



Mutual Evaluation Report

Anti-Money Laundering and
Combating the Financing of Terrorism

DECEMBER 2008

REPUBLIC OF BELARUS

The Republic of Belarus is a member of the Eurasian Group on combating money laundering and financing of terrorism (EAG). This evaluation was conducted by the EAG and was then discussed and adopted by the EAG Plenary as a 2nd mutual evaluation on December 2008.

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PREFACE – INFORMATION AND METHODOLOGY USED FOR THE EVALUATION OF BELARUS

1. The evaluation of the anti-money laundering (AML)¹ and combating the financing of terrorism (CFT) efforts of the Belarusian Republic (Belarus) is based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), and was prepared using the AML/CFT Methodology 2004² which has been endorsed by the EAG. The evaluation is based on the laws, regulations and other materials supplied by Belarus, and information obtained by the evaluation team during its on-site visit to Belarus from July 28 to August 2, 2008 inclusive, and thereafter. During the on-site visit, the evaluation team met with officials and representatives of all relevant Belarusian government agencies and the private sector. The list of agencies met with is presented in Annex 2 to this mutual evaluation report.

2. The evaluation was conducted by an assessment team comprising EAG experts in law, finance and law enforcement. The assessment team included the following experts: Mr. P.Livadny, Federal Financial Monitoring Service (Russia), head of the law department (legal expert), Ms. E.Alimkina, Federal Financial Monitoring Service (Russia), consultant (financial expert), Mr. A.Feshchenko, advisor to the State Committee on Financial Monitoring of Ukraine (financial expert), Mr. B.Sadykov, chief inspector with the legal support department of the Kyrgyz Financial Intelligence Service (law enforcement expert), and Mr. I.Nebyvayev, Mr. M.Tkachenko, and Mr. D.Kostin from the EAG Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory systems and other systems in place to deter money laundering (ML) and terrorist financing (TF) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examined the implementation and effectiveness of these systems.

3. This report provides a summary of the AML/CFT measures in place in Belarus as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also establishes Belarus's levels of compliance with the FATF 40+9 Recommendations (see Table 1).

¹ See Annex 1 for a full list of acronyms and abbreviations.

² As updated in February 2007.

MUTUAL EVALUATION REPORT

1. GENERAL

1.1. General Information on Belarus

4. The Republic of Belarus is located in Central Europe. Belarus has common borders with Poland, Baltic nations, Russia, and Ukraine.

5. The Republic covers an area of 207,000 square kilometers and has a population of close to 10 million, 70% of which is urban. The Belarusian capital, Minsk, is home to about one-fifth of the country's population. The Republic is administratively divided into six regions. The official languages are Belarusian and Russian. The predominant languages of business communication are Russian, English, and German.

Government System

6. The Republic of Belarus is a unitary, democratic, law-governed, welfare state. The Belarusian Constitution is effective since 1994, as amended and supplemented through republican referenda on November 24, 1996, and October 17, 2004.

7. The head of state is the President of Belarus. The representative and legislative agency is the Parliament – the National Assembly of the Republic of Belarus, comprising two houses – the House of Representatives (110 members) and the Council of the Republic (64 members). Executive power is in the hands of the Council of Ministers headed by the Prime Minister.

8. State power in Belarus is divided into legislative, executive, and judicial branches. State bodies are independent within their respective terms of reference: they interact while checking and balancing one another.

9. The Constitutional Court of the Republic of Belarus makes sure legislation is consistent with the principles of the Constitution.

Economy

10. National GDP in 2007 totaled 96,087.2 billion rubles, up 8.2 percentage points year-on-year.

11. In 2007, state-owned industrial enterprises (republican and municipal), which make up 35.6 % of all officially registered Belarusian enterprises, accounted for 37.2% of total industrial output, while partially state-owned private enterprises contributed 50.8% of industrial output.

12. In 2007, investments in fixed assets accounted for 26.3% of GDP versus 25.7% in 2006. The Republic's major trade partners in January-November 2007 were Russia (49.3% of total trade turnover), the Netherlands (8.5%), Ukraine (5.6%), Germany (5.5%), Poland (3.8%), the UK (3.4%), China (2.4%), Latvia (2%), Italy and the US (1.5% each).

13. Over January – November 2007, per capita income amounted to 492,800 rubles per month.

International Relations

Belarus is a founding member of the UN and CIS, member of the Collective Security Treaty Organization (CSTO), the Euro-Asian Economic Community (EurAsEC), and other international organizations. In 2004, Belarus became one of the founding members of the EAG.

Legal System and Hierarchy of Laws

14. The Belarusian legal system belongs to the family of so-called Romano-Germanic (or Continental) law. The principal source of law in Belarus is regulatory legislation. The Constitution has the supreme legal effect among legislative acts.

15. Laws and acts of the President have equal force, and in some cases presidential decrees have a higher force than a Law. The Cabinet of Ministers, ministries and agencies have the authority to issue secondary legislation, which is mandatory for natural and legal persons on the territory of Belarus.

Transparency, good governance, ethics and measures against corruption

16. The fight against corruption is one of the national priorities in Belarus. In April 2004, Belarus became a party to the UN Convention against Corruption. In July 2006, Belarus passed the Law “On Combating Corruption”.

17. Prosecution, internal affairs, and state security agencies have formed special anti-corruption units. At the interagency level, the efforts of state agencies tasked with combating corruption, state bodies and other organizations involved in anti-corruption efforts are coordinated by the **Interagency Commission on Combating Crime, Corruption, and Drug Abuse** at the Security Council of the Republic of Belarus, created by the Belarusian President.

18. Additionally, permanent coordinating conferences have been instituted to coordinate the efforts of state agencies tasked with combating corruption as well as other state bodies involved in anti-corruption efforts.

19. The state anti-corruption program for 2007-2010 has been developed at the national level. Among other things it focuses on money laundering issues. Joint investigations of crimes involving corruption and legalization of illicitly acquired assets have substantially increased the money laundering crimes detection rate.

1.2 General Situation on Money Laundering and Financing of Terrorism

Money Laundering

20. The AML system in Belarus is at an adequate organizational level. AML efforts have been undertaken in the Republic since 2000, the year the AML/CFT Law was adopted in Belarus.

21. In 2004, law enforcement authorities in Belarus recorded 81,482 theft cases (including 100 cases involving an organized group), in 2005 – 103,196 (134), in 2006 – 104,161 (66), in 2007 – 103,082 (225).

Type of offence	Year/number of offences			
	2004	2005	2006	2007

22. The situation on crimes that constitute the primary source of illicit proceeds looks as follows:

Type of offence	Year/number of offences			
	2004	2005	2006	2007
Theft	81,482 (100)*	103,196 (134)	104,161 (66)	103,082 (225)
Fraud	5,266 (66)*	7,052 (39)	6,944 (21)	5,655 (44)
Embezzlement through abuse of office	1,116 (4)	965 (18)	887 (12)	675 (32)
Production, possession or sale of counterfeit cash or securities	2,852 (-)	2,822 (-)	2,120 (-)	1,840 (1)
Violation of rules for transactions with precious metals and stones	616 (-)	645 (0)	571 (-)	402 (0)
Illegal entrepreneurship	505 (5)	605 (12)	523 (7)	566 (22)
Homicide	994 (4)	1,023 (3)	939 (0)	783 (5)
Violent robberies	1,831 (39)	1,591 (9)	1,288 (5)	1,069 (4)
Illegal use of firearms, weapons, and explosives	621 (8)	613 (10)	450 (3)	468 (0)
Illegal circulation of narcotic, psychotropic substances and their precursors	5,808 (22)	5,311 (27)	4,819 (0)	4,152 (13)

23. All crimes of corruption, whose list includes 14 offenses, are believed to be the primary source of illicit proceeds.

24. In 2007, law enforcement authorities detected and recorded 3,084 (versus 3,387 in 2006) crimes of corruption. They include: 675 (887, down 23.9% year-on-year) cases of embezzlement through abuse of office; 1,066 (1,045, up 1.9 % y-o-y) cases of bribe taking; 310 (373, down 16.9 % y-o-y) case of abuse of power or office; 51 (74, down 31.1% y-o-y) cases of excess of power or authority; 17 (16, up 6.3% y-o-y) cases of officials' failure to act (omission); 931 (914, up 1.9% y-o-y) cases of official forgery; 7 (28, up 75.0%) cases of legalization ("laundering") of illicitly acquired assets.

25. Legalization of assets accounts for less than 0.015% of all offences recorded on Belarusian territory (close to 190,000 offences annually).

26. Analysis of criminal cases filed in 2004-2007 indicates that illicit proceeds and other assets were legalized through the sale on Belarusian territory of stolen cars with forged paperwork making it appear as if they had been imported from the EU; depositing funds into operating accounts of businesses in the form of contributions increasing the authorized capital; sale of illicitly acquired assets through the retail network; transfer of assets to balance sheets of pseudo-entrepreneurial structures with subsequent resale of such assets.

Financing of Terrorism

* (в т.ч. организованной группой)

27. In 2004-2007, not a single crime involving the financing of terrorism was recorded in Belarus (under Article 290-1 of the Belarusian Criminal Code). In 2006, one crime punishable under Article 289 of the Belarusian Criminal Code (terrorism) was recorded.

In terms of combating the financing of terrorism, during this period efforts were undertaken to detect individuals implicated in committing acts of terrorism in other countries. Yet no data has been obtained to suggest there had been any financial transactions aimed at financing the activity of such persons or assisting terrorist organizations controlled by persons engaged in terrorist activities. Belarus believes that its territory is free from terrorist organizations or activities, meaning that there are no high risk of terrorism financing.

1.3 Brief overview of the financial sector and DNFBP

1. Financial Sector

28. The Table below lists the types of financial institutions in Belarus, which engage in the financial activities to which the FATF Recommendations are applicable.

Types of financial activities, to which the FATF Recommendations are applicable (see Glossary to the FATF Forty Recommendations)	Types of financial institutions in Belarus engaged in financial activities
1. Acceptance of deposits and other repayable funds from the population	Commercial banks and specialized financial credit institutions licensed to mobilize deposits (under Banking Code No. 441-3).
2. Lending	Commercial banks (under Banking Code No.441-3); financial credit institutions licensed by the National Bank of Belarus to conduct relevant banking transactions.
3. Financial leasing	Commercial banks (under Banking Code No.441-3), leasing companies
4. Transfers of money or value	National Bank of Belarus (under Banking Code No.441-3), Republic Unitary Postal Service Enterprise <i>Belpost</i> (under the Postal Service Law), commercial banks
5. Issuance and management of payment facilities (e.g., credit and debit cards, checks, traveler's checks, money orders, bank drafts, electronic money)	Commercial banks (under Banking Code No.441-3)
6. Financial guarantees and obligations	Commercial banks (under Banking Code No.441-3)
7. Trade in: (a) monetary market instruments (checks, bills of exchange, certificates of deposit, derivatives, etc.); (b) foreign exchange; (c) instruments tied to the exchange rate,	Commercial banks (under Banking Code No.441-3) Brokers, dealers, securities management companies, clearing companies, depositaries, investment funds (under the Law "On

interest rates, and indexes; (d) transferable securities; (e) commodity futures.	Securities and Stock Markets” No.1512-XII, No.487-XIII).
8. Participation in security issues and provision of financial services relating to such issues	Commercial banks, if licensed to do so (under Banking Code No.441-3) Stock Exchange (under the Law “On Securities and Stock Markets” No.1512-XII, No.487-XIII)
9. Individual and collective portfolio management	Commercial banks (under Banking Code No.441-3) Brokers, dealers, securities management companies, clearing companies, depositaries, investment funds (under the Law “On Securities and Stock Markets” No.1512-XII, No.487-XIII)
10. Safekeeping and administration of cash or liquid securities on behalf of other persons	Commercial banks, if licensed to do so (under Banking Code No.441-3) Brokers, securities management companies, depositaries, mutual fund administrators (under the Law “On Securities and Stock Markets” No.1512-XII, No.487-XIII)
11. Otherwise investing, administering or managing assets or money on behalf of other persons	Commercial banks (under Banking Code No.441-3)
12. Underwriting and sale of insurance policies and other investment-related insurance policies	Insurance companies, insurance agents, brokers, reinsurance brokers (under Belarusian President’s Order No.530 “On Insurance Activities”)
13. Money and currency exchange	Commercial banks and specialized financial credit institutions, exchange offices opened by commercial banks (under Banking Code No.441-3 and Currency Regulation and Currency Control Law No.137-3)

Banking Sector³

29. The Belarusian banking system is a constituent component of the financial system of the Republic. It is a two-level system comprising the National Bank and other banks. Besides banks, other

³ The terms “banking sector” and “banking institutions” used in this Report refer to banks and other types of financial credit institutions.

non-bank financial credit institutions had existed in Belarus until recently before being gradually closed due to money laundering concerns, among other things.

30. As of January 1, 2008, the banking sector comprised 27 banks with 368 branches. Of these, 23 were banks with foreign capital, including 7 banks with 100% foreign capital. Banks and branches have standalone business units: payment processing centers, banking service centers, foreign exchange offices, etc.

31. As of January 1, 2008, the combined regulatory capital of banks totaled 6 526,81 billion rubles, and their combined resources amounted to 41 690,2 billion rubles. The primary sources of the banks' resource base are funds of private and corporate clients (residents), the central government and local administrations, nonresidents, banks and the National Bank.

32. There are eight representative offices of foreign banks in Belarus – those of Russia, Lithuania, Latvia, Germany, Ukraine, as well as the office of the Interstate Bank.

Insurance Sector

33. As of January 1, 2008, Belarus had 23 insurance firms, including six state-owned or partially state-owned (with over 50% of state interest) insurance companies; four insurance firms provide life insurance services; one insurance institution, the Republican Unitary Enterprise *Belarusian State Reinsurance Organization*, was established in 2006; and 12 commercial insurance firms founded by individuals or corporations unassociated with the state.

Securities sector

34. As on June 30, 2008 there were 60 professional participants of the securities market. No other information on the structure or size of the market was provided to the assessment team.

Foreign exchange

35. Foreign exchange transactions in Belarus are carried out via banks and non-bank financial and credit institutions that have special permits (licenses) to engage in the relevant transactions.

Persons providing money or value transfer services (MVT)

36. Money transfers (postal, telegraph, electronic) can be provided by either banks or the postal service operator – Republic Unitary Postal Service Enterprise *Belpost* (hereafter *Belpost*).

37. The exchange of international money transfers is carried out under the Postal Payment Services Agreement. The upper limit for amounts transferred via the international money transfer service is stipulated in the relevant contracts.

38. Belarus has 3,790 postal service locations, including 3,654 stationary postal offices, 50 mobile offices, 67 communication offices, and 19 postal areas.

2. Overview of designated non-financial businesses and professions (DNFBP)

Dealers in precious metals and stones.

39. The National Bank, authorized banks and corporations holding relevant permits (licenses) from state authorities have the right to deal in precious metals in the form of bars of gold, silver or platinum, ancient or modern coins made of precious metals with individuals.

40. As of April 11, 2008, Belarus had 89 business entities engaged in wholesale trade in precious metals and stones, 202 retail entities dealing in items made of precious metals or stones, including used items accepted for resale, 40 pawnbrokers offering loans in exchange for items of precious metals or stones, two state organizations buying items and scrap of precious metals and stones.

Gambling business

41. As of January 1, 2008, a total of 261 business entities were engaged in the gambling industry. Such entities received special permits (licenses) to carry out gambling business activities in the following areas:

- Casinos – 72;
- Slot machine halls – 536;
- Betting shops – 206;
- Lotteries – 2.

Registration of immovable property

42. The subjects of state registration of immovable property, title thereto and transactions therewith are the republican organization of state registration of immovable property and title thereto, territorial organizations of state registration of immovable property and title thereto, registrars, as well as owners of immovable property and holders of other rights to immovable property, and persons seeking to acquire title to immovable property.

43. A Belarusian citizen who has received certification as a registrar may be appointed a registrar of immovable property. The registrar must have a law degree or higher education in keeping the state land cadastre (register), or higher education and at least three years of work experience in registration on the date of official publication of the relevant Law.

44. In Belarus, the Republican Unitary Enterprise *National Cadastral Agency*, a republican registration organization, keeps a single state register of immovable property, titles thereto and transactions therewith.

45. As of January 1, 2008, there were 948 certified registrars, of whom 639 were providing registration services.

Real Estate Business

46. Real estate firms and agents require a special permit (license) from the Justice Ministry to provide legal services involving the licensed service type – real estate services.

47. As of May 23, 2008, there were 118 real estate firms and 691 realtors.

Notary Practice

48. Under the Belarusian Law “On the Notarial Profession and Notary Practice”, the competence of notaries includes acting on behalf of the Republic of Belarus in carrying out notarial acts stipulated in this Law, other enactments, and international treaties to which Belarus is a party. Notably, a private notary practice is not an entrepreneurial activity.

49. The notarial profession in Belarus includes state and private notaries, authorized officials of local executive and administrative authorities, diplomatic agents of Belarusian diplomatic missions and consular officers of Belarusian consulates, who protect the rights and legitimate interests of citizens and legal entities and state interests by carrying out notarial acts on behalf of the Republic of Belarus.

50. Notarial acts in Belarus are carried out by state notaries at state notary offices and private notaries who provide notary services on the basis of a special permit (license).

51. As of January 1, 2008, there were 800 practicing state notaries at 219 state notary offices and 55 private notaries in Belarus.

1.4 Overview of commercial laws and mechanisms regulating legal entities and formations

52. Legal entities in Belarus can be registered in the form of either commercial or noncommercial organizations. Commercial organizations are formed to generate profit and can be registered as business partnerships and companies, production cooperatives, or unitary enterprises.

53. Under law, legal entities in Belarus may form associations, including with the participation of foreign legal entities, in the form of financial, industrial or other economic groups on the conditions stipulated in laws applicable to such groups.

54. Direct foreign investors may form in Belarus legal entities of any form of incorporation without a limit on the investment amount. A company is granted status of a legal entity with foreign investments and qualifies for relevant fiscal benefits if the contribution of the foreign partner amounts to the equivalent of at least USD 20,000 and this partner's share in the authorized capital is at least 30%. Commercial companies with foreign investments may have subsidiaries and branches or open branches and representative offices in Belarus and abroad.

55. A permissive principle applies to state registration of legal entities (commercial and noncommercial organizations). The Single State Register of Legal Entities and Individual Entrepreneurs is maintained by the Justice Ministry.

Business company:

56. A business company is liable for its obligations with all of its assets. The founders (partners) of a business company are not liable for the obligations of the business company, which in turn is not liable for the obligations of such founders (partners).

57. A business company determines the list of its *affiliates*⁴ in accordance with the procedure duly established by the company, keeps records of such affiliates and submits written reports on such affiliates to the appropriate agencies. An affiliate of a business company must duly notify this company about the purchase by this affiliate or a stake in this company's authorized capital (shares) within ten days from the date of purchase.

58. *Noncommercial organizations* do not pursue profit and may be registered as consumer cooperatives, public or religious organizations. Noncommercial organizations may engage in production activities in accordance with their Articles and objectives. Certain types of

⁴ Affiliates of a business company are individuals and legal entities that are capable of making the company's decisions or influencing the company's decision making directly and/or indirectly (via other individuals and/or legal entities), as well as legal entities whose decision making is influenced by the business company.

noncommercial organizations may be required by law to follow rules that permit them to engage in business activities only through participation in setting up a commercial organization.

1.5 Overview of Strategy to Prevent Money Laundering and Financing of Terrorism

a. AML/CFT Strategies and Priorities

59. Belarus does not have a unified anti-money laundering strategy. Money laundering issues are examined only as part of other state programs. It does not have a single agency devoted to coordinating AML/CFT efforts. The Prosecutor's Office supervises compliance with the law, but does not perform general coordination in this sphere. Because of this, politicians do not always pay due attention to AML/CFT issues.

60. Belarus has adopted the State Program to Combat Crime for 2006-2010, which among other things envisions interagency preventive AML activities and special operations under plans to be agreed upon additionally.

61. In a joint resolution, Belarusian state agencies have set up an interagency taskforce to ensure coordination and interaction among state agencies in the prevention of money laundering and financing of terrorism.

b. The Institutional Framework for Combating Money Laundering and Terrorist Financing

Financial authorities

62. **The National Bank of Belarus** regulates and supervises the operation of banks and non-bank financial credit institutions (hereafter banks) to ensure safety and liquidity of the banking system. The National Bank's rights in regulating and supervising banking are stipulated in Article 34 of the Banking Code. As a foreign currency control authority, the National Bank controls foreign currency transactions of banks and carries out other associated functions. It provides AML/CFT regulation and supervision of credit institutions.

Ministries

63. **The Finance Ministry of Belarus** systematically controls the fulfillment of the republican budget, effective spending for designated purposes of funds from the republican budget and dedicated state budgetary and extrabudgetary funds by the republican administrative authorities, local executive and administrative bodies and organizations, state regulation of transactions with precious metals and stones, state supervision of the insurance sector, financing of subordinated organizations, state assay supervision, compliance with laws governing lotteries, and other issues within the Ministry's competence.

64. **State Inspectorate for Assay Supervision at the Finance Ministry** controls the activities of persons carrying financial transactions, inspects business entities engaged in wholesale trade in precious metals and stones; retail trade in items made of precious metals and stones, including used items accepted from the population for resale; controls the operation of pawnbrokers offering loans in exchange for items made of precious metals and stones; collectors of items and scrap of precious metals and stones.

65. Securities Department at the Finance Ministry is a structural unit of the Belarusian Finance Ministry headquarters, having state authority and powers to carry out executive, controlling, coordinating, and regulatory functions in state regulation of the securities market, control and supervise the issuance of and trade in securities, as well as professional services and trade in securities on the stock exchange. The Securities Department controls securities market players for compliance with securities laws.

66. The Justice Ministry of Belarus controls notaries, companies providing realty services and participating in transactions that involve selling and purchasing immovable property on behalf of their clients, companies and individual entrepreneurs providing legal services, lawyers carrying out financial transactions that involve selling or purchasing immovable property on behalf of or on the instructions of their clients; administering funds, securities or other assets; administering bank accounts and/or depositary accounts; establishing companies or their standalone units or participating in the management of such companies; buying or selling a business as an asset complex, and maintains the Single State Register of Legal Entities and Individual Entrepreneurs.

67. The Ministry of Communications and Informatization of Belarus supervises postal service operators.

68. The Sports and Tourism Ministry of Belarus performs licensing of the gambling business and controls license holders in keeping with the Policy on Licensing Individual Types of Activity approved by Decree of the Belarusian President.

69. The State Property Committee of Belarus controls organizations that perform state registration of immovable property, title thereto and transactions therewith.

70. The Foreign Ministry is the state authority issuing permits for foreign organizations to open their representative offices in Belarus. Such permits can be issued under international treaties signed by Belarus with other countries. The Ministry also cooperates with UN structures, informing the parties concerned about changes to the list of Committee 1267.

Criminal justice and investigative authorities

71. The State Control Committee is an agency performing state control of the fulfillment of the republican budget, the use of state property, compliance with laws, acts of the Republic's President, Parliament, Council of Ministers, and other state authorities regulating state property, economic, financial, and fiscal relations.

72. The Financial Monitoring Department is a financial monitoring body at the State Control Committee tasked with preventing money laundering and financing of terrorism.

73. The Financial Investigations Department at the State Control Committee is a law enforcement authority, part of the system of agencies ensuring economic security of Belarus. The Department is headed by the Deputy Chairman of the State Control Committee of Belarus – the Department Director, who is directly subordinated to the Committee Chairman.

74. The State Security Committee is an agency implementing a complex of measures to prevent, detect and deter crimes associated with money laundering and financing of terrorism. The State Security Committee also monitors the spending by noncommercial organizations of foreign grants in order to detect and deter attempts at supporting or financing extremist activities. Among other republican state authorities, the State Security Committee of Belarus is also the designated body responsible for fulfilling the obligations assumed by Belarus under the International Convention for

the Suppression of the Financing of Terrorism. Additionally, the Committee is implementing measures geared towards fulfilling UN Security Council resolutions on the prevention of terrorist financing No.1267 (1999) and No.1373 (2001).

75. The Ministry of Internal Affairs (MIA) is the republican agency of state administration that heads the nation's police and interior troops (hereafter the interior troops), performs within its terms of reference the regulatory and administrative functions in combating crime, protecting law and order, ensuring public safety, and coordinating the efforts of other state administrative agencies along these lines. The Main Directorate on Combating Organized Crime at the Belarusian Ministry of Internal Affairs is a structural division of the Ministry tasked with organizing police efforts to combat organized crime. Within the Belarusian Ministry of Internal Affairs, organizational, preventive and investigative measures aimed at combating money laundering and financing of terrorism are also carried out by the Main Directorate of Criminal Police on Combating Corruption and Economic Crimes, the Drug Control and Anti-Human Trafficking Directorate of Criminal Police, and the Main Investigative Directorate for Preliminary Investigation.

76. The Prosecutor's Office of Belarus is a state agency tasked with organizing the fight against corruption. Economic crimes in Belarus are investigated under the supervision of the General Prosecutor's Office (GPO) by investigative units of the GPO. The General Prosecutor has absolute powers to assign or reassign the investigation of a specific crime to any of the investigative agency or have several agencies conduct a joint investigation.

Other Agencies

77. An interagency taskforce has been set up to ensure coordination and interaction among state agencies in the prevention of money laundering and financing of terrorism. The taskforce comprises representatives of the Belarusian Prosecutor's Office, National Bank, Ministry of Internal Affairs, State Security Committee, Ministry for Taxes and Duties, Financial Investigations Department, Financial Monitoring Department. The interagency taskforce is headed by the Financial Monitoring Department director.

The key tasks of the interagency taskforce are to:

- Prepare proposals regarding the procedure for gathering, analyzing, and exchanging information on suspicious financial transactions.
- Develop joint measures to act on information on suspicious financial transactions.
- Prepare proposals on raising the effectiveness of the ATM/CFT system.
- Work out recommendations and proposals on improving current legislation regulating financial and economic relations on the basis of experience in ATM/CFT.
- Examine proposals on organizing training for state agency employees involved in ATM/CFT efforts.

78. To raise the effectiveness of ATM/CFT efforts of state security agencies, the State Security Committee of Belarus and its territorial units have set up special units carrying out investigations and searches to detect and deter such crimes. The units have sufficient personnel and technical resources to perform their functions fully and effectively.

Progress since the last mutual evaluation

79. In 2004, the Republic of Belarus had its first evaluation of ATM/CFT efforts by the IMF.

80. The EAG has conducted its first evaluation of Belarusian legislation for compliance with FATF standards.

81. Having taken into account all comments and recommendations made by the IMF during the evaluation visit, Belarus has made substantial strides in revising and improving its AML/CFT legislation. Over the four-year period, Belarus passed the relevant laws and amended existing legislation.

82. The most significant amendments / additions:

- Article 235 “Legalization of illicitly acquired assets” has been supplemented with a clause envisioning criminal liability for “self-laundering”;
- The financing of terrorism has been criminalized;
- An interagency taskforce has been formed to optimize ATM/CFT investigation efforts;
- The Law “On the Single State System for Registering and Tracking Offences” has been adopted; A single database of offences has been created;
- A single financial intelligence agency has been created: functions and powers of the Financial Monitoring Department have been expanded, making it the single state agency receiving, analyzing, processing, and forwarding reports on suspicious financial transactions;
- Standard internal control rules for banks and non-bank financial institutions have been approved;
- The National Bank of Belarus has received the powers to issue, and has issued, mandatory AML/CFT instructions.

83. However, some IMF recommendations issued in 2004 were not duly complied with. These were mainly the financial recommendations (R. 5, 6, 8) relating to client identification procedures as well as document storage rules (R. 10).

2. THE LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalization of Money Laundering (R.1 & 2)

2.1.1 Description and Analysis

Recommendation 1

84. Belarus criminalized money laundering in Article 235 of the Criminal Code “Legalization (“laundering”) of illicitly acquired assets”.⁵ The wording of this article does not fully incorporate the requirements of the relevant international conventions (the Vienna and Palermo Conventions). “Conversion and transfer of property” is covered since the terms “financial transaction and deal” used in the article are properly defined in the Civil code (despite the fact that there is some misunderstanding of the term in AML/CFT Law, which defines the term “transaction” through the term “deal”). The Civil Code defines the term “deal” as “any actions taken by natural and legal persons aimed at establishing, changing or termination of civil rights and liabilities”.

85. “The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime” is covered by analogous wording in the article.

86. The definition of “transaction” that is used in the context of Civil Code also covers “ownership, use and acquisition”.

87. The crime of money laundering applies to any type of assets regardless of their value. During their visit, the evaluation experts ascertained that the law enforcement and judicial practice under Article 235 does not require for the defendant to be convicted of a predicate offence. In this connection evaluation experts were presented specific case studies as proof.

88. In Belarus, predicate offences for money laundering are all crimes with some exception of tax evasion crimes. Meanwhile, Belarus has failed to criminalize insider trading and market manipulations, hence it does not meet FATF requirements for the minimum list of predicate offences.

⁵ Article 235 of the Criminal Code. Legalization (“laundering”) of illicitly acquired assets

1. Financial transactions and other deals involving money, securities, or other assets knowingly acquired by illicit means, using such assets to carry out entrepreneurial or other business activities with the aim of concealing or distorting the nature, origin, location, investment, movement or actual ownership of such assets or rights associated with them

are punishable by a fine, or deprivation of the right to occupy certain positions or engage in certain activities along with a fine, or incarceration for a period of two to four years with or without a fine and with deprivation of the right to occupy certain positions or engage in certain activities.
(edition of the Law dated July 18, 2007, No.264-Z).

2. The same acts, if committed repeatedly or by an officer abusing official powers or where the amount involved is especially large, are punishable by incarceration for a period of four to seven years with confiscation of property and deprivation of the right to occupy certain positions or engage in certain activity.

(edition of the Law dated July 18, 2007, No.264-Z).

3. Where acts stipulated in parts 1 or 2 of this article have been committed by an organized group,

they are punishable by incarceration for a period of five to ten years with confiscation of property and deprivation of the right to occupy certain positions or engage in certain activity.

(edition of the Law dated July 18, 2007, No.264-Z).

Notes:

1. The perpetrator of the crime through whom the assets were acquired shall not be criminally prosecuted for acts specified in this article if this person acquired such assets as a result of committing:

1) crimes stipulated in articles 225, 231, 243 of this Code;

2) other crimes, where this person did not use such assets to engage in entrepreneurial activity or other kind of business activity.

(Part one of notes to Article 235 in the edition of the Law dated July 17, 2006, No.147-Z).

2. A person participating in the legalization of illicitly acquired money or assets shall be relieved of criminal liability for such acts if this person volunteered information about the crime and helped solve it.

89. Under Article 6 of the Criminal Code, a Belarusian citizen or person without citizenship permanently residing in Belarus who commits a crime outside Belarus is subject to prosecution under the Criminal Code if the act committed by this person was recognized as a crime in the country where it was committed and if the person was not prosecuted in that country.

90. Belarus criminalized self-laundering in 2006 following the requirements of international standards and recommendations of the detailed evaluation by the IMF. Yet criminalization of self-laundering is restricted by the same stipulation of “using such assets to carry out entrepreneurial or other business activities”.

91. The Belarusian Criminal Code envisions criminalization of all the relevant forms of complicity in the crime. Complicity in the crime is covered by Article 16 of the Criminal Code, criminal endeavor – by Article 14 of the Criminal Code, aiding and abetting, accessory in crime, or advice – paragraphs 5 and 6 of Article 16 of the Criminal Code.

Recommendation 2

92. Criminal prosecution for money laundering crimes is carried out under Article 235 of the Criminal Code only against individuals who knowingly commit the crime of money laundering. Criminal sanctions stipulated in this article are effective and proportionate, since they envision both fines and incarceration for between two to ten years.

93. Under Article 88 of the Criminal Procedural Code, evidence of a person’s guilt/innocence are any factual data gathered in line with the legislatively prescribed procedure.

94. Criminal liability does not apply to legal entities. Belarus has ratified the Palermo Convention with a clause stating that the application of article 10 (liability for legal persons) shall be instituted to the extent that local laws permit. This institutes sufficient grounds to exclude criminal liability for legal persons from national legislation.

95. Other liability for legal entities for money laundering crimes is specified by different mechanisms in the legislation. Under Article 15 of the Belarusian Republic Law dated June 27, 2007, “On Combating Organized Crime”, effective since October 1, 2007, the organization aiding an organized group or a criminal organization, or one created using funds of an organized group or a criminal group, shall be liquidated by decision of the Supreme Court of Belarus. The request to liquidate an organization aiding an organized group or a criminal organization, or one created using funds of an organized group or a criminal group, shall be filed with the Supreme Court of Belarus by the Republic’s General Prosecutor or his deputy. If the Supreme Court of Belarus decides to liquidate the organization aiding an organized group or a criminal organization, or one created using funds of an organized group or a criminal group, the assets of the liquidated organization remaining after creditor claims have been satisfied (provided such creditors are not implicated in organized crime) shall be seized by the state.

96. Administrative liability for legal entities is set for illegal financial operations (Art. 11.53 AOC). Meanwhile, the Article covers the definitions of “funds” and “financial operation” in the meanings determined by the AML/CFT Law.

97. Administrative liability is instituted also for the legalization of illegal (and not criminal proceeds) obtained as the result of offences stipulated by the Administrative Code (Article 12.32).

98. In accordance with Article 51 of the Civil Code a legal entity may also be liquidated if it has violated the legislation of Belarus. While existing regulations on liability for legal entities may not be in some respects concrete, these regulations are used effectively in practice.

Effectiveness and Statistics

99. The effectiveness of application of Article 235 of the Criminal Code is not high, although a positive trend discernible in the last few years is noteworthy. In 2004, law enforcement authorities in Belarus recorded 21 crimes of money laundering (including 0 cases involving an organized group), in 2005 – 36 (1), in 2006 – 28 (4), in 2007 – 21 (4). Statistics of court rulings in money laundering cases look as follows:

2004

Article of the Belarusian Criminal Code	Number of convicted persons	Fine	Incarceration
235, part 1	1	1	
235, part 2	2		1

2005

Article of the Belarusian Criminal Code	Number of convicted persons	Incarceration
235, part 2	2	1
235, part 3	2	

2006

Article of the Belarusian Criminal Code	Number of acquitted persons	Number of convicted persons	Deprivation of the right to occupy certain positions or engage in certain activity	Incarceration
235, part 1		2	2	
235, part 2	1	1		
235, part 3		1		1

2007

Article of the Belarusian Criminal Code	Number of convicted persons		Incarceration
235, part 1	1		1
235, part 2	1		
235, part 3	9		1

100. Under Article 6 of the Criminal Code, a Belarusian citizen or person without citizenship permanently residing in Belarus who commits a crime outside Belarus is subject to prosecution under

the Criminal Code if the act committed by this person was recognized as a crime in the country where it was committed and if the person was not prosecuted in that country.

