs at the request of any of its members. The Ministry of Foreign Affairs provides the secretariat for the Council.

Additional element – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBPS)(c. 31.2)

1589. The national strategy includes as one of its objectives the strengthening of cooperation with the private sector by enhancing the level of training and awareness of reporting entities. However, there appears to be no mechanism in place for consultation between competent authorities and the financial and DNFBP sector, though the authorities indicated that some of the consultations took place in the context of trainings and participation by FIU representatives and sectors' representatives to various internal meetings, events, annual congresses etc.

1590. It is noted that the FIU has adopted an Operational Strategy for the Office for the period 2013-2016, which includes also various measures to strengthen the mechanism for consultations between the FIU and the financial sector and DNFBPs.

Review of the effectiveness of the AML/CFT system on a regular basis (Recommendation 32.1)

1591. Pursuant to the national strategy, the Inter-Institutional Working Group is required to review the effectiveness of the systems for combating ML/FT in Romania. In particular, the Working Group's tasks include the analysis of the legal framework and identifying issues which require improvement, the analysis of the efficiency of the activities for the prevention of ML/FT, and the analysis of cooperation mechanisms.

1592. Although the framework has been set up, the authorities provided little information regarding the actual process for a comprehensive review of effectiveness of the AML/CFT system in Romania. There appears to be no overall review of the results achieved in terms of reports filed with the FIU, notifications disseminated by the FIU to the GPO, investigations, prosecutions, convictions of ML/FT, confiscation of assets, etc. It is also evident that statistics maintained by the various competent authorities are not assessed in a holistic view. As a result, it is difficult for the Romanian authorities to identify the weaker links and establish an overarching policy to improve the system.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1593. In the absence of information, the evaluation team cannot conclude that R.30 requirements are met for Policy makers.

Effectiveness and efficiency

1594. In the period under review, the FIU has been very active in an attempt to significantly improve national cooperation in the area of AML/CFT. The FIU should certainly be commended for all the initiatives undertaken. The GPO has also been very receptive to proposals by the FIU to

enhance cooperation. Nevertheless, the system for coordination and cooperation in Romania appears not to be yet fully functional. As mentioned previously, it is clear that further efforts are required to align the activities of the FIU and the GPO to maximize results in the area. Furthermore, coordination between the activities of the various law enforcement authorities involved in the investigation and prosecution of ML/FT cases needs to be reviewed and strengthened. Moreover, it is the view of the evaluators that the commitment of the supervisory authorities to FIU initiatives has sometimes been lacking.

6.1.2 Recommendations and Comments

Recommendation 31

1595. Romania should make greater use of existing coordination mechanisms. At the general coordination level, it should enhance the role of the Working Group by undertaking regular reviews of the AML/CFT strategic direction in the light of risks identified, examining jointly the issues which hinder the effectiveness of the AML/CFT system in Romania and as appropriate, making necessary adjustments to applicable policies.

1596. As regards operational co-operation, the current mechanisms for co-operation between competent authorities and their effectiveness should be reviewed and additional measures taken, on a bilateral basis, to ensure that they are fully used.

1597. Competent authorities responsible for the implementation of the national strategy should actively and regularly cooperate with the FIU in a significant and meaningful manner. They should seriously commit to. Romania should also ensure that full use is made of the various members of the FIU's Board which are nominated by the various competent authorities, to facilitate and support such co-operation/coordination between the FIU and the respective institutions, in their areas of competence.

1598. Romanian authorities should continue increase mechanism for consultation between competent authorities, financial institutions and, in particular, DNFBPs, in order to involve better these sectors in the requirement to declare to the FIU, as concerns of effectiveness are raised.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

1599. Romania should ensure that the mechanism in place is effectively reviewing the Romanian AML/CFT system and its effectiveness on a regular basis. The system should, at least, involve a mechanism to collect all relevant statistics to enable the authorities to establish a comprehensive view of the ML/FT situation in Romania and identify the issues which require further attention by the authorities.

1600. One of the objectives of the national strategy for the prevention of ML/FT set out in 2010 was to intensify the identification and assessment of ML-FT risks, trends and vulnerabilities in Romania. A further step could be to aim at ensuring the risks are mitigated effectively, by an appropriate allocation of resources and revision of the legislation when identified as insufficient.

Recommendation 30 (Policy makers – Resources, professional standards and training)

1601. The authorities should ensure that policy makers in the field of AML/CFT are adequately structured and funded.

6.1.3 Compliance with Recommendations 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**LC**	**Effectiveness** • (1) Co-operation mechanisms in place do not appear to be fully effective; (2) inadequate coordination between the various law enforcement authorities responsible for the investigation and prosecution of ML/FT; (3) Cooperation between supervisory authorities and FIU needs improving.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

Recommendation 35 (rated LC in the 3rd round report) & Special Recommendation I (rated PC in the 3rd round report)

Summary of 2008 factors underlying the rating

1602. The deficiencies identified in the third round regarding SR I were the following:

- TF offence should be amended in order to ensure fully cover of the Terrorist Financing Convention.
- A precise mechanism for freezing of funds related to terrorist financing should be established.

1603. The situation with respect to the FT offence remains the same since the third round. As far as the FT freezing mechanism is concerned, legislation has since been adopted, although further measures are still required.

6.2.1 Description and analysis

Ratification of AML Related UN Conventions (c. R.35.1 and of CFT Related UN Conventions (c. SR I.1)

1604. As noted already at the time of the third evaluation round, Romania has ratified through Law no. 118/1992 the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). It has ratified through Law 565/2002 the United Nations Convention against Transnational Organised Crime (the Palermo Convention) and the subsequent protocols. Romania signed the Terrorist Financing Convention on 26 September 2000 and ratified it on 9 January 2003 (through Law no. 623/2002).

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. 35.1)

1605. Romanian legislation complies with many provisions of the Vienna Convention. ML is criminalised in line with the Vienna Convention, confiscation and seizing measures are available for all offenses under the convention, with a few deficiencies, and the power of law enforcement to identify and trace property that is or may become subject to confiscation is not hindered by financial or professional secrecy. Mutual legal assistance measures in respect of drug related money laundering offenses appear to be adequate. Law 302/2004 regarding international judicial cooperation in criminal matters (as republished in 2011) covers also extradition and transfer of proceedings.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c.35.1)

1606. Romanian legislation has implemented the Palermo Convention requirements through law 39/2003. ML offenses involving organised crime are criminalised in line with the Palermo Convention. Liability of legal persons is also covered. The legislation covers also aspects related to joint investigative techniques, joint investigations, protection of witnesses. Specific MLA provisions are covered in Law 39/2003 on the prevention and combat of organised crime, as well as Law 302/2004 regarding international judicial cooperation in criminal matters (as republished in 2011). Extradition and transfer of proceedings is equally covered. Preventive measures and a supervisory regime are in place for banks and non-bank financial institutions. The legal framework setting out the various obligations is subject to a number of shortcomings as discussed under Section 3 of the report (see aspects raised in respect of customer due diligence and STR reporting requirements). An FIU has been established. Romania has an EU cross-border declaration system.

Implementation of the Terrorist Financing Convention (Articles 2-18, c.35.1 & c. SR. I.1)

1607. The provisions of the FT Convention relating to the criminalisation of FT were implemented, to some extent, through the adoption of Law 535 of 2004 on preventing and fighting terrorism and certain provisions of general application in the Criminal Code and the Code of Criminal Procedure. In combination, these provisions implement many but not all the FT Convention requirements as described in SR II[175]. Preventive measures are still subject to a number of shortcomings as discussed in Section 3 of the report. TF is an extraditable offence.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

1608. As discussed under Special Recommendation III, the legal framework which provides for the implementation of UNSCR 1267 and 1373 is set out under Government Emergency Ordinance 202 of 2008 on the implementation of international sanctions and the applicable European Union legal instruments. Notwithstanding the existence of an administrative system for the freezing of terrorist funds in relation to UNSCR 1267, issues remain regarding the implementation of UNSCR 1373 (notably guidance, supervision and other issues as identified in the discussion under SR III).

Additional element – Ratification or Implementation of other relevant international conventions

1609. Romania has ratified a number of Council of Europe Conventions, including the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg Convention) and the 2005 Council of Europe Convention on Laundering, search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention).

6.2.2 Recommendations and comments

1610. Romania should take additional measures, as relevant, to implement fully the Vienna and Palermo Convention.

1611. Romania should take additional measures to implement fully the CFT Convention, in particular by addressing the shortcomings identified in SR.II

1612. Romania should address the shortcomings identified in relation to the implementation of UNSCR 1373.

[175] The situation has changed substantially as of February 2014.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• 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.
SR.I	**PC**	• Shortcomings remain in the implementation of the FT Convention; • Shortcomings remain in the implementation of UNSCR1373.

6.3 Mutual legal assistance (R. 36, SR. V)

Recommendation 36 (rated LC in the 3rd round report) & Special recommendation V (rated LC)

1613. In the third round MER, both Recommendation 36 and Special Recommendation V were rated LC due to the shortcomings of the domestic legislation in relation to the criminalisation of the TF offence which could have impacted on mutual legal assistance based on dual criminality.

Legal framework

1614. .As it was already set out in the 3rd round MER, Romania has ratified all relevant international conventions within the scope of R.36, both at international and European level, including the relevant conventions of the Council of Europe in the field of international cooperation in criminal matters, and the Strasbourg (CETS 141) and Warsaw Conventions (CETs 198)[176] . Romania has taken measures to implement the relevant European Union framework decisions in this field, and has implemented since 2008 the Framework Decision 2003/577/JHA on freezing orders, the Framework Decision 2005/214/JHA on financial penalties and the Framework decision 2006/783/JAI on confiscation.

1615. In addition to international agreements ratified and bilateral agreements concluded with various States, the international judicial cooperation in criminal cases is still regulated by Law no. 302/2004 on international judicial cooperation in criminal matters[177], in conjunctions with special

[176] Since the last evaluation, Romania was assessed by the Conference of the Parties to CETS 198 in June 2012. For further details, the full report is available at www.coe.int/cop198

[177] Republished in accordance with Article III of Law no. 222/2008 amending and supplementing Law no. 302/2004 on international judicial cooperation in criminal matters, published in Official Gazette of Romania, Part I, no. 758 of 10 November 2008, re-numbering the legal provisions.
– Law no. 302/2004 on international judicial cooperation in criminal matters was published in Official Gazette of Romania, Part I, no. 594 of 1 July 2004, and was subsequently amended and supplemented by:
– Law no. 224/2006 amending and supplementing Law no. 302/2004 on international judicial cooperation in criminal matters, published in Official Gazette of Romania, Part I, no. 534 of 21 June 2006;
– Emergency Government Ordinance no. 103/2006 on certain measures aimed at facilitating international police cooperation, published in Official Gazette of Romania, Part I, no. 1,019 of 21 December 2006, approved by Law no. 104/2007 approving Emergency Government Ordinance no. 103/2006 on certain measures aimed at facilitating international judicial cooperation, published in Official Gazette of Romania, Part I, no. 275 of 25 April 2007, as subsequently amended and supplemented.

laws that have specific provisions on international judicial cooperation. Law 678/2001 as amended on the prevention and repression of trafficking in human beings includes specific provisions on international cooperation (articles 45-47) and notably on establishing contact officers within the Ministry of Interior and within the prosecutorial offices for coordination purposes with foreign contact officers. Law 39/2003 on the prevention and repression of organised crime also includes provisions on international cooperation (articles 24-26). It provides that that the Ministry of Interior, the Ministry of Justice and the Public Ministry cooperate directly with similar institutions on organised crime aspects, and notably as regards international judicial assistance, extradition, identification, freezing, seizing and confiscating proceeds of crime and instruments, for the purpose of joint investigation teams, the exchange of information, technical assistance etc. Competent authorities are required under the law to take a number of measures in respect of cooperation for confiscation purpose and joint investigations are permitted both on the territory of Romania and abroad, on the basis of international or bilateral agreements.

Widest possible range of mutual assistance (c.36.1) & Conditions (c. 36.2)

1616. The possible forms of international cooperation in criminal matters cover a wide range of measures, including extradition; surrender based on a European Arrest Warrant; transfer of proceedings in criminal matters; recognition and enforcement of judgments; transfer of sentenced persons; judicial assistance in criminal matters; other forms of international judicial co-operation in criminal matters. The law does not apply to the specific modalities of international police co-operation, where, under the law, they are not under judicial control.

1617. As noted at the time of the third evaluation round, the assistance required under the standard can be provided directly by reference to provisions of relevant international conventions, which are self-executable or otherwise on the basis of the Romanian legislation.

1618. All the types of cooperation mentioned from under Criterion 36.1 a to f) are covered in the Romanian legislation. The main provisions for obtaining information, documents or evidence from financial institutions (including on bank accounts held by a person, on historic information on banking transactions) can be obtained on the basis of article 171 of the Law 302, which allows for other forms of legal assistance to be provided, in addition to the execution of letters rogatory, organizing hearing by videoconference, the service of trial documents etc. The handling of property, records or documents requested may be delayed if they are required in pending criminal proceedings (article 177). All information available in the context of domestic investigations is also available in the same manner in the context of mutual legal assistance. Romanian judicial authorities may without prior request forward to the competent authorities of a foreign state information obtained in the framework of their own investigations if they consider that the disclosure might assist the receiving State in initiating criminal proceedings or might lead to a request of judicial assistance by a State (article 179 – spontaneous exchange of information). The general content of the request is detailed in article 172.

1619. Changes made to the confiscation regime (see section 2.3) have increased the ability of the Romanian authorities to provide assistance in this area. Letters rogatory for search or seizure of property and documents and provisional measures are subject to two conditions: that the offence is an offence for which extradition is granted (which involves a dual criminality test) and that the execution of the letter rogatory is consistent with the national legislation (article 176 , not applicable in relation to States party to the Convention applying Schengen agreements). It should be noted that except in connection with requests from other European Union member States, Romania has no domestic legal provisions in relation to returning or sharing confiscated property to a requesting State as in principle the confiscated property is allocated to the general budget of Romania. However this is possible on the basis of relevant international agreements which cover provisions on repatriation or sharing of assets.