2.1.2 Recommendations and Comments

101. Belarus should criminalize insider trading and market manipulation. Belarus is recommended to specify the wording of Article 235 in order to make it more specific and bring into line with the Vienna and Palermo Conventions.

102. Belarus should specify the definition of administrative and civil liability for ML offenses.

103. It is also recommended to keep credible statistics on money laundering cases and take steps to raise the effectiveness of application of Article 235, including through conducting trainings for prosecutors and judges.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	LC	<ul style="list-style-type: none">Insider trading and market manipulation are not criminalized.
R.2	LC	<i>Effectiveness:</i> <ul style="list-style-type: none">Low effectiveness of application of Article 235 of the Criminal Code.

2.2 Criminalization of Terrorism Financing (SR.II)

2.2.1 Description and Analysis

104. Financing of terrorism is criminalized in Belarus by Article 290-1 of the Criminal Code⁶ and on the whole complies with the criminalization requirement in Article 2 of the Convention for the Suppression of the Financing of Terrorism. “Provision and receipt of money” are covered by the article, but it omits indirect provision of money.

105. The article also envisions liability only for “financing terrorist activities” and, obviously, does not cover the financing of a terrorist organization or an individual terrorist in cases when money is not intended for a specific act of terrorism.

106. Seemingly, virtually all elements of offences stipulated in the nine recommendations on combating the financing of terrorism listed in the annex to the Convention for the Suppression of the Financing of Terrorism are covered by Article 290-1 (second edition). At the same time, the law does not criminalize the financing of theft of nuclear materials for purposes of terrorism or illegal acts against fixed platforms on the continental shelf.

⁶ Provision or receipt of money, securities, or other assets, including property rights and exclusive rights to intellectual property, in any way for the purpose of their use in terrorist activities (financing of terrorism)

are punishable by incarceration for eight to twelve years with confiscation of property.

2. The same acts, if committed repeatedly or by an organized group or by an officer abusing official powers or by a person who had previously committed crimes under Articles 124-127, 131, 287, 289-292, 311, 359, and 360 of this Code,

are punishable by incarceration for eight to fifteen years with confiscation of property.

Note. A person guilty of terrorist financing shall be relieved of criminal liability under this article if this person reports the crime in a timely manner and/or otherwise helps prevent the act of terrorism and solve this crime.

107. Under Article 290-1, the word “funds” refers to money, securities, or other assets, as well as property and intellectual rights. Apparently, this definition covers all aspects of the definition in the Convention.

108. As already pointed out in Recommendation 1, the Belarusian Criminal Code criminalizes all the relevant forms of complicity, including those stipulated in Article 2(5) of the Convention. Organizing or directing others to commit financing of terrorism is covered in paragraph 4 of Article 16, aiding and abetting is covered in paragraphs 5 and 6 of Article 16 of the Criminal Code. Under Article 235, the financing of terrorism is a predicate offence for money laundering.

109. Norms of Article 88 of the Criminal Procedural Code on proving the person’s guilt/innocence apply to Article 290-1 of the Criminal Code much like they do to crimes of money laundering. Specifically, the presence of guilt is determined on the basis of objective factual circumstances.

110. Belarus has not instituted criminal liability for crimes of terrorist financing for legal entities (see R.2). Meanwhile, under Article 23 of the Law “On Combating Terrorism”, an organization engaged in the financing of terrorism may be liquidated by decision of the Supreme Court upon indictment from the General Prosecutor of Belarus. Likewise, an organization may be liquidated if its officer uses his powers to finance terrorism with the funds of this organization. The list of terrorist organizations is maintained and published by the State Security Committee of Belarus.

111. Sanctions stipulated in Belarusian legislations are proportionate and effective. They envision incarceration for between eight and fifteen years. At the same time, no cases of terrorist financing have been detected in Belarus, which nonetheless does not indicate a possibly ineffective CFT system.

2.2.2 Recommendations and comments

112. Belarus should criminalize indirect provision of money for purposes of terrorist financing, the provision of funds for a terrorist organization or an individual terrorist, if such funds are not intended for a specific act of terrorism. Belarus should also criminalize the financing of theft of nuclear materials for terrorist purposes or the financing of illegal acts against fixed platforms on the continental shelf.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	PC	<ul style="list-style-type: none"> • The law does not criminalize indirect provision of money for purposes of terrorist financing; • The law does not criminalize provision of funds for a terrorist organization or an individual terrorist, if such funds are not intended for a specific act of terrorism. • The law does not criminalize the financing of theft of nuclear materials for terrorist purposes or the financing of illegal acts against fixed platforms on the continental shelf.

2.3 Confiscation, freezing or seizing of proceeds of crime (R.3)

2.3.1 Description and Analysis

113. In Belarus, punishment in the form of property confiscation is a measure of deterring grave offences and felonies committed for lucrative purposes. Confiscation may be ordered by court only as additional punishment and only in cases when sanctions under the article envision this measure. In other words, confiscation of property is not a mandatory punishment and is not used in all cases.

114. Article 235 of the Criminal Code “Legalization (“laundering”) of illicitly acquired assets” envisions confiscation in the following cases:

- in part two – for crimes of money laundering committed repeatedly or by an officer using his official powers or where the amount involved is especially large;
- in part three – for crimes of money laundering committed by an organized group.

115. Meanwhile, the crime of financing terrorism is punishable by property confiscation in all cases. For other predicate offenses, confiscation norms are instituted according to the procedure equivalent to that of Article 235. Confiscation of proceeds from insider trading and market manipulation is not possible, since these acts are not criminalized.

116. General provisions on property confiscation are stipulated in Article 61 of the Belarusian Criminal Code. Under this article, all or some of the convicted felon’s property is subject to confiscation. Thus, the law envisions confiscation of assets beyond the limits of FATF requirements on the confiscation of only illicit proceeds / instruments of the crime. Not subject to confiscation is property of vital need to the convict or his dependants, according to the list stipulated in the Criminal Procedural Code of Belarus.

117. Under Article 61 of the Criminal Code, regardless of the crime category and type of punishment, special confiscation shall apply, which involves forceful confiscation into state ownership of the instruments and means of the crime belonging to the convict; items taken out of commercial turnover; criminally acquired assets, as well as objects directly associated with the crime, unless they have to be returned to the victim or a different person.

118. Apparently, Belarus does not have norms envisioning confiscation of a property equivalent. Nor does Belarus have norms envisioning confiscation of profit generated using criminal proceeds.

119. Property held by a third party is subject to confiscation, as stated in the Supreme Court interpretation No. 8 dated September 23, 1999. All contracts concluded with the intention of concealing property by transferring it to third parties shall be considered null and void by court decision.

120. Competent authorities of Belarus have vast powers to apply preventive measures, including freezing or attaching property subject to confiscation. Article 11 of the AML/CFT Law permits the Financial Monitoring Department to suspend a financial transaction if it is suspected of being linked with money laundering or financing of terrorism. Law enforcement authorities have the power to suspend transactions for 10 days with the prosecutor’s approval if there are reasons to suspect that such transactions are associated with crimes of corruption. Under Article 132 of the Criminal Procedural Code, the agency of inquiry, investigator, prosecutor or court may attach the assets of the suspect, defendant or persons financially liable for their actions in order to ensure fulfillment of the sentence in a civil lawsuit, other property-related penalties or

possible confiscation. Attachment of property involves officially prohibiting its owner or user from disposing of the property or, where necessary, from using such property, or seizing such property and handing it over for safekeeping.

121. The aforementioned measures of freezing assets are carried out without prior notice to the person having his assets frozen. Competent authorities of Belarus, including law enforcement authorities (using investigative powers – see R.27 and 28) and the financial intelligence units have sufficient powers to detect illicit proceeds.

122. The rights of bona fide third parties are protected in accordance with the decision of the Supreme Court No.8 dated September 23, 1999, which states that bona fide parties whose rights have been infringed by confiscation mechanisms may challenge any such decisions in court through civil suits.

123. Persons guilty of concealing, selling, damaging, destroying or stealing property subject to confiscation, as well as persons guilty of causing a bank or other financial credit institution to carry out transactions with attached funds (deposits) are prosecuted under Belarusian legislation (Article 169 of the Criminal Executive Code).

Additional elements

124. Criminal procedural legislation envisions measures to secure a civil lawsuit and enforce the sentence involving property confiscation. If the measures to secure a civil lawsuit and enforce the sentence involving property confiscation were not undertaken at the state of preliminary investigation, the court may order such measures before the sentence or ruling (determination) become legally effective (Part 2 of Article 156 of the Criminal Procedural Code).

Effectiveness and Statistics

125. Belarus did provided the following statistics on the amount of confiscated proceeds.

	2006	2007	2008
Total value of confiscated assets (billion rubles)	0.8	1,1	1,6

126. Belarus also provided statistics on the total amount of funds confiscated and channeled into the budget, which most likely includes both confiscated proceeds and fines.

	2004	2005	2006	2007	1 st half of 2008
proceeds from confiscation, million rubles	1,500	3,100	10,494.1	13,858.1	9,803.6

2.3.2 Recommendations and Comments

127. Belarus should introduce a criminal procedural norm envisioning confiscation of property equivalent. Profit generated using illicit proceeds should be subject to confiscation.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	LC	<ul style="list-style-type: none"> • There is no norm that would envisage confiscation of a property equivalent; • The law does not envisage confiscation of profit generated using illicit proceeds; • Confiscation of proceeds from insider trading and market manipulation is not possible, since these acts are not criminalized.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and Analysis

128. Belarus has implemented some of the requirements of Special Recommendation III. The basic tool for carrying out the provisions of UN Security Council Resolutions 1267 and 1373 is the mechanism of freezing funds of persons on the list of terrorists. This list is drawn up by the State Security Committee of Belarus. Persons are put on the list on the basis of information obtained:

- by state security agencies;
- from actors directly fighting terrorism;
- from actors involved in preventing, detecting and deterring terrorist activities within their respective terms of reference;
- from competent authorities of foreign states as part of international treaties to which Belarus is a party;
- in accordance with the established procedure from international organizations combating terrorism.

129. The Belarusian Foreign Ministry is regularly supplying the competent state authorities with information obtained via diplomatic channels from international organizations and foreign states.

130. Suspension of transactions is regulated by Article 5 of the AML/CFT Law, which requires financial institutions and DNFBPs to suspend a financial transaction if one of its participants is a person suspected of being involved in terrorist activities or controlled by terrorists. Article 11 of the AML/CFT Law grants the Financial Monitoring Department the right to suspend a transaction for up to 5 days, after which time it can decide to report the information to the law enforcement or resume the transaction.

131. Belarus's approach to freezing funds is also problematic. The fact that funds belonging to a person on the list can be unfrozen after 5 days constitutes a violation of the requirements of Resolutions 1267 and 1373. Obviously, the funds can also be attached by law enforcement authorities. However, this raises the question about the effectiveness of the freezing system, much of which is based on criminal procedural mechanisms.

132. One of the grounds for putting persons on the list is information from competent agencies of foreign states. Yes Belarus has not provided any criteria or mechanisms for reviewing and applying lists drawn up by foreign states.

133. The freezing mechanism applies to assets wholly owned by terrorist. At the same time, Belarus failed to supply evidence to the effect that this mechanism also covers assets in joint ownership of terrorists and third persons. Nor is there any evidence to suggest that the freezing mechanism is applied to profit generated using proceeds or assets of terrorists.

134. With its letters dated June 23, 2006, No.21-20/653, August 11, 2006, No.21-20/807, October 4, 2006, No.21-20/934, October 19, 2006, No.21-20/968, the National Bank brought to banks' attention the State Security Committee's lists of persons carrying out financial transactions and suspected of being involved in terrorist activities or controlled by persons engaged in terrorism. Evaluation experts did not receive information to suggest that the list of terrorists and terrorist organizations were brought to the attention of other financial institutions and DNFBPs. Conversations with non-bank institutions prompt a conclusion that more often than not they have very low, if any, awareness of the requirements in this sphere.

135. The National Bank is the only competent agency of Belarus to be supplying supervised credit institutions with instructions on the procedure for freezing funds. With its March 13, 2006, Provision No.34, the National Bank Management approved the Instruction on the Procedure for Suspending Individual Financial Transactions by Bank and Non-Bank Financial Credit Institutions, which regulates suspension of financial transactions where at least one participant of the transaction is involved in terrorist activities or controlled by terrorists.

136. Belarus has no procedures in place for reviewing requests to remove persons from the list. Nor are there mechanisms for unfreezing the funds of persons to whom the freezing mechanism was applied by accident.

137. Belarus does not have mechanisms to grant access to the portion of funds required for basic vital needs under the UN Security Council Resolution 1452. Nor are there procedures that would enable the subject whose funds have been frozen to contest such actions of the authorities in court. It seems that the criminal-procedure mechanisms do not apply to administrative freezing measures.

138. As pointed out in the description of Recommendation 3, attachment and confiscation measures are applied to funds belonging to terrorists. These mechanisms are therefore also applied with regard to Special Recommendation III.

139. The rights of bona fide third parties are envisaged in the same manner as in the implementation of Recommendation 3.

140. The mechanisms for supervising and monitoring financial institutions and DNFBPs for compliance with Special Recommendation III are applied as a constituent element of supervision of compliance with AML/CFT legislation as a whole (see compliance with Recommendations 23 and 29). Relevant sanctions are applied for violations of the AML/CFT Law (see Recommendation 17).

Effectiveness

141. Evaluation experts were informed that Belarus had only one case of a transaction by a person found in List 1267 being suspended. Once it became clear that this person was a law-abiding businessman, not a terrorist, his funds were unfrozen.

2.4.2 Recommendations and Comments

142. Belarus should develop a full set of administrative measures relating to freezing. It is advisable to introduce specific mechanisms for reviewing and using information received from foreign states with regard to subjects who have their assets frozen. Detailed freezing mechanisms for non-credit institutions should be developed. Belarus should introduce procedures for reviewing requests to remove a person from the lists as well as mechanisms for unfreezing the funds of persons to whom freezing mechanisms were applied accidentally.

143. It is necessary to work out and implement mechanisms for granting access to the portion of frozen funds required for basic vital needs under the UN Security Council Resolution 1452.

2.4.3 Compliance with Special Recommendation III

	Rating	Summary of factors underlying rating
SR.III	PC	<ul style="list-style-type: none"> • Questions arise about the effectiveness of the freezing system, much of which is based on criminal procedural mechanisms. • There are no specific mechanisms for reviewing and using information received from foreign states with regard to subjects who have their assets frozen. • Detailed freezing instructions are in place only for credit institutions. • Belarus has no procedures in place for reviewing requests to remove persons from the list. • Nor are there mechanisms for unfreezing the funds of persons to whom the freezing mechanism was applied by accident. • Belarus does not have mechanisms granting access to a portion of funds required for basic vital needs under the UN Security Council Resolution 1452. <p><i>Effectiveness</i></p> <ul style="list-style-type: none"> • Low awareness of freezing mechanisms in the financial sector and among DNFBPs indicates the low effectiveness of measures.

Authorities

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

2.5.1 Description and Analysis

144. Belarus has a financial intelligence unit – the Financial Monitoring Department at the State Control Committee. Under Article 11 of the AML/CFT Law, this agency collects, analyzes and transmits information received in the form of suspicious transaction reports (STRs) and other forms for purposes of ML/FT prevention.

145. Before 2005, Belarus had two agencies performing FIU functions – the Financial Monitoring Department (FMD) and the Ministry for Taxes and Duties. The tax authority would receive reports on transactions with the national currency, and the FMD would be sent reports on foreign currency transactions. Following recommendations by the IMF evaluation team, this structure was reformed. Specifically, following amendments to the Presidential Order No.408 dated September 14, 2003, the FMD became the only agency performing the FIU functions, and its powers became far broader. The

Department is a structural unit of the State Control Committee of Belarus with the rights of a legal entity.

146. The FMD employs a staff of 25. The FMD comprises the IT Directorate comprising 7 members, the Analytical Directorate comprising 8 members, and the Coordination and International Cooperation Directorate comprising 7 members.

147. With its March 16, 2006, resolution No.367, the Council of Ministers of Belarus approved the format of a special form to be used for registering financial transactions subject to special control, guidelines for completing, transmitting, registering, keeping records and storing special forms registering financial transactions subject to special control. The FMD prepares a review of revealed reporting violations which is used by the supervisory authorities in inspections of supervised institutes. The Department and the National Bank jointly developed a software complex for preparing, controlling, accounting, and accepting special forms. Financial institutions with appropriate technological capability have automated workstations for completing and transmitting special forms. The bulk of special forms (over 98%) arrive electronically (mostly from bank institutions). Other forms arrived on paper to be then entered manually. Completed forms are signed with an electronic signature and transmitted in encrypted form via secure channels. The Department verifies information received from subordinated organizations and compares it with data available in different information resources, including information from other organizations carrying out transactions with money or assets, as well as governmental authorities. Upon receipt of low-quality or incomplete information, the Department sends the organization where it originated a notice with highlighted errors. Organizations are obligated to correct the reporting form where errors are revealed until the end of the working day following the day of receiving the receipt. Department employees provide quick advice on submitting the data. The FMD has an IT system that analyzes and stores incoming data. The FMD staff also participates as lecturers in the workshops for supervised organizations.

148. Under Article 12 of the AML/CFT Law, state agencies and other organizations shall duly submit to the financial monitoring agency the information and documents (except personal information of citizens) which it needs to perform its functions, and such submission does not constitute a violation of official, banking or other legislatively protected secret. Article 5 of the Presidential Order No.408 obligates all state agencies, legal entities and individuals to submit to the FMD the information it needs to carry out its functions and grant the FMD access to their IT systems and databases. The Department currently has direct or remote access to 32 databases of republican state authorities. The FMD also has direct access to the Single Clearing Center of the National Bank of Ukraine through which the FMD receives information on all deals in excess of 3,000,000 rubles.

149. During their meetings the evaluators became convinced that the FMD can receive any additional information from reporting institutions on demand. Specifically, under paragraph 7.1 of the Regulation on the Financial Monitoring Department, for purposes of its tasks and functions the FMD may request state agencies and other organizations, including the National Bank and persons carrying out financial transactions to provide information and documents (except personal information of citizens) which it needs to perform its functions.

150. Provided there are sufficient grounds to believe the financial transaction is associated with ML/FT, such information and materials are forwarded by the Department to a criminal prosecution agency under paragraph 7.9 of the Regulation on the FMD at the State Control Committee of Belarus, as well as Article 4.4 of Law 369-3 dated February 9, 2000, "On the State Control Committee" (with the FMD being a structural unit of the State Control Committee). The evaluation team was not supplied with the procedure for submitting information and materials to

law enforcement authorities. The team was informed that financial investigation materials submitted by decision of the FMD Director.

Table: statistics on STR receipt, analysis and submission to law enforcement

Total number of suspicious transaction reports received and analyzed by the Department	2005	28,204
	2006	141,299
	2007	269,701
	Total:	439,204
Including the number of suspicious transactions reports:	2005	-
	17.03.2006-31.12.2006	14,238
	2007	42,247
	Total:	56,425
Number of reports forwarded to law enforcement and control authorities (including those based on STR analysis)	2005	378 (133)
	2006	816 (157)
	2007	2,088 (128)
	Total:	3,282 (418)

151. The FMD forwards money laundering information mainly to the Financial Investigations Department (FID), which is a law enforcement agency and also part of the State Control Committee. Since the FMD and the FID are units of the State Control Committee, they have effective interaction with constant feedback. The second agency to receive the most reports from the FMD is the Ministry of Internal Affairs.

Table: Statistics on reports submitted by the FMD to law enforcement and other state agencies

Year	FID	Prosecutor's Office	State Security Committee	Ministry of Internal Affairs	Minister for Emergencies	State Control Committee	Others
2004	56	0	59	0	0	7	11
2005	219	0	99	25	0	15	10
2006	481	4	116	105	45	42	23
2007	1,170	34	164	403	32	197	122
1 st half of 2008	829	22	107	285	10	131	34

152. Unlike the FID, other law enforcement agencies and the prosecutor's office fail to send the FMD regular feedback on the use of its materials in criminal prosecution and court proceedings. It would be helpful to organize such feedback as a source of additional information. Such feedback would help improve the criteria for preparing and submitting FMD materials to the law enforcement and prosecutor's office.

153. The FMD is an autonomous unit within the State Control Committee of Belarus with the rights of a legal entity. However, the evaluation team learned that the FMD does not have an independent budget and cannot hire staff on its own. In certain exceptional cases, when

conducting high-profile investigations, the FMD reports to the SCC Chairman of ongoing cases. Despite these restrictions, the FMD enjoys sufficient operational independence and autonomy, especially with regard to powers associated with obtaining, analyzing and transmitting information about financial transactions associated with ML/FT when there are sufficient grounds to do so.

154. Under Article 11 of the AML/CFT Law, the confidentiality of information contained in the special forms is guaranteed by the financial monitoring agency, except in cases stipulated in the law. Employees of the financial monitoring agency ensure nondisclosure of information on the agency's activities which constitute an official or banking secret or other type of secrets protected under law and are liable under law for disclosing such secrets. As part of organizational measures to ensure information security, the Department has drawn up and introduced the guidelines on protecting official information while using computer, photocopying, or electronic communication devices. A number of software and hardware means are used additionally to ensure information security. Server equipment with financial data is located in a separate room at the FMD. Some aspects of physical security of data appeared questionable to the evaluation team. Specifically, the data backup center is located in the same room, creating certain risks of loss of all data in the event of an accident.

155. The FMD, is a structural unit of the SCC. The FMD periodically publishes its result in the mass media. In 2007 19 articles were published. Each year the Department reports its performance results only to SCC collegiums. The FMD has a website of its own (www.kgk.gov.by/monitoring-dept).

156. On May 31, 2007, at the 15th Plenary Session of the Egmont Group, Belarus's FIU received full member status, confirming FMD's compliance with requirements for FIUs. Long before joining the Egmont Group, the Department had been exchanging information in accordance with the Group's Statement of Purpose and Principles of Information Exchange in Money-Laundering Cases.

Effectiveness

157. FMD's efforts produced considerable results not just along the lines of specific financial investigations and cooperation with the law enforcement (the evaluation team received specific examples), but also in terms of exposing typical money laundering schemes and legislative loopholes exploited by them. For instance, following the detection of money laundering schemes using bills of exchange the government passed legislation to additionally regulate the circulation of bills of exchange. Similar steps have been taken with regard to bank operations in free economic zones. The effectiveness of the FMD is further raised by the fact that the Department is part of the State Control Committee of Belarus, which has vast regulatory, supervisory, law-enforcement and other powers in matters of controlling all economic operations of Belarus.

Table: FMD analysis results

After processing FMD reports, law enforcement and controlling authorities imposed administrative fines (billion rubles)	2005	7.8
	2006	17.7
	2007	35.9
	Total:	61.4
After processing FMD reports, law enforcement and controlling authorities confiscated in favor of the state budget (billion rubles)	2005	3.1
	2006	7.1
	2007	13.9
	Total:	24.1

Law enforcement and controlling authorities filed criminal cases (including in connection with predicate crimes)	2005	34
	2006	79
	2007	289
	Total:	402

158. Yet the effectiveness of FMD operations is restricted by limited resources. The staff of analysts is short of the needed number, resulting in a small number of financial investigations. The resources of the IT Department are also limited in terms of both hardware and software. The available software can handle comprehensive analysis of the database, but lacks all the visualization, acceleration, and expansion functionality.

159. Paragraph 10 of the Regulation on the FMD stipulates that research, advisory, and expert boards may be set up at the Department to help evaluate the effectiveness of ongoing AML/CFT efforts and work out proposals on how to improve them. However, the evaluation team did not receive any information on any advisory or expert boards at the FMD. At the same time, the FMD has set up an interagency taskforce on ensuring coordination and interaction of state agencies in AML/CFT as well as a taskforce manned by private sector representatives tasked with developing typologies. To coach employees and organize analytical work, the Department has developed and implemented methodical recommendations on detecting and analyzing financial transactions associated with ML/FT. The methodical recommendations are an internal document stamped “official use only”. They are approved by order of the FMD director. The recommendations embrace the procedure and techniques of detecting and analyzing financial transactions associated with money laundering and financing of terrorism. Specifically, it describes direct and indirect suspicious signs to look for in individuals and legal entities and financial transactions, examines the key stages of investigating and analyzing suspicious financial transactions, including identification of transaction participants using the available databases, uncovering the scheme of key financial and commodity flows between the participants of suspicious transactions, the decision-making procedure, maintaining Department lists and keeping records of outgoing reports, preparing analytical and methodological materials. Overall, the evaluation experts have concluded that FMD analysts are trained at an appropriate level.

2.5.2 Recommendations and comments

160. Raising the effectiveness of the FMD requires increasing the staff numbers of analysts and providing additional funds for IT infrastructure.

161. To assess the effectiveness of AML/CFT efforts and develop applications to enhance them, the question of setting up a research, advisory, or expert board at the Department should be examined.

162. It is recommended to introduce normative acts regulating the procedure of transferring information from the FMD to the law enforcement.

2.5.3 Compliance with Recommendations 26

	Rating	Summary of factors underlying rating
R.26	LC	<i>Effectiveness:</i> <ul style="list-style-type: none"> • A lack of resources decreases the effectiveness of FDM work.

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

2.6.1 Description and Analysis

Recommendation 27

163. Under Section 8 of Article 182 of the Criminal Procedural Code of Belarus, investigations into criminal cases under Article 235 (ML) and Article 290-1 (FT) of the Belarusian Criminal Code are to be carried out by the agency that made the decision to start criminal proceedings under these articles (alternative jurisdiction). In Belarus, investigations into these types of crimes are conducted by investigative units of the GPO, Ministry of Internal Affairs, FID, and State Security Committee within their respective terms of reference under the Criminal Procedural Code (Paragraph 5 of Article 34 of the Belarusian Criminal Code). The GPO supervises pre-investigation and investigation activities by the law enforcement agencies. The GPO is also authorized to reallocate cases among different law enforcement agencies depending on their interest, workload, and case complexity. High-profile and complex cases are handled by the GPO, which often sets up interagency investigation teams in the process.

164. Even though under the Criminal Procedural Code all law enforcement agencies have the right to investigate ML and FT cases, none of these agencies is officially responsible for developing and implementing a set of measures designed for systemic detection and prosecution of ML and FT cases.

165. Article 7 of Law No.289-3 dated July 9, 1999, “On Operational and Detective Activities” envisions the right of investigatory units of the police, state security committee, financial investigators of the State Control Committee, and customs authorities to carry out operational and detective activities in Belarus. One of the tasks of such operational and detective activities is crime prevention, detection, deterrence, and solution and detection and identification of individuals who are plotting, committing or have committed crimes (Article 3 of the Operational and Detective Activities Law). The legality of operational and detective activities is supervised by the General Prosecutor of Belarus and prosecutors authorized by him (Article 22). Under paragraph 5 of Article 34 of the Belarusian Criminal Procedural Code, the prosecutor supervising the observance of legality in the process of preliminary inquiry, interrogation and procedural handling of the investigation is authorized to apply, modify or call of measures of restraint, prolong detention in custody, house arrest, determine the period of preliminary inquiry, prolong the period of inquiry into claims and crime reports and the preliminary inquiry term, as well as sanction measures of restraint such as placement into custody, house arrest, bail; conduct of searches, inspection of a residence; attachment of assets located at a residence or other legitimately owned assets.

166. Pursuant to Article 190 of the Belarusian Criminal Procedural Code, a preliminary inquiry must be completed within 2 months. This term may be prolonged to 3 months by district or municipal prosecutors or prosecutors of equivalent rank or their deputies, and to 6 months by district or Minsk City prosecutors or their deputies. The preliminary inquiry may be prolonged beyond this time only in exceptional cases by the General Prosecutor of Belarus or his deputy.

Additional elements

167. Article 11 of the Operational and Detective Activities Law authorizes the State Security Committee, MIA, and FID to resort to operative and detective measures, such as:

- 1) questioning citizens;
- 2) making inquiries;

- 3) collecting samples for comparative analysis;
- 4) test purchases;
- 5) examination of items and documents;
- 6) surveillance;
- 7) identity verification;
- 8) inspection of premises, buildings, structures, areas, and transport vehicles;
- 9) eavesdropping;
- 10) control of mail, telegraph and other messages;
- 11) wiretapping;
- 12) data mining in communication channels;
- 13) infiltration;
- 14) controlled delivery;
- 15) operative experiment.

Customs authorities of Belarus carry out operative and detective measures other than those stipulated in items 6, 9-13.

168. In order to prevent, detect, deter, and solve crimes and detect and identify individuals who are plotting, committing or have committed crimes, including ML/FT crimes, the law enforcement agencies of Belarus shall make full use of operative and detective measures in accordance with Belarusian legislation.

169. Pursuant to Presidential Order No.103 dated February 21, 2006, "On the state program to combat crime for 2006-2010", Belarus has developed a plan of special interagency operative preventive and inspection measures and special operations to prevent, detect and deter crimes in the banking and financial sector. Joint measures are carried out as part of interagency cooperation.

170. Under Article 34 of the Belarusian Criminal Code, the prosecutor is authorized to entrust a preliminary inquiry into a criminal case to a team of investigators, man the team, and head it. Belarus focuses a great deal of attention on setting up permanent special units to combat corruption and organized crime. In this connection, the President issued Order No.330 dated July 16, 2007, "On special units to combat corruption and organized crime" as well as a number of other enactments. Money laundering (parts 2 and 3 of Article 235) was in turn included in the list of crimes of corruption (decree by the GPO, MIA and the State Security Committee No.17/94/11 dated April 5, 2007), which has produced certain results in the detection of ML crimes committed by officers prosecuted for abuse of office.

171. Belarusian law enforcement agencies conduct joint ML investigations with the relevant foreign agencies. The evaluation team was presented some successful examples of interaction with Russian law enforcement agencies.

172. The evaluation team has learned that all law enforcement agencies have internal staff training programs, including the ones on AML/CFT. However, the evaluation team was not presented the subjects and issues addressed during such classes. There are no permanent trainings in AML/CFT methods, techniques and trends at the interagency level.

173. It is also noteworthy that the law enforcement agencies do not return feedback to the FMD at the preliminary inquiry stage.

Effectiveness

174. The Financial Investigation Department (FID) operates from within the SCC, investigating fiscal and economic crimes. Even though AML/CFT issues are not the direct competence of the FID,

this agency is the most active in investigating such crimes. This is partly due to the close and effective cooperation the FID has with the FMD – both agencies are part of the SCC and interact without bureaucratic obstacles. The FID is also actively using the powers of the FMD to freeze accounts through which illicit funds may be transferred.

Number of ML crimes detected by the FID:

2005	2006	2007	1 st half of 2008
9	10	12	9

175. Amounts of illicit proceeds detected by the FID in criminal cases:

2005	2006	2007
9,811 million rubles	13,588 million rubles	14,693 million rubles

176. The evaluation team has been informed that the FID is actively cooperating with supervisory units of the SCC, contributing to analysis of supervisory inspection materials and using such materials in its own work.

177. *The Ministry of Internal Affairs (MIA).* The MIA handles a substantial portion of investigations under Article 235. In 2008, the Money Laundering Detection and Deterrence Department was established within the structure of the State Economic Security Directorate of the MIA Main Directorate on Combating Organized Crime. MIA agencies detected the following number of crimes under Article 235 (ML): 2005 – 36; 2006 – 28; 2007 – 21. Of these, organized crime groups committed 1 crime in 2005, 4 in 2006, and 4 in 2007.

178. ML/TF crimes are also investigated by the KGB, which revealed 13 crimes in 2005, 8 in 2006 and 17 in 2007.

179. ML/FT crimes are also investigated by the GPO. However, the evaluation experts did not receive statistics on the AML/CFT record of this agency. Nor did they receive data on the number of criminal cases referred to court with a breakdown by law enforcement agencies. The lack of aforementioned data makes it impossible to fully evaluate the effectiveness of the law enforcement agencies.

180. The law enforcement agencies told the evaluation team that the current wording of Article 235 of the Criminal Code, which defines money laundering as an activity involving the use of laundered money “to carry out entrepreneurial or other economic activity”, significantly complicates the law enforcement agencies’ work of gathering evidence of ML crimes. Evaluation experts were also informed that a bill that would exclude this restrictive wording from Article 235 has been prepared and will be considered shortly in Parliament.

181. Evaluation experts were presented examples of several complex ML criminal cases involving transnational crime groups and ranking state officials. These examples prompt the conclusion on the *high quality* of the Belarusian law enforcement agencies’ work investigating money laundering in complex, high-profile cases, especially corruption-related cases. Seemingly, these successes are due to the fact that the fight against *corruption* has been promoted as a national priority by the nation’s leadership.

182. Nevertheless, the *number* of ML cases being investigated is very small. This indicates that administrations of law enforcement agencies have yet to prioritize the *fight against money laundering*.

Further proof of this fact is that virtually in all criminal cases money laundering is prosecuted as an accompanying crime.

Recommendation 28

183. Belarusian legislation – the Laws “On Internal Affairs Agencies of Belarus”, “On State Security Agencies of Belarus”, “On Financial Investigation Agencies of Belarus”, “On Operative and Detective Activities”, the Criminal Procedural Code, as well as the Customs Code – authorized law enforcement agencies to conduct the entire range of operative and detective measures (see description under R.27). Moreover, when there is sufficient information indicating that certain persons committed crimes, law enforcement agencies may inspect buildings and premises, conduct searches (bodily searches of persons suspected of such crimes), confiscate documents, seize postal, telegraph and other messages, and attach property. Under Article 8 of the Law “On Combating Corruption”, law enforcement agencies may freeze for up to 10 days any funds if there are sufficient reasons to believe such funds and/or other assets were obtained from persons implicated in crimes of corruption or money laundering.

184. Pursuant to the aforementioned legislation, law enforcement agencies must receive and register claims, crime reports, administrative offence reports, and accident reports and act on them immediately. These obligations also apply to witness testimony used in the investigation and indictment for ML, FT and other predicate crimes.

2.6.2 Recommendations and Comments

185. To identify the agency(ies) that would be responsible for developing and implementing a system of law enforcement measures to combat money laundering and terrorist financing as well as coordinate the activity of other law enforcement agencies along these lines.

186. It is necessary to establish, through resolutions of law enforcement agencies / resolutions of coordinating meetings, the investigation of ML/FT crimes as one of the priorities for the law enforcement.

187. To form special ML/FT crime investigatory units at the GPO, FID, and SSC.

188. To provide AML/CFT training for law enforcement agency investigators, judges and prosecutors.

189. The law enforcement agencies should introduce a system for returning feedback to the FMD on the practice of using FMD materials in investigations.

2.6.3 Compliance with Recommendations 27 and 28

	Rating	Summary of factors underlying rating
R.27	LC	<ul style="list-style-type: none"> No agency(ies) has (have) been put in charge of developing and implementing a system of law enforcement measures to combat ML/FT. <p><i>Effectiveness:</i></p> <ul style="list-style-type: none"> Law enforcement agencies lack a systemic approach to

		<p>investigating ML/FT, which results in low detection figures in statistics on such crimes.</p> <ul style="list-style-type: none"> • Because of the absence of certain statistical data, it is impossible to evaluate the effectiveness of some law enforcement agencies' performance.
R.28	C	This Recommendation is fully observed.

2.7 Cross-border Declaration or Disclosure (SR.IX)

2.7.1 Description and Analysis

190. Under current legislation, Belarus has a combined system in place for declaring cash and financial instruments crossing the border. Yet this system was not developed with AML/CFT objectives in mind. In this connection, Special Recommendation IX is not observed to a considerable extent. Belarus also failed to provide information on what types of transferable bearer instruments are covered by the declaration requirements. Legislation contains a reference to “securities”. It is, however, unclear what is meant by this notion.

191. The procedure and norms for importing and exporting cash via the customs border of Belarus, including the procedure for declaring it to the customs authorities, are set out in the resolution of the Belarusian National Bank Board and the State Customs Committee of Belarus dated April 30, 2004, No.73/38 “On the adoption of the Instruction on the Procedure for Importing, Exporting, and Transferring Foreign Currencies, Belarusian Rubles, Foreign-Currency Payment Instruments, Certificated Securities in Belarusian Rubles and Foreign Currencies by Individuals Across the Customs Border of Belarus”.

192. Under this resolution, where individuals are importing foreign currency in the amount exceeding the equivalent of USD 10,000 per one person, the foreign currency being imported must be declared in writing to the customs authorities of Belarus.

193. Where individuals are importing foreign currency in the amount not exceeding the equivalent of USD 10,000 per one person, such persons are not required to file a written declaration unless they wish to do so.

194. The following limitations apply to foreign currency export from Belarus by individuals:

- foreign currency in amounts in excess of USD 10,000 can be exported after presenting the relevant permits to the customs authorities;
- foreign currency in amounts not exceeding the equivalent of USD 10,000 per person can be exported without presenting permits to the customs authorities;
- foreign currency exported in amounts in excess of the equivalent of USD 3,000 per person must be declared in writing;
- foreign currency exported in amounts not exceeding the equivalent of USD 3,000 per person does not have to be declared in writing, unless the person wishes to do so.

195. Individuals may import or export certificated securities denominated in foreign currencies and payment instruments in foreign currencies without any limitations on the amount and without the need to declare them in writing to the customs authorities of Belarus, unless the person wishes to do so.

196. Individuals are allowed to import or export Belarusian rubles in amounts not exceeding 500 (five hundred) basic units established in Belarus per person on the date of importation (exportation)

without the need to declare them in writing to the customs authorities of Belarus, unless the person wishes to do so.

197. The Policy on preferential border-crossing for personal use items and simplified procedure for customs declaration of such items, approved by Presidential Decree No.503 dated October 15, 2007, “On preferential border-crossing for personal use items”, envisions the possibility to export/import foreign currency and Belarusian rubles that does not have to be declared in writing via “green” corridors.

198. Passage of personal use items via “green” corridors is controlled randomly (random choice of control objects and/or operations) and is carried out by customs officers whenever there are signs of noncompliance with cross-border conditions.

199. Once personal use items, vehicles, or trailers have passed through the “green” corridor, such items may be subject to customs, vehicular, veterinary, phytosanitary, or other types of state control in legislatively prescribed forms whenever there are signs or information indicating that such items have cross the border in violation of the law.

200. Therefore, Belarus has a mixed declaration system that includes both regimes proposed by FATF.

201. If violations of customs legislation are detected, the customs authorities may require the violator to provide all the required additional information, suspend the movement of such items across the border, i.e., prolong the term of inspection of the goods and other items for a period exceeding 30 days, if a violation of customs legislation is suspected (under Article 277 of the Customs Code). Perhaps this also applies to ML/FT violations, but the evaluation experts have some doubts in this respect. The evaluation experts were informed that Belarus has a mechanism for interaction among the FMD, FID, SCC, State Customs Committee, GPO of Belarus, which allows controlling cross-border movement of individuals for purposes of customs control operations. If analysis of information by the FMD reveals any signs indicating a possible violation of legislation, the individual in question may be subject to control. Nevertheless, it is not clear whether this includes the possibility to suspend the movement of funds on the basis of a suspicion.

202. Pursuant to the resolution by the State Customs Committee of Belarus dated June 28, 2007, No.67 “On the form of and procedure for filling out customs paperwork, submitting customs and other documents to the customs authorities, and procedure for registering such documents”, collected declarations are stored. At the same time, because the customs authorities do not handle AML/CFT issues, they do not store information on declarations that raised ML/FT suspicions.

203. To monitor the situation on the movement of foreign currencies across the Belarusian customs border, pursuant to the Belarusian State Control Committee resolution (No.16/3-9 dated January 24, 2005), the Belarusian State Customs Committee sends the FMD a monthly report on instances of nonresidents and residents with residence permits in Belarus moving across the Belarusian border foreign currency in amounts exceeding the equivalent of USD 3,000 (export) and USD 10,000 (import).

204. At the interagency level, the State Customs Committee cooperates with other law enforcement agencies and the Financial Monitoring Department. Evaluation experts received information on successful examples of State Customs Committee’s cooperation with different law enforcement agencies.

205. Since 1993, Belarus is a member of the World Customs Organization and has its representatives working as part of different WCO bodies. Belarus is also a party to international customs conventions, including, since 2004, the International Convention on Mutual Administrative Assistance in Customs Matters. Belarus has bilateral agreements with the following states: Armenia, Germany, Italy, Iran, Lithuania, Latvia, Slovakia, the US, the Czech Republic, Estonia. Besides, the Belarusian State Customs Committee is an active contributor to the efforts of Regional Intelligence Liaison Offices and the Customs Law Enforcement Network of the WCO. These agreements and instruments enable Belarus to cooperate actively on customs issues. It seems that all of these mechanisms allow Belarusian customs authorities to cooperate in AML/CFT issues.

206. Current legislation envisions administrative and criminal penalties for illegal movement of foreign currency across the Belarusian customs border (Articles 14.4, 14.5 of the Belarusian Code on Administrative Offences, Article 228 of the Belarusian Criminal Code). The law envisions administrative liability for failure to declare items (including currency), bypassing customs control, or concealing items from customs control.

207. Where the value of items exceeds 2,000 basic units established at the moment of the offence, the guilty persons may be criminally prosecuted for contraband.

208. Between 2004 and 2007, the customs authorities detected and prevent the attempts at illegal movement of foreign currency across the border:

Administrative Offences Code, Criminal Code of Belarus	Total	2004	2005	2006	2007
Administrative offences	1,949	524	431	495	499
Criminal cases	16	5	4	2	5

209. At the same time, it is worth noting that Article 235 of the Criminal Code and Article 290-1 do not belong to the jurisdiction of the customs authorities, which renders them unable to investigate ML/FT cases.

210. Belarus is unable to apply the relevant provisions of Recommendation 3 and Special Recommendation VII with regard to funds associated with ML/FT and moved across the border. The current mechanisms of cooperation with foreign agencies allow the customs authorities to cooperate on cases of suspicious movement of precious metals or stones across the border.

211. All information on cross-border movement of currency and assets is stamped “official use only” and is subject to nondisclosure conditions in place at government institutions.

Effectiveness and resources

212. Since the customs authorities do not work on AML/CFT issues, it seems hard to evaluate their performance and adequacy of the resource base.

2.7.2 Recommendations and Comments

213. Belarus should implement legislative, institutional and other measures in order to apply existing mechanisms of customs control and declaration for AML/CFT purposes.

214. Customs authorities should be able to suspend cross-border movement of funds if ML/FT suspicions arise, store information on such incidents, cooperate on AML/CFT at the international level, and use sanctions against individuals moving funds associated with ML/FT across the border.

215. Belarus should apply declaration requirements to all types of transferable bearer instruments that are set out in the FATF Recommendations. Belarus has to create legislative and institutional mechanisms to enable the application of R.3 and SR.III requirements with regard to cross-border movement of funds.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
CP.IX	NC	<ul style="list-style-type: none"> • The current system of customs control is not used for AML/CFT purposes. • It is not clear beyond doubt whether it is possible to stop cross-border movement of funds if ML/FT is suspected. • It is not clear if the declaration requirements apply to all types of bearer negotiable instruments. • Customs authorities do not store information on declarations that raised ML/FT suspicions. • Customs authorities are unable to apply sanctions against persons moving funds associated with ML/FT across the border. • Belarus is unable to apply the relevant provisions of Recommendation 3 and Special Recommendation III with regard to funds associated with ML/FT and moved across the border.

3. PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

Customer Due Diligence & Record Keeping

3.1. Risk of money laundering and terrorist financing

216. Belarus's national AML/CFT system is not based on an approach that takes into account the assessment of risks in different financial sectors. In this connection, legislatively prescribed AML/CFT measures are applied in equal measure to all financial institutions. As part of customer identification requirements, financial institutions must form risk profiles. However, this is a private requirement that will be examined within the context of Recommendation 5.

3.2 Customer Due Diligence, including enhanced and reduced measures (R.5-8)

3.2.1 Description and Analysis

Preamble: Types of financial institutions subject to AML/CFT measures

217. The following financial institutions of Belarus are subject to the FATF Recommendations under Article 1 of the AML/CFT Law:

- banks and non-bank financial credit institutions;
- professional operators of the securities market;
- persons engaged in exchange transactions, including commodity exchanges;
- insurance firms and insurance brokers;
- postal service operators;
- firms leasing out property;
- other organizations, their standalone units, individual entrepreneurs providing services that involve receipt, disposal, acquisition, handover, transportation, transfer, remittance, exchange and/or storage of funds, as well as persons certifying or registering civil law agreements of persons carrying out financial transactions.

218. The requirements of AML/CFT legislation apply to all financial institutions in equal measure. Meanwhile, financial institutions engaged in the leasing business are presently not subject to supervision or monitoring. This makes it impossible to evaluate the effectiveness of AML/CFT efforts undertaken by this sector.

Preamble: Specifics of AML/CFT Legislation

219. The legislative hierarchy of Belarus within the context of FATF requirements is evaluated as follows: the category of "law or decree" includes the laws of Belarus, specifically the AML/CFT Law, as well as enactments whose passage is delegated under this Law to the Council of Ministers or a different competent authority.

220. Financial institutions are regulated, among other things, on the basis of recommendations for the organization of internal control set out in the Council of Ministers resolution based on which supervisory authorities have issued their own resolutions. Financial institutions must bear these recommendations in mind when drawing up their own internal control regulations. Since the implementation of these requirements in internal control rules is verified by the relevant supervisory authorities, these requirements are viewed as other mandatory measures.

Recommendation 5

221. The current system of AML/CFT legislation in Belarus is based on ensuring the following objective is met: detection by financial institutions of transactions subject to special control (suspicious transactions or those exceeding an upper limit), recording information on such transactions, and reporting the information to the FIU. In addressing this core objective, the FATF Recommendations as regards completeness of Customer Due Diligence (CDD) measures were not implemented in their entirety.

222. The insufficient general customer identification requirements of Belarusian legislation for certain categories of financial institutions are partially compensated by agency requirements.

Anonymous accounts

223. Under the Belarusian Banking Code and National Bank Resolution No.127, accounts can be opened by banks and non-bank financial credit institutions on the basis of contracts and documents identifying the account holder, which rules out the possibility of opening anonymous accounts.

224. At the same time, the Rules for Conducting Electronic Cash Transactions (National Bank Resolution No.52) do not require mandatory identification of the electronic cash account holder, including the owners of an electronic wallet (which, in essence, is the customer's electronic cash account). The existing system Webmoney allows opening a WMB electronic wallet (equivalent of Belarusian ruble) under a fictitious name.

225. Articles 192, 195, 196 of the Belarusian Banking Code permit the opening of a deposit account through issuing savings passbooks or deposit and savings bearer certificates, which are securities. In accordance with Article 168 of the NBRB Instruction No.168 the all clients opening such passbooks and cashing them in must be identified, which meets the FATF requirements.

226. Apparently, Belarusian legislation does not envision and hence does not permit numbered accounts.

When CDD is required

227. Belarusian AML/CFT legislation does not contain a clear requirement to perform CDD upon establishing business relations with a customer. Belarus also failed to present other legislative acts, including those regulating the insurance and securities sectors, envisioning mandatory requirements to identify customers upon establishing business relations.

228. Under Article 5 of the AML/CFT Law, persons carrying out transactions subject to mandatory reporting must be identified. Therefore, the identification requirement applies to persons carrying out transactions worth over 2,000 basic units for individuals or 20,000 basic units for organizations and individual entrepreneurs, close to USD 30,000 and USD 300,000, respectively, which exceeds the threshold value of USD/EUR 15,000 set out in FATF Recommendation 5.⁷ Accordingly, the operations under the threshold which do not fall under any identification requirements are banking operations performed without opening an account and currency exchange operations.

⁷ In November 2008 the President of Belarus adopted a Decree, which lowers the identification threshold to 15 000 USD for both natural and legal persons, which would meet the FATF requirements. However this Decree was adopted outside the post-assessment two-month timeframe established by the FATF and EAG for considering new legal acts.

229. Also, Article 9 of the Belarusian AML/CFT Law sets out a list of transactions not subject to special control and with regard to which customer identification is not mandatory. Belarus failed to present a document that would confirm that exclusion of these transaction types from the identification requirements was justified in terms of risk assessment.

230. With international money transfers, identification of the sender is carried out pursuant to National Bank Resolution No.66, which requires sender identification in all cases. Meanwhile, money transfer within Belarus by means of a bank transfer without opening an account (paragraph 44 of the National Bank Resolution No.66) or via Belpost in the amount of up to 2,000 basic units (close to USD 30,000) is possible without sender identification.

231. Customer identification must be carried out when there are suspicions of ML/FT, since Article 6 of the AML/CFT Law defines ML/FT suspicion as a criterion for subjecting a transaction to special control. At the same time, Article 9 of the same law sets forth a number of transaction categories that are not subject to special control. Therefore, this requirement does not apply to all transaction types.

232. Paragraph 3 of the general requirements for rules of internal control adopted by the Council of Ministers Resolution No.352 envisions repeat identification if there are reasons to doubt the credibility of data submitted previously. This requirement is repeated in paragraph 19 of the National Bank Recommendations for credit institutions No.21-20/367 (2006), as well as in paragraph 28 of Instruction No.34 (2008). The same requirements are envisioned for the Postal Service (paragraph 3 of the Ministry for Telecommunications Resolution No.9 – 2006) and for the securities sector (Securities Committee Resolution No.08-P – 2006). Meanwhile, this requirement of the FATF Recommendations for these sectors has not been complied with.

Required CDD measures

233. Article 7 of the AML/CFT Law requires identifying customers using identity documents / constituent documents, registration certificates or other documents. The same article sets forth the list of data recorded upon identification.

234. Recommendations on data verification methods have been formulated for banks (paragraph 16 of the National Bank Recommendations on internal control rules). Verification implies not only checking data against the documents, but also ascertaining the place of residence, checking the authenticity of documents, gathering business information, using data on the customer available from public and private sources, reviewing the customer's history of prior relations with banks, visiting the customer, contacting the customer on the phone. The joint Resolution by the MIA and the National Bank No.124/105 grants banks online access to MIA databases, allowing them to run a person search, lost or stolen passports search, and use other data resources. Banks also have online access to the Ministry of Statistics data on the registration of legal entities and data of the National Bank clearing center on banks serving accounts of legal entities.

235. No additional verification requirements, other than the requirement to use a personal identity document, have been established for other sectors.

Identification of legal entities

236. Article 7 of the AML/CFT Law requires, when carrying out identification of a legal entity, recording “the last name, first name, patronymic of the manager, chief accountant of the organization and/or other competent officers who are authorized by legislation or the manager to act on behalf of the organization”.

237. In addition to the above requirement to identify managers and representatives of the legal entity, Article 7 of the AML/CFT Law requires ascertaining the following data: name, registration number and date, name of the registering authority (if any), location (registered address), taxpayer identification number (if any).

Identification of beneficial owners

238. In case of suspicion or certainty that the customer is carrying out transactions on somebody else's behalf, Article 7 of the AML/CFT Law requires identifying the person on whose behalf the customer is acting.

239. Under paragraph 21.2 of the National Bank Instruction No.34, credit institutions must focus particular attention on the founders and shareholders of the organization in order to identify persons capable of influencing decisions of the organization's governing bodies. Credit institutions must also focus attention on the structure of the organization's governing bodies and their powers. No such requirements are in place for other sectors.

240. For the benefit of banks, the National Bank Instruction No.34 defines the "end beneficial owner" and requires identifying such owners in the process of customer identification. Under paragraph 3 of this Instruction, the end beneficial owner is identified as an individual who directly or indirectly, through participation in other organizations, is the ultimate owner of the organization or can otherwise influence decisions made by the organization. The instruction also uses the term "beneficiary", which also partially applies to the first part of the relevant FATF definition and applies to persons on whose instructions or behalf and/or in whose interests the persons carrying out financial transactions are acting; these terms in Belarusian legislation fully cover the relevant FATF definition.

241. No requirements are in place for identification of beneficial owners in other sectors.

142. Applicable to banks only, the National Bank Instruction No.34, paragraph 8.1., contains the requirement to record information in order to "form an idea of the customer, including his end beneficial owners, as well as the nature of the customer's operations and expected turnovers." There is no such requirement for other types of financial institutions.

On-going CDD measures

243. Applicable to banks only, the National Bank Instruction No.34, paragraph 8.2., requires conducting current control of financial transactions based on the information gathered on the customer at the preliminary control stage – i.e., gathering customer information, forming an idea of the customer, the nature of operations and expected turnovers. The credit institution uses such information to carry out so-called "current control", i.e., monitoring of the customer's transactions. There is also the requirement to carry out subsequent control, i.e., measures to detect suspicious transactions of long-term nature, which were not detected at the current control stage. The criteria of suspicious transactions contained in the Instruction include transactions conflicting with the customer profile (e.g., criteria 10, 23, 34). There is no such requirement for other types of financial institutions.

244. Paragraph 3 of the general requirements for rules of internal control adopted by the Council of Ministers Resolution No.352 requires updating customer identification data at least once per year. For the banking sector, this requirement is also reflected in paragraph 28 of Instruction No.34, in which case the customer risk degree is taken into account. For the securities sector, this requirement is repeated in Paragraph 9 of standard rules of internal control developed for this sector (Securities Commission Resolution 08-p – 2006). Meanwhile, this requirement is not repeated in standard rules of internal control for the postal service.

Risks

245. Only for banks, the National Bank Instruction No.34 requires conducting and updating customer risk assessments. The same Instruction specifies the categories of high-risk transactions.

Banks are required to focus extra attention on transactions carried out by high-risk customers. The fact that a transaction has been classified as belonging to a high-risk category can only affect the customer risk assessment (paragraph 23 of the Instruction).

246. There are no requirements for CDD measures with regard to customers and high-risk transactions in other sectors.

247. Simplified CDD measures are envisioned by paragraph 21 of the National Bank Instruction No.34 – simplification of the procedure for identifying individuals carrying out one-time transactions without opening an account and Group A correspondent banks (see description in Recommendation 7).

248. The AML/CFT Law exempts certain transaction types from the mandatory reporting requirement and hence from the identification requirement. Since the FATF Recommendations do not permit full exemption of a transaction from FATF requirements, but permit only simplifying CDD requirements, this exemption should be eliminated.

Timing of verification

249. The only requirement for the timing of customer identification is contained in Article 7 of the AML/CFT Law, under which identification is to be conducted “in the process of transactions” and only those subject to special control.

250. Whereas the AML/CFT Law does not require conducting identification upon establishing business relations with the customer, the requirements for the timing of verification do not apply in this case. There are no procedures to mitigate risks arising from transactions, where immediate identification/verification is not possible. Therefore, Belarusian legislation does not comply with FATF requirements in this respect.

251. The current practice of electronic cash transactions in Belarus (a business without direct contact with the customer) envisions conducting data verification once business relations have been established. For example, internal rules of the Webmoney system permit opening an electronic WMB wallet (the equivalent of the Belarusian ruble) using fictitious identification data. Cash can be withdrawn from the electronic wallet only after the customer details have been verified. Meanwhile, the possibility to carry out any online transactions using electronic cash without ID verification does not correspond to FATF requirements and poses an ML/FT risk.

Failure to satisfactorily complete CDD

252. Belarusian AML/CFT legislation does not grant financial institutions the right to refuse to carry out a financial transaction or sever existing business relations when it is impossible to satisfactorily complete CDD procedures with regard to the customer, except in cases when the client fails to present details for the special form of the transaction subject to mandatory reporting (Article 5 of the AML/CFT Law). However, even this norm is formulated as a right, not as an obligation for financial institutions, and applies only to obtaining primary identification details, and not conducting the entire CDD process.

253. AML/CFT legislation of Belarus contains a general requirement for financial institutions to send a report to the FID when it is impossible to complete the CDD for a given customer (Council of Ministers Regulation No. 367, Annex 4). Additionally, suspicious financial transactions criterion No.4 for banks contained in the National Bank Instruction No.34 contains the element “Submission by the customer of suspicious information that cannot be verified or where such verification would prove too costly”.

Applying CDD to customers relations with whom predate AML/CFT legislation

254. According to decree of the Council of Ministries № 352 the requirement to perform an annual update of customer identification data applies to existing customers of credit institutions and securities market players. Following the adoption of the new National Bank Instruction No.34 dated February 28, 2008, the bank were given 1 year and 3 months to bring their customers’ questionnaires into line with the requirements of this Instruction.

Effectiveness

255. In cases stipulated in current Belarusian legislation, customer identification and other CDD measures are effectively used mainly by credit institutions. Worthy of special attention as a best practice example is the fact that banks have online access to databases of different agencies, allowing them to verify customer identification data or check criminal records of individuals.

256. The evaluation team believes that the implementation of measures in the remaining sectors is somewhat low.

Recommendation 6

257. The definition of politically exposes persons (PEP) is provided only in the National Bank Instruction No.34 for banks. Recommendation 6 is completely unimplemented for other categories of financial institutions.

258. Banks are required to determine whether a customer is a PEP. Banks are also required to identify possible PEPs among beneficial owners according to p. 24.15 of the Instruction No.34. The approval of the bank’s senior management for the establishment (continuation) of relations with PEPs and introduction of additional measures to ascertain the sources of PEP funding are not required.

259. The National Bank Instruction No.34 mentions PEPs only to classify them as belonging to the high-risk customer category. Consequently, the bank is required to focus heightened attention on their transaction and complete an extended questionnaire on them.

Additional elements

260. For nonresident PEPs, there are no requirements for enhanced CDD measures and other requirements pursuant to R.6.

261. Belarus signed the UN Convention Against Corruption on April 28, 2004, and ratified it on February 17, 2005.

Recommendation 7

262. The National Bank Instruction No.34 groups correspondent banks separately for purposes of CDD measures. Under Belarusian legislation, all correspondent banks are divided into four subgroups

– “A” to “D” depending on ratings assigned by international agencies (Instruction on standards of safe functioning of banks and non-bank financial credit institutions No.137 dated September 28, 2006).

263. The correspondent bank questionnaire set out in Annex 1 to the National Bank Instruction No.34 and the requirements of paragraph 16.2 of the National Bank Instruction No.34 contain a long list of correspondent bank data to be collected. This data allows evaluating the business reputation of the correspondent bank, but are only partially aimed at obtaining information on the nature of its activities. Among other things this data includes:

- an audit report;
- information on business reputation obtained from government agencies, organizations and individuals;
- inquiries concerning the correspondent bank to the central bank of the country of registration or Group A bank having correspondent relations with the counterparty bank;
- information on the bank management, founders, and beneficial owners;
- form of incorporation, governing bodies.

The extended questionnaire form for correspondent banks contains additional fields concerning the nature of the correspondent bank’s operations (“history, banking product specialization, market segment and competition information, reorganizations and changes in the nature of operations, etc.”). However, the use of the extended questionnaire form is not required upon establishing correspondent relations with all correspondent banks. Questionnaire data are used only with regard to Category D banks under paragraphs 14 and 24.14 of Instruction No.34, as well as banks suspected of involvement in ML/FT or banks that submitted unreliable information.

264. Belarusian legislation, including Instruction No.34, does not contain requirements for obtaining information on the quality of supervision in the country of the correspondent bank’s registration. Nonetheless, the correspondent bank questionnaire in Instruction No.34 requires disclosing information on any measures used against correspondent banks for noncompliance with AML/CFT laws.

265. The correspondent bank questionnaire also requires banks to obtain information on organizational measures undertaken by the correspondent bank for purposes of AML/CFT. However, Belarusian legislation does not obligate banks to scrutinize or assess the information obtained in this way.

266. Under paragraph 23.1 of Instruction No.34, the bank may use the questionnaire at its own discretion upon establishing correspondent relations with Group A correspondent banks. The FATF Recommendations do not permit such exemptions if Recommendation 7 is to be complied with. Under FATF standards, in limited cases and following a comprehensive assessment of ML/FT risks some of the FATF requirements may be slightly relaxed. However, evaluation experts did not receive any information on any completed ML/FT risk assessment of Category A banks, which is why this exemption is viewed as a flaw of the Belarusian AML/CFT system.

267. Belarusian laws do not contain a direct requirement whereby the senior management of banks has to approve the establishment of correspondent relations.

268. Belarusian laws do not grant banks the right to delegate some of the AML/CFT functions to a correspondent bank, which is why this requirement of Recommendation 7 does not apply.

269. Article 209 of the Belarusian Banking Code defines a correspondent account as an account belonging to a different bank (financial credit institution). Remittance of money from a correspondent account can be performed only on the instructions of the account owner (correspondent). Thus, Belarusian legislation does not envision payable-through correspondent accounts, which is why this requirement of Recommendation 7 does not apply.

Recommendation 8

270. Only for banks, the National Bank Instruction No.34 classifies financial transactions using Internet technologies as high-risk transactions. At the same time, this Instruction does not require banks to take any additional measures with regard to such transactions. In another Regulation of the NBRB No. 231 the requirements for addressing risks arising from the non-face-to-face banking system “client-bank” are addressed. These requirements oblige banks to establish a minimum period of face-to-face business contact with the client before possible use of the “client-bank” system, they also include certain limitations on the types of business of the client and other measures.. There are no other measures with regard to ML/FT risk management when using new technologies.

271. When a bank customer conducts transactions without direct contact (via the Client-Bank system), paragraph 4 of the National Bank Resolution No.66 requires the payment order to contain a digital signature or use other means confirming the authenticity and integrity of transmitted messages. The evaluation experts were informed that customers must show up at the bank and sign a remote service contract to be able to use such a system. Nonetheless, no regulatory substantiation for this statement was provided.

272. The Rules for Conducting Electronic Cash Transactions (National Bank Resolution No.52) do not require mandatory identification of the electronic cash account holder, including the owners of an electronic wallet (which, in essence, is the customer’s electronic cash account). The existing system Webmoney allows opening a WMB electronic wallet (equivalent of Belarusian ruble) under a fictitious name. Despite the fact that paragraph 20 of the National Bank Resolution No.52 limits the amount per single e-cash transaction to 30 basic units (approx. USD 450), this does not eliminate ML/FT risks associated with this financial instrument.

3.2.2 Recommendations and Comments

273. The basic definition of transactions subject to special control, which is provided in the Belarusian AML/CFT Law, essentially refers to the FIU activities (since the FIU inspects only such transactions). However, it also applies to financial institutions that are obligated to report such transactions to the FMD. As a result, exclusions from the list of transactions subject to special control under Article 9 of the AML/CFT Law in fact prohibit the FIU from identifying customers that perform certain transaction or from taking any action with regard to such transactions.

274. Notably, the NBRB also carries out transactions that require CDD measures, namely sales, including retail sales, and purchase of certified diamonds. It should be kept in mind that certified diamonds are an instrument with properties similar to those of bearer securities – high value combined with insignificant physical weight and volume, ability to change hands without the transaction being documented. Paragraph 75 of National Bank Resolution No.72 does not require recording passport details of diamond buyers except where this is explicitly required by law.

Recommendation 5

275. Belarus should include in the Belarusian AML/CFT Law a requirement to identify customers upon the establishment of a business relationship and in other cases stipulated in Recommendation 5.

276. Belarus should introduce mandatory CDD requirements for holders of electronic wallets and savings account passbooks.

277. Belarus should revise the definition of transactions subject to special control (see Section 8) in the AML/CFT Law.

278. Belarus should lower the threshold for transactions requiring customer identification to 15,000 dollars/euros (1,000 dollars/euros for money transfers). This should not necessarily be accompanied by a lowering of the transaction amount threshold whereupon a notification is sent to the FIU.

279. Belarus should strike the list of CDD exclusions from the current edition of Article 9 of the AML/CFT Law.

280. The requirements to apply CDD measures, such as identification of beneficial owners, re-identification, constant monitoring of transactions, etc. (see rating table) should apply not only to banks, but also to other financial institutions.

281. Impossibility to complete CDD measures should constitute grounds for terminating a business relationship and submitting a report to the FIU.

Recommendation 6:

282. Existing internal control measures applicable to PEPs should be expanded to all sectors and also include requirements on the establishment of a business relationship only with the consent of the senior management, clarification of sources of funds, and more specific transaction monitoring procedures.

Recommendation 7:

283. Correspondent relations should be established only with the consent of the bank's senior management.

284. It is recommended to unify requirements that apply to questionnaires for all categories of correspondent banks on the basis of the extended questionnaire for correspondent banks in Annex 1 of Instruction No.34.

285. Belarus should establish the requirement to examine and evaluate information received from correspondent banks about their AML/CFT measures.

286. Belarus should establish the requirement to obtain information on the quality of scrutiny in the country of the correspondent bank.

Recommendation 8

287. Banking instructions and regulations of other financial markets should demand heightened attention and special procedures to address risks associated with new non-face to face technologies or transactions.

3.2.3 Compliance with Recommendations 5-8

	Rating	Summary of factors underlying rating
R.5	PC	<ul style="list-style-type: none">• There is no clear requirement to identify customers upon the establishment of business relationships.• The CDD threshold in place (USD 300,000 for transactions by legal

		<p>persons) is significantly higher than the one specified in the FATF Recommendations.</p> <ul style="list-style-type: none"> • It is possible to maintain unverified and fictitious accounts and carry out e-cash transactions. • There is no requirement in place to identify customers carrying out certain types of operations below a certain threshold (currency exchange and banking operations without the opening of an account, including wire transfers inside Belarus). • The presence of exceptions in the mandatory reporting requirements means that identification of clients suspected of ML/FT is not performed in all cases. • There is no requirement in place for financial institutions, other than credit institutions, to examine the ownership/governance structure of the customer – legal person. • The requirement to request information on the purpose and expected nature of a business relationship from the customer is in place only for the banking sector. • For financial institutions, other than credit institutions, there is no requirement to perform on-going monitoring of customer transactions for compliance with the customer's profile. • There is no requirement to request information about the source of the customer's funds, when necessary. • There are no requirements in place to carry out enhanced CDD measures with regard to high-risk customers, business relationships and transactions (except for the banking sector). • There are no procedures to mitigate risks arising from transactions, where immediate identification/verification is not possible. • There is no requirement for financial institutions to refuse to establish or continue a business relationship or perform a transaction when it is impossible to perform CDD. • The requirements to identify existing customers are in place only for the banking sector and securities market operators. <p>Effectiveness:</p> <ul style="list-style-type: none"> • The absence of effective supervision over the financial leasing sector makes it impossible to evaluate the degree of implementation of Belarusian AML/CFT legislation. • Low compliance with CDD requirements in non-bank sectors.
R.6	PC	<ul style="list-style-type: none"> • The requirements to apply additional CDD measures with regard to PEPs are present only in banking regulations. These requirements apply only to conducting additional identification of PEPs and monitoring their transactions. Not all other requirements are in place as per Recommendation 6 (establishment of sources of funds, establishment of business relationships with the approval of senior management).
R.7	PC	<ul style="list-style-type: none"> • Belarusian laws do not contain a direct requirement that the senior management of banks has to approve the establishment of correspondent relations. • There is no requirement to request Category A correspondent banks to provide information on AML/CFT measures undertaken by them and sanctions for violations of AML/CFT laws.

		<ul style="list-style-type: none"> • There is no requirement to request information on the quality of supervision in the country of the correspondent bank. • There is no requirement to examine and evaluate information received from correspondent banks about their AML/CFT measures. • In the majority of cases banks are obliged to request only limited information on the nature of the correspondent bank's activities.
R.8	PC	<ul style="list-style-type: none"> • There are no requirements for non-bank financial institutions to manage ML/FT risks when using new non-face to face technologies and performing non-face to face transactions. • It is possible to have unverified e-money accounts.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

288. Belarusian legislation does not permit delegating some of the CDD functions to third parties.

3.3.2 Recommendations and Comments

289. This Recommendation is not applicable.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	n/a	This Recommendation is not applicable.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

290. Under the AML/CFT Law, the applicable secrecy or confidentiality laws do not prohibit or prevent the fulfillment of the FATF Recommendations applying to the FIU. Submission by a financial institution of information on financial transactions subject to special control to a financial monitoring agency does not constitute a violation of official, banking or other type of secrecy protected under law (Article 5 of the AML/CFT Law). State agencies and other organization shall submit information and documents (except information on the private life of citizens) to the financial monitoring agency, which shall not constitute a violation of official, banking or other type of secrecy protected under law (Article 12 of the AML/CFT Law). Under paragraph 7.6 of Presidential Order No.408, the Department may demand any additional information from subordinated institutions and other state agencies.