1620. The limitations to international cooperation are set out in article 3 of Law 302, and relate to

the protection of sovereignty, security and public order as defined by the Constitution. In general, in executing MLA requests, the double criminality requirement is not required with some exceptions for certain coercive measures (for example requests for search and freezing). Most of these offences which require intrusive measures are involve usually serious crimes, committed most of the times by organised criminal groups and having on many occasions transnational elements. Thus the offences will most likely always be extraditable offences. In order for the Romanian authorities to dispose intrusive measures such as search, seizure, wiretapping, the Soliciting State has to offer sufficient elements that would justify the disposition of such measures.

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1621. Romania has developed good practices as regards the execution of the MLA requests. Depending on the type of request and complexity of request, and whether it implies volatility of data, the disposal of intrusive measures, the fulfilment of the request may take from several days to 6 months. Usually the average response rate is between 2 and 6 months, depending as previously mentioned on the type and complexity of the request. The feedback received from other States in respect to their experience of cooperation with Romania has not included any negative feedback in this respect.

1622. It should be noted that courts and prosecution offices can use direct contacts in the dispatch and reception of certain requests and measures when cooperating with EU countries (ex. European arrest warrant). The central authority of the Ministry of Justice is assisting the competent judicial authorities if so requested.

Clear and efficient processes (c. 36.3)

1623. There are clear processes for the execution of mutual legal assistance requests. Each of the central authorities in matters related to international judicial cooperation in criminal matters has established through internal regulations rules regarding prioritisation of requests and timetables for various types of requests. There are also internal rules at the level of the courts and prosecutor's office on this issue to ensure that they are treated according to set deadlines and without undue delays.

1624. Also, it should be noted that there are special provisions in relation to UE countries with regard to mutual legal assistance regarding bank account information, transaction and monitoring (Art. 210-215 of Law 302/2004) for which direct contact is the main rule. These provisions need to be read in conjunction with the general framework on mutual legal assistance requests and international judicial cooperation(see previous items) and also with other international instruments to which Romania and the requesting States are parties and which, in accordance with the Romanian law are self/executing (Council of Europe instruments, UN instruments, bilateral treaties). Also with regard to search and seizure, , direct contact will be possible, as long as the international instrument applicable between Romania and the other State allows for such channels of communication. The provisions of Law 302/2004 from this perspective are very flexible.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1625. Romania will not refuse a request for mutual assistance on the sole grounds that it the offence is also considered to involve fiscal matters. Article 205 of Law 302 covers assistance in matters of fees and excise duty and sets out the general principle of providing assistance as regards infringements of the laws and regulations on excise duties, value added tax and customs duties. Assistance may be refused where the alleged amount of duty underpaid or evaded does not exceed EUR 25,000, however if the case is deemed to be extremely serious by the requesting State, assistance may be nevertheless provided. This applies also when the assistance concerns acts punishable only by a fine by virtue of being infringements of the rules of law in proceedings

brought by the administrative authorities, where the request for assistance was made by a judicial authority.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1626. Law 302/2004 on international judicial cooperation establishes through Article 216 that MLA requests cannot be refused on this ground in relation to EU countries. This is to be read also in conjunction with international instruments which stipulated for such provisions, also with relevant provisions from special laws since such requests will be executed in accordance with the Romanian law. For example, Law 508/2004 establishes that bank and professional secrecy cannot be invoked in front of the prosecutor, once the criminal pursuit has been started. Also, Law 656/2002 stipulates in Art. 34 that banking and professional secrecy cannot be opposed to the criminal investigation bodies and the competent court.

Availability of powers of competent authorities (applying R.28, c. 36.6)

1627. In response to mutual legal assistance requests, the same investigation powers and techniques may be used as for domestic proceedings. As noted earlier, the law enforcement authorities appear to have adequate powers required to carry out investigations and take statements concerning any crime.

Avoiding conflicts of jurisdiction (c. 36.7)

1628. Conflicts of jurisdiction are dealt through consultations with the requesting States on case by case basis. Requests on transfer of proceedings or requests transmitted or received in accordance with Art. 21 of the 1959 MLA Convention are dealt with by the Romanian Ministry of Justice or the Prosecutor's Office attached to the High Court of Cassation and Justice in their quality of central authorities and they can establish further competence. The central authorities may facilitate, upon request, consultations in cases of conflicts of jurisdiction, when direct contact does not determine relevant outcomes. This is also undertaken in the context of contacts, whether formal or informal, in EUROJUST, when the cases involve serious organised crime, with transnational component, the European Judicial Network (EJN) or the Council of Europe Committee (PC/OC) points of contact. In addition, the authorities also have recourse to spontaneous exchange of information as a practical solution in avoiding positive conflicts of jurisdiction, which is allowed for in the domestic law as mentioned earlier (see Art. 179 of Law 302/2004) and which is also established in several international instruments to which Romania is a party to (e.g. UNTOC). At the time of the assessment, a new draft act was pending which included provisions covering specifically aspects of conflict of jurisdiction, implementing Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal procedures, and which would also apply in relation to third states.

Additional element – Availability of powers of competent authorities required under R. 28 (c. 36.8)

1629. The powers of the competent authorities may be used in the event that a direct request is made by foreign judicial or law enforcement authorities to Romanian judicial or law enforcement authorities. These can receive and execute direct requests from their foreign counterparts within the limits of domestic legislation.

Special Recommendation V (rated LC in the 3rd round report) (applying 36.1 – 36.6 in R.36, c.V.1)

1630. The provisions described above apply equally to the fight against terrorism and TF. It should be noted however that the deficiencies described under Special Recommendation II[178] could impact on Romania's ability to provide mutual legal assistance in cases where dual criminality is a precondition.

Additional element under SR V (applying c. 36.7 & 36.8 in R. 36, c.V.6)

1631. The provisions described under R.36 equally apply to the fight against terrorism and the financing.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1632. There are three central authorities responsible for MLA requests: the Ministry of Justice (for requests formulated during trial and execution stage), the Prosecutor's Office of the High Court of Cassation and Justice (for requests formulated during the investigation and criminal prosecution stage) with three different structures competent depending on the type of offence – DNA, DIICOT or the Service for International Cooperation of the Public Ministry.

1633. Central authorities with whom the evaluation team has met did not express strong concerns as regards resources allocated to international cooperation, though it is clear that there is an increasing trend in terms of number of MLA requests and complexity of cases involved, which does not appear to have been followed by changes to human resources compared with the situation at the time of the previous evaluation. A number of training events have been organised, particularly on the implementation of EU legal instruments on judicial cooperation in criminal matters, within the National Magistrates' Institute and the National Court Clerk's School. Also, between 2009-2011 within courts of appeal, prosecution offices and the High Court of Cassation and Justice, a number of professional training meetings were held to address certain aspects of practice of implementation of EU instruments.

Recommendation 32 (Statistics – c. 32.2)

1634. Statistics are kept by relevant central authorities, which enable to establish the requesting country, the offences covered, the type of assistance required, the status of the request and date of execution, including the final outcome. However, it is clear that there is no mechanism which collects comprehensive statistics on mutual legal assistance aspects and which would enable to have an overall picture of all international cooperation afforded or requested by Romanian authorities in respect of ML/TF cases. The evaluation team has not received statistics on requests relating to FT.

Effectiveness and efficiency

1635. It should be noted from the outset that the statistics covering mutual legal assistance were provided to the evaluation team at an advanced stage of the assessment process. Thus there were little opportunity to discuss the statistics as well as the implementation of the various legal provisions with the authorities and conclusions were formed mostly based on the information already gathered in the report and during the visit.

[178] See in respect of this issue the comments made under SR.II. The majority of these deficiencies appear to have been addressed by the new FT offence, which is in force as of February 2014.

1636. According to the statistics received, in 2012, the International Cooperation Unit of the Prosecutor's office to the High Court of Cassation has dealt with 607 rogatory letters, 283 requests for transfer of proceedings, 67 requests for documents and 104 other requests, involving over 53 States. The highest number of requests concerned cooperation with Moldova, Germany, Hungary and Italy. It remained unclear how many covered ML aspects. In addition, in 2012, a cooperation agreement was also signed with the General Prosecutor's office of the Russian Federation in order to strengthen co-operation. The statistics received from DNA for the period 2011-May 2015, which include ML offences, show an increasing number of requests: 10 in 2011, 27 in 2012 and 2 by May 2013. These cover a variety of measures requested, and involve primarily requests covering ML offences, tax avoidance, offences with EU funds, and bribe taking. DIICOT indicated that in the period 2008-2013 it had handled 224 requests (sent and received), involving approximately 64 foreign States. Overall the average time of execution ranged from 3 to 6 months. Bilateral protocols have been concluded with Belgium, Netherlands, Turkey, Moldova and Italy which enable direct contacts.

1637. It is positively noted that Romania has also issued on the website of the Ministry of Justice a Handbook on Romanian legislation and procedures on international judicial cooperation in criminal matters which is intended to assist foreign officials when making requests. [179]

1638. Overall, Romania has a sound legal basis for providing a wide range of mutual legal assistance and has not formulated restrictive reservations to the international conventions to which is it a Party. The information received indicates that Romania provided MLA in ML cases and few requests have been rejected. 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, particularly for complex cases where the assistance required involves a large number of measures. Cooperation with EU countries is clearly facilitated, but data provided shows also co-operation with other non EU countries (eg. Moldova, USA) in this area.

6.3.2 Recommendations and comments

Recommendation 36

1639. Romania should consider amending the dual criminality requirement to ensure that Romania can assist any foreign country in searching and seizing evidence in relation to any ML case.

Special Recommendation V

1640. Romania should clarify whether the application of dual criminality may limit its ability to provide assistance in certain situations, particularly in the context of identified deficiencies with respect to the FT offence as outlined under Special Recommendation II.

Recommendation 30

1641. Romania should conduct an assessment of the staffing levels in authorities responsible for sending/receiving MLA as well as the level of workload and take any measures to ensure that they are adequately funded and staffed in order for them to be able to fully and effectively perform their functions. It is also recommended to continue to develop on-going training and guidance for prosecutors and staff who are involved in MLA, with a view to foster their expertise and know-how in handling international requests.

[179] See www.just.ro. In addition, for further information on Romania and practical tools, see also http://www.ejn-crimjust.europa.eu/ejn/EJN_Home.aspx

Recommendation 32

1642. Romania should review the technical resources available within central authorities enabling them to keep track of all incoming and outgoing MLA requests by implementing, if appropriate, an automated system.

1643. In any event, Romania should improve the current mechanism of maintaining statistics, in order to be able to provide overall annual statistics on all MLA requests that are made or received, relating to ML, the predicate offence and FT, including the nature of the request, whether it was granted or refused and the time required to respond.

6.3.3. Compliance with Recommendations 36 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36	**LC**	• 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. **Effectiveness** • Effectiveness cannot be fully demonstrated
SR.V	**LC**	• 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. **Effectiveness** • Effectiveness cannot be demonstrated.

6.4 Other Forms of International Co-operation (R. 40 and SR.V)

Recommendation 40 (rated C in the 3rd round report)

1644. In the third round, Romania was rated Compliant for R. 40 and SR V.

Legal framework

- Law 656/2002
- GEO 99/2006
- Law 312/2004
- NSC Statute
- Law 32/2006
- Law 32/2000
- GEO 50/2005
- GEO 113/2009
- Law 127/2011

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1); Clear and effective gateways for exchange of information (c.40.2), Spontaneous exchange of information (c. 40.3)

FIU

1645. Pursuant to Article 7(4) of the AML/CFT Law, the FIU may exchange information, based on reciprocity, with foreign institutions having similar functions and which are subject to secrecy obligations, where such information exchange is made for the purpose of preventing and combating money laundering and terrorism financing. Information may be exchanged either at the request of another FIU or spontaneously by the Romanian FIU. Although the law does not expressly refer to the exchange of information in relation to the underlying predicate offences of money laundering, the evaluators consider the formulation of Article 7(4) to be wide enough to permit the exchange of information regarding a predicate offence where this is required for the prevention of ML.

1646. In terms of Article 26(4) of the AML/CFT Law, the FIU, at the request of foreign institutions which have similar functions and which are subject to secrecy obligations, can request the suspension of a transaction that appears to have been carried out for the purpose of money laundering or financing of terrorism. The FIU may only proceed with the suspension after taking into consideration the justification presented by the requesting institution as well as the fact that the transaction could have been suspended had it been the subject of a suspicious transaction report.

1647. The exchange of information with foreign counterparts is considered to be one of the main priorities of the FIU. The National Strategy for the Prevention and Combating Money Laundering and Terrorism Financing adopted in June 2010 contains a specific objective on international cooperation ("Consolidation of the role of Romania in the international mechanisms and organisations for prevention and combating money laundering and terrorism financing"). The measures set out to achieve this objective are the conclusion and/or revision of international agreements on ML/FT and participation by the FIU in international organisations in the field of ML/FT.

1648. The FIU has established well-functioning mechanisms for the exchange of information with foreign FIUs. Information is provided in a rapid, constructive and effective manner, as confirmed by other FIUs prior to the on-site mission. The response time for international requests varies between one to two weeks depending on the complexity of the request and the workload of the analyst processing the request.

1649. The unit within the FIU which is responsible for the exchange of information is the International Relations Department within the Directorate for Inter-institutional Cooperation and International Relations. According to Article 12 of the FIU Regulation, the International Relations Department is responsible for receiving, submitting and managing incoming and outgoing requests for information related to ML/FT from/to foreign FIUs.

1650. The officers of the International Relations Department perform their functions in accordance with the Operational Procedure for the exchange of information in the AML/CFT Field issued in February 2013. The purpose of the procedure is to implement international practices in the exchange of information process.

1651. As a general rule, the FIU replies to a request for information within one to two weeks, depending on the workload of the analyst processing the request. The responses provided within one to two weeks generally consist in:

- providing a positive/negative reply including information based on clarifications where the FIU has direct access to the requested information;
- providing a motivated reply with regard to the refusal of the FIU to provide assistance, if the reply is not in accordance with international best practices.