291. The law enforcement agencies, including interrogation and preliminary inquiry authorities, may – if sanctioned by the prosecutor or deputy prosecutor – access information that constitutes the banking secret of natural persons, legal persons and individual entrepreneurs in relation to materials and criminal cases in their proceedings (Article 121 of the Banking Code). The NBRB has the required access, under law and in practice, to information protected under financial secrecy provisions, which the NBRB requires to carry out supervisory functions associated with AML/CFT. Information that constitutes the banking secret of legal persons and individual entrepreneurs is disclosed by banks to the NBRB and bodies of the State Control Committee. Information that constitutes the banking secret of

natural persons is disclosed to the FMD and the NBRB (Article 121 of the Banking Code). Under Article 121 of the Banking Code, information on natural persons is not disclosed to other bodies of the State Control Committee of Belarus.

292. Upon conducting an inspection, the NBRB may inspect accounts and other documents relating to financial and business activities, assets and liabilities, etc., of the bank or non-bank financial institution (NBFI), require bank or NBFI officers to clarify issues arising in the course of inspection, and exercise other rights that do not contravene Belarusian legislation (Article 34 of the Banking Code).

293. Seemingly, the commercial secret provisions of the Instruction on the Procedure for Carrying out Professional Activities with Securities (adopted by Belarusian Council of Ministers Resolution dated 12.09.2006 No.112, paragraphs 10, 37, 57),⁸ cannot be fully circumvented during inspections by the Securities Department of the Finance Ministry, given the powers stipulated under paragraph 5.9 of the Instruction “to approach the republican authorities of state power, local executive and administrative authorities, and other organizations to obtain the required documents and information”. Also, if necessary, the Securities Department of the Finance Ministry can submit inspection materials to law enforcement agencies and other bodies of state administration in accordance with their terms of reference (paragraph 4.12 of the Instruction).

294. The policy on insurance activity in Belarus concerning different types of insurance explicitly orders insurers “not to disclose information received from the insured upon the execution of the insurance contract” (paragraph 174) and “ensure secrecy of insurance information” (paragraph 231). In individual cases such prohibitions can be circumvented in cases stipulated in legislation (paragraphs 194, 300). Such prohibitions and restrictions do not exist with regard to individual types of insurance. There are doubts as to the Finance Ministry’s ability to circumvent these limitations if you consider the legislatively established powers to “obtain from insurance companies and insurance brokers duly executed reports on insurance and insurance brokerage activities as well as other information on their financial and business activities, which is required for purposes of insurance supervision functions” (paragraph 71.6 of the Policy on Insurance Activity).

295. Information that constitutes a postal communication secret “may be also disclosed to state authorities in cases stipulated in legislation” (Article 13 of the Postal Communication Law). The Communication Ministry may “request republican authorities of state power, other state agencies subordinated to the Government of Belarus, local executive and administrative authorities, and other organizations to provide information relating to issues within its terms of reference in accordance with the procedure stipulated in legislation,” (paragraph 6.5 of the Policy on the Communication Ministry). In this connection it is unclear whether this power of the Communication Ministry circumvents Article 13 of the Postal Communication Law as regards communication secrecy. Belarus does not have the practice of payable-through accounts, which is why this paragraph of R.7 is not applicable with regard to R.4.

296. Under law, including international treaties, a financial monitoring agency shall volunteer information to competent authorities of other countries or disclose it upon their request only if such disclosure does not damage the national security of Belarus and this information is not used without the prior consent of the financial monitoring agency (Article 13 of the AML/CFT Law).

⁸ A broker shall:

preserve commercial secrecy of all deals carried out pursuant to a contract of agency or commission, as well as keep secret any information on such deals (paragraph 10 of the Instruction);

The parties to a contract shall be held liable for noncompliance with legislative requirements, violation of contractual terms, disclosure of information that constitutes a commercial secret under the contract and law (paragraph 37);

Disclosure of information contained in logs and constituting the commercial secret of parties to the deal is permitted only in cases and in accordance with the procedure established by the law (paragraph 57).

297. A restriction applies to disclosing information that constitutes a banking secret “without the consent of the account and/or deposit holder or depositor, except in cases stipulated in Belarusian legislation”. This may create an obstacle for information exchange among competent authorities inside the country and for international exchange, except requests for mutual legal assistance and data exchange along the lines of the FIU (Article 121 of the Banking Code).

298. Under Article 13 of the Postal Communication Law, information about the address of the postal service user, about mailings and their contents, and other messages within the competence of postal service operators constitute a secret of postal communication and may be disclosed only to senders, recipients, or their legitimate representatives. As part of Universal Postal Union communications, Belarusian postal service supplies the receiving organization with all the required sender information.

3.4.2 Recommendations and Comments

299. It is necessary to clarify the wording concerning the access of the Finance Ministry and Communications Ministry of Belarus to the information of supervised organizations.

300. The bodies of the State Control Committee (not only the FMD) should receive banking secrecy information on natural persons.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	LC	<ul style="list-style-type: none"> • There are ambiguities in the legislative regulation of the access by the Finance Ministry and the Communications Ministry to the information of supervised organizations. • Ambiguities in legislative regulation of financial secrecy conditions may complicate international data exchange among legislative and supervisory authorities.

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10

301. Belarus has certain requirements for keeping records on financial transaction, but overall they fall short of the FATF Recommendations.

302. Article 5 of the AML/CFT Law requires all financial institutions to store second counterparts of special forms and documents relating to the performance of financial transactions subject to special control for at least five years from the date of their completion – not from the end date of a business relationship as required by the relevant FATF standard. The procedure whereby financial institutions should store special forms (SF) is stipulated in the Instruction on the procedure for completing, transmitting, registering, accounting and storing special forms of registration of financial transactions subject to special control (adopted by the Belarusian Council of Ministers Resolution dated March 16, 2006, No.367).

303. The Law Accounting and Reporting Law of Belarus No.3321-XII requires all legal persons and organizations of Belarus, including branches and representative offices, to store all primary accounting documents, according registers and statements for periods established under the October 6, 1994, Law of Belarus “On the National Archival Fund and Archives in the Republic of Belarus”. The implementing legislation (Resolution of Belcomarchive dated August 6, 2001 No. 38) requires all financial institutions to maintain primary accounting documents for three years after the completion of a tax inspection or a revision. For other types of documents specific record-keeping periods are also set ranging from 1 year and up. Nevertheless all of these various requirements do not cover the FATF recommendation to keep documents for 5 years after the termination of the business relationship.

304. Separate document storage requirements exist for banks. Under the March 29, 2001, Resolution No.66 of the NBRB Management Board, the procedure for storing payment instructions transmitted either electronically or on paper is to be determined by internal regulations of the bank. Under Instruction No.66, a bank customer (payment originator) completing payment instructions must fill out the required fields. Also, under the norms of the Instruction on carrying out interbank payments via the automated system of interbank payments of the Belarusian National Bank (adopted by the March 10, 2005, Resolution No.37 of the NBRB Management Board), banks must maintain an archive of interbank payments in Belarusian rubles. Additionally, electronic documents must be submitted to the central archive of interbank payments of the NBRB.

305. Professional operators of the securities market also operate in accordance with record keeping requirements that do not fully meet the FATF Recommendations. The Instruction on carrying out professional activities with securities (adopted by the Finance Ministry resolution No.112, paragraphs 55-57) establishes the requirement to keep records of deals carried out on the over-the-counter market by a professional market participant in chronological order in accounting registers (for deals on both the over-the-counter market and the listed market) in hardcopy and electronic form, as well as ensure this information is safe. A professional participant must store deal logs indefinitely. The evaluation team did not receive explanations regarding the deal components to be registered in the deal log, which is why the evaluators could not reach a conclusion on the adequacy of information subject to storage. Contracts and other documents accompanying deals (including copies of transferred / received bills of exchange) are stored by a professional participant for at least five years from the moment of the deal – not from the moment of termination of the business relationship with the customer.

Reconstruction of transactions

306. Belarusian legislation does not have requirements for financial institutions to store the necessary information in a volume sufficient to allow for its reconstruction and use as evidence in criminal, civil, or arbitration proceedings.

Timely access

307. Belarusian legislation does not contain a specific requirement for financial institutions to store documents on customers and transactions in such a way as to enable their timely submission to competent authorities. Even though the FMD and other competent authorities have the powers to request the relevant documents from financial institutions, this does not comply with the requirements of R.10, which aims to obligate financial institutions to ensure appropriate record keeping.

308. Despite the August 6, 2001, Resolution No.38 of the State Committee for Archives and Record Keeping, which regulates requirements for storing documents of financial institutions, the requirements of R.10 are not fulfilled. This Resolution requires financial institutions to store documents for 5 years after the fiscal inspection – not from the moment of termination of a business relationship with the customer.

Effectiveness

309. The evaluation experts were told that differing requirements for document storage cause confusion among financial institutions as to the required storage periods. This had led the evaluation experts to conclude that all document storage requirements in place in Belarus are ineffective.

Special Recommendation VII

310. Belarus complies with SR.VII requirements which apply to obtaining information about the customer (see R.5). The requirements to accompany money transfers with the relevant information are ensured by the normative documents of the National Bank. Thus, according to subparagraph 1.24 of paragraph 132, and paragraph 133 of the regulation № 66 of the National Bank the requirements for carrying out interbank transfers are specified including the requirement to accompany the transfer with originator information. The payment orders that are sent to the correspondent-banks are filled in in accordance with the payment instruction of the clients. All details have to be enclosed in the payment according to the information mentioned in the payment instruction of the clients, including:

- The name of the payer – legal person and (or) full family name, name (if available – patronymic) of the payer – natural person;
- Details of the document (name, number, date of issue) that identify the payer-natural person when transfers without opening an account take place. These requirements are determined for banks-senders that have to implement the AML/CFT legislation;
- The bank account number of the payer from which the funds are written-off. The is not specified if the payer does not have a bank account;
- Other necessary information.

A similar procedure for interbank transfers is set for private payment systems (paragraph 11 of the Instruction on the procedure to carry out transfers using the private payment system that is specified by the Resolution № 87 from 02.06.2004 of the Board of the National Bank of Belarus)

311. At the same time mentioned requirements do not cover post offices. Other SR.VII requirements are not complied with: transfer of information through the payment chain, risk management procedures, etc.

3.5.2 Recommendations and Comments

312. Belarus should abolish the requirements for special forms storage as unnecessary, since under Article 5 of the AML/CFT Law financial institutions must forward first counterparts of special forms to the FMD, meaning that there is no need for financial institutions to store second counterparts of SFs. Belarus should establish requirements for the reconstruction of transactions so that such data could provide, if necessary, evidence for prosecution of criminal activity.

313. Belarus should introduce unified requirements for storing all documents of financial institutions (identification data, deal information, business correspondence, etc.) for all deals of financial institutions without exception. Belarus should establish the period for keeping records as 5 years from the termination of the business relationship with the customer.

314. Belarus should implement SR. VII requirements for FIs-intermediaries, establish risk-based procedures for transactions that are not accompanied by originator information. Belarus also needs to implement a full-fledged supervisory and sanctions regime in order to comply with SR. VII requirements. Belarus should establish SR.VII requirements for postal transfers.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	PC	<ul style="list-style-type: none"> • The existing requirements for record-keeping do not set the appropriate time period of five years after the closing of the account; • No requirements are in place for the components of the transactions subject to reconstruction; • There are no requirements to store documents in a format enabling timely access to such documents by competent authorities. <p><i>Effectiveness</i></p> <ul style="list-style-type: none"> • Differing, often contradictory requirements for document storage cause confusion among financial institutions and reduce effectiveness.
SR.VII	PC	<ul style="list-style-type: none"> • There are no requirements to identify the originators of wire transfers inside Belarus below the threshold of 30 000 USD; • The National Bank requirements for accompanying transfers with originator information do not cover the postal transfers; • There is no requirement for intermediary financial institutions to pass originator information through the entire transfer chain; • There are no risk-based procedures on transfers, which are not accompanied by full and accurate originator information; FIs are not required to consider sending an STR on such transfers and to consider terminating the relationship with originator-FIs. • There are no monitoring and sanctions mechanisms for the violation of SR.VII requirements.

Unusual and suspicious transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11

315. AML/CFT legislation of Belarus establishes a number of norms requiring compliance with Recommendation 11. The AML/CFT Law identifies suspicious transactions similarly in essence to the text of Recommendation 11, i.e. as "...financial transaction does not correspond to the purpose of activity of the person carrying out the financial transaction under the constituent documents..."

(Article 6). In this connection, financial institutions must record all the relevant information on such transactions (Article 8 of the AML/CFT Law) and report them to the FMD. According to the general requirements of the AML/CFT Law, information and SFs must be stored for at least 5 years from the date of their execution.

316. However, because we are dealing with transactions subject to special control, this record keeping requirement applies only to those transactions that warranted a decision to report information to the FIU, and not for all ordinary transactions.

317. As for the results of scrutiny of suspicious transactions that did not warrant a decision to report them to the FIU, it is only for banks that paragraphs 23, 25, 26 of the NBRB Instruction No.34 require documentation and storage of the results of scrutiny of such transactions. For other sectors, there is no requirement to scrutinize unusual transactions and store the results of such scrutiny for 5 years.

Recommendation 21

318. The system of compliance with Recommendation 21 that existed in Belarus was fully based on the FATF Non-Cooperative Countries and Territories list.

319. Under Article 6 of the AML/CFT Law, if a person carrying out a financial transaction is registered, resides or is located in a state (territory) that does not participate in the international AML/CFT cooperation or if there is information about this person carrying out transactions via an account with a bank or non-bank financial institution registered in such a country (territory), then information on all such transactions is reported to the FMD and documents are stored for at least 5 years from the moment of their receipt. Under Council of Ministers Resolution No.259, the list of countries is determined by the FMD and coordinated with the NBRB, the Foreign Ministry, the MIA, the State Security Committee and approved by the Council of Ministers of Belarus.

320. The Belarusian list of such countries matched the FATF blacklist. Until 2006, the FIU had been receiving reports on such transactions. Starting with 2007 and till the moment of this evaluation no such reports had been submitted because the Belarusian list did not contain a single country. Nevertheless, from the legal point of view this list does not have to match lists compiled by international organizations and may be compiled by the authorities on the basis of their own decisions.

321. Belarus currently has no requirements for financial institutions to pay special attention to transactions with countries that do not comply with the FATF Recommendations. There are no mechanisms for informing the financial sector about such countries. There are no requirements for financial institutions to scrutinize transactions with such countries and store the results of such scrutiny for 5 years. Belarus is unable to apply countermeasures against such states.

Effectiveness

322. The effectiveness of measures in the banking sector is sufficiently high, according to observations of evaluation experts. The absence of requirements in other sectors means the absence of effectiveness.

3.6.2 Recommendations and Comments

Recommendation 11

323. Competent authorities should develop detailed procedures for financial institutions in order to ensure highly effective compliance with R.11 requirements.

324. Professional operators of the securities market, insurance firms, and postal service should record in writing the actual circumstances of complex, unusually large value transactions and unusual patterns of transactions, which have no apparent economic purpose; scrutinize the background of such transactions and store the findings of such scrutiny to be able to present them to competent authorities within 5 years' time.

Recommendation 21

325. Belarus should activate its mechanisms which had been used for NCCT purposes with regard to countries that do not comply with the FATF Recommendations.

326. Financial institutions should cooperate with competent authorities in scrutinizing the observance of the FATF Recommendations by other states.

327. Belarusian legislation should include a norm obligating all financial institutions to scrutinize and store scrutiny findings on transactions with countries that do not comply with the FATF Recommendations to be able to present them, if necessary, to competent authorities.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	PC	<ul style="list-style-type: none"> Legislation does not contain requirements for financial institutions (other than banking institutions) to scrutinize and store the findings on unusual transactions in writing for 5 years and, if necessary, present them to competent authorities.
R.21	PC	<ul style="list-style-type: none"> The existing system has not been used since the termination of the FATF NCCT list, despite the existence of countries, which do not implement the FATF standards. Belarus currently has no requirements for financial institutions to pay special attention to transactions with countries that do not comply with the FATF Recommendations. There are no requirements for financial institutions to scrutinize transactions with such countries and store the findings of such scrutiny for 5 years. Belarus is unable to apply countermeasures against such states.

3.7 Suspicious transactions reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Preamble: system of mandatory reporting

328. Belarus has created a system of mandatory reporting (Articles 5 and 6 of the AML/CFT Law), whereby financial institutions must report to the FMD not only suspicious transactions, but also all large-value transactions and deals over 2,000 basic units for natural persons or over 20,000 basic units for organizations and individual entrepreneurs as long as they belong to one of the following types of financial transactions:

- Financial transactions with cash;
- Financial transactions involving bank accounts and deposits of customers;

- Financial transactions involving international payments and money transfers (postal, telegraph, electronic);
- Financial transactions involving movable and immovable property;
- Financial transactions involving securities;
- Financial transactions involving borrowing and credit for purposes of international wire transfers;
- Financial transactions involving the assignment of debt and receivables.

Recommendation 13

329. Belarus has established a system for reporting suspicious transactions. If a financial institution suspects that any transaction is carried out for purposes of money laundering or terrorist financing, this financial institution must report this transaction to the FMD (Article 6 of the AML/CFT Law) regardless of the value of this transaction or any other suspicious signs. It is worth noting that Article 9 of the AML/CFT law stipulates the list of financial transactions that are not subject to special control, which automatically means that suspicions raised by such transactions are not subject to reporting to the FMD either.

330. The AML/CFT Law contains a requirement to report to the FMD “suspicious transactions” (Article 6 of the AML/CFT Law), which include transactions “matching the description of suspicious transactions that do not have a clear economic purpose and are uncharacteristic of the activity of this legal or natural person”. The FMD has developed a list of signs of suspicious transactions, which is contained in the Council of Ministers Resolution No.367. The NBRB Instruction No.34 (Chapter 5) also contains a list of criteria of suspicious transactions, which must be followed by banks when detecting transactions subject to mandatory reporting.

331. Suspicious transactions should be reported to the FMD regardless of their value. Belarusian legislation contains a requirement to report attempts to carry out such transactions to the FMD – “regardless of whether or not they had been completed” (Article 6 of the AML/CFT Law).

332. No restrictions apply to reporting to the FMD information on transactions associated with fiscal violations.

Effectiveness and Statistics

333. At the initial stage, financial institutions primarily focused on reporting transactions exceeding the threshold value to the FMD. Currently, credit institutions are focusing more on submitting STRs.

334. The evaluation team received the following statistics on reports submitted by banks and non-bank institutions between 2006 and 2008. In the first 6 months, over 155,000 SFs were submitted by banks and non-bank institutions.

335. The considerable percentage of suspicion transaction reports sent to the FMD (11.64% in 2007, 13.52% in the six months of 2008 of all submitted reports) indicates the effectiveness of the suspicious transactions detection and reporting system.

Recommendation 14

336. Under Article 5 of the AML/CFT Law, a financial institution's report to the FMD under the AML/CFT Law does not constitute a violation of official, banking or other legislatively protected secrecy and does not entail liability for any losses or moral damages resulting from such a report. Such protection from liability does not apply to managers of financial institutions and their employees.

337. Article 5 of the AML/CFT Law prohibits persons that carry out financial transactions from disclosing facts of transactions subject to special control being reported to the FMD. However, this requirement does not apply to employees and managers of legal persons.

Additional elements

338. FMD employees who had access to information of financial institutions are liable under law for disclosing such information (Article 11 of the AML/CFT Law).

Effectiveness

339. Representatives of the banking sector and the NBRB, who participated in meetings with the evaluation experts, said there were no cases of customers complaining about losses caused by banks reporting information to the FIU or cases of illegal disclosure of information to the FIU.

Recommendation 19

340. All types of transactions subject to mandatory reporting under Article 6 of the AML/CFT Law shall be reported to the FMD, including in cases when they are carried out with cash (see Preamble to item 3.7.1 of this Report). National Bank Resolution No.1/134 requires the NBRB and all commercial banks to report information on all cashless payments to the FIU.

Additional elements

341. At the FIU, the information received is stored in an electronic database. Banks submit the relevant information in electronic form via a closed interbank data exchange system. The FIU has special software for analyzing the incoming array of data, which detects and identifies the most suspicious transactions and reveals hidden connections between transaction participants.

342. Access to the database is restricted. It is not possible to access the database via electronic channels from outside the FIU. The FIU information system is separated from the remaining information system of the State Control Committee.

Recommendation 25

343. The Financial Monitoring Department has established a feedback mechanism in communication with financial institutions. When upon receiving reports on transactions subject to mandatory reporting the FMD discovers the SFs are completed with errors, the FMD returns the SFs, pointing out the errors. Other feedback on the course and results of financial investigations is not provided to financial institutions. Each year the FMD conducts training events for banks and non-bank institutions, which have resulted in a reduced number of SFs with errors sent to the FMD.

344. With the exception of the NBRB and the FMD, other supervisory authorities did not publish any guidelines describing the ML and FT techniques and methods, which the financial institutions could revise to ensure effective AML/CFT measures. Nonetheless, jointly with representatives of regulators and the private sector the FMD conducts typology studies.

However, at the moment of the evaluation individual findings were published only in the *Bulletin of Belarusian Banks's Association*.

Special Recommendation IV

345. Under the AML/CFT Law, the entire system of mandatory reporting, including the requirement to report suspicious transactions, applies not only to money laundering, but also to the financing of terrorism. Under Article 6 of the AML/CFT Law, deals and transactions in which at least one of the parties is a natural or legal person involved in any way in terrorist activities are subject to mandatory reporting.

346. The other requirements of Recommendation 13 equally apply to the financing of terrorism and money laundering. At the same time, the definition of FT does not cover the provision of funds by terrorists or terrorist organizations for purposes unrelated to acts of terror. Criminalization flaws as regards SR. IV restrict STR obligations with regard to FT.

3.7.2 Recommendations and Comments

Recommendation 13:

347. Belarus should criminalize insider trading and market manipulations as well as eliminate other flaws in terms of ML so they would not affect the scope of STR requirements.

Recommendation 14:

348. Amendments should be made to Article 5 of the AML/CFT Law to protect managers of financial institutions from liability for disclosing information to the FMD.

349. Employees and managers of legal persons should be prosecuted for disclosing facts of transactions subject to special control being reported to the FMD.

Recommendation 19:

350. Belarus has undertaken all the measures required under Recommendation 19.

Recommendation 25:

351. The FMD should conduct seminars on ML/FT typologies for supervisory agencies, which in turn should bring the required information to the attention of supervised institutions.

352. The FMD should provide more information to the reporting institutions on the course and results of financial investigations conducted using their materials.

Special Recommendation IV

353. Belarus should undertake legislative measures in order to obligate financial institutions to report facts of terrorist financing even the funds are not intended for finance a specific terrorist act.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2) and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	PC	<ul style="list-style-type: none"> • Flaws in the criminalization of ML and FT restrict STR obligations as regards ML and FT; • Article 9 of the AML/CFT Law excludes a number of financial transactions subject to special control; • Financial institutions do not pay due attention to sending STRs in connection with transactions exceeding the threshold value (does not apply to the banking sector).
R.14	LC	<ul style="list-style-type: none"> • The legislation is not clear on whether there is protection of managers and employees of financial institutions from criminal and administrative liability for reporting information to the FMD and an exemption from liability for disclosing facts of reposts being submitted to the FMD.
R.19	C	This Recommendation is fully observed.
R.25	PC	<ul style="list-style-type: none"> • There are no recommendations for financial institutions with descriptions of ML/FT techniques and methods (does not apply to banks); • Financial institutions receive insufficient information on the results of financial investigations carried out by the FIU. <p>Other grounds for the R.25 rating in sections 3.10 and 4.3 of this Report.</p>
SR.IV	PC	<ul style="list-style-type: none"> • Flaws of FT criminalization restrict STR obligations as regards FT; • Article 9 of the AML/CFT Law excludes a number of financial transactions subject to special control; • The definition of terrorist financing does not include provision of funds to terrorists and terrorist organizations for purposes unrelated to committing a terrorist act. Financial institutions are not obligated to submit STRs in connection with such facts.

Internal control and other measures

3.8 Internal control, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

354. Financial institutions of Belarus are obligated to develop and follow internal control rules pursuant to Article 5 of the AML/CFT Law. This article of the AML/CFT Law also obligates financial institutions to appoint officers responsible for organizing the development and implementation of such rules. Council of Ministers Resolution No.352 stipulates the general requirements for the rules and requirements for organizing internal control and AML/CFT procedures. This Resolution requires supervisory authorities to develop standard rules of internal control taking into account the specifics of the financial institutions' activities.

355. At the same time, supervisory authorities have used the requirements of the AML/CFT Law and general requirements for rules of internal control to outline the requirements for organizing internal control for purposes of AML/CFT by financial institutions. Financial institutions must develop their own local internal control regulations on the basis of such requirements.

Banking sector

356. Until March 2008, it was recommended for banks organizing internal control systems to follow the Recommendations of the NBRB on organizing internal control for purposes of AML/CFT (Letter No.21-20/367 dated April 3, 2006). However, this document was not regulatory in nature or mandatory. In this letter, the NBRB recommends banks to develop internal control rules taking into account the requirements of AML/CFT legislation, appoint a special officer responsible for developing and implementing internal control rules, form or appoint a structural unit on AML/CFT.

357. Since March 2008, banks are obligated to organize the internal control system for purposes of AML/CFT in accordance with the requirements of Instruction No.34 (adopted by Resolution No.34 of the NBRB Management Board). This Instruction establishes requirements for the organization of the internal control system: Determines the key lines of its implementation, the requirements for internal control rules, procedure of identifying persons carrying out financial transactions, detection of transactions subject to special control, including criteria and signs of unusual transactions, the procedure of the bank's actions upon detecting unusual transactions, reporting to the financial monitoring agency, and training of bank staff. Under the Instruction, the bank must appoint a special officer responsible for the implementation of internal control. At the same time, there is no requirement to grant such a person status of a unit manager. The Instruction requires granting real-time access to information obtained through identification and contained in customer questionnaires only to bank employees who serve customers. Therefore, the real time access requirement does not apply to the special bank officer in question. There is also no requirement to ensure real time access for the officer and other bank employees performing internal control procedures to information on transactions and other relevant information. During meetings with banks the evaluation experts got the impression that the list of information resources that can be accessed by the compliance officer is restricted, even compared to the bank's security service.

358. Banks must create an internal control service to ensure reliability of financial and economic operations. A component of this system is the internal audit service (Instruction on organizing internal control at banks and non-bank credit and financial institutions, adopted by the NBRB Management Board resolution No.139). This Instruction establishes requirements for conducting preliminary administrative control of recruitment by way of thorough analysis of business and professional knowledge and skills needed to perform certain tasks (job duties) and recruitment of the best trained and qualified specialists from among the applicants.

359. National Bank Letter No.21-20/747 dated July 24, 2006 (On the requirements for the qualification and training bank employees responsible for organizing internal control) establishes the list of employees responsible for organizing internal control at the bank and specifies qualification requirements for them. It determines the contents of the AML/CFT training program for bank employees, types of training on this subject, training periodicity, and procedure for testing employees' knowledge in this sphere. It also establishes that the officer must review the AML/CFT training program for bank employees at least once a year and update it taking into account amendments to existing and adoption of new regulations in this sphere.

360. The NBRB Management Board Resolution No.140 dated September 28, 2006, adopted the "Instruction on evaluating applicants' suitability for the positions of manager and chief accountant of a bank or non-bank credit and financial institution, its branch (office), or their

deputies in terms of their compliance with the qualification requirements and business reputation requirements”. Qualification requirements include requirements for education and years of work experience. The requirements for business reputation of applicants are reduced to the absence of outstanding or unexpunged convictions, administrative violations during the past year in finance, securities market, banking, entrepreneurship and (or) taxation. Applications may not be a suspect or be under indictment in a criminal case, there should be no instances of an employment contract terminated at the employer’s initiative, application should not be guilty of causing the bankruptcy of a bank or a different commercial organization.

Securities

361. With its April 10, 2006, Resolution No.08/p, the Committee for Securities at the Belarusian Council of Ministers adopted Standard Rules of Internal Control for professional operators of the securities market, under which standard internal control rules must include the procedure of identifying persons carrying out financial transactions, the procedure for ensuring storage and nondisclosure of information on financial transactions, the procedure for detecting financial transactions subject to special control (paragraph 1 of the Resolution). The professional participant of the securities market is required to determine for oneself the detection criteria and signs of suspicious transactions (paragraph 5 of the Resolution) as well as the procedure for completing SFs (STRs), submitting and storing them. The Resolution on Standard Rules of Internal Control stipulates a requirement obligating professional operators to necessarily report suspicious transactions to a relevant officer (paragraph 8).

362. The Resolution requires professional operators to developed internal control programs that include conditions and procedures for training (professional advancement) of employees of financial institutions (paragraph 10). However, this provision does not contain a requirement to inform employees about new ML/FT methods and explain the requirements of the AML/CFT Law. There is no special requirement to appoint a compliance officer at the level of the management.

363. There is no explicit requirement to ensure timely access for the officer to all identification details of customers as well as information on all transactions and other relevant data. The legislation does not stipulate a requirement for securities market participants to have an independent audit service to perform internal procedures for purposes of AML/CFT.

364. The Council of Ministers Resolution on general requirements for internal control rules obligates supervisory authorities that control the activities of financial institutions to determine qualification requirements for employees responsible for the AML/CFT system (paragraph 9). The Committee for Securities Resolution dated April 26, 2005, No.05/P establishes qualification requirements for managers and employees of the securities market and stock exchanges, which boil down to the requirement to have a qualification certificate and for managers to undergo recertification on an annual basis. Obviously, these requirements do not cover AML/CFT issues.

Insurance sector

365. Under the Council of Ministers Resolution Dated March 16, 2006, No.352, state authorities are obligated to develop standard rules of internal control taking into account the specifics of activities of financial institutions. The insurance sector has no standard rules of internal control for insurance market participants, since the state agency that controls the insurance market has not developed standard rules of internal control for this sector and, as a consequence, it can be pointed out that the Finance Ministry is not fully performing the functions imposed on it by the AML/CFT legislation.

Post

366. With its March 30, 2006, Resolution No.9, the Communication Ministry adopted Standard Rules of Internal Control for postal operators, which require the internal control rules of postal operators to include a procedure for identifying persons carrying out financial transactions (paragraph 14), the procedure for ensuring storage and nondisclosure of information on financial transactions (paragraph 1.2), (only with regard to transactions subject to special control) the procedure for identifying financial transactions subject to special control (paragraph 1.5). At the same time, paragraph 1.1 restricts the list of transactions subject to special control to postal money orders as well as transfers to recipients engaged in terrorist activities. There are no requirements to develop for identifying suspicious transactions and signs of suspicious transactions. Moreover, postal operators should include in their internal control rules the procedure for completing special forms (STRs) and the procedure for submitting, storing them and keeping records of them (clause 1.6).

367. The legislation does not stipulate a requirement for postal operators to inform their employees about internal procedure, policy and control, or conduct AML/CFT training. Resolution No.9 of the Communication Ministry requires postal operators to include in the internal control rules the requirements for the qualification and training of employees that perform registration of financial transactions (paragraph 1.3), and obligates postal operators to foresee the requirement obligating the postal operator's employee to report suspicious transactions to the relevant officer (paragraph 6). There is no special requirement to appoint an officer at the level of the management of the financial institution.

368. There is no explicit requirement to ensure timely access for the officer to all identification details of customers as well as information on all transactions and other relevant data. The legislation does not stipulate a requirement for the postal operator to have an independent audit service (internal control service) to perform internal procedures for purposes of AML/CFT.

369. Information on qualification requirements for postal workers was not made available, which prompts the conclusion that the Communication Ministry has not established such requirements. No requirements have been established for the procedure of checking the background of employees upon recruitment.

Effectiveness

370. The effectiveness of internal control requirements in the banking sector meets the standards overall. However, concern is raised by the somewhat inferior status of the compliance service as regards its access to information at the bank.

371. As for the effectiveness of internal control in other sectors, the evaluation experts pointed out its extremely low level.

Recommendation 22 (Foreign branches and subsidiaries)

372. Belarusian financial institutions do not have foreign branches or offices. At the same time, Belarusian legislation does not contain a regulatory base that would regulate the creation of branches and offices by financial institutions (other than the banking sector).

373. Article 2 of the AML/CFT Law states that the Law applies to financial transactions on Belarusian territory, meaning that the effect of the AML/CFT Law would not extend to foreign branches and offices if there had been such. No mention is made of foreign branches and subsidiaries of financial institutions in regulatory acts adopted pursuant to this Law.

374. Under legislation (Chapter 11 of the Belarusian Banking Code and Chapter 6 of the NBRB Management Board Resolution No.175), resident banks may establish branches and offices outside Belarus, and yet no legislative measures required by R.22 are in place. No measures of any kind are in place for the remaining financial institutions.

3.8.2 Recommendations and Comments

Recommendation 15:

375. Belarus should develop standard rules for the insurance sector jointly with the Finance Ministry and the FMD, taking into account the specific of the insurance business.

376. A requirement obligating financial institutions to adopt background check procedures upon the recruitment of all employees should be introduced into legislation (does not apply to banking institutions and professional operators of the securities market).

377. Belarus should adopt legislation establishing requirements for the appointment of a special officer at the management level responsible for implementing internal control.

378. Belarus should establish the requirement for all financial institutions to create an independent audit service (does not apply to banking institutions).

379. Belarus should establish more detailed internal control rules for all financial institutions by adopting relevant legislation and regulations (does not apply to banking institutions).

380. Compliance officers should be granted timely access to identification data of customers and other CDD information.

381. Belarus should establish requirements for staff training in AML/CFT for all financial institutions.

382. Belarus should establish requirements for financial institutions to inform their employees about internal procedures and AML/CFT policy.

Recommendation 22

383. Belarus should establish requirements for financial institutions to control AML/CFT compliance of their foreign branches and subsidiaries in accordance with the requirements of the host country.

384. Belarus should establish requirements for financial institutions to control AML/CFT compliance of their foreign branches and subsidiaries in countries that do not or insufficiently apply the FATF Recommendations.

385. Belarus should establish the requirement for foreign branches and subsidiaries of financial institutions to observe higher AML/CFT standards as far as this is possible under local laws and regulations in countries with minimal AML/CFT requirements.

386. Belarus should establish a requirement for financial institutions to report to the regulator on the foreign branches' and subsidiaries' inability to comply with AML/CFT measures because of the requirements of the host country.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	PC	<ul style="list-style-type: none"> • There is no obligation to appoint an officer responsible for AML/CFT issues at the management level; • There is no legal obligation to grant the compliance officer timely access to all the required information of the financial institution; • There is no requirement to conduct an independent audit of AML/CFT measures at financial institutions (does not apply to banks); • Legislation does not contain a detailed requirement to conduct staff training in AML/CFT issues (does not apply to banks); • There is no requirement for financial institutions (except certain positions at banks and professional operators of the securities market) to conduct background checks upon recruitment; <p><i>Effectiveness</i></p> <ul style="list-style-type: none"> • The effectiveness of application of internal control measures in the non-bank sector is low.
R.22	NC	<ul style="list-style-type: none"> • Requirements of Recommendation R.22 are not implemented in legislation.

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

Recommendation 18

387. Belarus does not have any shell banks. Banking legislation in Belarus has high requirements for the licensing of banking operation and makes it impossible to establish shell banks in the country. Requirements of Chapter 9 of the Belarusian Banking Code as regards the presence of premises, staff, and technical capabilities to conduct banking transactions make it impossible to establish and operate shell banks in Belarus.

388. Belarusian legislation does not contain an explicit prohibition to establish and/or maintain correspondent relationships with shell banks. Measures for identifying shell banks (see R.7) possibly enable Belarusian banks to identify shell banks. However, in the absence of an explicit legislative ban, Belarusian banks are not obligated to stop correspondent relationships with shell banks or banks that have correspondent relations with shell banks. There is no requirement to ascertain that correspondent financial institutions in other countries do not permit shell banks to use their accounts.

3.9.2 Recommendations and Comments

389. Belarus should introduce an explicit ban on establishing and operating shell banks in the country.

390. Belarusian is recommended to introduce a ban on establishing and/or maintaining correspondent relationships with shell banks.

391. Belarus should establish a requirement for financial institutions to ascertain that correspondent financial institutions in other countries do not permit shell banks to use their accounts.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	PC	<ul style="list-style-type: none">▪ There is no ban on establishing and/or maintaining correspondent relationships with shell banks;▪ There is no requirement for financial institutions to ascertain that correspondent financial institutions in other countries do not have correspondent relations with shell banks.

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system – competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)

3.10.1 Description and Analysis

Recommendation 23

392. Belarus has a system for regulating the supervision of financial institutions in connection with AML/CFT issues. Under Article 16 of the AML/CFT Law, all financial institutions are subject to regulation and supervision for compliance with the ALM/CFT Law and, under Council of Ministers Resolution No.352, for internal control organization.

393. Article 16 of the AML/CFT Law imposed on the relevant competent supervisory authorities the functions of controlling compliance with AML/CFT legislation. The NBRB supervises banks and non-bank credit and financial institutions. The Securities Committee at the Council of Ministers and its inspectorates supervise professional operators of the securities market and persons engaged in exchange and depositary activities. The Belarusian Finance Ministry (Department for Insurance Activity) supervises insurance and reinsurance firms, friendly societies, insurance brokers, and lottery organizers. The Communication and Informatization Ministry supervises postal operators. In the absence of a state agency that would control the activity of persons carrying out financial transactions for compliance with AML/CFT legislation, such control is carried out by the financial monitoring agency.

394. In the absence of an authority that would supervise the financial leasing sector, the FMD would have to carry out such supervision. Yes because the FMD has no supervisory staff, no such supervision is carried out.

395. Under Presidential Order No.408 “On the Establishment of the FMD”, this Department coordinates state agencies in matters of AML/CFT, which also involves coordination of supervision by all state agencies. However, because the FMD has no specialized supervisory staff, these functions are not carried out for the most part.

396. Under the AML/CFT Law, the relevant authorities must supervise compliance with not only AML legislation, but also CFT legislation.

Recommendation 30 (structure and resources of supervisory authorities)

397. AML/CFT supervisory authorities, with the exception of the NBRB, do not have an appropriate organization structure or staffs needed for AML/CFT purposes. Within the FMD there is the Directorate for Coordination of International Cooperation, which plays a considerable role in coordinating cooperation with the NBRB and supervisory authorities, including as regards the development of the required regulations.

398. At the NBRB, AML/CFT efforts are supervised by the Deputy Chairman of the NBRB. The unit responsible for AML/CFT efforts is the Directorate for Currency Control. The Directorate works out National Bank regulations on AML/CFT and supervises financial institutions for compliance with AML/CFT legislation. Belarus did not provide information on the staff structure of the Directorate and the number of employees engaged in AML/CFT efforts.

399. At the Belarusian Finance Ministry, AML/CFT efforts are supervised by the Department for Securities and the Department for Insurance Activity. These departments have appropriate staffs that control observance of sector-specific legislation by supervised entities and compliance with AML/CFT legislation. However, the number of employees specifically engaged in AML/CFT efforts at these departments was not disclosed to the evaluation experts. Also, in all probability there is no specialized unit or staff responsible for direct supervision of financial institutions for compliance with AML/CFT legislation. During meetings with the evaluation team, Finance Ministry employees displayed rather low awareness of AML/CFT issues.

400. All employees of supervisory authorities must meet the requirements for public servants in Belarus, including requirements for the level of professional education, relevant work experience, professional knowledge and skills required to carry out job duties (Law “On Public Service of the Republic of Belarus”). Nondisclosure of confidential information is a mandatory requirement for public servants.

401. Legislative acts of the NBRB prohibit National Bank officers from disclosing confidential information about National Bank activities or other information that has become known to them in connection with their official duties, except in cases stipulated in legislation.

402. The FMD organized training of supervisory authorities in the form of meetings to discuss the application of the AML/CFT Law. Supervisory authorities have participated in training seminars on AML/CFT conducted as part of EAG and by other international organizations. Nonetheless, extensive training in AML/CFT issues should be foreseen for non-bank supervision employees in view of their low awareness in this sphere.

Recommendation 29

Banking sector

403. Under Article 34 of the Banking Code, the NBRB may conduct inspections of the activity of banks and non-bank credit and financial institutions, issue orders to eliminate any violations exposed, and apply sanctions against violators as per the Banking Code and other Belarusian legislation. Inspections of banks and non-bank credit and financial institutions are carried out by National Bank representatives, including with the enlistment of specialists from other organizations. Alternatively, the NBRB may instruct an audit firm or auditor – individual entrepreneur holding a special permit (audit

license) from the NBRB to conduct the inspection (Article 34 of the Banking Code). However, this norm was not applied in practice. Because of the small number of credit institutions in Belarus (27), no auditors were enlisted to conduct inspections. Article 143 of the Banking Code outlines measures of retaliation applied by the NBRB in response to nonperformance by a bank or non-bank credit or financial institution of the instruction to eliminate violations.

404. With its November 28, 2006, Resolution No.195 the NBRB Management Board determined the procedure whereby the NBRB issues compliance orders and retaliates against banks and non-bank credit and financial institutions. During the meeting with the NBRB representatives, they made it clear that the bank has sufficient powers to control and enforce compliance with AML/CFT legislation and conduct onsite inspections.

405. Under Article 121 of the Banking Code, the NBRB has access to information that constitutes a banking secret (i.e., information on accounts and deposits, including on the presence of accounts at the bank (non-bank credit and financial institution), its owner, number and other account details, the amount of funds in accounts or on deposit, as well as information on specific deals, transactions carried out without opening a bank account, account and deposit transactions, assets stored at the bank).

406. In the course of an inspection, National Bank representatives may: Inspect accounts and other documents on the financial and economic activities, assets and liabilities, actual availability of funds (bills, coins), securities, other assets of the bank or non-bank credit or financial institution; require officers of the bank or non-bank credit or financial institution to provide oral or written clarification of issues arising in the course of the inspection and relating to its subject; exercise other rights that do not contravene Belarusian legislation (Article 34 of the Banking Code).

407. Article 134 of the Banking Code stipulates the measures of retaliation available to the NBRB: recall or suspend the banking license, including with regard to specific banking transactions, if the institution fails to fulfill a compliance order, comply with safe operation ratios, submit full or credible financial and economic information, violates the procedure and timeframe for submitting reports; if the bank's financial status is found to be unsatisfactory or if it transpires that the institution submitted false information or failed to comply with other legislative requirements.

408. If a bank or non-bank credit or financial institution fails to fulfill a compliance order, the NBRB may: propose a replacement of the manager of the bank or non-bank credit or financial institution or conduct a reassessment of the managers or chief accountants' compliance with qualification requirements and (or) business reputation requirements; demand suspension of the manager from the position occupied; impose a ban on opening branches (offices) and (or) establishing structural units of the bank for a period of up to one year or until violations are eliminated; modify the list of banking transactions specified in the banking license; put the bank or non-bank credit or financial institution under temporary administration of the NBRB or appoint a temporary administration in accordance with the procedure stipulated in Belarusian legislation.

409. After applying a measure of retaliation against a bank or a non-bank financial institution, the NBRB may assess the manager or chief accountant for compliance with qualification and business reputation requirements stipulated in the Banking Code. The NBRB may apply several measures of retaliation simultaneously or sequentially for one and the same violation.

410. Therefore, banking supervisory authorities have the right to access – without obtaining a court order – any information needed for purposes of supervision and have the right to impose sanctions, including sanctions against specific institution employees.

Securities and insurance sectors

411. The Finance Ministry has sufficient powers to control supervised financial institutions, conduct onsite inspections, carry out licensing and supervision, as well as impose sanctions in the relevant sphere (pursuant to the Provision on the Finance Ministry and Law No.1512 XII dated March 12, 1996, “On the Securities Market and Stock Exchange” and the Provision on Insurance Activity in Belarus).

412. While carrying out state supervision of insurance firms, the Finance Ministry may:

- issue mandatory instructions for insurance firms and insurance brokers to fulfill a compliance order; suspend licenses issued to insurance firms and brokers until such violations are eliminated; issue compliance orders for the founders (partners) of an insurance firm or approach them at a relevant state agency with a proposal to carry out financial restructuring of the insurance firm or replace its management;
- make decisions to liquidate the insurance firm, insurance broker – legal person, and to terminate the operation of an insurance broker – individual entrepreneur, including in connection with all licenses of the insurance firm or broker being recalled or annulled, as well as in other cases stipulated in legislation;
- institute economic insolvency (bankruptcy) proceedings against an insurance firm or broker with an economic court;
- suspend – until the appointment of a temporary administrator – the transactions of an insurance firm conducted via settlement and other accounts with banks as part of insurance operations without a license or activities unrelated to insurance or reinsurance, or in the event of systematic violations of insurance legislation by this institution.

413. The Finance Ministry’s powers to carry out control and supervision of activities of professional operators of the securities market and stock exchanges are stipulated in the Provision on the Finance Ministry of Belarus (paragraph 4.68-4).

414. In carrying out state supervision of the securities market operators, the Finance Ministry may:

- duly propose the inclusion of inspections into coordination plans of control activities and inspect securities market operators for compliance with securities legislation and, if necessary, submit inspection findings to law enforcement authorities and other agencies of state administration in accordance with their competence;
- duly apply economic sanctions for violations of securities legislation.

415. Therefore, the Finance Ministry has sufficient powers to control the activity of persons engaged in financial transactions for compliance with sector-specific legislation, but not AML/CFT legislation. Interviewees explained to the evaluation experts that as part of general supervision the Finance Ministry also controls AML/CFT issues. However, in the absence of widespread practice to indicate that this is in fact so, the evaluation experts questioned the effectiveness of this mechanism.

Money or value transfer (MVT)

416. Information on MVT monitoring and supervision is contained in the text of Recommendation 23 (current supervision and monitoring).

Recommendation 17

417. The framework of sanctions for noncompliance with AML/CFT legislation in Belarus is not formed in all sectors. Supervisory authorities have the right to impose sanctions on supervised entities in accordance with their own regulations. The AML/CFT Law vests supervisory authorities with the power to carry out “control” of financial institutions for compliance with AML/CFT legislation (Article 16 of the AML/CFT Law). However, it does not contain provisions on the application of sanctions.

418. The provision on liability in the sphere of AML/CFT is contained in Article 23.20 of the Code on Administrative Offences, which is connected with violations of the duly established procedure for registering and informing competent state authorities on financial transactions subject to special control. Under the Code, sanctions under Article 23.20 of the Code on Administrative Violations may be imposed by State Control Committee agencies and tax authorities. The evaluation experts were told that this article can be applied only in the form of fines imposed on institution employees. However, the evaluation experts believe that the article’s wording allows applying it to legal persons as well.

Banking institutions

419. The types of sanctions applied by the NBRB against banking institutions are outlined in the NBRB Provision No.195 pursuant to Articles 97 and 134 of the Banking Code. The choice of a specific type of sanctions is determined taking into account the nature of the violation, the degree of its impact on the bank’s financial status and the degree to which such violations fall under AML/CFT legislation. Before resorting to stricter measures of retaliation, the NBRB sends a written notice of violation of AML/CFT norms to the bank and may also issue a compliance order which the bank must fulfill within a specific timeframe in order to eliminate the violations. In the event of noncompliance, the NBRB will resort to other measures.

420. The NBRB may impose a number of enforcement measures of retaliation in the event of AML/CFT violations. They include replacement of bank officers, suspension or limitation of certain banking transactions, appointment of a temporary administration to manage the bank, temporary suspension or annulment of the license (paragraph 12, chapter 3 of Resolution No.195). Similar measures of retaliation may be imposed on non-bank credit and financial institutions pursuant to Resolution No.195. However, there is no possibility to apply financial sanctions against directors and senior managers for violating requirements of AML/CFT legislation.

421. Findings of inspections conducted by the NBRB in 2007 revealed sporadic violations of the established procedure for filling out SFs, registering financial transactions subject to special control, timeframes for their submission to the financial monitoring agency, the procedure for identifying customers, and internal control rules at 10 banks. The banks received compliance orders and were cautioned against repeating such violations in the future. The State Control Committee received letters with proposals to impose administrative sanctions on persons whose actions (lack of action) caused the violations, along with materials relating to such violations. See the number of sanctions imposed below.

422. National Bank representatives told the evaluation experts that, since the NBRB cannot impose fines, the materials on the violators are sent to the SCC – the Main Directorate for Banking Supervision. The evaluation experts were also informed about the upcoming amendments to legislation under which the NBRB would be able to independently impose administrative sanctions (fines). They will become effective only in 2009.

Securities and insurance sectors

423. Under the Council of Ministers Resolution No.1585, the Belarusian Finance Ministry is authorized to impose general economic sanctions on supervised entities for noncompliance with legislation regulating their professional activity. The Finance Ministry is unable to impose specialized AML/CFT sanctions. There is no practice of imposing sanctions for AML/CFT violations.

424. As part of general measures, the Finance Ministry may send the supervised person compliance orders, suspend transactions with securities, suspend or recall licenses from professional operators of the securities market and insurance companies. The Provision on the Finance Ministry does not contain the right to impose administrative sanctions on supervised institutions for noncompliance with AML/CFT legislation, much like the right to impose other sanctions under AML/CFT legislation.

Belarusian postal service

425. Regulations on the Communication Ministry do not stipulate any special sanctions relating to AML/CFT. Sanctions are in place only for violations of sector-specific legislation. During the visit, the evaluation experts were told that the Communication Ministry did not apply sanctions for AML/CFT valuations. However, it was later reported that in 2008 the Communication Ministry sent 4 compliance orders (7 order sin 2007, 5 orders in 2006) in connection with AML/CFT violations revealed during onsite visits.

Recommendation 23 (market entry)

426. Belarus has legislative requirements for banking institutions, which obstruct criminals from participating in the capital or governing bodies of an institution. The NBRB uses strict criteria with regard to potential bank owners and managers. These criteria apply to ownership shares in exceed of 10 percent.

Banking sector

427. Appointments of key officers are coordinated with the NBRB. This process includes a background check to make sure such persons had no prior convictions and have an appropriate business reputation. Under Article 82 of the Banking Code, the NBRB may refuse to approve a candidate if he or she was convicted of economic or official crimes. An ongoing criminal case is also cause for refusal (Article 80 of the Banking Code).

428. The NBRB also checks officers of a major bank owner for any prior convictions. Under Article 82 of the Banking Code, bank managers and chief accountants may not have an outstanding conviction for crimes in finance, the security market, banking, entrepreneurial activities and (or) crimes against the fiscal procedure, established by a legally effective ruling of a body authorized to examine administrative offence cases. Also, under this article bank managers and chief accountants should hold a diploma of higher education in economics or law and have appropriate work experience in relevant positions.

429. Under Article 81 of the Banking Code, before making the decision on state registration of a bank the NBRB may request state authorities or other agencies to provide additional information on the founders of the bank being registered, about candidates to the positions of the manager and chief accountant, where such information is required to decide whether Belarusian legislation has been complied with upon establishing the bank.

Securities sector

430. Under Article 20 of Law No.41512-XII, the Finance Ministry may annul or suspend a license or certificate, if a professional operator of the securities market or its employees have outstanding or unexpunged convictions for economic crimes or if the term during which they were prohibited by court to occupy certain positions or engage in certain activities has not expired. Also, under this Law the Finance Ministry must establish qualification requirements for professional operators of the securities market, their managers and employees, which must be complied with to obtain a license to engage in professional activities in the securities market (Article 17).

Insurance sector

431. Under paragraph 17 of the Presidential Order “On Insurance Activity”, for purposes of registration of an insurance firm or broker, the insurance firm or broker must submit to the Finance Ministry – in addition to documents required under legislation on state registration of economic entities – information on candidates’ professional fitness for positions of managers, their deputies, and chief accountants of this insurance firm or broker, as well as documents confirming the origin of own funds of the insurance firm’s founders (partners).

Currency exchange and MVT

432. Currency exchange may be performed by authorized banks licensed to do so. The NBRB issues licenses under Chapter 12 of the Banking Code “Licensing of Banking”.

433. In Belarus, money and value transfers are carried out by a single state enterprise – Belpost, whose activity is licensed and registered by the Communication Ministry pursuant to Belarusian legislation.

Recommendation 23 (ongoing supervision and monitoring)

434. Belarusian legislation does not contain regulations that would obligate credit institutions, the insurance sector and the securities sector to apply the Core Principles for AML/CFT purposes.

Statistics on inspections and sanctions applied

435. In 2008 (and before that), the NBRB conducted comprehensive inspections of banks and thematic inspections (at least once every two years) for compliance with banking legislation, including NBRB acts on AML/CFT. In 2008, it conducted 11 inspections (including 9 comprehensive and 2 thematic inspections) on AML/CFT. The bank imposed 8 sanctions (including 3 compliance orders for bank management and 5 general compliance orders). In 2007, the bank conducted 10 inspections (including 5 comprehensive and 5 thematic inspections), and 10 comprehensive inspections in 2006.

436. The statistics on inspections by supervisory authorities are provided below. It is worth pointing out the absence of surprise inspections by Belarusian supervisory authorities, which may have adverse impact the effectiveness of AML/CFT legislation violations by supervised entities.

Activity type / supervisory authority	Number of onsite inspections conducted by the relevant supervisory authority	
	total	Including: on AML/CFT issues

		Comprehensive	Thematic	Scheduled	Onsite
1	2	3	4	5	6
Banks (National Bank)					
2004	17	17	-	-	-
2005	15	15	-	-	-
2006	10	10	-	-	-
2007	10	5	5	-	-
2008	11 (plan)	9	2	-	-
Professional operators of the securities market (Finance Ministry)					
2004	61	-	-	-	-
2005	37	-	-	-	-
2006	68	-	-	-	-
2007	31	-	-	-	-
2008	18	-	-	-	-
Insurance firms, insurance brokers (Finance Ministry)					
2004	-	-	-	-	-
2005	12	-	-	-	-
2006	13	-	-	13	-
2007	-	-	-	-	-
2008	6	-	-	6	-
Postal operators (Communication Ministry)					
2004	-	-	-	-	-
2005	-	-	-	-	-
2006	5	5	-	5	5
2007	7	6	1	7	7
2008	5	4	1	5	5

437. Statistics of sanctions applied by supervisory authorities against supervised entities in Belarus are provided below. In the course of inspections conducted from 2004 to 2008, the Finance Ministry did not expose any AML/CFT legislation violations among supervised entities, which may indicate the low effectiveness of the Finance Ministry in terms of AML/CFT, since the Finance Ministry inspects compliance with AML/CFT legislation only as far as completion of SFs goes.

Activity type / supervisory authority	Number and types of sanctions for AML/CFT violations					
	Number of sanctions			Number of sanctions by types		
	Total	Against officers	Against legal persons	Overview of flaws and violations sent	Compliance order requiring elimination of	Fines

				to the institution management	violations exposed during the onsite visit with the established timeframe	Under Article 23.20 of the Code on Administrat ive Violations
1	Millio n rubles		Million rubles			
Banks (National Bank)				-	-	-
2004	88,3*	-	88,3*	17	-	-
2005	61,7*	-	61,7*	15	-	-
2006	27,1* *	1****	27,1**	10	-	-
2007	-	-	-	10	10	16 persons/2135 00 rubles.*****
2008	-	-	-	3*****	5	26 persons/4305 00 rubles.*****
* For violation of regulatory acts of Belarus, including AML/CFT legislation, a fine of up to 1% of the minimum size of the authorized fund**For violations of AML/CFT legislation, a fine of up to 1% of the minimum size of the authorized fund***Proposal to conduct a reassessment of the bank manager's compliance with qualification requirements and business reputation requirements ****Six inspections conducted according to plan, three of them are under review *****Imposed by the State Control Committee						
Postal operators (Communication Ministry)						
2004	-	-	-	-	-	-
2005	-	-	-	-	-	-
2006	-	-	-	5	5	-
2007	-	-	-	7	7	-
2008	-	-	-	4	4	-

438. Other than by supervisory authorities, the supervised institutions were also inspected by the SCC, which is authorized under law to apply both general and administrative sanctions. In 2007, the SCC conducted 10 inspections of credit institutions, including 8 inspections on AML/CFT, and 3 inspections in 2008, including 1 on AML/CFT. With NBRB assistance, the SCC imposed administrative sanctions on 16 officers in 2007 and 26 officers in 2008.

Recommendation 25

439. Belarusian authorities return feedback to financial institutions only in limited quantities. The NBRB has developed guidelines (NBRB Letter dated May 31, 2006, No.21-20/563), which are meant to assist credit institutions in applying existing AML/CFT requirements. No feedback from supervisory authorities was provided in other sectors.

3.10.2 Recommendations and Comments

Recommendation 17:

440. Belarus should ensure appropriate application of Article 23.20 of the Code on Administrative Violations not only to employees of financial institutions, but to legal persons themselves. Belarus should foresee more significant financial sanctions under Article 23.20. Under the Code on Administrative Violations, other sanctions should be envisioned for noncompliance with AML/CFT requirements (all the way to the liquidation of an institution). The types of sanctions for noncompliance with AML/CFT measures should be varied and applied across all financial sectors. Sanctions should be applied not only for violating the procedure for registering and notifying the FIU, but should also encompass violations of all AML/CFT requirements (identification, record keeping, etc.).

Recommendation 23:

441. Belarus should ensure appropriate application of the Core Principles for AML/CFT purposes by financial institutions.

442. The Finance Ministry should develop the needed AML/CFT regulations and carry out monitoring of the insurance sector and the securities sector in practice. The Finance Ministry should also ensure application of the Core Principles for AML/CFT purposes by financial institutions.

443. The Communication Ministry should develop the needed AML/CFT regulations and carry out monitoring of Belpost in practice.

444. Belarus should organize full-fledged supervision of the financial leasing sector.

Recommendation 25

445. Supervisory authorities should issue special guidelines for the private sector, which would facilitate a more effective performance of obligations by financial institutions. Such guidelines should take into account the specifics of the activity of supervised entities.

Recommendation 29:

446. Belarus should ensure application by the NBRB of administrative sanctions against supervised entities for noncompliance with AML/CFT legislation.

447. The Finance Ministry should ensure its existing supervision and sanctioning provisions are applied with regard to AML/CFT requirements.

448. Effective supervision meeting the requirements of Recommendation 29 should be in place for persons and institutions providing money or value transfer services.

449. However, as the evaluation experts were told, information on violations of AML/CFT requirements is forwarded by supervisory authorities to the SCC so it can apply the relevant sanctions.

3.10.3 Compliance with Recommendations 17, 23, 25 and 29

	Rating	Summary of factors applicable to item 3.10 underlying the common rating
R.17	PC	<ul style="list-style-type: none"> • The possibility to apply a broad range of sanctions against all types of financial institutions (currently there is a system of

		<p>sanctions against the banking sector only) has not been established;</p> <ul style="list-style-type: none"> • The NBRB and the Communication Ministry are unable to apply financial sanctions against directors and senior managers. • The Finance Ministry is unable to impose specialized AML/CFT sanctions. The practice of applying sanctions for AML/CFT violations on the basis of powers that are not core to AML/CFT is nonexistent. • Article 23.20 is applied only against officers of financial institutions. • Article 23.20 covers a narrow list of AML/CFT violations (only violations of the procedure for registration and reporting to the FIU) • Article 23.20 establishes low fines.
R.23	PC	<ul style="list-style-type: none"> • An effective system for AML/CFT supervision, monitoring and sanctions functions only for the banking sector; • Banking, insurance and securities sectors do not apply the Core Principles (including IOSCO and IAIS principles) for AML/CFT purposes; • There are no measures on securities and insurance market entry. • There is no special registration or AML/CFT monitoring with regard to the financial leasing sector.
R.25	PC	<ul style="list-style-type: none"> • There are no recommendations for financial institutions on applying the relevant AML/CFT requirements (does not apply to banks).
R.29	PC	<ul style="list-style-type: none"> • Only the NBRB has the possibility to apply a broad range of sanctions against all types of financial institutions; • The Finance Ministry and the Communication Ministry are unable to impose specialized AML/CFT sanctions. The practice of applying sanctions for AML/CFT violations on the basis of powers that are not core to AML/CFT is nonexistent. • The NBRB cannot apply administrative sanctions against supervised entities. • The NBRB is unable to apply financial sanctions against directors and senior managers.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis

Special Recommendation VI

450. Money transfers via the officially regulated financial system in Belarus can be carried out only through banks and Belpost. Notably, all banks and the postal service already fall under the requirements of AML/CFT legislation, and all flaws pointed out with regard to AML/CFT measures in the banking system apply to banks within the context of money transfers (see previous Report chapters).

451. There are practically no risks of money or value transactions (MVT) outside the formal financial system.

3.11.2 Recommendations and Comments

452. It is necessary to correct all flaws in the AML/CFT measures in the banking and postal system, which also apply within the context of bank and postal money transfers.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	LC	<ul style="list-style-type: none">• All flaws pointed out with regard to AML/CFT measures in the banking and postal system apply to banks and Belpost within the context of money transfers.

4. PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

Preamble: types of DNFBPs subject to AML/CFT measures

453. Under the AML/CFT Law, virtually all categories of DNFBPs required by the FATF are covered by the relevant measures, with the exception of trusts and organizations that establish and service legal persons.

454. In addition to the established list of DNFBPs, AML/CFT requirements also apply to organizations that effect state registration of immovable property (registrars).

455. It is also noteworthy that Belarus does not have supervision or monitoring of accountants, which makes it impossible to evaluate the effectiveness of measures undertaken by them. In Belarus the functions of independent accountants are performed by auditors. In this regard for the purpose of the report auditors will be referred to as accountants.

Recommendation 12

456. Under the AML/CFT Law, the same norms and requirements apply to covered DNFBPs as those applied to financial institutions.

457. Covered DNFBPs must comply with the requirements of Recommendation 5 to the same extent as do financial institutions (DNFBPs are not covered by specialized legislation issued by the NBRB with regard to banks and financial and credit institutions). DNFBPs identify customers only when performing transactions subject to mandatory reporting. There is no legislative requirement to identify the beneficial owner (beneficiary), nor are there requirements to examine the ownership/governance structure of the customer – legal person. There is no requirement to obtain information on the expected purpose and nature of business relations, to carry out CDD measures, to obtain information on sources of the customer's funds, or verify customers who had already existed at the moment AML/CFT legislation came into effect. There are no requirements to carry out enhanced CDD measures with regard to high-risk customers or undertake measures in response to unsatisfactory findings (including sending an STR). There are no requirements regulating the time of data identification and verification or requirements to refuse to establish/continue a business relationship or carry out a transaction when it is impossible to conduct CDD.

458. There are no requirements to implement Recommendations 6 and 8. DNFBPs are not allowed to rely on third parties to carry out CDD procedures (Recommendation 9). The existing flaws in the implementation of Recommendation 10 exposed among financial institutions also apply to covered DNFBPs.

459. Legislative requirements have not been established pursuant to Recommendation 11.

Effectiveness

460. The experts witnessed an extremely low effectiveness of application of existing measures and often an absence of any sort of awareness about existing measures (e.g., in the casino sector). Judging by conversations with representatives of the profession, there is no effectiveness in the precious metals and stones sector either.

4.1.2 Recommendations and Comments

461. Belarus should take urgent steps to implement all norms of Recommendations 5-8, 10 and 11 with regard to DNFBPs in order to correct the exposed flaws.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors applicable to item 4.1 underlying the common rating
R.12	NC	<p>Recommendation 5:</p> <ul style="list-style-type: none"> • Belarus does not have supervision or monitoring of accountants, which makes it impossible to evaluate the effectiveness of measures undertaken by them. • AML/CFT legislation does not cover trust and organizations establishing and servicing legal persons. • There is no clear requirement to identify customers upon the establishment of business relationships. • The CDD threshold in place (USD 300,000 for transactions by legal persons) is significantly higher than the one established in the FATF Recommendations. • The presence of exceptions in the mandatory reporting requirements means that identification of clients suspected of ML/FT is not performed in all cases. • There are no requirements to examine the ownership/governance structure of a customer – legal person. • There are no requirements regarding beneficial ownership. • There is no requirement to obtain information from the customer on the purpose and expected nature of a business relationship. • There is no requirement to carry out ongoing control of customer's transactions for compliance with the client's profile. • There is no requirement to obtain information on the source of the customer's funds, when necessary. • There are no requirements in place to carry out enhanced CDD measures with regard to high-risk customers, business relationships and transactions; • There are no requirements that would regulate the time of identification and data verification. • There is no requirement to refuse to establish or continue a business relationship or perform a transaction when it is impossible to perform CDD. • There is no requirement to examine the issue of submitting an STR on a customer who provided false / unverifiable identification information. • No requirements are in place to identify existing customers. <p>Recommendations 6, 8 and 11:</p> <ul style="list-style-type: none"> • There are no legislative or other measures whatsoever. <p>Effectiveness</p> <ul style="list-style-type: none"> • Extremely low effectiveness of implementation by all sectors. Effectiveness is absent in the sectors of casinos and precious

		metals and stones dealers.
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4.2 *Suspicious transaction reporting (R.16)* (applying R.13-15 and 21)

4.2.1 Description and Analysis

Recommendation 16

462. The same norms under Recommendations 13-15 and 21 applicable to financial institutions also apply to covered DNFBPs.

463. The evaluation experts were told that covered DNFBPs submit STRs. However, supporting statistics were not made available to the evaluation team. Pursuant to mandatory reporting requirements, along with STRs covered DNFBPs must report deals with immovable property worth over 2,000 basic units for natural persons or 20,000 basic units for organizations and individual entrepreneurs.

464. Covered DNFBPs, much like financial institutions, are protected against liability for disclosing information to the FMD and must not inform customers about the submission of a report to the FMD (Recommendation 14). For covered DNFBPs, only the general requirement to set up an internal control system has been formulated (Article 5 of the AML/CFT Law). More detailed requirements for internal control are also formulated in the Council of Ministers Provision No.352 and the relevant internal control rules published by supervisory authorities.

465. Much like with financial institutions, no system of measures needed to carry out Recommendation 21 has been established for DNFBPs.

Effectiveness

466. The effectiveness of implementation of measures by DNFBPs raised special concert among the evaluation experts. This applies especially to the sectors of casinos and precious metals and stones.

4.2.2 Recommendations and Comments

467. Belarus should eliminate all flaws in the implementation of Recommendations 13-15 and 21 with regard to all DNFBPs.

4.2.2 Compliance with Recommendation 16

	Rating	Summary of factors applicable to item 4.2 underlying the common rating
R.16	PC	<ul style="list-style-type: none"> • Belarus does not have supervision or monitoring of accountants, which makes it impossible to evaluate the effectiveness of measures undertaken by them. • AML/CFT legislation does not cover trust and organizations establishing and servicing legal persons. <p><i>Recommendation 13</i></p> <ul style="list-style-type: none"> • Some DNFBPs do not pay appropriate attention to submitting STRs regarding transactions in excess of the threshold value;

		<ul style="list-style-type: none"> • Flaws of ML criminalization restrict STR obligations as regards ML; <p><i>Recommendation 14</i></p> <ul style="list-style-type: none"> • The legislation is not clear on whether there is protection of managers and employees of financial institutions from criminal and administrative liability for reporting information to the FMD and an exemption from liability for disclosing facts of reposts being submitted to the FMD. <p><i>Recommendation 15</i></p> <ul style="list-style-type: none"> • There is no obligation to appoint an officer responsible for AML/CFT issues at the management level; • There is no obligation to grant the compliance officer timely access to all the required information of the financial institution; • There is no requirement to conduct an independent audit of AML/CFT measures; • Legislation does not contain a detailed requirement to conduct staff training in AML/CFT issues; • There is no requirement to conduct background checks of employees upon recruitment; <p><i>Effectiveness</i></p> <ul style="list-style-type: none"> • There are standard rules of internal control, but the effectiveness of their implementation is low. <p><i>Recommendation 21</i></p> <ul style="list-style-type: none"> • The existing system has not been used since the termination of the FATF NCCT list, despite the existence of countries, which do not implement the FATF standards. • Belarus currently has no requirements for DNFBPs to pay special attention to transactions with countries that do not comply with the FATF Recommendations. • There are no requirements for DNFBPs to scrutinize transactions with such countries and store the findings of such scrutiny for 5 years. • Belarus is unable to apply countermeasures against such states.
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4.3 Regulation, supervision and monitoring (R.24-25)

4.3.1 Description and Analysis

Recommendation 24

Supervision and sanctions with regard to casinos

468. The Ministry of Transport and Tourism carries out licensing, supervision and control of casino activity (Council of Ministers Resolution No.1377). Under Article 16 of the AML/CFT Law, the Ministry of Transport and Tourism is authorized to control casinos for compliance with the AML/CFT Law and organization of internal control. At the same time, licensing requirements have no relation to AML/CFT issues.

469. In accordance with its general powers, the Ministry of Transport and Tourism controls subjects of the gaming business for compliance with legislation regulating the gambling procedure. Upon detecting violations the Ministry of Transport and Tourism may issue compliance orders to subjects of the gambling business, and where such orders are ignored – suspends licenses until the exposed violations are eliminated or decides to recall licenses. The Ministry of Transport and Tourism may apply economic sanctions, but may not impose administrative fines for violations of Belarusian legislation. There are no statistics on the application of sanctions by the Ministry of Transport and Tourism for violations of AML/CFT legislation. Based on the results of their meetings, the evaluation experts concluded that the effectiveness of the Ministry's AML/CFT measures was extremely low.