1652. The processing of information requests requiring information from external sources generally takes up to a month from the date of the receipt of the request. Where the FIU is not in a position to provide information within one month, the requesting FIU is notified.

1653. The Operational procedure for the exchange of information sets out the type of requests which are to be processed urgently:

- requests for information received from DAPI or from foreign FIUs marked as URGENT or having a specified response time;
- requests for information relating to suspicions of terrorism financing received from DAPI or from foreign FIUs;
- requests for information relating to the suspension of a suspicious transaction.

1654. According to Article 5(q) of Governmental Decision no. 1599/2008, the FIU may elaborate, negotiate and conclude conventions, protocols, agreements with similar foreign institutions, in accordance with the law. However, the conclusion of a memorandum of understanding is not a prerequisite for the exchange of information. Since its establishment the FIU has concluded fifty three memoranda of understanding with foreign FIUs. These memoranda are considered to be secondary legislation and are published in the Official Gazette and on the site of the FIU. Before negotiating and signing an MoU or a Declaration of Cooperation the FIU ensures that:

- the country is not included on the list of non-cooperative states and jurisdictions and implements the FATF standards in a satisfactory manner;
- the FIU is in existence and is in a position to exchange information in an optimal, secure manner and in compliance with the FATF international standards and Egmont principles ;
- the legal framework on the prevention of ML/FT is in compliance with FATF standards.

1655. As a member of the Egmont Group, the FIU exchanges information with foreign FIUs through the Egmont Secure Web (ESW) and FIU.Net with FIUs of EU countries. Diplomatic courier is used for the exchange of information with FIUs of countries which are not Egmont Group members.

Supervisory authorities

NBR

1656. Pursuant to Article 184, Paragraph 1 of the Government Emergency Ordinance 99 (2006) "in order to establish and facilitate effective supervision, the National Bank of Romania, in its capacity as authority responsible for supervision on a consolidated basis and/or on an individual basis, and the competent authorities of other Member States shall conclude written coordination and cooperation arrangements".

1657. Article 3, Paragraph 7 of the Law 312 (2004) further establishes that the NBR may "*conclude co-operation agreements, referring to the exchange of information, with the competent authorities*

of third countries…provided the information disclosed is subject to professional secrecy requirements …The exchange of information must be performed solely for the purpose of exercising the supervisory duties of the authorities and bodies concerned".

1658. Article 186 of the Government Emergency Ordinance 99 (2006) sets out that "the National Bank of Romania shall cooperate closely with the other [foreign] competent authorities. In this regard, for the exercise of the supervisory tasks on an individual and/or consolidated basis of the authorities concerned, the competent authorities shall provide on request all relevant information and on their own initiative all essential information".

1659. According to information available of the official website of the NBR, currently it has cooperation agreements for the exchange of information in the field of bank supervision, as well as monetary policy-related issues with central banks of a number of countries[180].

NSC

1660. The NSC has noted that the NSC Statute, NSC Regulations 32/2006 and bilateral and multilateral agreements to which it is party allow it to offer extended cooperation with its partners domestically and internationally.

1661. Article 6 of the Statute deals with international cooperation. The NSC must cooperate with the competent authorities in Member States and, on a reciprocity basis, with the competent authorities in member states whenever necessary for the fulfilment of the obligations "upon such, using the powers vested in it by law".

1662. The NSC is a signatory to the IOSCO and CESR MMOUs. It has signed twenty five bilateral MoUs (which include fourteen with authorities in non-EU Member States) and the MoU between the supervisory authorities, central banks and finance ministries of the EU on cross-border financial stability.

CSA

1663. The Romanian authorities have advised that under article 4 of Law 32/2000 the CSA shall exchange information with the competent authorities from Member States in order to improve supervisory activity, provided that the information meets the confidentiality criteria established in the norms issued for the implementation of the law. Article 4 also provides that the CSA shall sign MoUs with similar authorities regarding the exchange of confidential information as required for supervisory activity. The CSA shall sign MoUs with authorities from non-Member States only if the information sent to these authorities shall have the same level of confidentiality as required by the CSA in accordance with national legislation.

CSSPP

1664. Under article 29 of GEO 50/2005 (which has not been provided to the evaluation team), in order to strengthen the stability and the integrity of the private pension system and of the financial system in general, the CSSPP shall cooperate with other institutions and authorities in Romania and abroad, including, more particularly, authorities in charge of the supervision and regulation of financial markets in EU or EEA countries and the European Commission. The CSSPP may conclude a cooperation protocol with the authorities in charge of the regulation of financial markets in Romania. Cooperation shall be by exchange of information or in any other way

[180] Cooperation agreements are available with the central banks of Azerbaijan, Cyprus, the Czech Republic, France, Germany, Greece, Hungary, Indonesia, Italy, Kazakhstan, Kyrgyzstan, Malaysia, the Republic of Moldova, the Netherlands, Tunisia, Turkey, and the United Kingdom

according to the law and/or to the institutions and authorities in order to carry out their specific attributions, while securing the reciprocity and confidentiality of information thus supplied. Public institutions and authorities shall provide the CSSPP with information deemed necessary or that is required in order to carry out efficient supervision activity and in order to meet the CSSPP's objectives.

THE COMMISSION/OFFICE

1665. It is debatable whether the FIU as a supervisory authority can exchange information for supervisory purposes under Article 7(4) of the AML/CFT Law since the FIU may only exchange information with foreign authorities having similar functions. Thus, unless the foreign supervisor is also a FIU, the FIU in Romania would not be in a position to exchange information on supervisory matters. However, information in such cases can be exchanged indirectly, through FIU-to-FIU channels.

Law enforcement authorities

1666. The authority responsible for the exchange of information with foreign law enforcement authorities is the Centre for International Police Cooperation under the General Inspectorate of Police. The Centre is in charge of operational international matters and includes four main units: Europol, Interpol, SIREN and a bilateral cooperation unit.

1667. The main functions of the Centre are the following:

- granting support and assistance to foreign/Romanian authorities investigating judicial cases related to organised crime and the involvement of foreign/Romanian citizens;
- facilitating the exchange of data and information of police interest, having an operative character, between the Romanian and foreign authorities.

1668. Information is exchanged both spontaneously and upon request. The channels through which information is exchanged are Europol, Interpol, the SIREN network and through liaison officers within the context of bilateral cooperation. Romania has a wide network of liaison officers in other countries.

1669. There are no set time-frames for the exchange of information by the Centre. The evaluators were informed that the period within which a response is provided very much depends on each case. The Centre has never faced any difficulties in obtaining financial, administrative and law enforcement information for onward transmission to foreign authorities. The evaluators have no reason to believe that the Centre does not provide information rapidly, constructively and in an effective manner, since no negative feedback was received from MONEYVAL and FATF members regarding the Centre's activity in this area.

1670. The representatives of the Centre pointed out that most requests for information regarding ML are received by the FIU through the Egmont Secure Web rather than the Centre itself. However, no statistics are maintained by the Centre in this regard.

Making inquiries on behalf of foreign counterparts (c.40.4), FIU authorised to make inquiries on behalf of foreign counterparts (c. 40.4.1), Conducting of investigation on behalf of foreign counterparts (c. 40.5)

FIU

1671. Following a request for information from a foreign FIU, the Romanian FIU conducts searches both in its internal databases and in the external databases to which it has access. The list of

external databases to which the FIU has access may be found under Criterion 26.3. The FIU also performs searches in the specific international public terrorist lists approved by the Security Council of United Nations Organization and European Union, and in the lists made available by FIUs / governments from other states.

1672. The FIU has direct on-line access to external databases and does not need further permission from the respective authority to conduct its searches. A supplementary request for information is sent to a competent authority or reporting entity only when the requesting FIU requires information that is not directly available to the FIU. In such cases, before sending out a request for information the FIU requests the consent of the requesting FIU.

1673. As noted under the analysis of Recommendation 26, information contained within the real estate registry of Romania is limited. This hinders the FIU's effective exchange of information on real estate with foreign FIUs.

Supervisory authorities

NBR

1674. Article 211, Paragraph 2 of the Government Emergency Ordinance 99 (2006) establishes that "the competent authority of the home Member State may require the National Bank of Romania to carry out on-site inspections at the head office of the branch in Romania of a credit institution authorized in that Member State, in which case, the National Bank of Romania shall carry out the inspection either directly or by a third party appointed for that purpose[181]. The competent authority which made the request for the inspection may participate in the verification when it does not carry out the verification itself".

1675. Verification in this article refers to that of information concerning the management and ownership of credit institutions, as well as information with regard to liquidity, solvency, deposit guarantees, the limiting of large exposures, administrative and accounting procedures and internal control mechanisms as defined under Article 173, Paragraph 2 of the same ordinance.

1676. Similar provisions exist with respect to payment institutions (art.77 from EOG no.113/2009) and e-money institutions (art.80 from Law no.127/2011) but not non-bank financial institutions since they are not operating on a cross-border basis.

1677. These provisions are restricted to on-site inspections only. There are no other provisions empowering the NBR to conduct inquiries on behalf of foreign counterparts for broader purposes. Additionally, these provisions only apply to member states of the EU.

NSC

1678. Article 6 of the NSC Statute provides that, during the performance or performance of international agreements, the NSC shall provide assistance particularly with regard to exchange of information and cooperation in investigation activities. This form of assistance includes, without limitation, help in providing public or non-public information about or in connection with a natural or legal person subject to the regulation, supervision and control of the NSC; provision of copies of records held by regulated entities; and cooperation with persons who have information about the subject of an inquiry. Within international cooperation relationships, in order to address requests from other similar authorities conducting investigations for a breach of their own legislation, the NSC shall use the powers vested in it by law. The article goes on to say that the

[181] The authorities advised that, albeit this provision in the law, it is not a practice in Romania to authorize third persons for inspection of credit and financial institutions.

NSC shall issue regulations regarding the cooperation procedure with similar authorities in accordance with European Community legislation in force.

CSA

1679. No specific provisions have been referred to by the Romanian authorities.

CSSPP

1680. No specific provisions have been referred to by the Romanian authorities.

THE COMMISSION/OFFICE

1681. It is debatable whether the FIU as a supervisory authority can conduct inquiries on behalf of foreign counterparts, unless the foreign counterpart is also a FIU.

Law enforcement authorities

1682. No information was provided with respect to the ability of law enforcement agencies to conduct investigations on behalf of foreign counterparts outside the MLA process.

No unreasonable or unduly restrictive conditions on exchange of information (c.40.6)

FIU

1683. There are no conditions in the AML/CFT Law restricting the exchange of information by the Romanian FIU to foreign FIUs. In line with the Egmont Principles for the Exchange of Information, the Romanian FIU may only exchange information if such exchange is made for the purpose of preventing and combating money laundering and financing of terrorism.

1684. The Operational Procedure for the Exchange of Information states that the FIU is not obliged to provide information to a foreign FIU where criminal proceedings regarding the same facts have already been initiated in Romania or where the exchange of information can be prejudicial to the sovereignty, security or national policies, public policy or any interest of the Romanian state. The evaluators do not consider these restrictions to be unduly restrictive or unreasonable.

Supervisory authorities

1685. Article 215, Paragraph 1 of the Government Emergency Ordinance 99 (2006) defines that "the National Bank of Romania may exchange information with the competent authorities from other Member States …and transmit information to the European Banking Authority, in accordance with the provisions of Article 31 and of Article 35 of Regulation of the European Parliament and of the Council 1093 (2010)". Paragraph 3 of the same article further defines that "the National Bank of Romania may supply information to the competent authorities from other Member States, according to the provisions of Paragraph 1, if the information received by the concerned authorities is subject to professional secrecy, similarly to those provided in Article 214".

1686. Article 3, Paragraph 7 of the Law 312 (2004) further establishes that the NBR may "conclude co-operation agreements, referring to the exchange of information, with the competent authorities of third countries…provided the information disclosed is subject to professional secrecy requirements …The exchange of information must be performed solely for the purpose of exercising the supervisory duties of the authorities and bodies concerned".

1687. No information was provided by the other supervisory authorities on this criterion.

Law enforcement authorities

1688. There are no conditions restricting the exchange of information by law enforcement authorities. During the on-site visit the representatives of the Centre pointed out that a request for information has never been refused. The only condition applicable to information exchanged informally relate to the fact that such information cannot be used in criminal proceedings, which is a standard condition. The representatives of the Centre referred to other legal limitations, such as information that is required to be obtained through a court order within a criminal investigation. In such cases, the Centre would not be in a position to provide information. All of these conditions are standard conditions which apply in other countries.

Provision of assistance regardless of the fact that fiscal matters are involved (c.40.7)

1689. There are no restrictions on the FIU, supervisory authorities or law enforcement authorities that would prevent them from exchanging information with their counterparts in a case which also involves fiscal matters.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c.40.8)

1690. Laws imposing secrecy and confidentiality on financial institutions and DNFBPs in Romania do not prohibit the FIU from exchanging information with foreign counterparts. Article 7(3) of the AML/CFT Law explicitly stipulates that professional and banking secrecy shall not be invoked by reporting entities to refuse to provide information to the FIU when so requested.

1691. No information was made available by the supervisory and law enforcement authorities. However, the evaluation team did not identify any provisions which would hinder the exchange of information with foreign counterparts on the basis of secrecy or confidentiality laws.

Safeguards in use of exchanged information (c.40.9)

FIA

1692. Article 25 of the AML/CFT Law prohibits the personnel of the FIU from disseminating information received in the performance of their functions, including information received from foreign FIUs. The information received may not be used for the personal interests of the personnel of the FIU, either during or after their employment. According to Article 23 of the FIU Regulation, at the start of their employment, the personnel of the FIU is required to sign an agreement which prohibits them from disclosing any information received during their employment with the FIU, except in the case of a judicial procedure. Article 25(4) of the FIU Regulation provides that where the personnel of the FIU infringe any of their legal obligations they incur civil, criminal or disciplinary liability, as the case may be, according to the law.

1693. The FIU Operational Procedures for the Exchange of Information regulate the access to, management, processing and protection of different categories of information on a need-to-know basis. The main procedures are the following:

- the protection and flow of unclassified information within the FIU;
- the IT system and the access to databases;
- the registering and archiving procedure for documents received and processed at the level of the Inter-institutional Cooperation Department and the International relations Department.
- the internal procedure on exchanging information in the AML/CTF.