470. Under the Council of Ministers Provision No.1377, doubtful business qualities of the licensee or presence of an outstanding conviction may not constitute grounds to deny a license. This norm contravenes the requirements of Recommendation 24, since information about an improper reputation may not constitute grounds to deny ownership or management of a casino.

Supervision of precious metals and stones dealers

471. The Finance Ministry licenses and supervises activities involving precious metals and stones. However, the functions of oversight over precious metals and stones dealers within the context of AML/CFT legislation, including inspections, and application for sanctions for violations are not stipulated in the Provision on the Finance Ministry and were never used in practice. Given the low level of awareness in this sector about the AML/CFT legislation requirements, the absence of appropriate monitoring raised ML/FT risks.

472. The Finance Ministry has powers to issue compliance orders, suspend licenses or annul them for violations of sector-specific legislation. However, legislation does not contain requirements to apply sanctions for AML/CFT violations.

473. No statistics on inspections and AML/CFT sanctions in this sector were made available.

Registrars

474. Registrars are public servants and exercise their powers in the capacity of employees of a republican or territorial organization tasked with state registration (republic unitary enterprise). Registrars must undergo registrar certification and recertification at least once every three years (State Registration Law).

475. The republican state registration authority – the National Cadastral Agency of the State Property Committee – is part of the system of state organizations that perform state registrations of title to immovable property. Its competence includes conducting certification of registrars, keeping a register of registrars; controlling the fidelity of registration acts performed by registrars.

476. The State Property Committee is a specially authorized agency of state administration of Belarus. It manages subordinated state organizations and ensures, jointly with managers of such organizations, their effective operation; conducts inspections at state agencies and organizations

in matters within the competence of the State Property Committee; issues mandatory compliance orders; apply sanctions for violations of legislation in matters within the competence of the State Property Committee (Provision on the State Property Committee).

477. Even though the activity of registrars is not directly covered by the FATF Recommendations, this sector is supervised for AML/CFT purposes. The evaluation experts were told that several registrars who failed to comply with AML/CFT measures were disciplined.

Lawyers, Jurists, Notaries, Realtors

478. The Justice Ministry licenses the activity of lawyers, notaries, realtors, and jurists. The powers of the Justice Ministry boil down to controlling lawyers for compliance with legal practice laws, license requirements and conditions; obtaining information on the observance of legal practice laws provided secrecy of the legal practice is upheld; submitting proposals on disciplining licensees to the bar association (regional, Minsk City, Belarusian bar association). The Justice Ministry controls the lawyers' activities of providing legal services.

479. The Justice Ministry has general powers to issue compliance orders, suspend licenses and annul licenses for violations of sector-specific licensing legislation or requirements and conditions in place for the licensed activity. However, legislation does not contain requirements to apply sanctions for AML/CFT violations.

480. While no specific supervision and sanctions statistics were made available, the evaluation experts were told that some disciplinary sanctions had been applied against state notaries, which gives reasons to speak of a certain amount of effectiveness.

Recommendation 25

481. Justice Ministry representatives meeting with the evaluation experts said that organizations supervised by the Justice Ministry received relevant explanatory letters (3 letters) on AML/CFT issues.

482. The Finance Ministry did not issue guidelines addressed to the DNFBPs.

483. Overall the same feedback mechanisms that are in place for financial institutions are used for DNFBPs.

Effectiveness

484. Supervisory authorities conduct appropriate supervision of DNFBPs for compliance with sector-specific legislation within their competence. However, the evaluation experts concluded that due to the absence of the required legislative basis on AML/CFT issues and the application of sanctions only for violations on the FS submission procedure the effectiveness of supervisory authorities is low.

4.3.2 Recommendations and Comments

Recommendation 24:

485. Belarus should adopt measures to ensure effective supervision of AML/CFT compliance by casinos, including additional measures to obstruct criminals from managing/owning a casino, as well as foresee denial on the grounds of poor reputation and outstanding conviction. Belarus should revise the casino licensing procedure by incorporating AML/CFT issues.

486. Belarus should carry out effective monitoring of precious metals and stones dealers as well as other DNFBPs for compliance with AML/CFT measures. Belarus should create or appoint an agency or a self-regulating organization authorized to carry out supervision and monitoring of accounting for compliance with AML/CFT requirements. If this function is imposed on the FMD, the FMD should get the needed supervisory powers and mechanisms of their implementation, including an appropriate supervisory staff.

Recommendation 25:

487. Belarus does not publish guidelines meant for DNFBPs, except certain information letters of the Justice Ministry. Such guidelines are needed to assist DNFBPs in complying with AML/CFT norms. One must bear in mind the fact that DNFBPs are less prepared for AML/CFT measures than financial institutions, which raises the risk of ML/FT in this sector. In this connection, special attention should be focused on clarifications for DNFBPs.

4.3.3 Compliance with Recommendations 24 and 25 (criteria 25.1, DNFBPs)

	Rating	Summary of factors applicable to item 4.5 underlying the common rating
R.24	NC	<ul style="list-style-type: none"> • AML/CFT issues are not legally required as a condition in the licensing process for casinos. • The system in place for supervising and applying sanctions against casinos for noncompliance with AML/CFT measures, is not effective, which raised ML/FT risks in this sector; • There is no effective monitoring of compliance with AML/CFT measures by DNFBPs (with the exception of the Justice Ministry in some aspects); • There is no authorized agency or self-regulating organization to supervise accountants.
R.25	PC	<ul style="list-style-type: none"> • There are no guidelines for DNFBPs, except certain information letters published by the Justice Ministry; <p>See Other grounds for the rating in sections 3.7 and 3.10 of this Report</p>

4.4 Other Non-Financial Businesses and Professions. Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Recommendation 20

488. Besides financial institutions and DNFBPs, AML/CFT also apply to pawnshops, betting shops, lotteries and other gambling businesses with slot machines and other devices for risk-based games. These types of businesses are covered by the same AML/CFT legislation requirements as financial institutions.

489. Belarus has adopted a number of measures to introduce safer modern financial technologies aimed at reducing the amount of cash in circulation. The Council of Ministers and NBRB Resolution dated June 29, 2006, No.817/11 adopted the State Program to Develop the Technical Infrastructure to Ensure the Use of Plastic Bank Cards for 2006-2010, which aims to reduce the amount of cash in circulation in the commerce and services sector to 30 percent.

490. The maximum face value of Belarusian bills is 100,000 Belarusian rubles – close to USD 50.

491. Under the NBRB Resolution No.37, Belarusian banks carry out interbank settlements via the automated system of interbank settlements of NBRB (AS IBS). The AS MBR comprises the BISS (Belarus Interbank Settlement System) system and a clearing system for other payments. These requirements facilitate the monitoring of all interbank settlements.

492. Under Presidential Order No.359 dated June 29, 2000, the maximum volume of cash settlements between legal persons may not exceed 50 basic units (close to USD 750) per month. These requirements for legal entities help minimize the risk of ML using cash funds.

Effectiveness

493. The following indicators reflect a downward trend in the volume of cash circulating in the economy. These indicators are also proof of the effectiveness of Belarusian Government's measures to reduce the amount of cash in circulation.

Date	M0, billion rubles	M2, billion rubles	M0/M2
01.01.2005	1339	5288	25,3%
01.01.2006	2016	8465	23,8%
01.01.2007	2818	12321	22,9%
01.01.2008	3323	15732	21,1%

4.4.2 Recommendations and Comments

494. The Belarusian Government is recommended to continue the ongoing measures to reduce the amount of cash in circulation.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	C	<ul style="list-style-type: none"> ▪ This Recommendation is fully observed.

5. LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANIZATIONS

5.1 Legal persons - access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

Recommendation 33

495. Registration of legal persons in Belarus is carried out under Decree 11, which stipulates the creation of a Single State Register of Legal Persons and Individual Entrepreneurs (hereafter the SSR) in Belarus. The Register is kept by the Belarusian Justice Ministry. Under paragraph 7.7 of the Provision on the SSR, adopted by the Council of Ministers Resolution No.359, the register contains information on company founders besides other information. The procedure for keeping the SSR is stipulated in the Justice of Ministry Instruction No.9. Under this Instruction, the SSR database stores information on the founders of the legal person, the managers and other persons authorized to act without power of attorney on behalf of the legal entity.

496. The information contained in the SSR is open and publicly accessible, except data that constitutes the state secret, banking, official or commercial secret. Under paragraph 45 of the Justice Ministry Instruction No.9, the abovementioned restrictions for access to the SSR data do not apply to supervisory authorities and law enforcement agencies of Belarus.

497. Additional measures exist to control beneficial ownership of joint-stock companies, but these measures are not implemented for AML/CFT purposes. Under Article 34 of the Law of Belarus No.1512 – XII dated March 12, 1992, any person acquiring over 5 percent of the total number of authorized voting shares shall reporting this acquisition within 5 days to the central authority that controls and supervises the securities market, to the stock exchanges conducting transactions with such shares, as well as to their issuer. A similar requirement under Article 35 is made of the managers of the issuer in the event of acquisition of any block of shares.

498. Under Belarusian law, legal persons must open an account with a credit institution upon their establishment. Since the NBRB has established sufficiently comprehensive conditions for beneficial owner identification by banks, the relevant information about such owners can be obtained by competent authorities from credit institutions.

499. Article 70 of the Law “On Economic Societies” prohibits the issuance of bearer securities in Belarus.

Effectiveness

500. Online access to registration data of legal persons enables quick detection of fly-by-night firms. The FIU has special software designed to identify suspicious firms. Bank representatives with whom the evaluation experts met also confirmed the presence of internal criteria designed to identify fly-by-night firms established for ML purposes.

501. At the same time, despite all of the abovementioned mechanisms, this problem remains in Belarus and obviously requires additional measures.

5.1.2 Recommendations and Comments

502. Belarus should continue to take additional measures against misuse of legal persons for ML.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	C	This Recommendation is fully met.

5.2 Legal arrangements - access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

503. In Belarus it is impossible to establish legal arrangement, including trusts, in the sense in which these terms are used in the FATF Recommendations. This is due to the fact that the legal system of Belarus, much like those of other countries of the continental legal tradition (civil law) does not allow for the separation of the right of ownership into a legal title, which is given to the trustee along with the responsibilities of proprietorship, and an equitable title, which is given to the beneficiary.

504. There is a concept of trust management in Belarus, which is different from the trusts set up under Anglo-Saxon (common law) systems, because it is solely based on liability. Under Article 895 of the Civil Code, “the transfer of property into trust management does not lead to a transfer of ownership to the trust manager”, which conflicts with the basic principle of a trust. This also contradicts the definition of “settlor” in the FATF Methodology, which includes the “transfer of ownership of assets”. Under Article 899 of the Civil Code, the maximum term for a trust management contract is 5 years. A commercial entity or an individual entrepreneur may carry out trust management. The objects for trust management may include enterprises and other economic entities, as well as exclusive rights. Moveable property, including funds, cannot be the sole object of trust management. Persons, carrying out trust management of securities must receive a license from the Securities Commission. In this capacity they are professional participants of the securities market and are subject to AML/CFT requirements like other financial institutions. Other legal persons may have the characteristics of a trust, however in this case Recommendation 33 applies.

505. Belarus does not recognize foreign trusts and is not a signatory to the Hague Convention on the Law Applicable to Trusts and on their Recognition Belarusian lawyers can participate in the creation of trusts abroad, in which case the lawyers are not subject to Belarusian AML/CFT legislation.

506. Belarusian legislation does not contain any impediments for Belarusian citizens to participate in trusts created abroad. In this case the governing law is the foreign law chosen by the parties or, if none has been chosen, that with which the trust shows the closest connection.

5.2.2 Recommendations and Comments

507. Not applicable.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	n/a	Not applicable.

5.3 Non-profit organizations (SR.VIII)

5.3.1 Description and Analysis

Special Recommendation VIII

508. Belarus has not implemented the majority of Special Recommendation VIII requirements.

509. Belarus has not conducted the needed revision of existing legislation with regard to non-profit organizations. Competent authorities do not interact with the NGO sector to protect it from terrorist financing risks. Belarus failed to present examples of measures aimed to raise awareness of FT risks in this sector or enhance the transparency of the financial environment of NGOs and their management.

510. At the same time, Belarus is undertaking certain measures to monitoring financial flows to NGOs. Specifically, pursuant to the November 28, 2003, Presidential Decree No.24 “On receiving and using foreign donor aid” the Department on humanitarian assistance under the Presidential Administration is monitoring non-profit organizations for targeted spending of foreign donor aid received by Belarusian NGOs in order to detect and deter cases of aid and proceeds from its sale being used to finance extremist activities that include terrorism.

511. The goals and objectives of NGOs are outlined in the Articles of such organizations. Under the Law “On Public Associations”, NGOs must carry out their activities in strict compliance with the Articles.

512. The information about persons owning or administering NGOs, including the management, composition of the managing board, etc. is maintained in the Unified registry of legal persons maintained by the Justice Ministry.

513. The following sanctions can be applied against public associations for violations of Belarusian legislation and own Articles: a warning in writing; suspension of activity; liquidation. Belarus failed to present information on the state agency responsible for applying these sanctions or information on whether these sanctions have been applied in practice and the number and types of sanctions applied.

514. The Justice Ministry registers various forms of NGOs. The mechanisms of NGOs registration are similar to the registration procedures for legal persons and are reinforced by a special procedure established by the NBRB for opening NGO accounts.

515. NGOs are obligated to publish annual reports on the use of their assets. The publication procedure and contents of the report are established in the Justice Ministry Resolution No.43 dated August 3, 2005. The published data includes:

1. information on the number of NGO founders;
2. information on the value of NGO assets, including:
 - assets contributed by the founder(s) of the NGO;
 - proceeds from activities carried out under the NGO Articles;
 - proceeds from entrepreneurial activity carried out under the NGO articles;
 - other proceeds that do not contravene Belarusian laws;
3. information on the total amount of expenses incurred by the NGO to achieve socially useful objectives stipulated in the Articles;
4. information on the number of unitary enterprises, economic entities established by the NGO to carry out entrepreneurial activity, including on the NGO’s participation in such legal persons.

516. Belarus does not have any special coordination mechanisms between law enforcement agencies and other state authorities with regard to NGOs that pose an FT risk or mechanisms enabling

coordinated measures. All existing mechanisms of investigation and cooperation among law enforcement agencies and other authorities in this respect are examined in R.27, 28 and 31 and are applied in equal measure to NGOs.

517. The SSC of Belarus is the principal agency responsible for international cooperation on countering terrorist financing. However, the issues of interaction on NGOs are not explicitly stated in its terms of reference.

5.3.2 Recommendations and Comments

518. Belarus should undertake the remaining measures needed to comply with Special Recommendation VIII in the nearest future.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	PC	<ul style="list-style-type: none"> • NGO legislation is not being revised; • No periodic analysis of the NGO sector is conducted to identify FT risks; • There are no programs for interaction with the NGO sector on FT prevention; • General information was presented on supervision, monitoring, and application of sanctions against the NGO sector or its substantial part; • No special mechanisms are in place for exchanging information on NGOs at the national and international levels in case FT suspicions arise.

6. NATIONAL AND INTERNATIONAL COOPERATION

6.1 National Cooperation and Coordination (R.31)

6.1.1 Description and Analysis

519. Belarus has not established an AML/CFT coordination body. The existing Interagency Commission on Combating Crime, Corruption, and Drug Abuse under the Security Council of Belarus does not pay due attention to this sphere. On the whole, political coordination of AML/CFT issues requires a great deal of attention.

520. Belarus has the ongoing State Program to Combat Crime for 2006-2010. Under paragraph 21.14 of this program, the MIA, SCC, Prosecutor's Office, SSC, Ministry for Emergencies, State Customs Committee, National Bank, Finance Ministry, Justice Ministry, Transport Ministry, State Property Committee are tasked with preventing money laundering.

521. A joint resolution of the Belarusian State Control Committee, the Prosecutor's Office, the National Bank Management Board, the Ministry of Internal Affairs, the Ministry for Taxes and Duties, the State Security Committee has established an interagency taskforce to ensure coordination and interaction of state authorities in ML/FT. The key objectives of the taskforce are preparing and examining materials of ML/FT topologies and setting up a consultancy system. The taskforce does not have the powers to evaluate the effectiveness of the AML/CFT system and does not issue proposals for political decisions in this sphere.

Access to databases

522. Under a joint resolution of the MIA and SCC No.210/2 dated June 28, 2005, the Committee has remote access to republican automated databases. The joint MIA and NBRB Management Board resolution No.124/105 dated May 16, 2007, grants similar information access to databases for the National Bank, banks and non-bank credit and financial institutions. The issue of FIU access to databases is examined in section 2.5 of this Report.

Operative interaction

523. Coordination interactions on AML/CFT among agencies inside the country cannot be traced well. Operative cooperation among the FMD, law enforcement and supervisory authorities is one-way, i.e. submission of materials by the FMD to the law enforcement. As pointed out in section 2.6 of this Report, the most successful coordination is traced between the FMD and the FID, since these Departments are essentially units of the same structure – the SCC. Such level of coordination should be established between the FMD and other law enforcement agencies. The evaluation team was told that the signing of agreements between the FMD and the MIA and the State Customs Committee is planned in the immediate future.

524. Issues of operative interaction among law enforcement agencies were examined in section 2.6 of this Report.

Cooperation among supervisory authorities

525. Cooperation among supervisory authorities is not official or regular, with the exception of joint inspections.

526. Even though the FMD is obligated to carry out the role of the coordinator for the supervisory authorities, the absence of an appropriate supervisory staff at the FMD complicates its work in this field.

Effectiveness

527. National cooperation and coordination in AML/CFT in Belarus is currently happening at the level of the interagency taskforce and is manifested in the development of conditions whereby competitive authorities can access various databases as well as in the coordination of investigations and, to some extent, supervisory measures. While FMD interaction with different agencies is well organized overall, the interaction of other agencies among themselves on AML/CFT issues is ineffective on the whole. There is also inadequate feedback streaming from the law enforcement back to the FMD.

Additional elements

528. There are mechanisms for consultations with the private sector in matters of developing drafts of legislation, which enable private sector representatives and DNFBPs to offer their own proposals.

6.1.2 Recommendations and Comments

529. The creation of a coordinating agency would make it possible to coordinate the activities of law enforcement and supervisory authorities in working out a single AML/CFT policy.

530. The signing of bilateral agreements on mutual cooperation would enable fast resolution of issues arising as part of specific investigations.

	Rati ng	Summary of factors underlying rating
R.31	PC	<ul style="list-style-type: none"> • The AML/CFT Working group does not constitute a sufficient institutional platform for the elaboration of AML/CFT policy • The effectiveness of interaction of law enforcement agencies with the FMD (except the FIU) raises questions

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1. Description and Analysis

Recommendation 35 and Special Recommendation I

531. Belarus signed the UN Convention against transnational organized crime in Palermo on November 15, 2000; it became effective for Belarus on September 29, 2003, with the following reservation: the competent authority on mutual legal assistance for Belarus is the General Prosecutor's Office. Belarus is also party to the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) of 1988. Belarus ratified the International Convention for the Suppression of the Financing of Terrorism with its law dated July 5, 2004.

532. Belarus has implemented the above-mentioned international conventions, including in relation to the criminalization of ML.

533. Some of the FT criminalization aspects do not meet the requirements of the Convention for the Suppression of the Financing of Terrorism. Apparently, all the relevant articles of the Vienna Convention have been implemented. At the same time, paragraph 1 (a) of Article 7 of the Palermo Convention has not been implemented as regards establishing the record keeping requirement. Some of the aspects of Article 18: Paragraph 1 (b) are not met as regards to the identification of beneficial owners and record keeping.

534. As regards the implementation of UN Security Council Resolutions 1267 and 1373 and subsequent resolutions, Belarus has failed to comply with Resolution 1452 as regards granting access to funds required for basic vital needs.

Additional elements

535. Belarus is a party to the Agreement of the Member States of the Commonwealth of Independent States on Countering Money Laundering and Financing of Terrorism.

6.2.2 Recommendations and Comments

536. Belarus should implement all the requirements of the UN Conventions as well as other requirements to correct the exposed flaws.

537. Belarus is also recommended to join the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (Warsaw Convention).

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	LC	<ul style="list-style-type: none"> • Paragraph 1 (a) of Article 7 of the Palermo Convention has not been fully implemented as regards to establishing the record keeping requirement; • Certain aspects of Article 18: Paragraph 1 (b) as regards identification of beneficial owners and record keeping are not fully implemented.
SR.I	LC	<ul style="list-style-type: none"> • In some respects the criminalization of TF falls short of the Convention for the Suppression of the Financing of Terrorism; • Paragraph 1 (b) of Article 18 of the FT Convention as regards identification of beneficial owners and record keeping has not been fully implemented; • UN Security Council Resolution 1452 is not implemented as regards access to funds needed for basic vital needs.

6.3 Mutual Legal Assistance (R. 36 – 38, SR.V)

6.3.1. Description and Analysis

Recommendation 36

538. Belarus is a party to all the key UN treaties on providing international legal assistance in criminal cases (e.g., the Palermo Convention) and the Commonwealth of Independent States.

539. Bilateral agreements in this sphere have been signed with the following nations: Hungary (since January 4, 1959, and since July 23, 1972); Cuba (since August 7, 1986); Latvia (since June 18, 1995,); Lithuania (since June 11, 1993); China (since November 29, 1993); Bulgaria (since December 30, 2007); India (since June 30, 2006); Vietnam (since October 17, 2001); Italy (since August 8, 1986); Slovakia (since August 12, 1982); Poland (since October 26, 1994); Iran (November 7, 2006, ratified on June 12, 2007, not effective yet). A number of other draft international agreements on mutual assistance are being drafted and approved.

540. Their application in each particular case depends on the specific request of the requesting party and the availability of effective regulations.

541. Within the CIS, mutual legal assistance is provided under the Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Cases, signed in Minsk in 1993 and Chisinau in 2002. The Chisinau Convention of 2002 is applied in relations among countries that ratified it: Azerbaijan, Armenia, Kazakhstan, Kyrgyzstan, and Tajikistan. With the remaining CIS member states, mutual legal relationships are based on the requirements of the Minsk Convention of 1993. For Belarus it is effective in relations with Georgia (since July 11, 1996), Uzbekistan (since May 19, 1994), and Turkmenistan (since February 19, 1998).

542. Belarus adopted the Law dated May 18, 2004, No.284-Z “On international legal assistance in criminal cases”, which regulates legal relations in providing international legal assistance in criminal cases. Article 5 of the Law stipulates that the General Prosecutor’s Office and the Supreme Court of Belarus are the Belarusian authorities that have the competence to approve decisions in matters of international legal assistance in criminal cases on the basis of a mutuality principle (when a relevant international agreement of Belarus is not available).

543. The primary regulatory document that governs issues of mutual legal assistance (MLA) is the Criminal Procedural Code. In January 2008, Belarus adopted a law amending the Criminal Procedural Code. Specifically, it introduced an extensive and comprehensive section on mutual legal assistance (Chapter XV “International legal assistance in criminal cases based on the mutuality principle”).

544. International legal assistance in criminal cases on the basis of the mutuality principle includes:

- serving procedural and other documents;
- carrying out proceedings;
- transferring physical evidence in criminal cases;
- transit of persons subject to extradition or temporary transfer;
- temporary transfer of persons in custody or doing sentence in prison for purposes of proceedings with their participation;
- measures to locate persons suspected or accused or indicted of crimes, as well as missing persons;
- extradition of criminals for purposes of their criminal prosecution and (or) service of a sentence;
- criminal prosecution of persons suspected or accused of crimes;
- performance of effective court rulings in criminal cases;
- other actions.

545. These types of MLA entirely foresee the fulfillment of the relevant requirements of Recommendation 36. The requirement to seize documents, including financial documents, falls under “carrying out proceedings”.

546. The Criminal Procedural Code offers sufficiently detailed regulations for each step of various MLA procedures, thereby ensuring timeliness, constructiveness, and effectiveness of the relevant measures. These efforts are among other things foreseen in the organizational and staff structure of the General Prosecutor’s Office where international cooperation is handled by the International Law Department. In regional and equivalent prosecutor’s offices, aspects of international cooperation are assigned to specific employees by relevant administrative resolutions.

547. Belarusian legislation does not contain any conditions that would excessively restrict the provision of MLA. The Criminal Procedural Code stipulates the conditions for providing MLA, which are mostly technical in nature. Because the Criminal Procedural Code contains no grounds to deny legal assistance in fiscal crimes, the relevant MLA requests are fulfilled. Criminal Procedural Code norms relating to MLA do not contain any conditions regulating access to documents that constitute a financial secret, which would differ from the general norms in the Code that apply to this issue.

548. Procedural legislation envisions the possibility to use the powers of law enforcement agencies pursuant to Recommendation 28. At the same time, the Criminal Procedural Code and other regulations do not stipulate mechanisms for determining the best location (jurisdiction) for prosecuting the accused.

Recommendation 37

549. The evaluation team was told that in the absence of mutual recognition of an act as a crime (dual jurisdiction) MLA may be provided to the greatest degree possible, while technical differences between the legislation of the countries submitting and receiving a MLA request do not pose an obstacle for Belarus when providing MLA.

550. Moreover, under Article 6 of the Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Cases (Chisinau Convention) the parties shall provide MLE by carrying out procedural and other actions envisioned by the legislation of the requesting side. The parties may also provide MLA in other forms given the specific circumstances, interests of justice and public at large, and in accordance with internal legislations of the parties.

Recommendation 38

551. Requests by criminal prosecution authorities and courts of foreign states for procedural actions on Belarusian territory associated with locating and seizing property are carried out by Belarusian authorities that handle the criminal case, in accordance with the Criminal Procedural Code rules for seizing property.

552. Sentences, rulings, and judgments by courts of foreign states relating to confiscation are subject to fulfillment on Belarusian territory in accordance with the rules of the Criminal Procedural Code and international treaties of Belarus (Article 473 of the Criminal Procedural Code). Because procedural legislation foresees a so-called special confiscation, these measures may also be applied with regard to MLA. Additionally, the relevant norms of the Chisinau Convention apply to confiscation. Specifically, Belarus shall carry out decisions of foreign states in criminal cases, which relate to compensation of damage, recovery of fines, and

confiscation; decisions to attach property, including funds in bank accounts, as security for a claim.

553. Much like with regard to fulfilling Recommendation 3, MLA obviously does not foresee confiscation of property of equivalent value. Belarus also failed to present any documents, including regulations, which would confirm the presence of mechanisms for coordinating actions with international states in confiscating and attaching property.

554. Belarus did not examine the issue of establishing a confiscated property fund. The evaluation experts were told, however, that under Belarusian legislation confiscated proceeds are channeled into the state budget and used to finance social and other programs. Seized property is also used to finance law enforcement agencies.

555. Belarus did not consider the issues of sharing seized property with competent authorities of foreign states whose actions facilitated the confiscation of property. Article 480 of the Criminal Procedural Code contains a provision whereby instruments of crime and illegally obtained items may be temporarily transferred to a foreign state. However, eventually they must be returned to Belarus.

556. Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness.

6.3.2 Recommendations and Comments

557. Even though Belarus has a sufficiently regulated procedure for providing MLA, it contains certain gaps that need to be filled. Specifically, the Criminal Procedural Code or other legislation should foresee a mechanism for determining the best location (jurisdiction) for prosecuting the accused.

558. Belarus should introduce a norm on the confiscation of property of equivalent value, develop and apply a mechanism of coordinating actions with foreign states in attaching or confiscating property and subsequent splitting of property if it had been confiscated with the assistance of competent authorities in a foreign state.

6.3.3 Compliance with Recommendations 36-38 and Special Recommendation V

	Rating	Summary of factors applicable to item 6.3 underlying the common rating
R.36	LC	<ul style="list-style-type: none">• The Criminal Procedural Code or other regulations do not stipulate mechanisms for determining the best location (jurisdiction) for prosecuting the accused.• Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness.
R.37	C	
R.38	PC	<ul style="list-style-type: none">• Obviously, confiscation of property of equivalent value is not envisioned.• There are no specific mechanisms for coordinating actions with foreign states in attaching or seizing property;• Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness.

		<ul style="list-style-type: none"> • Flaws in the criminalization of ML and FT may restrict possible applications of confiscation. • Belarus did not consider the issue of sharing seized property with competent authorities of foreign states whose actions facilitated the confiscation of property.
SR.V	PC	<ul style="list-style-type: none"> • The Criminal Procedural Code or other regulations do not stipulate mechanisms for determining the best location (jurisdiction) for prosecuting the accused. • Obviously, confiscation of property of equivalent value is not envisioned. • There are no specific mechanisms for coordinating actions with foreign states in attaching or seizing property; • Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness. • Flaws in the criminalization of FT may restrict possible applications of confiscation. • Belarus did not consider the issue of sharing seized property with competent authorities of foreign states whose actions facilitated the confiscation of property.

6.4 Extradition (R.37 & 39, & SR.V)

6.4.1 Description and Analysis

559. Under the Belarusian Criminal Code and Criminal Procedural Code, money laundering is a crime that warrants extradition in the relevant cases. The extradition procedure is regulated by several articles in Chapter XV of the Criminal Procedural Code (CPC). The conditions for fulfilling the request by a foreign authority for extradition for purposes of criminal prosecution and (or) service of a sentence are stipulated in Article 475 of the CPC. This request may be fulfilled upon receipt of a certified photocopy of the relevant resolution by the foreign agency handling the criminal case confirming that custody is the measure of restraint against the accused, or a certified copy of an effective court decision in the foreign state sentencing the person to incarceration. The requesting state must also guarantee that the extradited person will not be criminally prosecuted for crimes that did not constitute the grounds for the extradition in the first place without the approval of the Belarusian General Prosecutor, and that this person will not be handed over to a third state without the consent of the Belarusian General Prosecutor. The CPC also stipulates grounds for rejecting the request for extradition (Article 484). These grounds include the following conditions:

- The person is a Belarusian citizen;
- The person has been granted political asylum in Belarus;
- Dual jurisdiction;
- The request is associated with persecution on the grounds of race, gender, faith, citizenship, nationality, belonging to a specific social group, or political beliefs, as well as war crimes;
- If the crime that provoked the extradition request is punishable by incarceration for less than one year or a milder punishment under the Criminal Code of Belarus or criminal legislation of the foreign state;

- The person whose extradition is requested has been sentenced in the foreign state to incarceration for a period of less than six months, or if the term that remains to be served by this person does not exceed six months;
- There is an effective decision of the criminal prosecution authority to deny the institution of criminal proceedings or to discontinue criminal proceedings or court proceedings against this person, or an effective sentence or decision (judgment) by a Belarusian court to discontinue criminal proceedings in the case involving the same act with regard to which the extradition request has been made;
- The person whose extradition is requested has served a sentence or been subjected to other measures of criminal prosecution for the crime that provoked the extradition request;
- Under the Belarusian Criminal Code or criminal legislation of the foreign state, the statute of limitations has elapsed with regard to criminal prosecution or to conviction verdict against the person whose extradition is requested;
- The crime that provoked the extradition request is punishable under the laws of the foreign state by death penalty, while the Belarusian Criminal Code does not foresee a death penalty, and if the foreign authority failed to present a written guarantee that no death sentence will be issued, or if one is issued, that it will not be effected;
- There is a legally effective court ruling of Belarus that has found the extradition request illegal, overturned the extradition request, lifted the measure of restraint, and freed the person;
- Criminal proceedings against the person whose extradition is requested have been initiated in response to a private lawsuit;
- The foreign state refused to extradite the person whose extradition is requested to another foreign state in cases when this person is transferred to Belarus at the request of the agency conducting the criminal proceedings;
- The act that provoked the extradition request was committed on Belarusian territory or against the interests of Belarus.

560. Even though quite numerous these conditions appear to be quite fair conditions for rejecting an extradition request and do not contravene the implementation of Recommendation 39 by Belarus.

561. Because Belarus does not extradite its own citizens, the relevant request may be formulated as a request for criminal prosecution of the relevant person on the territory of Belarus. Under Article 477, such persons may be subjected to criminal prosecution. In this connection, a required condition for the fulfillment of the relevant request from the foreign state is its cooperation in the collection of evidence. Specifically, the foreign state must present criminal case materials or their certified photocopies as well as objects used as the instruments of the crime or have preserved traces of the crime on them, or have been obtained illegally, or any other items or documents that may serve the purpose of detecting the crime, determining the actual circumstances of the criminal case, identifying the guilty persons or refuting the accusation, claims by victims or their representatives seeking criminal prosecution, and information on the compensation of damage caused by the crime (if any).

562. The procedures established by Belarus with respect to extradition are sufficiently regulated to ensure timely and effective assistance with extradition.

Recommendation 37

563. Dual jurisdiction is a mandatory requirement for extradition. At the same time, technical differences in the criminalization in the two countries do not constitute grounds to deny extradition.

Effectiveness and Statistics

564. Belarus provided general statistics on the number of persons extradited to/from Belarus: in 2005 – 220, in 2006 – 281, in 2007 – 287. Unfortunately, Belarus did not present more detailed statistics or statistics on extraditions associated with ML/TF.

6.4.2 Recommendations and comments

565. Belarus should implement mechanisms for determining the best location (jurisdiction) for prosecuting the accused, as well as correct the deficiencies in the criminalization of ML/TF so that they do not impede MLA or extradition.

6.4.3 Compliance with Recommendations 39, 37 and Special Recommendation V

	Rating	Summary of factors applicable to item 6.4 underlying the common rating
R.39	LC	<ul style="list-style-type: none"> • The Criminal Procedural Code or other regulations do not stipulate mechanisms for determining the best location (jurisdiction) for prosecuting the accused. • Flaws in the criminalization of ML and FT may restrict possibilities for extradition. • Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness.
R.37	C	
SR.V	PC	<ul style="list-style-type: none"> • The Criminal Procedural Code or other regulations do not stipulate mechanisms for determining the best location (jurisdiction) for prosecuting the accused. • Flaws in the criminalization of FT may restrict possibilities for extradition. • Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness. <p>Other grounds for the rating are presented in section 6.3.</p>

6.5 Other Forms of International Cooperation (R.40 & SR.V)

6.5.1 Description and Analysis

566. Belarusian legislation does not contain requirements for international cooperation on AML/CFT between the relevant competent authorities (except the FIU). In the majority of cases state agencies cooperate on the basis of common powers in this sphere.

567. Belarus is a party to the Agreement of the Member States of the Commonwealth of Independent States on Countering Money Laundering and Financing of Terrorism. In this connection, one of the lines of international cooperation between law enforcement agencies is implementation of joint

measures as part of this Agreement as well as other regional agreements within the framework of the CIS on combating crime.