1694. The operational procedures were approved by the President of the FIU by Order no. 192/05.10.2011 and 27/26.02.2013.

1695. FIU personnel only have access to information on a need-to-know basis. A more detailed description on the security features and procedures of the FIU may be found under Criterion 26.7.

1696. Access to the communication systems dedicated to the exchange of information (ESW and FIU.NET) is only granted to the Inter-Institutional Cooperation and International Relations Directorate – International Relations Department. Each specialist within this department has access authorisation for managing sensitive information.

1697. Although the FIU has established controls and safeguards to ensure that the information it receives is used only in an authorised manner, the evaluators noted a possible shortcoming. As discussed under Criterion 26.7, the confidentiality obligations under Article 25 of the AML/CFT Law and Article 23 of the FIU Regulation cease to apply to FIU personnel after five years from the termination of their employment. This could potentially prejudice the protection of information shared by foreign FIUs with the Romanian FIU.

Supervisory authorities

NBR

1698. Article 215, Paragraph 2 of the Government Emergency Ordinance 99 (2006) establishes that "the information received by the National Bank of Romania [within the framework of exchanging information with the competent authorities from other Member States] shall be subject to the conditions of professional secrecy as referred to in Article 214". Article 214, Paragraph 1 of the ordinance defines that the NBR board members and staff, as well as the financial auditors or experts appointed by the NBR "to perform on-site inspections at the head offices of credit institutions …shall be bound by professional secrecy regarding any confidential information, which they receive in the course of their duties. The National Bank of Romania's Board members and staff shall also be bound by professional secrecy after ceasing the activity with the bank".

NSC

1699. Article 11 of the NSC Statute provides that members of, employees who work or have worked within the NSC, as well as representatives of employees to whom the NSC has delegated powers, have an obligation to observe professional secrecy. The NSC has advised that the release of information is allowed under the signature of the president of the NSC or persons empowered to this effect after a meeting of the members of the NSC. Information subject to this approach to releasing information includes information within the framework of judicial procedures (at the order of the public attorney or of the courts of justice, as requested in each case); information within the process of negotiating international agreements to which Romania will be a signatory; and information within the framework of cooperation agreements concluded with other authorities, with international organisations the NSC has joined, or on the initiative of the NSC with a view to ensuring the fulfilment of the specific duties of supervision and control. NSC employees have signed confidentiality agreements. The NSC has also advised that Regulation 32/2006 provides for confidentiality of information received by the NSC or a similar authority under a cooperation agreement signed by the two bodies. Information received under the agreement may not be disclosed without the prior approval of the provider of the information and only for the purpose for which the provider has given approval.

Other authorities

1700. No information was provided on this issue by the other supervisory and law enforcement authorities.

Additional elements – Exchange of information with non-counterparts (c.40.10 and c.40.40.1); Exchange of information to FIU by other competent authorities pursuant to request from foreign FIU (c.40.11)

1701. The FIU can only exchange information with foreign institutions that have similar functions. The representatives of the FIU pointed out that an amendment to revise Article 7(4) of the AML/CFT Law to permit the FIU to exchange information with non-counterparts did not go through.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5) (rated LC in the 3rd round report)

1702. The text under Recommendation 40 applies *in toto* to SR.V.5.

Additional element under SR.V – (applying 40.10-40.11 in R.40, c.V.9)

1703. The text under Recommendation 40 applies *in toto* to SR.V.5.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1704. The FIU maintains statistics on the number of requests sent to and received from foreign FIUs (see Tables 49 and 50 below). The FIU never denied a request from a foreign FIU. Four requests (in 2011) submitted by FIU Romania were denied by foreign FIUs in the period under review.

Table 49: Number of requests sent to foreign FIUs

Requests sent	2008			2009			2010			2011			2012			2013		
	ML	TF	Other (please specify)	ML	TF	Other (please specify)	ML	TF	Other (please specify)	ML	TF	Other (please specify)	ML	TF	Other (please specify)	ML	TF	Other (please specify)
Executed	417	0	0	336	1	0	143	2	0	192	1	0	158	3	0	42	0	0
Denied	0	0	0	0	0	0	0	0	0	4	0	0	0	0	0	0	0	0
Pending from previous year (s)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	417	0	0	336	1	0	143	2	0	196	1	0	158	3	0	42	0	0

Table 50: Number of requests received from foreign FIUs

Requests received	2008			2009			2010			2011			2012			2013		
	ML	TF	Other (please specify)	ML	TF	Other (please specify)	ML	TF	Other (please specify)	ML	TF	Other (please specify)	ML	TF	Other (please specify)	ML	FT	Other (please specify)
Executed	86	14	0	179	3	0	180	8	0	194	2	0	245	3	0	82	1	1 (terrorism)
Denied	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Pending from previous year(s)	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total	86	14	0	179	3	0	180	8	0	194	2	0	245	3	0	82	1	1

Table 51: Spontaneous information submitted by the Romanian FIU

Spontaneous information submitted by the Romanian FIU	2008	2009	2010	2011	2012	2013
	2	3	8	10	14	21

1705. Only the NSC has provided statistics on formal requests for assistance. The NSC has noted that it continues cooperation and information exchange with EU Member State authorities and third country authorities to ensure an efficient cross-border supervisory framework and investor protection. It advised that no formal request on AML/CFT matters has been made or received by the NSC in relation to foreign regulators. It goes on to say that incoming and outgoing queries are shown in the tables below.

1706. The incoming and outgoing queries in period 2009-2012 are shown in the next table.

Table 52: Request of information received by NSC

Year/Item	2009	2010	2011	2012
Member States	4	3	2	2
Third countries	0	2	3	0
Total	4	5	5	2

Table 53: Request of information sent by NSC

Year/Item	2009	2010	2011	2012
Member States	0	3	5	7
Third countries	1	1	2	0
Total	1	4	7	7

1707. The police provided the following statistics:

Table 54: International police cooperation on money laundering through the international police cooperation centre from General Inspectorate of Romanian Police 2008

Money laundering	Requests in	Requests out	Total
DCCO	16	3	**19**
FID	12	2	**14**
TOTAL	**28**	**5**	**33**

Table 55: International police cooperation on money laundering through the international police cooperation centre from General Inspectorate of Romanian Police 2009

Money laundering	Requests in	Requests out	Total
DCCO	65	36	**101**
FID	23	18	**41**
TOTAL	**88**	**54**	**142**

Table 56: International police cooperation on money laundering through the international police cooperation centre from General Inspectorate of Romanian Police 2010

Money laundering	Requests in	Requests out	Total
DCCO	56	28	**84**
FID	19	13	**32**
TOTAL	**75**	**41**	**116**

Table 57: International police cooperation on money laundering through the international police cooperation centre from General Inspectorate of Romanian Police 2011

Money laundering	Requests in	Requests out	Total
DCCO	54	23	**77**
FID	42	25	**67**
TOTAL	**96**	**48**	**144**

Table 58: International police cooperation on money laundering through the international police cooperation centre from General Inspectorate of Romanian Police 2012

Money laundering	Requests in	Requests out	Total
DCCO	42	18	**60**
FID	46	23	**69**
TOTAL	**88**	**41**	**129**

Table 59: International police cooperation on money laundering through the international police cooperation centre from General Inspectorate of Romanian Police 2013 (first 9 months)

Money laundering	Requests in	Requests out	Total
DCCO	36	12	**48**

FID	32	14	**46**
TOTAL	**68**	**26**	**94**

Effectiveness and efficiency

1708. The FIU and law enforcement authorities have adequate resources to cooperate with their foreign counterparts. The streamlined procedures created purposely for the exchange of information enable the FIU and the police to respond to requests for information in a rapid, constructive and effective manner, as demonstrated by the feedback received by the evaluation team from other countries prior to the on-site visit.

1709. It was not possible to determine whether supervisory authorities (except for NSC) exchange information effectively since very little information was made available to the evaluation team. The authorities confirmed that the supervisory authorities have never received a request for information regarding FT.

6.4.1 Recommendation and comments

Recommendation 40

1710. The FIU should take measures to ensure that confidentiality obligations applicable to FIU staff are not extinguished after five years from the termination of their employment with the FIU[182].

1711. Clarify in law that the FIU as a supervisory authority may exchange information for supervisory purposes with its foreign counterparts.

1712. Empower supervisory authorities (except for the NSC) to conduct inquiries on behalf of foreign counterparts.

1713. Specify the conditions applicable to supervisory authorities for the exchange of information. Such conditions should not be unreasonable or unduly restrictive.

1714. Strengthen the regulatory safeguards of the CSA and CSSPP for the use of information exchanged.

Recommendation 32

1715. Supervisory authorities (except for the NSC) should maintain statistics on international cooperation.

[182] The AML Law now no longer provides that confidentiality obligations are extinguished after 5 years from termination of the employment of a member of the FIU staff. The amendment was adopted by the Romanian Parliament in November 2013 but is still not in force.

6.4.2 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	• Issues relating to confidentiality obligations applicable to FIU staff may prejudice the protection of information provided by foreign FIUs; • Some supervisory authorities did not demonstrate that certain technical aspects required for international cooperation are in place; • Effectiveness not demonstrated by several supervisory authorities.
SR.V	**LC**	• Issues relating to confidentiality obligations applicable to FIU staff may prejudice the protection of information provided by foreign FIUs; • Effectiveness not demonstrated by several supervisory authorities.

7 OTHER ISSUES

7.1 Resources and Statistics

1716. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains only the box showing the ratings and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	**PC**	<u>FIU</u> • 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. <u>Law enforcement authorities</u> • Limited human resources available to LE authorities; • Insufficient specialised training in the field of financial investigations; • Integrity of prosecution authorities not demonstrated. <u>Customs</u> • 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. <u>Supervisory authorities – Financial Institutions</u> • 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.

		Supervisory authorities – DNFBPs • 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. Policy makers • It was not demonstrated that the requirements under R.30 are met with respect to policy makers.
R.32	**PC**[183]	• 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 cooperation; • The mechanism in place does not review comprehensively the AML/CFT system in Romania on a regular basis and its effectiveness.

7.2 Other Relevant AML/CFT Measures or Issues

1717. There were no relevant AML/CFT measures or issues raised in this context. All concerns of the evaluators have been addressed under the relevant parts of the present report.

7.3 General Framework for AML/CFT System (see also section 1.1)

1718. A number of concerns of the evaluation team have been addressed under the relevant parts of the present report in respect of the general framework for AML/CFT system. It is reiterated in this context that :

a. Romania should clarify and consolidate the AML/CFT legislation, notably by making appropriate amendments to the AML/CFT Law (and as a result subsequently update the AML/CFT Regulation, as well as other sectorial implementing norms) to ensure that the requirements are specified once rather than for regulated/supervised entities to have to meet similar requirements couched in different language in more than one place. This would also assist institutions and facilitate the application of sanctions for failure to adequately meet the requirements.

b. Romania should 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

[183] 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.

and that greater use is made of the other existing cooperation mechanisms at the operational level.

c. Competent authorities responsible for the implementation of the national AML/CFT strategy and action plan should actively and regularly cooperate with the FIU in a significant and meaningful manner.

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to 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[184]
Legal systems		
1. Money laundering offence	**LC**	• Shortcomings remain in the definition of the FT offence[185] as a predicate offence to ML. **Effectiveness** • (1) 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; (2) underutilisation of FIU generated reports; (3) continuing resource and capacity problems affect ML investigations, prosecutions and convictions.
2. Money laundering offence / Mental element and corporate liability	***LC***	• *Autonomous money laundering still need to be successfully prosecuted in the case of a domestic predicate offence;* • *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)* **Effectiveness** • *The number of convictions is low.*

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

[185] 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).

3. Confiscation and provisional measures	**LC**	• Deficiencies[186] in the legal framework previously identified in the third round remain valid[187]. **Effectiveness** • (1) Imbalance between the total amounts of assets seized and final confiscations which may in part be explained by the backlogs of the system (2) Limited resources, particularly of financial investigators, and lack of expertise impact negatively on the application of provisional measures and confiscation.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	
5. Customer due diligence	**PC**	• 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); **Effectiveness:** • (1) Limited knowledge and understanding of CDD and related requirements by non-bank financial institutions and payment institutions; (2) Uneven understanding and implementation of certain CDD concepts, in particular the beneficial owner and the risk based approach, in respect of R.5.

[186] 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.

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

6. Politically exposed persons	**PC**	• 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; **<u>Effectiveness</u>** • 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**	• 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. New technologies and non face-to-face business	***C***	
9. Third parties and introducers	**PC**	• No explicit requirement for credit and financial institutions to: o 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; o Immediately obtain from the third party the necessary information concerning certain elements of the CDD process; o 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. **Effectiveness (positive aspects):** • 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**	• 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. Unusual transactions	***LC***	• *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;* • *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 backgrounds of such transactions and setting forth their findings in writing;* • *No explicit requirement to keep the findings available for competent authorities and auditors for at least five years.*
12. DNFBPS – R.5, 6, 8-11	**PC**[188]	• 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; **Effectiveness** • (1) Casinos do not apply the full range of R.5 measures; (2) PEP provisions not met by casinos; (3) Potential delays in ascertaining change of status of individuals to PEPs; (4) Concerns about the adequacy of implementation of AML/CFT

[188] 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.

		requirements by other DNFBPs.
13. Suspicious transaction reporting	**PC**	• 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; **Effectiveness** • (1) Low number of STRs by financial institutions other than banks; (2) uneven understanding of the reporting requirement in all sectors; (3) Inconsistencies in articulation of reporting requirement may have an impact on its effective implementation.
14. Protection and no tipping-off	**PC**	• 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**	• 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; • Entities subject to supervision by the CSSPP and the Office are not required to have screening procedures. **Effectiveness** • 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**	*Applying Recommendation 13* • 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). **Effectiveness** • 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. *Applying Recommendation 14* • 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. *Applying Recommendation 15* • 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. *Applying Recommendation 21* • No provisions implementing Recommendation 21.
17. Sanctions	**PC**	• 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; **<u>Effectiveness</u>** • (1) Fines as a supervisory measure are very rarely applied to banks and never applied to NBFIs, thus

		undermining their dissuading effect (2) sanctions not applied in relation to the Office Norms (3) 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**	• No overall explicit requirement to: o Give special attention to business relationships and transactions with persons in/from countries which do not or insufficiently apply the FATF Recommendations; o 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; **Effectiveness** • 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**	• 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: o 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; o 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; o 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**	• 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; **Effectiveness** • (1) small results of inspections for some supervisory authorities raise questions about ; the quality and depth of inspections; (2) 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; (3) 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; (4) NBR inspection manuals do not provide for checking obliged entities' compliance with all essential requirements of the national AML/CFT framework; (5) NBR inspection planning practices fail to stem from a consistently implemented annual on-site inspection program; (6) thoroughness of planning practices by other supervisory authorities not demonstrated through documentation .
24. DNFBPs - Regulation, supervision and monitoring	**PC**	• 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 casino has been licensed; • 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;

		Effectiveness • (1) Approach to sanctions by SRBs not robust when compared to the Office; (2) Limited numbers of off-site and on-site supervision of DNFBPs raise serious concerns about the effectiveness of the supervisory action; (3) Adequacy of resources not demonstrated and this impacts on the supervisory function.
25. Guidelines and Feedback	**LC**	• 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. **Effectiveness** • Feedback not regarded as sufficient by the private sector, in particular as regards specific feedback.
Institutional and other measures		
26. The FIU	**PC**	• 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. **Effectiveness** • 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**	**<u>Effectiveness</u>** • 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**	• 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**	<u>FIU</u> • 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. <u>Law enforcement authorities</u> • Limited human resources available to LE authorities; • Insufficient specialised training in the field of financial investigations; • Integrity of prosecution authorities not demonstrated. <u>Customs</u> • 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. <u>Supervisory authorities – Financial Institutions</u> • 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. <u>Supervisory authorities – DNFBPs</u> • 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. <u>Policy makers</u> • It was not demonstrated that the requirements under R.30 are met with respect to policy makers.
31. National co-operation	**LC**	**Effectiveness** • (1) Co-operation mechanisms in place do not appear to be fully effective; (2) inadequate coordination between the various law enforcement authorities responsible for the investigation and prosecution of ML/FT; (3) Cooperation between supervisory authorities and FIU needs improving.

32. Statistics	**PC**[189]	• 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 cooperation; • The mechanism in place does not review comprehensively the AML/CFT system in Romania on a regular basis and its effectiveness.
33. Legal persons – beneficial owners	***LC***	• *No possibility to fully assess the operation of bearer shares.*
34. Legal arrangements – beneficial owners	***N/A***	
International Co-operation		
35. Conventions	**LC**	• 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**	• 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; **<u>Effectiveness</u>** • Effectiveness cannot be fully demonstrated
37. Dual criminality	***C***	
38. MLA on confiscation and freezing	***LC***	• *No considerations have been given to establishing an asset forfeiture fund.*
39. Extradition	***C***	
40. Other forms of co-operation	**LC**	• 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;

[189] 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.

		• Effectiveness not demonstrated by several supervisory authorities.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Shortcomings remain in the implementation of the FT Convention; • Shortcomings remain in the implementation of UNSCR.
SR.II Criminalise terrorist financing	**PC**	• The FT offence[190]: o 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; o 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); o partly applies to "funds" as defined under criterion II.1(b); o 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. **Effectiveness** • 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**	• 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. **Effectiveness** • Limited knowledge and understanding of freezing

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

		measures by non-bank financial institutions, payment institutions and electronic money institutions; 2) 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**	• The FT reporting requirement does not include all the circumstances set out under criterion 13.2 and IV.1.; **Effectiveness** • 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	**LC**[191]	• 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; • Issues relating to confidentiality obligations applicable to FIU staff may prejudice the protection of information provided by foreign FIUs; **Effectiveness** • Effectiveness cannot be demonstrated.
SR.VI AML requirements for money/value transfer services	**PC**	• 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; **Effectiveness***:* • Insufficient awareness of agent registration/licensing requirements by payment institutions; lack of information on their compliance with the requirements of SR VI.
SR. VII Wire transfer rules	***LC***	• *The implementation and effectiveness of the EU Regulation could not be assessed.*
SR.VIII Non-profit organisations	**PC**	• 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

[191] 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.

		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; **Effectiveness** • 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**	• 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); • 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. **Effectiveness** • 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.

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1)	• Romania should criminalise FT[192] in conformity with international standards, so that it is fully a predicate offence to ML. • The Romanian authorities are thus strongly recommended to undertake appropriate measures to strengthen the implementation of the ML offence, including by: o taking appropriate measures to address the structural and capacity deficiencies in the law enforcement and judicial process. These measures should be included as priorities of the National Strategy for combating ML and its action plan, and the measures taken in this respect and the results should be monitored and reviewed on a regular basis; o 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 and ensuring that these are effectively implemented; o carrying out a comprehensive review of discontinued cases, prosecutions, case law and sentencing practices in order to identify the source of the continuing obstacles that may impede or hinder an adequate application of the ML offence. This review should then be used as a basis for developing clear methodologies to investigate and prosecute ML cases (with an emphasis on complex, third party and autonomous ML cases); additional guidelines and case compendiums to assist practitioners to develop their understanding of the types of conduct criminalised under the ML offence, how to prove the mental element required, the level of evidence required for the predicate offence, how to manage the complexity of ML cases etc.; o taking measures, as appropriate, to strengthen the ability of law enforcement officials to uncover and

[192] 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).

	prosecute ML offences more proactively, including in particular by increasing the number of specialists (financial investigators) attached to prosecution offices to support investigations related to financial crime. This should also involve a regular review of the geographical distribution of the investigations, prosecutions and convictions on the Romanian territory and possible discrepancies. This should be viewed in the context of the particular risks identified in the geographical areas, put into perspective with current identified risks.
2.2 Criminalisation of Terrorist Financing (SR.II)	• Review the new FT offence in the light of the FATF standard on the terrorist financing offence and demonstrate that it covers adequately all the requirements. Where applicable, it should take measures to amend the law in order to cover all essential criteria. • Put in place mechanisms to ensure that FT activities are investigated and prosecuted effectively in Romania.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Review the new CC and CPC provisions the light of the FATF standard on provisional measures and confiscation and demonstrate, under MONEYVAL's follow-up processes, that they covers adequately all the requirements. Where applicable, it should take further measures to amend the laws in order to cover all essential criteria; • Adopt comprehensive measures in the legal framework enabling to void legal actions when these have been made to transfer illicitly acquired assets to another person. • Review the national strategy and action plan in respect of the implementation of the confiscation regime and include clear and measureable objectives and indicators of success, based on a comprehensive audit of Romania's policy to deprive criminals of the proceeds of their crimes and its effective implementation in practice in respect of financial crime particularly. • consider the possibility of requiring that an offender demonstrates the lawful origin of alleged proceeds of crime or other property liable to confiscation envisaged in the Article 12 of the Palermo Convention (reversal of the burden of proof).
2.4 Freezing of funds used for terrorist financing (SR.III)	• 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. • 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. • 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. • 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. • 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. • 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.
2.5 The Financial Intelligence Unit and its functions (R.26)	• 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. • 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/CFT 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/CFT sphere (such as some of the authorities represented on the current Board but possibly other relevant institutions). • 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/CFT issues. • 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, who are specialist staff with the appropriate expertise required to perform these functions. • 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. • 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. • The requirement to establish solid grounds of ML/FT in order to disseminate financial information to competent authorities should be removed. • Efforts should be made by the authorities concerned to ensure that information on real estate in Romania is up to date. • The 30 day period for the submission of additional information by reporting entities should be reduced. • The obligation to maintain FIU information confidential by FIU staff after they cease to be employed by the FIU should apply indefinitely. • 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 reporting entities, especially banks. • 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.
2.6 Law enforcement, prosecution and other competent authorities (R.27)	• In addition to the recommendations made under Recommendation 1 which have a direct bearing on law enforcement authorities, Romania should consider implementing the following measures: o Formalise the procedure within the GPO for the distribution of FIU notifications to the appropriate competent authority. This could entail the establishment of a team of experts within the GPO responsible for the receipt and distribution of FIU notifications acting according to written procedures which set out time-frames and criteria on the basis of which distributions are to be made; o Consider introducing a system of prioritisation of ML investigations based on objective criteria, possibly in cooperation with the FIU, to ensure

	that the most urgent and serious cases receive the highest attention; o Increase the awareness of all law enforcement bodies regarding the investigation and prosecution of autonomous ML offences through, for instance, training activities and additional guidance on operational issues relating to financial investigations; o Consider further simplifying the manner in which competences for ML investigations are attributed to avoid unnecessary transfers of competence from one law enforcement authority to another; o Conduct periodical reviews to determine the reasons for the low number of prosecutions and convictions as a result of ML investigations, especially by the Tribunal Prosecutor's Office; o Consider adopting measures to ensure that FIU reports are utilised to an appropriate degree by all law enforcement authorities. This should entail providing training to all law enforcements bodies explaining the purpose and content of FIU reports and the manner in which such reports can be used effectively in the course of an investigation; o Consider setting up permanent or temporary groups specialised in investigating the proceeds of crime for the purpose of investigating, seizing and confiscating proceeds of crime.
2.7 Cross border declarations (SR.IX)	• The evaluators are of the opinion that all the deficiencies mentioned in the 3rd round evaluation remain outstanding. Romania should as a matter of urgency review the implementation of Special Recommendation IX as a whole and take the necessary steps as soon as possible to ensure that all criteria are adequately satisfied. They are advised in this process to also consider the measures set out in the Best Practices Paper for SRIX for further guidance. • NCA should have the power to stop/restrain cash, in order to ascertain whether evidence may be found for ML/FT and the legislation should be amended to ensure that this is adequately covered. • The sanctioning regime for false declarations or incomplete/inaccurate declarations should also be revised to ensure that proportionate and dissuasive sanctions are set out in the legal framework. • Romania should also take stock of the sanctions applied, and analyse the reasons which may undermine the effectiveness and deterrent scope of the sanctions. They should take additional measures, as appropriate, to ensure that sanctions are effectively applied and enforced. • The Romanian authorities should also make efforts to enhance public awareness and provide more information

	on cash declaration requirements especially at exit/entry points.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	• Romania should consider undertaking a domestic ML/TF risk assessment in order to have a national understanding of the risks facing the country that allows a proper verification of the risk based approach in place.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 7)	**Recommendation 5** • 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. • Establish a requirement for reporting entities 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 Norms. • 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. • For sectors other than those under NBR's supervision, revise the AML/CFT 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. • 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. • 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/CFT 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. • 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. • Issue guidance in addition to the current text of the manual on the risk based approach and suspicious transactions indicators in order to demonstrably address the risks perceived by the supervisors and responses from industry. **Recommendation 6** • Revise the definition of PEPs to cover "important political party officials". • Revise PEP requirements to ensure that they include potential customers, beneficial owners and foreign PEPs resident in Romania. • Extend PEP requirements to establish the source of wealth of customers and the sources of funds and wealth in relation to beneficial owners identified as PEPs. • Take measures to build-up awareness among payment institutions concerning PEP requirements. **Recommendation 7** • Provide for applicability of the requirements under Recommendation 7 to financial institutions in/from EU member states or within EEA. • Revise the measures required for establishment of cross-border correspondent relationships to explicitly provide for: a) determining whether the respondent institution has been subject to a money laundering or terrorist financing investigation or regulatory actions, and b) ascertaining that the respondent institution's AML/CFT controls are adequate and effective.
3.3 Third parties and introducers (R.9)	• Introduce an explicit requirement for credit and financial institutions to: o 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; o Immediately obtain from the third party the necessary information concerning certain elements of the CDD process; o 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. • Introduce an explicit 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.
3.4 Financial institution secrecy or confidentiality (R.4)	
3.5 Record keeping and wire transfer rules (R.10)	• Legislatively define the terms "secondary or operative records" and "registrations of financial operations". • Include an explicit legal provision that all necessary transaction records kept by entities supervised by the CSSPP and the Office must be kept longer than five years if requested by a competent authority upon appropriate authority and that transaction records must be capable of being reconstructed for a prosecution of criminal activity (with the language of the ISC Order being amended to refer to all necessary records on transactions rather than appropriate records). • Introduce an explicit requirement for credit and financial institutions to maintain account files and business correspondence for at least five years following the termination of an account or business relationship. • Clarify in legislation that all customer records held by entities supervised by the NBR, the CSSPP and the Office should be available on a timely basis to domestic competent authorities.
3.6. Monitoring of transactions and relationship reporting (R.21)	• Bearing in mind the better position of the NSC, introduce an explicit requirement to: o Give special attention to business relationships and transactions with persons in/from countries which do not or insufficiently apply the FATF Recommendations; o Examine, as far as possible, the background and purpose of transactions, which have no apparent economic or visible lawful purpose (already met by the NSC). • Introduce mechanisms enabling application of appropriate counter-measures to the countries, which continue not to apply or insufficiently apply the FATF Recommendations. • Take measures for advising non-bank financial institutions and payment institutions about countries which do not or insufficiently apply the FATF Recommendations.