FMD

568. Under Article 13 of the AML/CFT Law, the FMD cooperates with competent authorities of foreign states in preventing money laundering and financing of terrorism at stages of data collection, preliminary investigation, court litigation, and fulfillment of court decisions. The FMD submits the relevant information to competent authorities for foreign states voluntarily or upon their request only if such disclosure does not harm the national security of Belarus and such information is not used without the prior consent of the financial monitoring agency. As part of these powers, the FIU of Belarus can submit information to foreign agencies either from its own databases or other databases to which the FMD has access.

569. The Department currently has bilateral relations with FIUs of six states. Additionally, a Memorandum of Mutual Understanding has been signed by the Belarusian State Control Committee and the People's Bank of China on matters of cooperation in exchanging ML/FT data. The competent agencies of the Parties are the Financial Monitoring Department of the Belarusian State Control Committee and the Chinese Center for Anti-Money Laundering Monitoring and Analysis.

Table: FMD international exchange statistics

Year	Inquiries of FMD	Replies of FIU	Inquiries of FIU	Replies of FMD	Messages of FMD	Messages of FIU
2005	41	43	21	23	11	-
2006	14	30	24	26	7	-
2007	54	59	24	29	9	5

Customs authorities

570. See section 2.7.

Law enforcement authorities

571. The legislative and regulatory basis of Belarus's international cooperation foresees operative and detective measures upon the request of competent authorities of foreign states as long as this does not contravene Belarusian legislation.

572. To strengthen cooperation and expand professional ties, the Financial Investigations Department is developing relations directly with fiscal (financial) investigation authorities and other law enforcement agencies of foreign states.

573. Law enforcement agencies actively cooperate via the channels of the Coordinating Council of Head of Fiscal (Financial) Investigation Authorities of CIS Member States, as well as along the lines of the Interpol.

Supervisory authorities

574. The National Bank of Belarus cooperates actively with its counterparties in matters of AML/CFT.

575. The evaluation experts became convinced that the NBRB and its counterparts are exchanging specific information about credit institutions that post a high ML/FT risk in the Eurasian region. Such cooperation has yielded concrete results and coordinated actions along the lines of central banks in some countries against the institutions in question. The NBRB has been also providing technical assistance in the form of AML/CFT training to some of its counterparties in the CIS.

576. There is no international AML/CFT cooperation along the lines of other supervisory authorities.

All agencies

577. The evaluation experts did not receive evidence to the effect that there are any significant obstacles or conditions preventing information sharing with international counterparties. Requests for information are not rejected on the grounds of their association with tax issues or any financial secrecy limitations. Information received from international counterparties is intended “for official use only” or is classified, so the appropriate protection measures are undertaken.

6.5.2 Recommendations and Comments

578. Belarus should step up its international cooperation in AML/CFT along the lines of its supervisory authorities (does not apply to the NBRB).

6.5.3 Compliance with Recommendation 40 and Special Recommendation V

	Rating	Summary of factors applicable to item 6.5 underlying the common rating
R.40	LC	<ul style="list-style-type: none"> Belarus does not have international cooperation in AML/CFT along the lines of its supervisory authorities (does not apply to the NBRB).
SR.V	PC	See other grounds for the rating in sections 6.3 and 6.4

7 OTHER ISSUES

7.1 Resources and statistics (R.30 and 32)

579. 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 primarily contains the boxes showing the rating and the factors underlying the rating.

	Rating	Summary of factors relevant to Recommendations 30 and 32 and underlying overall rating
R.30	PC	<ul style="list-style-type: none"> Insufficient funding to provide technical resources for the FMD

		<p>of the SCC;</p> <ul style="list-style-type: none"> • Insufficient staff at the FMD of the SCC; • Absence of specialized AML/CFT units in the customs authority; • The staff strength and structure of supervisory authorities has not been fully transformed for purposes of AML/CFT (does not apply to the NBRB); • Supervisory authorities did not receive training in supervision techniques in the sphere of AML/CFT (does not apply to the NBRB).
R.32	PC	<ul style="list-style-type: none"> • There is a lack of clear statistics on the amount of frozen, attached and seized property in relation to ML/FT/predicate crime cases; • Statistics on MLA relating to ML/FT have not been provided; • Inadequate extradition statistics have been provided; • Supervisory authorities (other than the NBRB) do not keep ML/FT statistics.

7.2 Other relevant AML/CFT measures or issues

580. There are no other relevant AML/CFT measures or issues.

7.3 General framework of the AML/CFT system (see also section 1.1)

581. There are no other issues relating to the general framework of the AML/CFT system.

8. TABLES

Table 1. Ratings of Compliance with FATF Recommendations

• The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (NA). These ratings are based only on the essential criteria, and defined as follows:

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|----------------------------|--|
| Compliant | ➤ The Recommendation is fully observed with respect to all essential criteria. |
| Largely compliant | ➤ There are only minor shortcomings, with a large majority of the essential criteria being fully met. |
| Partially compliant | ➤ The country has taken some substantive action and complies with some of the essential criteria. |
| Non-compliant | ➤ There are major shortcomings, with a large majority of the essential criteria not being met. |
| Not applicable | ➤ A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country. |

Forty Recommendations	Rating	Summary of factors underlying rating
Legal systems		
1. ML offence	LC	<ul style="list-style-type: none"> Insider trading and market manipulation are not criminalized.
2. ML offence – mental element and corporate liability	LC	<p><i>Effectiveness:</i></p> <ul style="list-style-type: none"> Low effectiveness of application of Article 235 of the Criminal Code.
3. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> There is no norm that would envisage confiscation of a property equivalent; The law does not envisage confiscation of profit generated using illicit proceeds; Confiscation of proceeds from insider trading and market manipulation is not possible, since these acts are not criminalized.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	LC	<ul style="list-style-type: none"> There are ambiguities in the legislative regulation of the access by the Finance Ministry and the Communications Ministry to the information of supervised organizations. Ambiguities in legislative regulation of financial secrecy conditions may complicate international data exchange among legislative and supervisory authorities.

5. Customer due diligence	PC	<ul style="list-style-type: none"> • There is no clear requirement to identify customers upon the establishment of business relationships. • The CDD threshold in place (USD 300,000 for transactions by legal persons) is significantly higher than the one specified in the FATF Recommendations. • It is possible to maintain unverified and fictitious accounts and carry out e-cash transactions. • There is no requirement in place to identify customers carrying out certain types of operations below a certain threshold (currency exchange and banking operations without the opening of an account, including wire transfers inside Belarus). • The presence of exceptions in the mandatory reporting requirements means that identification of clients suspected of ML/FT is not performed in all cases. • There is no requirement in place for financial institutions, other than credit institutions, to examine the ownership/governance structure of the customer – legal person. • The requirement to request information on the purpose and expected nature of a business relationship from the customer is in place only for the banking sector. • For financial institutions, other than credit institutions, there is no requirement to perform on-going monitoring of customer transactions for compliance with the customer's profile. • There is no requirement to request information about the source of the customer's funds, when necessary. • There are no requirements in place to carry out enhanced CDD measures with regard to high-risk customers, business relationships and transactions (except for the banking sector). • There are no procedures to mitigate risks arising from transactions, where immediate identification/verification is not possible. • There is no requirement for financial institutions to refuse to establish or continue a business relationship or perform a transaction when it is impossible to perform CDD. • The requirements to identify existing customers are in place only for the banking sector and securities market operators. <p>Effectiveness:</p> <ul style="list-style-type: none"> • The absence of effective supervision over the financial leasing sector makes it impossible to evaluate the degree of implementation of Belarusian AML/CFT legislation. • Low compliance with CDD requirements in non-bank sectors.
6. Politically exposed persons	PC	<p>The requirements to apply additional CDD measures with regard to PEPs are present only in banking regulations. These requirements apply only to conducting additional identification of PEPs and monitoring their transactions. Not all other requirements are in place as per Recommendation 6 (establishment of sources of funds, establishment of business relationships with the approval of senior management).</p>
7. Correspondent banking	PC	<ul style="list-style-type: none"> • Belarusian laws do not contain a direct requirement that the senior management of banks has to approve the establishment of correspondent relations. • There is no requirement to request Category A correspondent banks to provide information on AML/CFT measures undertaken by them and sanctions for violations of AML/CFT laws. • There is no requirement to request information on the quality of supervision in the country of the correspondent bank. • There is no requirement to examine and evaluate information received from correspondent banks about their AML/CFT measures.

		In the majority of cases banks are obliged to request only limited information on the nature of the correspondent bank's activities.
8. New technologies & non face-to-face business	PC	<ul style="list-style-type: none"> There are no requirements for non-bank financial institutions to manage ML/FT risks when using new non-face to face technologies and performing non-face to face transactions. It is possible to have unverified e-money accounts.
9. Third parties and introducers	n/a	This Recommendation is not applicable.
10. Record keeping	PC	<ul style="list-style-type: none"> The existing requirements for record-keeping do not set the appropriate time period of five years after the closing of the account; No requirements are in place for the components of the transactions subject to reconstruction; There are no requirements to store documents in a format enabling timely access to such documents by competent authorities. <p>Effectiveness</p> <ul style="list-style-type: none"> Differing, often contradictory requirements for document storage cause confusion among financial institutions and reduce effectiveness.
11. Unusual transactions	PC	<ul style="list-style-type: none"> Legislation does not contain requirements for financial institutions (other than banking institutions) to scrutinize and store the findings on unusual transactions in writing for 5 years and, if necessary, present them to competent authorities.
12. DNFBP – R.5, 6, 8-11	NC	<p>Recommendation 5:</p> <ul style="list-style-type: none"> Belarus does not have supervision or monitoring of accountants, which makes it impossible to evaluate the effectiveness of measures undertaken by them. AML/CFT legislation does not cover trust and organizations establishing and servicing legal persons. There is no clear requirement to identify customers upon the establishment of business relationships. The CDD threshold in place (USD 300,000 for transactions by legal persons) is significantly higher than the one established in the FATF Recommendations. The presence of exceptions in the mandatory reporting requirements means that identification of clients suspected of ML/FT is not performed in all cases. There are no requirements to examine the ownership/governance structure of a customer – legal person. There are no requirements regarding beneficial ownership. There is no requirement to obtain information from the customer on the purpose and expected nature of a business relationship. There is no requirement to carry out ongoing control of customer's transactions for compliance with the client's profile. There is no requirement to obtain information on the source of the customer's funds, when necessary. There are no requirements in place to carry out enhanced CDD measures with regard to high-risk customers, business relationships and transactions; There are no requirements that would regulate the time of identification and data verification. There is no requirement to refuse to establish or continue a business relationship or perform a transaction when it is impossible to perform CDD. There is no requirement to examine the issue of submitting an STR on a customer who provided false / unverifiable identification

		<p>information.</p> <ul style="list-style-type: none"> No requirements are in place to identify existing customers. <p>Recommendations 6, 8 and 11:</p> <ul style="list-style-type: none"> There are no legislative or other measures whatsoever. <p>Effectiveness</p> <ul style="list-style-type: none"> Extremely low effectiveness of implementation by all sectors. Effectiveness is absent in the sectors of casinos and precious metals and stones dealers.
13. Suspicious transaction reporting	PC	<ul style="list-style-type: none"> Flaws in the criminalization of ML and FT restrict STR obligations as regards ML and FT; Article 9 of the AML/CFT Law excludes a number of financial transactions subject to special control; Financial institutions do not pay due attention to sending STRs in connection with transactions exceeding the threshold value (does not apply to the banking sector).
14. Protection & no tipping-off	LC	<ul style="list-style-type: none"> The legislation is not clear on whether there is protection of managers and employees of financial institutions from criminal and administrative liability for reporting information to the FMD and an exemption from liability for disclosing facts of reposts being submitted to the FMD.
15. Internal controls, compliance & audit	PC	<ul style="list-style-type: none"> There is no obligation to appoint an officer responsible for AML/CFT issues at the management level; There is no legal obligation to grant the compliance officer timely access to all the required information of the financial institution; There is no requirement to conduct an independent audit of AML/CFT measures at financial institutions (does not apply to banks); Legislation does not contain a detailed requirement to conduct staff training in AML/CFT issues (does not apply to banks); There is no requirement for financial institutions (except certain positions at banks and professional operators of the securities market) to conduct background checks upon recruitment; <p>Effectiveness</p> <ul style="list-style-type: none"> The effectiveness of application of internal control measures in the non-bank sector is low.
16. DNFBP – R.13-15 & 21	PC	<ul style="list-style-type: none"> Belarus does not have supervision or monitoring of accountants, which makes it impossible to evaluate the effectiveness of measures undertaken by them. AML/CFT legislation does not cover trust and organizations establishing and servicing legal persons. <p><i>Recommendation 13</i></p> <ul style="list-style-type: none"> Some DNFBPs do not pay appropriate attention to submitting STRs regarding transactions in excess of the threshold value; Flaws of ML criminalization restrict STR obligations as regards ML; <p><i>Recommendation 14</i></p> <ul style="list-style-type: none"> The legislation is not clear on whether there is protection of managers and employees of financial institutions from criminal and administrative liability for reporting information to the FMD and an exemption from liability for disclosing facts of reposts being submitted to the FMD. <p><i>Recommendation 15</i></p> <ul style="list-style-type: none"> There is no obligation to appoint an officer responsible for AML/CFT issues at the management level; There is no obligation to grant the compliance officer timely access to all the required information of the financial institution;

		<ul style="list-style-type: none"> • There is no requirement to conduct an independent audit of AML/CFT measures; • Legislation does not contain a detailed requirement to conduct staff training in AML/CFT issues; • There is no requirement to conduct background checks of employees upon recruitment; <p><i>Effectiveness</i></p> <ul style="list-style-type: none"> • There are standard rules of internal control, but the effectiveness of their implementation is low. <p><i>Recommendation 21</i></p> <ul style="list-style-type: none"> • The existing system has not been used since the termination of the FATF NCCT list, despite the existence of countries, which do not implement the FATF standards. • Belarus currently has no requirements for DNFBPs to pay special attention to transactions with countries that do not comply with the FATF Recommendations. • There are no requirements for DNFBPs to scrutinize transactions with such countries and store the findings of such scrutiny for 5 years. • Belarus is unable to apply countermeasures against such states.
17. Sanctions	PC	<ul style="list-style-type: none"> • The possibility to apply a broad range of sanctions against all types of financial institutions (currently there is a system of sanctions against the banking sector only) has not been established; • The NBRB and the Communication Ministry are unable to apply financial sanctions against directors and senior managers. • The Finance Ministry is unable to impose specialized AML/CFT sanctions. The practice of applying sanctions for AML/CFT violations on the basis of powers that are not core to AML/CFT is nonexistent. • Article 23.20 is applied only against officers of financial institutions. • Article 23.20 covers a narrow list of AML/CFT violations (only violations of the procedure for registration and reporting to the FIU) • Article 23.20 establishes low fines.
18. Shell banks	PC	<ul style="list-style-type: none"> • There is no ban on establishing and/or maintaining correspondent relationships with shell banks; • There is no requirement for financial institutions to ascertain that correspondent financial institutions in other countries do not have correspondent relations with shell banks.
19. Other forms of reporting	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
20. Other NFBP & secure transaction techniques	C	<ul style="list-style-type: none"> • This Recommendation is fully observed.
21. Special attention for higher risk countries	PC	<ul style="list-style-type: none"> • The existing system has not been used since the termination of the FATF NCCT list, despite the existence of countries, which do not implement the FATF standards. • Belarus currently has no requirements for financial institutions to pay special attention to transactions with countries that do not comply with the FATF Recommendations. • There are no requirements for financial institutions to scrutinize transactions with such countries and store the findings of such scrutiny for 5 years. • Belarus is unable to apply countermeasures against such states.
22. Foreign branches & subsidiaries	NC	<ul style="list-style-type: none"> • Requirements of Recommendation R.22 are not implemented in legislation.
23. Regulation, supervision	PC	<ul style="list-style-type: none"> • An effective system for AML/CFT supervision, monitoring and

and monitoring		<p>sanctions functions only for the banking sector;</p> <ul style="list-style-type: none"> • Banking, insurance and securities sectors do not apply the Core Principles (including IOSCO and IAIS principles) for AML/CFT purposes; • There are no measures on securities and insurance market entry. • There is no special registration or AML/CFT monitoring with regard to the financial leasing sector.
24. DNFBP - regulation, supervision and monitoring	NC	<ul style="list-style-type: none"> • AML/CFT issues are not legally required as a condition in the licensing process for casinos. • The system in place for supervising and applying sanctions against casinos for noncompliance with AML/CFT measures, is not effective, which raised ML/FT risks in this sector; • There is no effective monitoring of compliance with AML/CFT measures by DNFBPs (with the exception of the Justice Ministry in some aspects); • There is no authorized agency or self-regulating organization to supervise accountants.
25. Guidelines & Feedback	PC	<ul style="list-style-type: none"> • There are no recommendations for financial institutions with descriptions of ML/FT techniques and methods (does not apply to banks); • Financial institutions receive insufficient information on the results of financial investigations carried out by the FIU. • Other grounds for the R.25 rating in sections 3.10 and 4.3 of this Report. • There are no recommendations for financial institutions on applying the relevant AML/CFT requirements (does not apply to banks). • There are no guidelines for DNFBPs, except certain information letters published by the Justice Ministry.
Institutional and other measures		
26. The FIU	LC	<ul style="list-style-type: none"> • The FMD does not publish periodical performance reports. <p><i>Effectiveness:</i></p> <ul style="list-style-type: none"> • A lack of resources decreases the effectiveness of FDM work..
27. Law enforcement authorities	LC	<ul style="list-style-type: none"> • No agency(ies) has (have) been put in charge of developing and implementing a system of law enforcement measures to combat ML/FT. <p><i>Effectiveness:</i></p> <ul style="list-style-type: none"> • Law enforcement agencies lack a systemic approach to investigating ML/FT, which results in low detection figures in statistics on such crimes. • Because of the absence of certain statistical data, it is impossible to evaluate the effectiveness of some law enforcement agencies' performance.
28. Powers of competent authorities	C	This Recommendation is fully observed.
29. Supervisors	PC	<ul style="list-style-type: none"> • Only the NBRB has the possibility to apply a broad range of sanctions against all types of financial institutions; • The Finance Ministry and the Communication Ministry are unable to impose specialized AML/CFT sanctions. The practice of applying sanctions for AML/CFT violations on the basis of powers that are not core to AML/CFT is nonexistent. • The NBRB cannot apply administrative sanctions against supervised entities. • The NBRB is unable to apply financial sanctions against directors and

		senior managers.
30. Resources, integrity and training	PC	<ul style="list-style-type: none"> • Insufficient funding to provide technical resources for the FMD of the SCC; • Insufficient staff at the FMD of the SCC; • Absence of specialized AML/CFT units in the customs authority; • The staff strength and structure of supervisory authorities has not been fully transformed for purposes of AML/CFT (does not apply to the NBRB); • Supervisory authorities did not receive training in supervision techniques in the sphere of AML/CFT (does not apply to the NBRB).
31. National co-operation	PC	<ul style="list-style-type: none"> • The AML/CFT Working group does not constitute a sufficient institutional platform for the elaboration of AML/CFT policy • The effectiveness of interaction of law enforcement agencies with the FMD (except the FIU) raises questions
32. Statistics	PC	<ul style="list-style-type: none"> • There is a lack of clear statistics on the amount of frozen, attached and seized property in relation to ML/FT/predicate crime cases; • Statistics on MLA relating to ML/FT have not been provided; • Inadequate extradition statistics have been provided; • Supervisory authorities (other than the NBRB) do not keep ML/FT statistics.
33. Legal persons – beneficial owners	C	<ul style="list-style-type: none"> • This Recommendation is fully met.
34. Legal arrangements – beneficial owners	n/a	<ul style="list-style-type: none"> • Not applicable
International Co-operation		
35. Conventions	LC	<ul style="list-style-type: none"> • Paragraph 1 (a) of Article 7 of the Palermo Convention has not been fully implemented as regards to establishing the record keeping requirement; • Certain aspects of Article 18: Paragraph 1 (b) as regards identification of beneficial owners and record keeping are not fully implemented
36. Mutual legal assistance (MLA)	LC	<ul style="list-style-type: none"> • The Criminal Procedural Code or other regulations do not stipulate mechanisms for determining the best location (jurisdiction) for prosecuting the accused. • Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness.
37. Dual criminality	C	
38. MLA on confiscation and freezing	PC	<ul style="list-style-type: none"> • Obviously, confiscation of property of equivalent value is not envisioned. • There are no specific mechanisms for coordinating actions with foreign states in attaching or seizing property; • Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness. • Flaws in the criminalization of ML and FT may restrict possible applications of confiscation. • Belarus did not consider the issue of sharing seized property with competent authorities of foreign states whose actions facilitated the confiscation of property.
39. Extradition	LC	<ul style="list-style-type: none"> • The Criminal Procedural Code or other regulations do not stipulate mechanisms for determining the best location (jurisdiction) for prosecuting the accused. • Flaws in the criminalization of ML and FT may restrict possibilities for extradition. • Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness.

40. Other forms of co-operation	LC	<ul style="list-style-type: none"> Belarus does not have international cooperation in AML/CFT along the lines of its supervisory authorities (does not apply to the NBRB).
Nine Special Recommendations		
SR.I Implement UN instruments	LC	<ul style="list-style-type: none"> In some respects the criminalization of TF falls short of the Convention for the Suppression of the Financing of Terrorism; Paragraph 1 (b) of Article 18 of the FT Convention as regards identification of beneficial owners and record keeping has not been fully implemented; UN Security Council Resolution 1452 is not implemented as regards access to funds needed for basic vital needs.
SR.II Criminalise TF	PC	<ul style="list-style-type: none"> The law does not criminalize indirect provision of money for purposes of terrorist financing; The law does not criminalize provision of funds for a terrorist organization or an individual terrorist, if such funds are not intended for a specific act of terrorism. The law does not criminalize the financing of theft of nuclear materials for terrorist purposes or the financing of illegal acts against fixed platforms on the continental shelf.
SR.III Freeze and confiscate terrorist assets	PC	<ul style="list-style-type: none"> Questions arise about the effectiveness of the freezing system, much of which is based on criminal procedural mechanisms. There are no specific mechanisms for reviewing and using information received from foreign states with regard to subjects who have their assets frozen. Detailed freezing instructions are in place only for credit institutions. Belarus has no procedures in place for reviewing requests to remove persons from the list. Nor are there mechanisms for unfreezing the funds of persons to whom the freezing mechanism was applied by accident. Belarus does not have mechanisms granting access to a portion of funds required for basic vital needs under the UN Security Council Resolution 1452. <p>Effectiveness Low awareness of freezing mechanisms in the financial sector and among DNFBPs indicates the low effectiveness of measures.</p>
SR.IV Suspicious transaction reporting	PC	<ul style="list-style-type: none"> Flaws of FT criminalization restrict STR obligations as regards FT; Article 9 of the AML/CFT Law excludes a number of financial transactions subject to special control; The definition of terrorist financing does not include provision of funds to terrorists and terrorist organizations for purposes unrelated to committing a terrorist act. Financial institutions are not obligated to submit STRs in connection with such facts.
SR.V International co-operation	PC	<ul style="list-style-type: none"> The Criminal Procedural Code or other regulations do not stipulate mechanisms for determining the best location (jurisdiction) for prosecuting the accused. Obviously, confiscation of property of equivalent value is not envisioned. There are no specific mechanisms for coordinating actions with foreign states in attaching or seizing property; Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness. Flaws in the criminalization of FT may restrict possible applications of confiscation.

		<ul style="list-style-type: none"> • Belarus did not consider the issue of sharing seized property with competent authorities of foreign states whose actions facilitated the confiscation of property. • The Criminal Procedural Code or other regulations do not stipulate mechanisms for determining the best location (jurisdiction) for prosecuting the accused. • Obviously, confiscation of property of equivalent value is not envisioned. • There are no specific mechanisms for coordinating actions with foreign states in attaching or seizing property; • Belarus did not present statistics on mutual legal assistance, which makes it impossible to evaluate the system's effectiveness. • Flaws in the criminalization of FT may restrict possible applications of confiscation. • Belarus did not consider the issue of sharing seized property with competent authorities of foreign states whose actions facilitated the confiscation of property. • See other grounds for the rating in sections 6.3 and 6.4
SR.VI AML requirements for money/value transfer services	LC	<ul style="list-style-type: none"> • All flaws pointed out with regard to AML/CFT measures in the banking and postal system apply to banks and Belpost within the context of money transfers.
SR.VII Wire transfer rules	PC	<ul style="list-style-type: none"> • There are no requirements to identify the originators of wire transfers inside Belarus below the threshold of 30 000 USD; • The National Bank requirements for accompanying transfers with originator information do not cover the postal transfers; • There is no requirement for intermediary financial institutions to pass originator information through the entire transfer chain; • There are no risk-based procedures on transfers, which are not accompanied by full and accurate originator information; FIs are not required to consider sending an STR on such transfers and to consider terminating the relationship with originator-FIs. • There are no monitoring and sanctions mechanisms for the violation of SR.VII requirements.
SR.VIII Non-profit organisations	PC	<ul style="list-style-type: none"> • NGO legislation is not being revised; • No periodic analysis of the NGO sector is conducted to identify FT risks; • There are no programs for interaction with the NGO sector on FT prevention; • General information was presented on supervision, monitoring, and application of sanctions against the NGO sector or its substantial part; • No special mechanisms are in place for exchanging information on NGOs at the national and international levels in case FT suspicions arise.
SR.IX Cash Couriers	NC	<ul style="list-style-type: none"> • The current system of customs control is not used for AML/CFT purposes. • It is not clear beyond doubt whether it is possible to stop cross-border movement of funds if ML/FT is suspected. • It is not clear if the declaration requirements apply to all types of bearer negotiable instruments. • Customs authorities do not store information on declarations that raised ML/FT suspicions. • Customs authorities are unable to apply sanctions against persons moving funds associated with ML/FT across the border. • Belarus is unable to apply the relevant provisions of Recommendation 3 and Special Recommendation III with

		regard to funds associated with ML/FT and moved across the border.
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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	
Criminalisation of ML (R.1 & 2)	<p>Belarus should criminalize insider trading and market manipulation. Belarus is recommended to specify the wording of Article 235 in order to make it more specific and bring into line with the Vienna and Palermo Conventions.</p> <p>Belarus should specify the definition of administrative and civil liability for ML offenses;</p> <p>It is also recommended to keep credible statistics on money laundering cases and take steps to raise the effectiveness of application of Article 235, including through conducting trainings for prosecutors and judges.</p>
Criminalisation of TF (SR.II)	<p>Belarus should criminalize indirect provision of money for purposes of terrorist financing, the provision of funds for a terrorist organization or an individual terrorist, if such funds are not intended for a specific act of terrorism.</p> <p>Belarus should also criminalize the financing of theft of nuclear materials for terrorist purposes or the financing of illegal acts against fixed platforms on the continental shelf.</p>
Confiscation, freezing and seizing of proceeds of crime (R.3)	<p>Belarus should introduce a criminal procedural norm envisioning confiscation of property equivalent. Profit generated using illicit proceeds should be subject to confiscation.</p>
Freezing of funds used for TF (SR.III)	<p>Belarus should develop a full set of administrative measures relating to freezing. It is advisable to introduce specific mechanisms for reviewing and using information received from foreign states with regard to subjects who have their assets frozen. Detailed freezing mechanisms for non-credit institutions should be developed. Belarus should introduce procedures for reviewing requests to remove a person from the lists as well as mechanisms for unfreezing the funds of persons to whom freezing mechanisms were applied accidentally.</p> <p>It is necessary to work out and implement mechanisms for granting access to the portion of frozen funds required for basic vital needs under the UN Security Council Resolution 1452.</p>
The Financial Intelligence Unit and its functions (R.26)	<p>Raising the effectiveness of the FMD requires increasing its staff numbers.</p> <p>To assess the effectiveness of AML/CFT efforts and develop applications to enhance them, the question of setting up a research, advisory, or expert board at the Department should be examined.</p> <p>It is recommended to introduce normative acts regulating the procedure of transferring information from the FMD to the law enforcement.</p>
Law enforcement, prosecution and other competent authorities (R.27 & 28)	<p>To identify the agency(ies) that would be responsible for developing and implementing a system of law enforcement measures to combat money laundering and terrorist financing as well as coordinate the activity of other law enforcement agencies along these lines.</p> <p>It is necessary to establish, through resolutions of law enforcement agencies / resolutions of coordinating meetings, the investigation of</p>

	<p>ML/FT crimes as one of the priorities for the law enforcement.</p> <p>To form special ML/FT crime investigatory units at the GPO, FID, and SSC.</p> <p>To provide AML/CFT training for law enforcement agency investigators, judges and prosecutors.</p> <p>The law enforcement agencies should introduce a system for returning feedback to the FMD on the practice of using FMD materials in investigations.</p>
3. Preventive Measures – Financial Institutions	
Risk of ML or TF	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	<p>The basic definition of transactions subject to special control, which is provided in the Belarusian AML/CFT Law, essentially refers to the FIU activities (since the FIU inspects only such transactions). However, it also applies to financial institutions that are obligated to report such transactions to the FMD. As a result, exclusions from the list of transactions subject to special control under Article 9 of the AML/CFT Law in fact prohibit the FIU from identifying customers that perform certain transaction or from taking any action with regard to such transactions.</p> <p>Notably, the NBRB also carries out transactions that require CDD measures, namely sales, including retail sales, and purchase of certified diamonds. It should be kept in mind that certified diamonds are an instrument with properties similar to those of bearer securities – high value combined with insignificant physical weight and volume, ability to change hands without the transaction being documented. Paragraph 75 of National Bank Resolution No.72 does not require recording passport details of diamond buyers except where this is explicitly required by law.</p>
Third parties and introduced business (R.9)	This Recommendation is not applicable.
Financial institution secrecy or confidentiality (R.4)	<p>It is necessary to clarify the wording concerning the access of the Finance Ministry and Communications Ministry of Belarus to the information of supervised organizations.</p> <p>The bodies of the State Control Committee (not only the FMD) should receive banking secrecy information on natural persons.</p>
Record keeping and wire transfer rules (R.10 & SR.VII)	<p>Belarus should abolish the requirements for special forms storage as unnecessary, since under Article 5 of the AML/CFT Law financial institutions must forward first counterparts of special forms to the FMD, meaning that there is no need for financial institutions to store second counterparts of SFs.</p> <p>Belarus should establish requirements for the reconstruction of transactions so that such data could provide, if necessary, evidence for prosecution of criminal activity.</p> <p>Belarus should introduce unified requirements for storing all documents of financial institutions (identification data, deal information, business correspondence, etc.) for all deals of financial institutions without exception. Belarus should establish the period for keeping records as 5 years from the termination of the business relationship with the customer.</p> <p>Belarus should establish the requirement to store documents in a format enabling timely access to such documents by competent authorities.</p> <p>Belarus should implement SR. VII requirements for FIs-intermediaries, establish risk-based procedures for transactions that are not accompanied by originator information. Belarus also needs to implement a full-fledged supervisory and sanctions regime in order</p>

	to comply with SR. VII requirements. Belarus should establish SR.VII requirements for postal transfers.
Monitoring of transactions and relationships (R.11 & 21)	<p><u>Recommendation 11</u> Competent authorities should develop detailed procedures for financial institutions in order to ensure highly effective compliance with R.11 requirements. Professional operators of the securities market, insurance firms, and postal service should record in writing the actual circumstances of complex, unusually large value transactions and unusual patterns of transactions, which have no apparent economic purpose; scrutinize the background of such transactions and store the findings of such scrutiny to be able to present them to competent authorities within 5 years' time.</p> <p><u>Recommendation 21</u> Belarus should activate its mechanisms which had been used for NCCT purposes with regard to countries that do not comply with the FATF Recommendations. Financial institutions should cooperate with competent authorities in scrutinizing the observance of the FATF Recommendations by other states. Belarusian legislation should include a norm obligating all financial institutions to scrutinize and store scrutiny findings on transactions with countries that do not comply with the FATF Recommendations to be able to present them, if necessary, to competent authorities.</p>
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	<p><u>Recommendation 13:</u> Belarus should criminalize insider trading and market manipulations as well as eliminate other flaws in terms of ML so they would not affect the scope of STR requirements.</p> <p><u>Recommendation 14:</u> Amendments should be made to Article 5 of the AML/CFT Law to protect managers of financial institutions from liability for disclosing information to the FMD. Employees and managers of legal persons should be prosecuted for disclosing facts of transactions subject to special control being reported to the FMD.</p> <p><u>Recommendation 19:</u> Belarus has undertaken all the measures required under Recommendation 19.</p> <p><u>Recommendation 25:</u> The FMD should conduct seminars on ML/FT typologies for supervisory agencies, which in turn should bring the required information to the attention of supervised institutions. The FMD should provide more information to the reporting institutions on the course and results of financial investigations conducted using their materials.</p> <p><u>Special Recommendation IV</u> Belarus should undertake legislative measures in order to obligate financial institutions to report facts of terrorist financing even the funds are not intended for finance a specific terrorist act.</p>
Cross-border declaration or disclosure (SR.IX)	<p>Belarus should implement legislative, institutional and other measures in order to apply existing mechanisms of customs control and declaration for AML/CFT purposes. Customs authorities should be able to suspend cross-border movement of funds if ML/FT suspicions arise, store information on such incidents, cooperate on AML/CFT at the international level, and use sanctions against individuals moving funds associated with ML/FT across the border. Belarus should apply declaration requirements to all types of transferable</p>