3.7 Suspicious transaction reports and other reporting (R.13-14 & SR.IV)	**Recommendation 13 and Special Recommendation IV** • 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. • Ensure that the reporting requirement includes all the circumstances referred to in criterion 13.2 under the FT reporting requirement. • The FIU should undertake further efforts to increase reporting entities' understanding of ML/FT reporting requirements and ensure that suspicious transactions are reported promptly to the FIU. **Recommendation 14** • Provide for protection of reporting entities and their staff, if they report suspicions unrelated to money laundering or terrorist financing; • Extend the prohibition of tipping off to encompass all possible forms and ways of disclosing the fact that a STR or related information is being reported or provided to the FIU.
3.8 Internal controls, compliance, audit (R.15)	• Clarify the requirements in the AML/CFT Law to ensure that they cover adequately the requirements under criterion 15.2. • Introduce requirements for entities supervised by the Office to establish and maintain internal policies, procedures and controls to prevent ML and FT, and to communicate these to their employees. • While basic internal audit requirements apply to entities supervised by the NSC, introduce an explicit requirement for financial institutions which are not banks to maintain an adequately resourced and independent audit function to test compliance (including sample testing) with applicable AML/CFT procedures, policies and controls. • Introduce training requirements meeting C 15.3 to entities supervised by the Office, more detailed requirements for entities supervised by the CSSPP, and for all entities, introduce a requirement for training to be on-going and to cover new developments (including information on current ML and FT techniques, methods and trends). • Introduce a requirement for entities supervised by the CSSPP and the Office to put in place screening procedures. • Ascertain availability of appropriate training arrangements in non-bank financial institutions under NBR's supervision, payment institutions and electronic money institutions.

3.9 Foreign branches (R.22)	• Provide for applicability of the requirements under Recommendation 22 (AML/CFT measures as a whole and also not limited to policies and procedures) to branches of credit and financial institutions in EU member states or within EEA as well as outside the EU and EEA , including introducing explicit requirements for credit and financial institutions to: o 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; o 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. In order to put this recommendation in context, at the time of the onsite visit, it should be noted that Romanian financial institutions had very few foreign branches and subsidiaries.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17, 25)	**Recommendation 23** • Consider conducting a comprehensive national/sectorial risk assessment so as to understand and appropriately respond to the threats and vulnerabilities in the system. • Review the role of the Office in legislation in relation to currency exchange offices and remedy lack of clarity in legislation. • Complete the authorization of currency exchange offices supervised by the Commission and reinforce programme of on-site inspection based on risk. • Introduce licensing/registration and regulation of activities of the Post Office. • Revise/ improve NBR inspection manuals to provide for checking obliged entities' compliance with all essential requirements of the national framework for combating ML/FT. • Revise, systematize, and improve inspection planning practices by the NBR (including the risk-based definition/ implementation of the supervisory cycle). • The NBR should review the current level of scrutiny and depth of the AML/CFT 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/CFT requirements. • Provide for reasonable and even application of supervisory measures (including fines as a supervisory measure with dissuading effect) by the NBR, as appropriate. • 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. *Effectiveness* • The NSC should provide better feedback to the Bucharest Stock Exchange 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. • Take measures to ensure that supervisory activities of the NBR provide for fully ascertaining efficient implementation of applicable AML/CFT requirements by obliged parties. **Recommendation 17** • Romania should review the legal framework covering all sanctions applicable for AML/CFT violations and ensure that its scope covers all relevant requirements193, that they are clearly applicable to all natural and legal persons covered by the FATF Recommendations. • Sanctions covering directors and senior management provided under prudential legislation should be made applicable for AML/CFT purposes. • The sanctions should be revised to ensure that they are proportionate and dissuasive. • Harmonize the amounts of sanctions with those applicable elsewhere in the financial sector. • Ensure clarity and applicability of sanctions provided under prudential legislation for AML/CFT purposes. • The supervisory authorities should review their supervisory policies and practices to date and ensure that they make an adequate and full use of their powers of sanctioning in practice.

[193] See the "Conclusions" under the analysis for R 17

	Recommendation 29 • Clarify language of requirements so that it is unambiguous the NSC, CSA, the CSSPP and the Office can require information. • Clarify that the authority of the NSC, the CSA and the CSSPP extends to all AML/CFT measures and remediation extends beyond seeking modification of procedures. • Though this appears not to be an issue in practice, the limitation on the Office to take away records only when there is suspicion of ML/FT should be explicitly removed. • Re-establish momentum for on-site inspections by the NSC and, more particularly, the CSA and the Office. **Recommendation 25** • Competent authorities are recommended to undertake a dialogue with all reporting institutions on how best to address their need for further feedback, as this would also contribute to enhance the effectiveness of the reporting system. • The authorities should review the guidance issued and ensure that it includes more detailed information assisting to implement the AML/CFT requirements, rather than the same text of the general legislation, and provides also updated assistance notably on the nature of AML/CFT risks in Romania. • Provide guidance in form of training sessions, round tables and other communication for NBFIs, payment institutions and electronic money institutions. • Romania should develop more detailed and tailored guidance to assist all designated professionals to understand and effectively implement their preventive obligations.
3.11 Money or value transfer services (SR.VI)	• The authorities should establish licensing/registration requirements for the Post Office in relation to money and value transfer services provided by them and ensure that they are subject to adequate AML/CFT requirements, supervision and application of sanctions. • Romania should establish a requirement of agent registration for the Post Office. • Romania should revise the sanctions applicable in relation to the obligations under SR VI and make sure that they are proportionate and dissuasive. • Romania should take measures to build-up awareness among payment institutions concerning agent registration/ licensing requirements.

	• Romania should take measures to ensure an effective and efficient implementation of the obligations under the AMLK/CFT Law of MVTs and Post Office.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	Some of the remarks made in Chapter 3 of this report on the formal compliance of laws and regulations with Recommendations 5, 6, 9, 10 are also relevant to DNFBPs, since they are subject to the same statutory obligations as those applicable to financial institutions. **Recommendation 5** • Revise the AML/CFT Law and Regulation to introduce requirements on anonymous accounts. • 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. • Establish a requirement for DNFBPs 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 Norms. • 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. • Revise the AML/CFT 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 DNFBPs 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. • Include a requirement that DNFBPs 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. • 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/CFT

	requirements against the FATF requirements (for allowing simplified CDD or for requiring enhanced CDD). • 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. • Issue guidance in addition to the current text of the manual on the risk based approach and suspicious transactions indicators in order to demonstrably address the risks perceived by the supervisors and responses from the professionals. • Take measures to build-up awareness among DFNFBPs concerning CDD and related requirements. • Take urgent measures to ensure that the full range of AML/CFT requirements are met by casinos. **Recommendation 6** • Revise the definition of PEPs to cover "important political party officials". • Review PEP requirements to ensure that they include potential customers, beneficial owners and foreign PEPs resident in Romania. • Extend PEP requirements to establish the source of wealth of customers and the sources of funds and wealth in relation to beneficial owners identified as PEPs. • With reference to effectiveness, ensure casinos meet Recommendation 6 and that DNFBPs as a whole do not rely on one data source and become aware of a change of status of a customer or beneficial owner earlier than, potentially, annually. **Recommendation 9** • Introduce an explicit requirement for DNFBPs to: o 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; o Immediately obtain from the third party the necessary information concerning certain elements of the CDD process; o 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. • Introduce an explicit 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. **Recommendation 10** • Legislatively define the terms "secondary or operative records" and "registrations of financial operations". • Include an explicit legal provision that all necessary transaction records kept by DNFBPs must be kept longer than five years if requested by a competent authority upon appropriate authority and that transaction records must be capable of being reconstructed for a prosecution of criminal activity. • Introduce an explicit requirement for DNFBPs to maintain account files and business correspondence for at least five years following the termination of an account or business relationship. • Clarify in legislation that all customer records held by DNFBPs should be available on a timely basis to domestic competent authorities. **Recommendation 11** • Regarding the application of enhanced due diligence obligations, the competent authorities should assist DNFBPs by providing adequate information on the circumstances in which the activities in which these professionals are engaged are likely to present greater risks and which require due diligence.
4.2 Suspicious transaction reporting (R.16)	***Applying Recommendation 13*** • Introduce a requirement to report suspicions that funds are the proceeds of criminal activity. • Include all the circumstances referred to in criterion 13.2 under the FT reporting requirement. • The FIU and SROs should conduct an analysis to determine the reasons for the low number of STRs submitted by DNFBPs. • Further efforts should be made to increase reporting entities' understanding of ML/FT reporting requirements. ***Applying Recommendation 14*** • Provide for protection of reporting entities and their staff, if they report suspicions unrelated to money laundering or terrorist financing. • Extend the prohibition of tipping off to encompass all possible forms and ways of disclosing the fact that a STR or related information is being reported or provided to the FIU.

	Applying Recommendation 15 • Make it clear that procedures, policies and controls should cover the detection of unusual and suspicious transactions and the reporting obligation. • Make it explicit that an AML/CFT compliance officer should be appointed at management level. • Introduce an 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. • Introduce a requirement to have on-going training. • Introduce a requirement for training to cover new developments (including information on current ML and FT techniques, methods and trends). • Introduce a requirement for training to cover all and not just some aspects of AML/CFT laws and obligations (including CDD). • Ascertain availability of appropriate training arrangements in non-bank financial institutions, payment institutions and electronic money institutions. • Include a requirement for on-going training. • Introduce an explicit requirement for training to ensure employees are kept informed of new developments (including information on current ML and FT techniques, methods and trends) and to cover all rather than some aspects of AML/CFT laws and obligations, including CDD. • Include requirement for staff screening. ***Applying Recommendation 21*** • Introduce provisions to implement adequately the requirements of Recommendation 21.
4.3 Regulation, supervision and monitoring (R.24)	• Bring internet casinos, types of poker not already covered and any (other) black market casino activities into NOG's supervisory framework, and within the AML/CFT framework and subject to AML/CFT supervision. • Revise legislation administered by NOG to include explicit reference so that criminals are prevented from being beneficial owners of a significant or controlling interest in casinos, and those holding a management function, and that changes to these persons and casino operators are provided in advance to NOG, providing NOG with an opportunity to prevent persons occupying these roles at any time. There should be appropriate sanctions for failure to provide prior notice of changes. The evaluation team also recommends that the references

	should be expanded so that the test to be met is more of a fit and proper test rather than merely an absence of apparent criminality. • Revise the gambling legislation to remove or revise the 30 day time frame for dealing with applications. • Introduce a registration and AML/CFT oversight framework for trust and company service providers. • Resolve the disconnect on the role of the UNBR where it appears to meet none of its responsibilities under section 24 of Law 656/2002 so that it fulfils its responsibilities under the law. • Develop a framework for those sectors, such as the legal and accountancy sectors, where the Office and the SRBs have joint monitoring roles so as to demonstrably show both bodies in relation to a sector are meeting their responsibilities and do so in a coordinated way. The UNBR is dealt with above but it is not clear to the evaluation team how the other sectors meet their responsibilities under section 24 of Law 656/2002. • Review the robustness of approaches by SRBs to sanctions in light of absence of any AML/CFT sanctions by SRBs and, in any case, ensure consistent approach to the issue of sanctions. • Apply the recommendations on sanctions made in respect of Recommendation 17 in relation to all DNFBPs (and the recommendations in Recommendation 29 on the powers of the Office). • Finally, the authorities should take any other additional measures as appropriate to ensure that the system for monitoring the AML/CFT compliance of DNFBPs as well as the sanctions regime are applied effectively.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.3 Non-profit organisations (SR.VIII)	• Romania should review the adequacy of the legal framework applicable to NPOs to cover the requirements set out in SR.VIII and include adequate measures to ensure accountability and transparency, including measures that information on the identity of persons who own, control or direct NPOs activities (including senior officers, board members and trustees) is accessible and up to date. • Romania should conduct period reassessments by reviewing new information on the NPO sector's potential vulnerabilities to terrorist activities. • Romania should develop an effective outreach program with the NPO sector, including regular activities, and covering TF risks, awareness raising activities on the

	scope and methods of abuse of NPOs, typologies and emerging trends. • Romania should ensure that it has mechanisms to undertake an effective supervision and monitoring of the NPO sector, including applying sanctions for violations. Such measures should particularly be taken in respect of NPOs which control significant portions of the financial resources of the sector and substantial shares of the sector's international activities.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• Romania should make greater use of existing coordination mechanisms. At the general coordination level, it should enhance the role of the Working Group by undertaking regular reviews of the AML/CFT strategic direction in the light of risks identified, examining jointly the issues which hinder the effectiveness of the AML/CFT system in Romania and, as appropriate, making necessary adjustments to applicable policies. • As regards operational co-operation, the current mechanisms for co-operation between competent authorities and their effectiveness should be reviewed and additional measures taken, on a bilateral basis, to ensure that they are fully used. • Competent authorities responsible for the implementation of the national strategy should actively and regularly cooperate with the FIU in a significant and meaningful manner. They should seriously commit to. Romania should also ensure that full use is made of the various members of the FIU's Board which are nominated by the various competent authorities, to facilitate and support such co-operation/coordination between the FIU and the respective institutions, in their areas of competence. • Romanian authorities should continue increase mechanism for consultation between competent authorities, financial institutions and, in particular, DNFBPs, in order to involve better these sectors in the requirement to declare to the FIU, as concerns of effectiveness are raised.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Romania should take additional measures, as relevant, to implement fully the Vienna and Palermo Convention. • Romania should take additional measures to implement fully the CFT Convention, in particular by addressing the shortcomings identified in SR.II. • Romania should address the shortcomings identified in relation to the implementation of UNSCR.
6.3 Mutual Legal Assistance (R.36 & SR.V)	

6.5 Other Forms of Co-operation (R.40 & SR.V)	• The FIU should take measures to ensure that confidentiality obligations applicable to FIU staff are not extinguished after five years from the termination of their employment with the FIU. • Clarify in law that the FIU as a supervisory authority may exchange information for supervisory purposes with its foreign counterparts. • Empower supervisory authorities (except for the NSC) to conduct inquiries on behalf of foreign counterparts. • Specify the conditions applicable to supervisory authorities for the exchange of information. Such conditions should not be unreasonable or unduly restrictive. • Strengthen the safeguards of the CSA and CSSPP for the use of information exchanged.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	**Recommendation 30** <u>FIU</u> • Analytical tools should be introduced as a matter of priority. • Internal training to FIU staff, especially financial analysts, should be provided on a more regular basis. • More adequate premises should be sought for the FIU. • The members of the Board (if the Board is retained) should receive more training on AML/CFT issues. <u>Law enforcement authorities</u> • The authorities should increase the number of financial investigators attached to prosecution offices to support investigations related to financial crime. • The authorities should also develop adequate and continuous training programmes to enhance the capacity of all law enforcement authorities to investigate ML cases and financial crime generally. • Romania should identify gaps in the capacity and analytical skills of police and prosecutors to handle the caseload and financial investigations, to gather evidence and estimate the legality of particular assets, and strengthen current training for law enforcement and the judiciary to address the identified gaps. • Romania should make a comprehensive assessment of the overall resources allocated to conduct financial investigations and results achieved, and based on that, take any additional measures as necessary to ensure that all law enforcement bodies are adequately resourced for

	the purpose of conducting financial investigations, and having access to qualified financial investigators and expertise. Customs • Romania should continue its efforts to ensure that the NCA and Border Police are maintaining high professional standards and that there is a continuous monitoring of compliance with the integrity requirements set out in the legal framework. • Comprehensive training should be provided regularly to the NCA (and Border Police) on detection of cash couriers and further guidance on trends/risks/patterns associated with cross border transportation of cash and other instruments, as well as typologies are available. • Resources should be provided to the NCA to enable it to make proper use of AFIS. Supervisory Authorities – Financial Institutions • Given that the evaluation team could not review the FSA legal framework, Romania should demonstrate that it indeed complies with the requirements set out in R.30, and notably as regards confidentiality and integrity aspects and that those are adequately implemented194. • Furthermore, the re-organisation process of the new supervisory authority should take into account the need for the FSA to be adequately structured, funded, staffed, and provided with sufficient technical and other resources to fully and effectively perform its functions. This includes the need for sufficient operational independence and autonomy to ensure freedom from undue influence or interference. • Staff training programmes for the NSC, the CSA and the CSSPP should be reviewed and enhanced, and comprehensive data should be maintained on this. • Considering the overall conclusion on the adequacy of resources of supervisory authorities, Romania should undertake a comprehensive review of the adequacy of staff resources of supervisory authorities devolved to AML/CFT supervision, and notably of resources at the CSA and the Office, and take appropriate action to increase resources so that these can adequately perform their functions. • Enhance the CSSPP's information technology systems. • Amend the confidentiality framework to which the

[194] The evaluation team has noted from public information available that several criminal investigations related to corruption, organised criminal group and abuse of power have been opened by the DNA in February 2014, involving several high level members of the FSA, including the President of the FSA.

	CSSPP is subject. Supervisory Authorities – DNFBPs • Increase resources at NOG as planned (paying attention to internet casino supervision) so as to carry out its supervisory functions effectively. • Increase resources significantly at the Office so as to enhance the programme of on-site and off-site supervision so that all DNFBP sectors subject to its supervision are subject to supervision routinely. This recommendation does not seek to remove a risk based approach - it reflects the view of the evaluation team that the Office has too few staff to supervise the number and type of entities for which it has responsibilities. • Furthermore adequate supervisory activity should be undertaken throughout the territory of the country. • Additional training should be provided to the legal profession, which is not engaged as attendance at training events is poor. Policy makers • The authorities should ensure that policy makers in the field of AML/CFT are adequately structured and funded. **Recommendation 32** • The authorities should ensure that statistics kept enable to have a comprehensive picture of the state of ML investigations, prosecutions and convictions. • The statistics on ML/FT investigations maintained by the authorities should distinguish between investigations initiated on the basis of an FIU notification and investigations initiated independently by the authorities. • The collection of statistics should enable Romanian authorities to draw a meaningful picture of the overall efforts undertaken by the various bodies and institutions at the various stages (pre-trial investigation, prosecution, adjudication etc.) to secure and recover assets, so that these can be used at a wider policy level for the assessment of the effectiveness of the system. • The Customs Authorities should consider developing the breakdown of statistics available in order to be able to have supplementary information available to assess whether the system in place is effective. Statistics could be further detailed to cover details such as nationality of persons involved, direction of transport, results of controls per port of entry etc.

	• The supervisory authorities should collect more comprehensive and detailed data by sector and by year, on the use of their inspection and enforcement powers with respect to AML/CFT aspects and the nature of breaches identified, and sanctions applied, so that they can use such data to develop their understanding of ML/TF risks, to review whether the action taken in this area is indeed appropriate and effective, and be in a position to take any remediating action as appropriate. • Romania should ensure that the mechanism in place is effectively reviewing the Romanian AML/CFT system and its effectiveness on a regular basis. The system should, at least, involve a mechanism to collect all relevant statistics to enable the authorities to establish a comprehensive view of the ML/FT situation in Romania and identify the issues which require further attention by the authorities. • One of the objectives of the national strategy for the prevention of ML/FT set out in 2010 was to intensify the identification and assessment of ML-FT risks, trends and vulnerabilities in Romania. A further step could be to aim at ensuring the risks are mitigated effectively, by an appropriate allocation of resources and revision of the legislation when identified as insufficient. • Supervisory authorities (except for the NSC) should maintain statistics on international cooperation.
7.2 Other relevant AML/CFT measures or issues	• Romania should 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 and that greater use is made of the other existing cooperation mechanisms at the operational level.
7.3 General framework – structural issues	• Romania should clarify and consolidate the AML/CFT legislation, notably by making appropriate amendments to the AML/CFT Law (and as a result subsequently update the AML/CFT Regulation, as well as other sectorial implementing norms) to ensure that the requirements are specified once rather than for regulated/supervised entities to have to meet similar requirements couched in different language in more than one place.

10 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Romania is a member country of the European Union since 2007. It has transposed **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: "the Directive") and the **Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis**.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

1.	**Corporate Liability**
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF R. 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
Description and Analysis	Criminal liability of legal entities was implemented in the Romanian criminal system in 2006. Art. 19^1 of the Romanian Penal Code stipulates that: (1) *Legal entities, except for state, public authorities and public institutions performing activities that cannot fall under the scope of the private domain, shall be held criminally liable for offences perpetrated in performing their activities or in the interest or on behalf of legal entities, if such act was perpetrated with a form of guilt specified by the criminal law.* *(2) Criminal liability of legal entities shall not exclude criminal liability of natural persons who contributed, in any manner, to the perpetration of the same offences.* Criminal liability of legal entities can be established in situations where an offence was perpetrated in the interest of such entity, by a natural person holding a management position with such legal entity. According to the provisions of Article 27 of the AML/CFT Law a breach of any of the provisions of the AML/CFT Law is subject to a civil, disciplinary, misdemeanour or criminal penalty which applies to both natural and legal persons.
Conclusion	In Romania, the provisions dealing with corporate liability are in line with the Directive and go beyond the FATF Standards.
Recommendations and Comments	

2.	Anonymous accounts
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Article 16(1) of Law 656/2002 establishes that credit and financial institutions "shall not open and operate anonymous accounts, respectively accounts for which the identity of the holder or owner is not known and documented accordingly". The same article further requires that standard CDD measures applicable to all new and existing customers should be applied to the "owners and beneficiaries of existing anonymous accounts as soon as possible and in any event before such accounts or are used in any way". The Annex to Government Decision 594/2008 provides similar regulation for anonymous accounts. Articles 4(4) to (6) prohibit opening and operation of anonymous accounts and establish that the "use of any type of existing anonymous accounts and savings checks shall not be allowed unless after the application of standard customer due diligence".
Conclusion	Romania complies with the EU requirements.
Recommendations and Comments	

3.	Threshold (CDD)
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to EUR 15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of EUR 15 000 covered?
Description and Analysis	Article 13 of Law 656/2002, as well as article 4 of the Annex to Government Decision 594/2008 establish that all reporting entities are obliged to apply standard customer due diligence measures, when, *inter alia, c*arrying out occasional transactions amounting to or in excess of EUR 15.000, whether the transaction is carried out in a single operation or in several operations which appear to be linked.
Conclusion	Romania complies with the EU requirements.
Recommendations and Comments	

4.	Beneficial Owner
Art. 3(6) of the Directive (see Annex)	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements.
FATF R. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
Key elements	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	Article 4 of the law contains a definition of beneficial owner as follows: "(1) For the purposes of the present law, beneficial owner means any natural person who ultimately owns or controls the customer and/or the natural person on whose behalf or interest a transaction or activity is being conducted, directly or indirectly. (2) The beneficial owner shall at least include: a) in the case of corporate entities: 1. the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership over a sufficient percentage of the shares or voting rights sufficient to ensure control in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards. 2. A percentage of 25% plus one share shall be deemed sufficient to meet this criterion; 2. the natural person(s) who otherwise exercises control over the management of a legal entity; b) in the case of legal entities, other than those referred to in para (a), and other entities or legal arrangements, which administer and distribute funds: 1. The natural person who is the beneficiary of 25% or more of the property of a legal person or other entities or legal arrangements, where the future beneficiaries have already been determined; 2. Where the natural persons that benefit from the legal person or entity have yet to be determined, the group of persons in whose main interest the legal person, entity or legal arrangement is set up or operates;

	3. The natural person(s) who exercises control over 25% or more of the property of a legal person, entity or legal arrangement.”
Conclusion	Romania complies with the EU requirements.
Recommendations and Comments	

5.	**Financial activity on occasional or very limited basis**
Art. 2 (2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive. Art. 4 of Commission Directive 2006/70/EC further defines this provision.
FATF R. concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	Romania has chosen not to exercise the option under article 2 of the directive.
Conclusion	Romania has chosen not to take advantage of article 2(2) of the directive.
Recommendations and Comments	

6.	**Simplified Customer Due Diligence (CDD)**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?

Description and Analysis	Articles 7 to 9 of the Annex to Government Decision 594/2008 define the categories of low-risk customers, services and transactions, for which reporting entities may choose to apply simplified due diligence measures, as follows: • **Under Article 7**: a) life insurance policies below certain thresholds; b) insurance policies for pension schemes; c) transactions in electronic money, as defined in Governmental Emergency Ordinance 99/2006 for specific products below certain thresholds. • **Under Article 8**: a) companies whose securities are admitted to trading on a regulated market in one or more Member States and listed companies from third countries which are subject to disclosure and transparency requirements consistent with Community legislation; b) beneficial owners of the transactions performed through pooled accounts administrated by notaries and other independent legal professions from Member States or from third countries imposing requirements equivalent to those laid down in the Law 656/2002 and Government Decision 594/2008 and supervised for compliance with those requirements; c) domestic public authorities; d) customers, which are considered a low AML/CFT risk and are communitarian public authorities, have publicly available identity, transparent activities and accountable evidence etc. • **Under Article 9**: a) products offered on basis of a written contract; b) operations performed through an account opened with credit institutions from Member States or from third countries imposing requirements equivalent to those laid down in the Law 656/2002 and the Government Decision 594/2008; c) products or connected operations, which are nominatives and according to their nature allow a proper application of standard CDD measures; d) the value of the product is below EUR 15,000; e) the beneficiary of products or connected operations cannot be a third person, excepting death, invalidity, predetermined ages or other similar situations; f) products or connected operations allow investments in financial assets or debts, provided that the benefits are materialized just on a long term, the product or the connected operations cannot be used as guaranty (assurance), and that there are no surrender clauses. Except for article 7(1)(a), which defines that obliged entities "shall apply simplified customer due diligence measures" where the customer is a credit or financial institutions from a Member State or from a third country imposing requirements equivalent to those laid down in the Law 656/2002 and supervised for compliance with those requirements, all other derogations in this regulation from standard CDD requirement use the wording "may apply simplified customer due diligence measures", which means that the provision under article 7(1),(a) is rather a

	requirement than an option. Compared to the provisions of the Annex to Government Decision 594/2008 above, Article 17 of the Law 656 (2002) provides a less detailed description of the categories of low-risk customers, services and transactions, for which reporting entities are entitled to apply simplified CDD measures. Article 10 of the AML/CFT Regulation (Government Decision 594/2008) specifies that, in the situations provided for in Articles 7 and 8, reporting entities shall obtain adequate information about their clients and shall permanently monitor their activity to establish whether they are framed within the category for which the respective derogation is provided (i.e. whether they can be considered low risk clients).
Conclusion	The provisions in Romanian law are in line with the Directive.
Recommendations and Comments	

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive *(see Annex)*	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	The definition of politically exposed persons (PEP) is provided under Article 3(1) of Law 656/2002, as the "individuals who work or have worked with important public functions, their families and persons publicly known to be close associates of individuals acting in important public functions". Hence, this definition includes both domestic and foreign PEPs. Paragraph 2 of the same article defines the list of the natural persons entrusted, for the purposes of the law, with prominent public functions[195],

[195] The list defines the following persons/ positions: a) Heads of state, heads of government, members of parliament, European commissioners, members of government, presidential councillors, state councillors, state secretaries; b) Members of constitutional courts, members of supreme courts, as well as members of the courts whose decisions are not subject to further appeal, except in exceptional circumstances; c)Members of account courts or similar bodies, members of the boards of central banks; d) Ambassadors, charges d'affaires and high-ranking officers in the armed forces; e) Managers of the public institutions and authorities; f) Members of the administrative, supervisory and management bodies of State-owned enterprises.

	and Paragraphs 4 and 5 provide the definitions of family members[196] and close associates[197]. Article 3(3) of Law 656/2002 establishes that the categories of natural persons entrusted with prominent public functions shall not include middle ranking or more junior officials, and that they shall include, where applicable, positions at [European] Community and international level, except for those of the members of administrative, supervisory and management bodies of state-owned enterprises. Paragraph 6 of the same article further details that, where a person has ceased to be entrusted with a prominent public function for a period of at least one year, he or she shall not be considered as a politically exposed person. Article 18, Paragraph 1, Letter (c) of the Law 656 (2002), as well as Article 12, Paragraph 1, Letter (c) of the Annex to the Government Decision 594 (2008) contain identical texts requiring that enhanced CDD measures are applied to the "occasional transactions or business relationships with politically exposed persons, which are resident in another European Union Member State or European Economic Area member state, or a third country". Article 12, Paragraph 4 of the Annex to Government Decision 594/2008 further details that, in case of occasional transactions or business relations with [foreign] politically exposed persons, reporting entities should apply the following measures: a) Have in place risk based procedures enabling identification of the clients within this category; b) Obtain executive management's approval before starting a business relationship with a client within this category – c) Set up adequate measures in order to establish the source of income and the source of funds involved in the business relationship or the occasional transaction – in relation to this, the provision falls short of requiring that obliged entities take reasonable measures to establish the source of wealth and source of funds of customers and beneficial owners identified as PEPs (as opposed to the "source of funds involved in the business relationship"); d) Carry out enhanced and permanent monitoring of the business relationship – in relation to this, Article 16, Letter (e) further defines that additional CDD measures set up by obliged entities include implementing adequate IT systems enabling, *inter alia*,

[196] Family members include: a) the spouse; b) the children and their spouses; c) the parents; the definition does not comprise the "partner" as specified under the Directive 2006/70/EC.

[197] Close associates are defined as: a) any natural person who is found to be the real beneficiary of a legal person or legal entity together with any of the persons included in the list or having any other privileged business relationship with such a person; b) any natural person who is the only real beneficiary of a legal person or legal entity known as established for the benefit of any person included in the list.

	effective monitoring of customer transactions.
Conclusion	Romania complies with the EU requirements
Recommendations and Comments	

8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Art. 13(3) of the Directive?
Description and Analysis	Article 18(1)(b) of Law 656/2002 requires that enhanced CDD measures are applied to "correspondent relationships with credit institutions from states that are not European Union's Member States or do not belong to the European Economic Area". Article 12, Paragraph 1, Letter (b) of the Annex to the Government Decision 594 (2008) contains a somewhat similar provision requiring application of enhanced CDD measures to "correspondent relations with credit institutions within third states".
Conclusion	Romania complies with the EU requirements.
Recommendations and Comments	

9.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favour anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity [...].
Key elements	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	As indicated above in box 2 of this section, Romania does not permit anonymous accounts. Article 10 of the NSC Regulation states that regulated entities shall take the steps required in the case of operations favouring anonymity in order to prevent their use in money laundering or terrorist financing. In addition, article 18 of the ISC Norms provides that entities shall take adequate measures with respect to operations and products which, by their nature, may foster anonymity and may relate to money laundering

	or terrorist financing. Article 18 of Law 656/2002 provides that enhanced due diligence measures must be applied in the following situations, which, by their nature, may pose a higher risk of money laundering a) Persons who are not physically present when performing the transaction; b) Correspondent relationships with credit institutions from states that are not EU Member States or which are not in the EEA; c) Transactions or business relationships with PEPs which are resident in another EU Member State, in an EEA Member State or a third country; In addition, enhanced due diligence measures must be applied for other cases which, by their nature, pose a higher risk of money laundering or terrorist financing. Article 12 of the Annex to the Government Decision 594/2008 specifies that application of enhanced due diligence measures is mandatory at least in the case of: a) Persons who are not physically present for the performance of the operations; b) Correspondent relations with credit institutions within third states; **c)** Occasional transactions or business relations with the politically exposed persons who are resident within a Member State of the European Union or of the European Economic Area or within a foreign state Article 11 of NBR Regulation 9/2008 defines that reporting entities should establish classes of customers and transactions representing high risk, using risk parameters such as the size of the assets and income, the types of services to be provided, the activity field of the customer, the economic background, the reputation of the home country, the veracity of the customer's motivation, and value limits on each type of transaction. Articles 12 to 14 of the same regulation define the following categories of high-risk customers, services and transactions: a) Customers and transactions in and/or from jurisdictions, which do not impose KYC and record keeping requirements equivalent to those laid down in the Law 656/2002, the Government Decision 594/2008 and the NBR Regulation 9/2008, and in which they are not supervised for compliance with those requirements; b) Personalized (private) banking services; c) Non-nominative accounts, for which the identity of the holder, known by the credit institutions, is replaced in records by a

	numerical code or by a code of another nature.
Conclusion	The article of the directive goes beyond simply preventing anonymous accounts. In this context, the evaluation team has noted the provisions in the NSC Regulation and the ISC Order although these provisions do not appear to capture the quality of special attention required by the directive. applied in case of ML or FT threats that may arise from products or transactions that might favour anonymity.
Recommendations and Comments	Romania should revise the legislation so that ECDD provisions apply to ML or TF threats that may arise from products or transactions that might favour anonymity.

10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	Article 2(1)(d) of the Annex to Government Decision 594/2008 defines third parties as credit and financial institutions situated in Member States or in third countries, which: a) are subject to mandatory professional registration for performing of the activity recognized by law; b) apply customer due diligence and record keeping requirements as laid down in Law 656/2002 and Government Decision 594/2008, and their compliance with the requirements of these acts is supervised in accordance with the Law 656/2002. Paragraph 2 of the same article establishes that, in the meaning of this article, "specialized entities which perform services regarding money remittance and foreign currency exchange are not considered third parties". The authorities advised that, in accordance with this article, money remittance and foreign currency exchange service providers are not recognized as a permitted source of CDD information for credit and other financial institutions.
Conclusion	Romanian legislation only permits reliance on credit and financial institutions.
Recommendations and Comments	

11.	Auditors, accountants and tax advisors
Art. 2 (1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF R. 12	CDD and record keeping obligations 1. do not apply to auditors and tax advisors; 2. apply to accountants when they prepare for or carry out transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organization of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (2004 AML/CFT Methodology criterion 12.1(d)).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	Article 10 of Law 656/2002 provides that the provisions of the law are applied to natural or legal persons which are auditors, and natural and legal persons providing tax and accounting consultancy.
Conclusion	The scope of Romanian AML/CFT legislation is in line with the Directive.
Recommendations and Comments	

12.	High Value Dealers
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.
FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	Article 10 of Law 656/2002 provides that the provisions of the law are applied to natural or legal persons which are natural or legal persons that trade goods and/or services, provided that the operations are based on cash transactions, in RON or foreign currency, whose minimum value represents the equivalent of 15000 euro, indifferent if the transaction is

	performed through one or several linked operations.
Conclusion	The scope of Romanian AML/CFT legislation is in line with the Directive.
Recommendations and Comments	

13.	**Casinos**
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	Article 13 of Law 656/2002, as well as Article 4 of the Annex to the Government Decision 594 (2008) establish that all reporting entities are obliged to apply standard customer due diligence measures, when purchasing or exchanging casino chips amounting to or in excess of 2,000 euro. Article 11 of Law 656/2002 requires that, in order to combat money laundering and terrorism financing, reporting entities apply standard customer due diligence measures. Article 5(1)(a) of the Annex to the Government Decision 594/2008 specifies that standard CDD measures include, *inter alia*, identification of the customer and verification of identity on the basis of documents and information obtained from reliable and independent sources.
Conclusion	Romania complies with the EU requirements.
Recommendations and Comments	

14.	**Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU**
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.

Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	Article 5(11) of Law 656/2002 specifies that persons listed under articles 10(e) and (f) (accountants, auditors and tax advisors, notaries and other independent legal professionals) may forward the STR to their respective SRO which must transmit reports to the Office within three days of their receipt unmodified. There are five SROs in Romania, namely the UNBR, the UNNPR, CECCAR, CAFR and the Tax Consultants Chamber.
Conclusion	Romania makes use of the option under Article 23(1) of the Directive.
Recommendations and Comments	

15.	**Reporting obligations**
Arts. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	The requirement to submit ML/FT STRs derives from a combination of provisions in the AML/CFT Law. Article 5(1) requires reporting entities to notify the FIU immediately where they have a suspicion that an operation, which is to be executed, has a money laundering or terrorism financing purpose (*ex-ante* reporting). The suspicion must be based on a reasonable motivation. Article 6(2) provides that where it is ascertained that an operation or several operations carried out on the account of a customer are atypical for the activity of such customer or for the type of transaction in question, the reporting entity shall notify the FIU immediately where suspicions arise that the atypical nature of the operation(s) has a money laundering or terrorism financing purpose. In terms of Article 6(3), reporting entities are required to notify the FIU immediately where they suspect that the funds used in an operation or several operations carried out on behalf of a customer have a money laundering or terrorism financing purpose (*ex post* reporting). In Articles 5(1), 6(2) and 6(3), the term 'operation' appears to refer to a 'transaction', since Article 2(d) provides a definition of a 'suspicious transaction' as an operation which apparently has no economical or legal purpose or an operation that by its nature and/or its unusual character in relation to the activities of the customer raises suspicions of money laundering or terrorist financing.

	The *ex-ante* reporting requirement (Article 5(1)) is subject to an exception. In terms of Article 6(1), a reporting entity may carry out a transaction which is suspected to have a ML purpose before notifying the FIU, where (1) the transaction must be carried out immediately or (2) where the non-performance of the transaction could prejudice efforts to identify the beneficiaries of the ML operation. The reporting entity is required to report the transaction to the FIU immediately, and in any case not later than twenty four hours, after the transaction is performed. The reporting entity is also required to specify the reasons for not reporting the transaction before it was executed.
Conclusion	The reporting requirement in Romanian legislation is inspired by the equivalent provisions in the Directive. However, there is no express requirement to refrain from carrying out a transaction suspected to be related to ML/FT and the first condition under Article 6(1), i.e. 'where the transaction must be carried out immediately', may be too wide in its scope.
Recommendations and Comments	Romanian authorities should align the provisions under Article 6(1) with Article 24 of the Directive.

16.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and Analysis	There appears to be no language in Romanian legislation which specifically protects employees of reporting institutions from being exposed to threats or hostile actions.
Conclusion	Romania does not meet the EU rules.
Recommendations and Comments	Explicit language should be included in law to protect employees of reporting institutions from being exposed to threats and hostile actions.

17.	**Tipping off (2)**
Art. 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	Under article 25 of Law 656/2002 reporting entities have an obligation not to warn customers about the report sent to the Office. Article 19 of the NSC Regulation, article 25 of the ISC Order and article

	17 of the CSSPP Norms contain similar tipping off provisions. However, the directive goes beyond the language of non-disclosure that information has been transmitted in accordance with articles 22 or 23 of the directive to the additional situations of a money laundering or terrorist financing investigation being carried out or that an investigation may be carried out.
Conclusion	Romania does not meet the EU rules.
Recommendations and Comments	Additional language should be added to Romanian legislation stating that the prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out.

18.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	Under article 13(4) of Law 656/2002 credit and financial institutions have to apply customer due diligence and record keeping procedures at least equivalent to those established by this law in all their branches and subsidiaries located in third countries. Article 20(2) provides that entities shall appoint one or more persons in charge of applying the law and establish adequate policies and procedures related to customer due diligence measures, reporting, secondary or operative record keeping, internal control, risk assessment and management, compliance management, and communication, in order to prevent and obstruct money laundering or terrorism financing suspect operations, by ensuring proper training of their employees. Credit and financial institutions have the obligation to appoint a compliance officer subordinated to the executive management, who coordinates the implementation of internal policies and procedures in the application of the law. Article 20(5) of the law specifies that credit and financial institutions have to inform all their branches and subsidiaries located in third countries of the policies and procedures established under article 20(2). Similar provisions are included in article 15 of Government Decision 594/2008.
Conclusion	Romania meets the EU rules except that the reference to record keeping communicated to branches and subsidiaries extends only to secondary or operative record keeping.
Recommendations and Comments	Romania should revise legislation so that the internal policies and procedures communicated to subsidiaries and branches extends to record keeping rather than secondary or operative record keeping.

19.	Branches and subsidiaries (2)
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	According to Article 13 of Government Decision 594/2008, financial and credit institutions shall apply in their branches from other third states, customer due diligence and record keeping measures, equivalent at least with those provided for under the AML/CFT Law and Regulation. Where the legislation of the third state does not allow for such equivalent measures to be applied, the credit and financial institutions shall inform the competent Romanian authorities. Where the legislation of the third state does not allow for customer due diligence measures to be applied, the credit and financial institutions shall apply the necessary customer due diligence measures, in order to efficiently cope with the money laundering or terrorism financing risk.
Conclusion	The provisions of Article 13 are broadly in line with the requirement under the Directive. However, it only applies to branches and additional measures are only required where the application of CDD is not permitted rather than in situations where equivalent AML/CFT measures are not permitted to be applied.
Recommendations and Comments	Romanian legislation should be aligned further with the requirement

20.	Supervisory Bodies
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	Article 24(2) of Law 656/2002 contains a requirement for supervisory bodies to inform the Office forthwith where they have suspicions of ML/FT resulting from obtained data.
Conclusion	Romania meets the EU's rules.
Recommendations and Comments	

21.	Systems to respond to competent authorities
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Article 20 of Law 656/2002 provides that the persons in charge of applying the law should have direct and timely access to the data and information necessary for the fulfilment of the obligations established by the law. Record keeping requirements are contained in the annex to Government Decision 594/2008. Article 23 of the NBR Regulation states that records and documents regarding customers, operations performed by them, including analysis made by the institution for the detection of unusual or suspicious transactions or risk levels associated with transactions or customers should be accessible and available for the NBR and other authorities. Article 18(3) of the NSC Regulation specifies that regulated entities are required to have internal procedures and systems which enable the prompt submission of information about the identity and the nature of the relationship for the customers specified in the request with whom they are in a business relationship or have had a business relationship for the last five years, at the request of the Office, NSC and/or criminal investigation bodies. Article 24 of the ISC Order provides that entities should have internal procedures and systems which shall allow the immediate transmission at the request of the Office or the CSA of information on the identity and nature of current business relationships or relationships conducted in the last five years. Article 16 of the CSSPP Norms contains a similar provision to article 24 of the ISC Order. There appear to be no equivalent provisions for currency exchange providers.
Conclusion	The EU rules are met except in relation to currency exchange providers.
Recommendations and Comments	The Romanian AML/CFT framework should be amended so as to provide that currency exchange providers should have systems in place to meet article 32 of the Directive.

22.	Extension to other professions and undertakings
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for

	money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	Article 10 of the Law 656/2002 covers general insurance, persons having duties and prerogatives in the privatisation process, and associations and foundations.
Conclusion	Romania meets the EU rules.
Recommendations and Comments	

23.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	The list of third countries imposing requirements equivalent to those of Law 656/2002 was approved by Government Decision 1437/2008, which was amended in 2012.
Conclusion	Romania is compliant with the Directive with respect to equivalent third countries.
Recommendations and Comments	

VI. LIST OF ANNEXES

Please see MONEYVAL (2014) 4 ANN