	<p>bearer instruments that are set out in the FATF Recommendations. Belarus has to create legislative and institutional mechanisms to enable the application of R.3 and SR.III requirements with regard to cross-border movement of funds.</p>
Internal controls, compliance, audit and foreign branches (R.15 & 22)	<p>Recommendation 15: Belarus should develop standard rules for the insurance sector jointly with the Finance Ministry and the FMD, taking into account the specific of the insurance business. A requirement obligating financial institutions to adopt background check procedures upon the recruitment of all employees should be introduced into legislation (does not apply to banking institutions and professional operators of the securities market). Belarus should adopt legislation establishing requirements for the appointment of a special officer at the management level responsible for implementing internal control. Belarus should establish the requirement for all financial institutions to create an independent audit service (does not apply to banking institutions). Belarus should establish more detailed internal control rules for all financial institutions by adopting relevant legislation and regulations (does not apply to banking institutions). Compliance officers should be granted timely access to identification data of customers and other CDD information. Belarus should establish requirements for staff training in AML/CFT for all financial institutions. Belarus should establish requirements for financial institutions to inform their employees about internal procedures and AML/CFT policy.</p> <p>Recommendation 22 Belarus should establish requirements for financial institutions to control AML/CFT compliance of their foreign branches and subsidiaries in accordance with the requirements of the host country. Belarus should establish requirements for financial institutions to control AML/CFT compliance of their foreign branches and subsidiaries in countries that do not or insufficiently apply the FATF Recommendations. Belarus should establish the requirement for foreign branches and subsidiaries of financial institutions to observe higher AML/CFT standards as far as this is possible under local laws and regulations in countries with minimal AML/CFT requirements. Belarus should establish a requirement for financial institutions to report to the regulator on the foreign branches' and subsidiaries' inability to comply with AML/CFT measures because of the requirements of the host country.</p>
Shell banks (R.18)	<p>Belarus should introduce an explicit ban on establishing and operating shell banks in the country. Belarusian is recommended to introduce a ban on establishing and/or maintaining correspondent relationships with shell banks. Belarus should establish a requirement for financial institutions to ascertain that correspondent financial institutions in other countries do not permit shell banks to use their accounts.</p>
The supervisory and oversight system - competent authorities and SROs: role, functions, duties and powers (including sanctions) (R. 23, 30, 29, 17 & 25).	<p><u>Recommendation 17:</u> Belarus should ensure appropriate application of Article 23.20 of the Code on Administrative Violations not only to employees of financial institutions, but to legal persons themselves. Belarus should foresee more significant financial sanctions under Article 23.20. Under the Code on Administrative Violations, other sanctions should be envisioned for noncompliance with AML/CFT requirements (all the way to the liquidation of an institution). The types of sanctions for noncompliance</p>

	<p>with AML/CFT measures should be varied and applied across all financial sectors. Sanctions should be applied not only for violating the procedure for registering and notifying the FIU, but should also encompass violations of all AML/CFT requirements (identification, record keeping, etc.).</p> <p><u>Recommendation 23:</u> Belarus should ensure appropriate application of the Core Principles for AML/CFT purposes by financial institutions.</p> <p>The Finance Ministry should develop the needed AML/CFT regulations and carry out monitoring of the insurance sector and the securities sector in practice. The Finance Ministry should also ensure application of the Core Principles for AML/CFT purposes by financial institutions.</p> <p>The Communication Ministry should develop the needed AML/CFT regulations and carry out monitoring of Belpost in practice.</p> <p>Belarus should organize full-fledged supervision of the financial leasing sector.</p> <p><u>Recommendation 25</u> Supervisory authorities should issue special guidelines for the private sector, which would facilitate a more effective performance of obligations by financial institutions. Such guidelines should take into account the specifics of the activity of supervised entities.</p> <p><u>Recommendation 29:</u> Belarus should ensure application by the NBRB of administrative sanctions against supervised entities for noncompliance with AML/CFT legislation.</p> <p>The Finance Ministry should ensure its existing supervision and sanctioning provisions are applied with regard to AML/CFT requirements.</p> <p>Effective supervision meeting the requirements of Recommendation 29 should be in place for persons and institutions providing money or value transfer services.</p> <p>However, as the evaluation experts were told, information on violations of AML/CFT requirements is forwarded by supervisory authorities to the SCC so it can apply the relevant sanctions.</p>
Money or value transfer services (SR.VI)	It is necessary to correct all flaws in the AML/CFT measures in the banking and postal system, which also apply within the context of bank and postal money transfers.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	Belarus should take urgent steps to implement all norms of Recommendations 5-8, 10 and 11 with regard to DNFBPs in order to correct the exposed flaws.
Suspicious transaction reporting (R.16)	Belarus should eliminate all flaws in the implementation of Recommendations 13-15 and 21 with regard to all DNFBPs.
Regulation, supervision and monitoring (R. 24-25)	<p><u>Recommendation 24:</u> Belarus should adopt measures to ensure effective supervision of AML/CFT compliance by casinos, including additional measures to obstruct criminals from managing/owning a casino, as well as foresee denial on the grounds of poor reputation and outstanding conviction. Belarus should revise the casino licensing procedure by incorporating AML/CFT issues.</p> <p>Belarus should carry out effective monitoring of precious metals and stones dealers as well as other DNFBPs for compliance with AML/CFT measures. Belarus should create or appoint an agency or a self-regulating organization authorized to carry out supervision</p>

	<p>and monitoring of accounting for compliance with AML/CFT requirements. If this function is imposed on the FMD, the FMD should get the needed supervisory powers and mechanisms of their implementation, including an appropriate supervisory staff.</p> <p><u>Recommendation 25:</u> Belarus does not publish guidelines meant for DNFBPs, except certain information letters of the Justice Ministry. Such guidelines are needed to assist DNFBPs in complying with AML/CFT norms. One must bear in mind the fact that DNFBPs are less prepared for AML/CFT measures than financial institutions, which raises the risk of ML/FT in this sector. In this connection, special attention should be focused on clarifications for DNFBPs.</p>
Other non-financial businesses and professions (R.20)	The Belarusian Government is recommended to continue the ongoing measures to reduce the amount of cash in circulation.
5. Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	Belarus should continue to take additional measures against misuse of legal persons for ML.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	Not applicable
Non-profit organisations (SR.VIII)	Belarus should undertake the remaining measures needed to comply with Special Recommendation VIII in the nearest future.
6. National and International Co-operation	
National co-operation and co-ordination (R.31)	<p>The creation of a coordinating agency would make it possible to coordinate the activities of law enforcement and supervisory authorities in working out a single AML/CFT policy.</p> <p>The signing of bilateral agreements on mutual cooperation would enable fast resolution of issues arising as part of specific investigations.</p>
The Conventions and UN Special Resolutions (R.35 & SR.I)	<p>Belarus should implement all the requirements of the UN Conventions as regards criminalization of ML and FT as well as other requirements to correct the exposed flaws.</p> <p>Belarus is also recommended to join the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (Warsaw Convention).</p>
Mutual Legal Assistance (R. 36-38, SR.V)	<p>Even though Belarus has a sufficiently regulated procedure for providing MLA, it contains certain gaps that need to be filled. Specifically, the Criminal Procedural Code or other legislation should foresee a mechanism for determining the best location (jurisdiction) for prosecuting the accused.</p> <p>Belarus should introduce a norm on the confiscation of property of equivalent value, develop and apply a mechanism of coordinating actions with foreign states in attaching or confiscating property and subsequent splitting of property if it had been confiscated with the assistance of competent authorities in a foreign state.</p>
Extradition (R.37 & 39, & SR.V)	Belarus should implement mechanisms for determining the best location (jurisdiction) for prosecuting the accused, as well as correct the deficiencies in the criminalization of ML/TF so that they do not impede MLA or extradition.
Other Forms of Co-operation (R.40, & SR.V)	Belarus should step up its international cooperation in AML/CFT along the lines of its supervisory authorities (does not apply to the NBRB).

7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	See recommendations for resources and statistics in boxes 1-6 of the Table.

Table 3. Authorities' Response to the Evaluation (if necessary)

Relevant sections and paragraphs	Country comments
Overall Report	

ANNEXES

ANNEX 1: List of abbreviations⁹.

AML	Anti-money laundering
CDD	Customer due diligence
CFT	Combating the financing of terrorism
CIS	Commonwealth of Independent States
CSTO	Collective Security Treaty Organization
DNFBP	Designated non-financial businesses and professions
EAG	Eurasian group on combating money laundering and financing of terrorism
EurAsEC	Eurasian Economic Community
FATF	Financial Action Task Force
FID	Financial Investigations Department
FIU	Financial intelligence unit
FMD	Financial Monitoring Department
GDP	Gross Domestic Product
GPO	General Prosecutor's Office
ID	Identification documents
IMF	International Monetary Fund
KGB	State Security Committee
MER	Mutual evaluation report
MFA	Ministry of Foreign Affairs
MIA	Ministry of Internal Affairs
ML	Money laundering
MLA	Mutual legal assistance
MOF	Ministry of Finance
MOJ	Ministry of Justice
MVT	Money or value transfer
NBRB	National Bank of the Republic of Belarus
NPO	Non-profit organization
OECD	Organization for Economic Cooperation and Development
OKPO	National classifier code for companies and enterprises
OSCE	Organization for Security and Cooperation in Europe
PEP	Politically exposed person
R.	Recommendation
RB	Republic of Belarus
SCC	State Control Committee
SCO	Shanghai Cooperation Organization
SF	Special form

⁹ Some abbreviations that are solely used in the Russian version of the MER and are not listed in the English version.

SR	Special Recommendation
SRO	Self-regulatory organization
STR	Suspicious transaction report
TCSPs	Trust and company service providers
TF/FT	Terrorism financing/financing of terrorism
TIN	Taxpayer identification number
UNDP	United Nations Development Program
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council
UNSCR	United Nations Security Council Resolution
VAT	Value added tax
WB	World Bank

ANNEX 2: Details of all bodies met on the on-site mission – Ministries, other government authorities or bodies, private sector representatives and others

I. Ministries and other government authorities

- Ministry of Finance
- Ministry of Justice
- Ministry of Foreign Affairs
- State Control Committee
- Financial Monitoring Department
- Supreme Court

II. Investigation and law enforcement bodies

- State Customs Committee
- Financial Investigations Department
- Ministry of Internal Affairs
- State Security Committee
- General Prosecutor's Office

III. Financial Sector bodies

- National Bank
- Financial Markets Supervisory and Regulatory Service with the Ministry of Finance
- Insurance Supervisory Service with the Ministry of Finance
- Division on Precious Metals with the Ministry of Finance
- Belarus Postal Service

IV. Other government bodies

- Governmental Agency on Registration of Real Estate Property Rights

V. Private sector representatives and associations

- Belarus Banking Association
- Representatives of private banks
- Professional participants of the securities market
- Belarus Trade Exchange
- Casino representatives
- Dealers in precious metals and stones
- Pawnshops
- Currency exchange bureaus and offices
- Real estate agents
- Lotteries

ANNEX 3: Copies of key laws, regulations and other measures

**LAW
of the Republic of Belarus**

On Making Alterations and Amendments to Law of the Republic of Belarus ‘On Measures to Prevent Legalisation of Illegally Acquired Proceeds’

Adopted by the House of Representatives
Approved by the Council of the Republic

16 November 2005
24 November 2005

Article 1. The following alterations and amendments shall be made to Law of the Republic of Belarus of 19 July 2000 ‘**On Measures to Prevent Legalisation of Illegally Acquired Proceeds**’ (National Register of Legislative Acts of the Republic of Belarus, 2000, No. 75, 2/201; 2002, No. 87, 2/883; 2003, No. 8, 2/932, No. 74, 2/958), and the Law shall be redrafted in the following:

**‘LAW
of the Republic of Belarus**

**‘On Measures to Prevent Legalisation of Illegally Acquired Proceeds
and Financing of Terrorist Activity**

This Law establishes legal and organisational bases to take measures to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity for the purpose to protect the rights and legitimate interests of the citizens of the Republic of Belarus, society and the State.

Section 1. General Provisions

Article 1. Basic Terms and Their Definitions Used in This Law

Internal control – a set of measures taken by persons carrying out financial transactions, to prevent and detect financial transactions relating to legalisation of illegally acquired proceeds and the financing of terrorist activity.

Illegally acquired proceeds – assets acquired as a result of violation of civil, criminal, administrative and other legislation of the Republic of Belarus.

Legalisation of illegally acquired proceeds – making ownership, use and/or disposition of illegally acquired proceeds look lawful to conceal or disguise their source, location, placement, movement or their actual ownership, including the rights to dispose of these proceeds.

Persons carrying out financial transactions:

banks and non-bank finance and credit institutions;
professional participants of the securities market;
persons involved in stock exchange and depository activities;
dealers in precious metals and dealers in precious stones;
pawn-shops, buying-up offices;
insurance and reinsurance companies, mutual insurance societies, insurance brokers;
organisers of lotteries,
notaries;

organisations providing real estate services and involved in transactions concerning the buying and selling of real estate for their client;

organisations, individual entrepreneurs providing legal and / or accounting services, lawyers carrying out financial transactions on behalf or by order of their client concerning the buying and selling of real estate; managing of client money, securities or other assets; management of bank and / or securities accounts; as well as creation or participation in management of legal persons or their separate subdivisions; buying and selling of a business entity as a property system;

post offices;

casinos, bookmakers, totalisators, and other gambling establishments equipped with slot-machines, other devices for conducting games based on chance;

institutions providing state registration of real estate, titles to it and transactions with it;

institutions carrying out leasing activities;

other organisations, their separate subdivisions and individual entrepreneurs providing services to receive, alienate, acquire, pay out, deliver, transport, transfer, exchange and / or keep funds, as well as persons obliged to certify or register civil law deals of persons performing financial transactions.

Persons performing financial transactions – organisations, individual entrepreneurs and natural persons performing deals with assets in their own name and in their own interest.

Non-residents:

natural persons – foreign citizens and stateless persons permanently residing outside the Republic of Belarus;

organisations located outside the Republic of Belarus established in accordance with the legislation of foreign states.

Special control – a set of measures taken by the Financial Monitoring Authority to supervise financial transactions for the purpose to prevent, detect and suppress legalisation of illegally acquired proceeds and the financing of terrorist activity.

Residents:

natural persons – citizens of the Republic of Belarus as well as foreign citizens and stateless persons possessing a residence permit (its substituting document) issued by competent State Bodies of the Republic of Belarus;

organisations located in the Republic of Belarus and established in accordance with the legislation of the Republic of Belarus, their affiliates and representations, as well as individual entrepreneurs who are citizens of the Republic of Belarus and registered in accordance with the legislation of the Republic of Belarus;

Belarus-located affiliates and representations of organisations located outside the Republic of Belarus and established in accordance with the legislation of foreign states.

Assets – money, securities, other property, including property rights and sole rights on intellectual activity results.

Financial transaction amount – the amount of the monetary funds or of the money equivalent of non-monetary assets used in a financial transaction, including the amount agreed by persons performing a financial transaction aimed at transfer of titles to assets.

Financial transaction – a deal with assets regardless of the form and method of its implementation.

Article 2. Scope of This Law

This Law regulates relations between persons performing and persons carrying out financial transactions within the Republic of Belarus, the activity of the Financial Monitoring Authority and

State Bodies supervising the activity of persons carrying out financial transactions with regard to their compliance with the legislation to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity.

Article 3. Legal Activity Background to Prevent Legalisation of Illegally Acquired Proceeds and Financing of Terrorist Activity

The Constitution of the Republic of Belarus, this Law, other acts of legislation, as well as international treaties, make up the legal activity background to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity.

Where rules set forth in this Law differ from those contained in an international treaty, the rules of the international treaty shall apply.

Section 2. Prevention of Legalisation of Illegally Acquired Proceeds and Financing of Terrorist Activity

Article 4. Measures to Prevent Legalisation of Illegally Acquired Proceeds and Financing of Terrorist Activity

Measures to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity are as follows:

- internal control;
- special control;
- prohibition to inform persons performing financial transactions, about measures taken to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;
- other measures taken in compliance with acts of legislation.

Article 5. Obligations and Rights of Persons Carrying Out Financial Transactions

Persons carrying out financial transactions shall:

- identify persons performing financial transactions, where it is envisaged by the legislation;
- register special control financial transactions in a special form and deliver its first copy to the Financial Monitoring Authority not later than the workday following the day of the completion of the reported transaction; in case assets are received as a result of international settlements – not later than the workday following the day of the receipt of confirming statements; and in case of a suspension of a financial transaction – on the day of its suspension;
- suspend a financial transaction, where at least one of its parties is a person participating in terrorist activity, or where a person performing the financial transaction is controlled by persons participating in terrorist activity. The money received is to be entered to the recipient's account, whereupon clearing transactions performed via this account shall be suspended to the amount of the money received. A suspended financial transaction shall be resumed based on a relevant notification of the Financial Monitoring Authority presented either in writing or in a form of an electronic document;
- provide the Financial Monitoring Authority, according to its demand, with the information necessary to fulfill its functions;
- keep second copies of special forms and documents relating to carrying out and / or performing special control financial transactions, during not less than 5 years after their completion;
- work out and comply with standards of internal control, appoint officials responsible for development of such standards and their implementation, as well as take other internal organisational measures to exercise internal control.

Standards of internal control are worked out by persons carrying out financial transactions subject to general requirements set forth by the Council of Ministers of the Republic of Belarus. Standards of internal control shall include the order to fix special control financial transactions in a documentary form, the order to store and maintain confidentiality of information, requirements for qualification and training of proper officials, as well as criteria to detect suspicious financial transactions and criteria of their suspiciousness that shall take account of the particular character of the activities of a person carrying out financial transactions.

Persons carrying out financial transactions are within their right not to conduct financial transactions (excluding receipt to the receiver's account of the money arrived) subject to non-submission by persons performing financial transactions of the necessary documents to register a special control financial transaction.

A suspension of a financial transaction, according to paragraph 4 of part 1 of this Article, does not constitute a basis for liability measures to be imposed on a person carrying out financial transactions for losses or moral harm resulted from such actions.

Persons carrying out financial transactions shall not disclose information on submission of data to the Financial Monitoring Authority, except as otherwise provided by the legislation.

Dissemination by persons carrying out financial transactions of information on special control financial transactions to the Financial Monitoring Authority, as envisaged by this Law, shall not constitute a breach of official, bank or other secrecy protected by the law and not entail responsibility for losses or moral harm caused as a result of such action.

Article 6. Special Control Financial Transactions

Financial transactions are subject to special control, irrespective of their completion, where at least one of the following aspects is present:

- if a person carrying out a financial transaction got suspicious that the financial transaction is being carried out for the purpose of legalisation of illegally acquired proceeds or the financing of terrorist activity, including a financial transaction which does not correspond to the business purposes stated in the constituent documents of the person performing the financial transaction; a transaction is performed repeatedly to avoid registration in a special form;

- in case a person performing a financial transaction is known as a terrorist activity participant, or a person performing a financial transaction is controlled by persons participating in terrorist activity. The order to determine the list of such persons and the order to bring it to the attention of persons carrying out financial transactions is established by the Council of Ministers of the Republic of Belarus;

- in case a person performing a financial transaction is registered, domiciling or dwelling (staying) in a state (territory), which does not participate in international cooperation to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity, or is known to have performed transactions via an account opened with a bank, non-bank finance and credit institution registered in the mentioned state (territory). The order to determine the list of such states (territories) and the order to publish it are fixed by the Council of Ministers of the Republic of Belarus;

- in case a financial transaction amount equals to or exceeds 2,000 basic units for physical persons or 20,000 basic units for organisations and individual entrepreneurs and falls into one of the following categories of financial transactions, viz., a financial transaction carried out with cash; a financial transaction carried out via customers' bank accounts and with clients' deposits; a financial transaction concerning international settlements and remittances (postal, telegraphic, electronic money orders); a financial transaction with movable and immovable property; a financial transaction with securities; a financial transaction relating to loans and credits combined with international transfers; a financial transaction with the transfer of debt and the cession of a requirement.

The list of other special control financial transactions is determined by President of the Republic of Belarus.

Article 7. Identification of Persons Performing Financial Transactions

Persons carrying out special control financial transactions shall identify persons performing financial transactions.

To identify physical persons performing financial transactions, persons carrying out financial transactions shall establish and fix the following data based on an identifying document:

- the surname, name, patronymic;
- the nationality;
- the date and place of birth;
- the place of residence (registration);
- details of the identifying document.

The payer account number (if any) is fixed based on the document certifying the registration at a tax body.

To identify individual entrepreneurs performing financial transactions, persons carrying out financial transactions shall establish and fix the following data, in addition to those envisaged in part 2 of this Article, based on an identification document, registration and other documents:

- the registration number and the individual entrepreneur's registration date, the registering body's name;
- the payer account number.

To identify organisations performing financial transactions, persons carrying out financial transactions shall establish and fix the following data, based on constituent, registration and other documents:

- the name;
- the registration number and the organisation's registration date, the registering body's name (if any);
- the location (legal address);
- the payer account number (if any);
- the surname, name and patronymic of a head, a chief accountant of the organisation and / or other authorised officials empowered by law or by the head to act on behalf of the organisation.

To identify persons performing financial transactions, persons carrying out financial transactions shall establish and fix the name and location of the bank or non-bank finance and credit institution, via the accounts of which the financial transaction is carried out.

In case a person carrying out financial transactions suspects that persons performing financial transactions act not on their own behalf, or should it become apparent that persons performing financial transactions act not on their own behalf, the former shall take measures to identify persons performing financial transactions or persons on behalf of which act those performing financial transactions.

Article 8. Registration of Special Control Financial Transactions

Financial transactions that are subject to special control are registered in a special form by a person carrying out financial transactions.

A physical person should neither complete a special form nor submit it to the Financial Monitoring Authority.

In case a special control financial transaction is performed in the absence of a person carrying out financial transactions, a special form shall be completed and submitted to the Financial Monitoring Authority by the person performing the financial transaction.

In case a special control financial transaction is performed between a resident and a non-resident in the absence of a person carrying out financial transactions, a special form shall be completed and submitted to the Financial Monitoring Authority by a resident.

In case bank money is transferred from accounts opened with remitting banks or non-bank finance and credit institutions of the Republic of Belarus to accounts opened with receiving banks or non-bank finance and credit institutions of the Republic of Belarus, a special data form is completed and submitted to the Financial Monitoring Authority by remitting banks or non-bank finance and credit institutions.

With regard to transactions carried out with money paid as an insurance payment (insurance premium) or insurance compensation, insurance coverage, a special form is completed and submitted to the Financial Monitoring Authority by insurance and reinsurance companies, mutual insurance societies, insurance brokers.

For civil law transactions carried out with property, where such transactions and / or property rights are subject to registration, a special form is completed and submitted to the Financial Monitoring Authority by persons providing state registration of such property, titles to it and transactions with the property.

For transactions carried out with securities in a non-documentary form and with securities in a documentary form, with the titles to them to be fixed, according to the requirements of law, by specialised organisations (depositories) or legal persons that issued them (issuers), a special form is completed and submitted to the Financial Monitoring Authority by depositories or issuers, respectively; for transactions carried out with securities in a documentary form, where the rights in such securities are transferred between residents without fixing them by the third parties, – by the person transferring titles to these securities.

For transactions relating to the transfer of debt and the cession of requirement performed between residents, a special form is completed and submitted to the Financial Monitoring Authority by the person transferring the debt or performing the cession of requirement.

The template of a special form, the order of its completion, submission, registration and filing are approved by the Council of Ministers of the Republic of Belarus.

Article 9. Financial Transactions not Subject to Special Control

The following financial transactions are not subject to special control:

- financial transactions carried out with Union State's budgetary funds;
- financial transactions carried out with the money of the Republican and local budgets, of the state special purpose budget and off-budget funds;
- financial transactions carried out by diplomatic and other official representations in the Republic of Belarus;
- obtaining credits granted under the guarantee of the Government of the Republic of Belarus, combined with an international money transfer;

withdrawal of cash money to pay wages and make other payments, included into the wage fund under the law, as well as transfer for the mentioned payments of monetary funds to physical persons' bank accounts / placing them on deposits;

financial transactions carried out via correspondent and other accounts opened by the National Bank of the Republic of Belarus with other banks or by other banks and by the Open Joint-Stock Company 'Belarusian Stock Exchange' with the National Bank of the Republic of Belarus;

financial transactions carried out between banks of the Republic of Belarus to attract and place monetary funds in the form of Interbank credits and deposits;

cash financial transactions carried out between banks of the Republic of Belarus;

export by banks of cash foreign currency outside the Republic of Belarus to be further entered to their correspondent accounts opened with foreign banks;

financial transactions carried out with government securities and with securities issued by the National Bank of the Republic of Belarus, as well as with local bonds and mortgage bonds;

financial transactions carried out with assets of compulsory insurance;

depositing by retail trade enterprises, public service and catering establishments of cash money to the bank and post cash offices, to be further entered to their bank accounts;

other financial transactions, according to the list approved by President of the Republic of Belarus.

Section 3. Financial Monitoring Authority

Article 10. Authority to Prevent Legalisation of Illegally Acquired Proceeds and Financing of Terrorist Activity

The body to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity is the Financial Monitoring Authority, which is established according to Decision of President of the Republic of Belarus.

Article 11. Terms of Reference of Financial Monitoring Authority

Exercising special control, the Financial Monitoring Authority shall:

take measures to create and put into operation a computer-based integrated system of account, processing and analysis of information on financial transactions subject to special control;

collect and process information on suspicious financial transactions;

issue an order to suspend a financial transaction where there are sufficient grounds proving the financial transaction to be related to legalisation of illegally acquired proceeds or the financing of terrorist activity, provided this financial transaction has not been suspended by the person carrying out financial transactions. The person carrying out this financial transaction shall be advised on the order to suspend it not later than the next working day following the issue of such an order. A relevant notification of the Financial Monitoring Authority made in writing or in the form of an electronic document, constitutes a reason to resume a suspended financial transaction;

within 5 days on receiving a special form completed by a person carrying out financial transactions, take decisions concerning a suspended financial transaction with regard to either submitting the relevant information and evidence to a prosecuting agency or resuming the suspended financial transaction. The person suspended the financial transaction shall be advised on the decision in writing or in the form of an electronic document;

send the relevant information and materials to a prosecuting agency provided there are sufficient grounds proving the financial transaction to be related to legalisation of illegally acquired proceeds or the financing of terrorist activity;

make use of the information contained in special forms and in other sources, to take measures to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;

take other measures in accordance with legislative acts.

To prevent legalisation of illegally acquired proceeds and the financing of terrorist activity, the Financial Monitoring Authority shall:

- exercise control over the activities of persons carrying out financial transactions with regard to their fulfillment of the requirements of the legislation to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;

- work out and carry out measures to prevent violations of the legislation to counteract legalisation of illegally acquired proceeds and the financing of terrorist activity, summarize practice of application of such legislation based on the information received from the State Bodies exercising control over the activities of persons carrying out financial transactions in respect of their compliance with such legislation, and from other organisations, as well as put forward proposals to improve it;

- participate, in accordance with the established procedure, in the activities of international organisations;

- participate, in accordance with the established procedure, in drafting enactments, in conclusion and execution of international treaties to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;

- penalize, as provided by the legislation, persons for violating the legislation to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;

- exercise other powers in accordance with the law.

Privacy of information contained in special forms is secured by the Financial Monitoring Authority, except as otherwise envisaged by the legislative acts.

Employees of the Financial Monitoring Authority provide safety of data they became aware of, relating to the activity of the Financial Monitoring Authority and constituting official, bank or other secrecy protected by the law; and bear responsibility for disclosure of these data as envisaged by the legislative acts.

Article 12. Provision of Information to Financial Monitoring Authority

The State Bodies and organisations shall provide, in accordance with the procedure established by law, the Financial Monitoring Authority with the information and documents (excluding the information on citizens' private life) required for the implementation of its functions, which shall not constitute a disclosure of official, bank or other secrecy protected by law.

Article 13. International Cooperation to Prevent Legalisation of Illegally Acquired Proceeds and Financing of Terrorist Activity

The Financial Monitoring Authority, according to the legislation, including international treaties, cooperates with the foreign states' competent authorities to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity at the stages of gathering information, preliminary investigation, court examination, and execution of court decisions.

In accordance with the legislation, including international treaties, the Financial Monitoring Authority provides the authorised bodies of foreign states, on their demands or through its own initiative, with the relevant information only in case its provision does not prejudice national security interests of the Republic of Belarus and this information will not be used without a prior Financial Monitoring Authority's consent.

Section 4. Liability for Breach of Legislation to Prevent Legalisation of Illegally Acquired Proceeds and Financing of Terrorist Activity. Supervision and Control

Article 14. Liability for Breach of Legislation to Prevent Legalisation of Illegally Obtained Income and Financing of Terrorist Activities

Liability as envisaged by the legislative acts shall apply to persons responsible for the violation of the legislation to prevent legalisation of illegally obtained income and the financing of terrorist activity.

Article 15. Supervision over Implementation of Legislation on Prevention of Legalisation of Illegally Acquired Proceeds and Financing of Terrorist Activity

The exact and uniform implementation of the legislation on prevention of legalisation of illegally acquired proceeds and the financing of terrorist activity shall be supervised by the Prosecutor General of the Republic of Belarus and the subordinate prosecutors.

Article 16. Control over Activities of Persons Carrying out Financial Transactions in Respect of their Compliance with Legislation on Prevention of Legalisation of Illegally Acquired Proceeds and Financing of Terrorist Activity

Control over the activities of persons carrying out financial transactions in respect of their compliance with the legislation on prevention of legalisation of illegally acquired proceeds and the financing of terrorist activity is exercised, *intra vires*, by:

the National Bank of the Republic of Belarus – over banks and non-bank finance and credit institutions;

the Committee on Securities at the Council of Ministers of the Republic of Belarus and its inspectorates – over professional participants of the securities market and persons involved in stock exchange speculations and depositary activities;

the Ministry of Finance of the Republic of Belarus – over dealers in precious metals and precious stones; pawn-shops, buying-up offices; insurance and reinsurance companies, mutual insurance societies, insurance brokers and organisers of lotteries;

the Ministry of Justice of the Republic of Belarus – over notaries, organisations providing real estate services including transactions concerning the buying or selling of real estate for their clients, organisations, individual entrepreneurs providing legal services, lawyers carrying out financial transactions on behalf or by order of their client concerning the buying or selling of real estate; managing of client money, securities or other assets; management of bank and / or securities accounts; as well as creation or participation in management of legal persons or arrangements; buying and selling of a business entity as a property system;

the Ministry of Communications and Informatisation of the Republic of Belarus – over mail service operators;

the Ministry of Sports and Tourism of the Republic of Belarus – over casinos, bookmakers, totalisators, and other gambling establishments equipped with slot-machines and other devices for conducting games based on chance;

the Committee on Land Resources, Geodesy and Cartography at the Council of Ministers of the Republic of Belarus – over organisations providing state registration of real property, titles to it and transactions with real property.

In case of absence of a State Body to exercise control over the activities of persons carrying out financial transactions in respect of their compliance with the legislation on prevention of legalisation of illegally acquired proceeds and the financing of terrorist activity, such control is exercised by the Financial Monitoring Authority.

On eliciting facts of non-submission of information on conduct of a special control financial transaction or on other violations of legislation on prevention of legalisation of illegally acquired proceeds and the

financing of terrorist activity, State Bodies shall, within 5 days from the day of completion of a proper inspection certificate, inform the Financial Monitoring Authority on that fact’.

Article 2. This Law shall enter into force three months after the date of its official publication, excluding the current Article and Article 3 of the current Law, which come into force on the day of the official publication of the current Law.

Article 3. Within three months from the date of official publication of this Law, the Belarusian Council of Ministers of the Republic of Belarus shall:

- take measures to ensure that legislative acts are brought in line with this Law;
- adopt (in cooperation with the National Bank of the Republic of Belarus, when necessary) normative and legal acts necessary to apply the provisions of this Law;
- take other measures necessary to apply the provisions of this Law.

Within three months from the date of official publication of this Law, the National Bank of the Republic of Belarus shall bring its normative and legal acts in conformity with this Law.

President of the Republic of Belarus

A.Lukashenko

APPROVED
Decree of President
of the Republic of Belarus
14.09.2003 No. 408
(redrafted by Decree of President
of the Republic of Belarus
of 19 April 2006 No.259)

REGULATION

On the Department of Financial Monitoring
of the State Control Committee of the Republic of Belarus

General Provisions

1. The Department of Financial Monitoring of the State Control Committee of the Republic of Belarus (hereinafter referred to as 'the Department') is a Financial Monitoring Authority empowered, according to the legislation of the Republic of Belarus, to carry out activity to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity.

The Department is a structural subdivision of the State Control Committee of the Republic of Belarus (hereinafter referred to as 'the Committee') qualified as a legal entity.

2. The Department's activity is governed by the Constitution of the Republic of Belarus, Laws of the Republic of Belarus of 9 February 2000 '*On the State Control Committee of the Republic of Belarus*' (the National Register of Acts of Law of the Republic of Belarus, 2000, No. 18, 2/144) and of 19 July 2000 '*On Measures to Prevent Legalisation of Illegally Acquired Proceeds and Financing of Terrorist Activity*' (the National Register of Acts of Law of the Republic of Belarus, 2000, No. 75, 2/201), by other acts of legislation, including this Regulation.

3. When carrying out its functions, the Department interacts, according to the established procedure, with state bodies and other organisations of the Republic of Belarus and of foreign states, as well as with international organisations, for the purpose of preventing legalisation of illegally acquired proceeds and the financing of terrorist activity.

4. The Department possesses a seal with the State Emblem of the Republic of Belarus and the name of the Department.

Major Tasks

5. The major tasks of the Department shall be:

5.1. taking effective measures to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;

5.2. creating and putting into operation a computer-based integrated system of record, processing and analysis of information on financial transactions subject to special control;

5.3. carrying out international cooperation for the purpose to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity.

Major Functions

6. According to the tasks imposed on it, the Department shall:

6.1. establish a procedure of formation of a computer-based integrated system of record, processing and analysis of information on financial transactions subject to special control;

6.2. collect and analyse information on suspicious financial transactions;

6.3. verify, in accordance with the established procedure, the information received;

6.4. reveal signs proving financial transactions to be related to legalisation of illegally acquired proceeds or the financing of terrorist activity;

- 6.5. secure the relevant mode of storage and protection of information gained in the process of its activity and constituting official, bank or other secrecy protected by the law;
 - 6.6. take part in retraining and further training of the staff, including officials from other state bodies, in the field of preventing legalisation of illegally acquired proceeds and the financing of terrorist activity;
 - 6.7. participate, in accordance with the established procedure, in drafting normative and legal acts, concluding and executing international treaties, and conclude and execute, when appropriate, international treaties of interdepartmental character on prevention of legalisation of illegally acquired proceeds and the financing of terrorist activity;
 - 6.8. study international experience and practice to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;
 - 6.9. take part in working out and carrying out programs on international co-operation to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;
 - 6.10. perform other functions envisaged by the legislation of the Republic of Belarus.
- Powers of the Department

7. To perform its tasks and functions, the Department shall:

- 7.1. request, in the order envisaged by the legislation, from the state authorities and other organisations, including the National Bank, and from persons carrying out financial transactions, information and documents (excluding information on private life of citizens) necessary for the performance of its tasks;
- 7.2. take measures to create and put into operation a computer-based integrated system of record, processing and analysis of information on financial transactions subject to special control;
- 7.3. monitor the activity of persons carrying out financial transactions as regards their observance of the legislation to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;
- 7.4. work out and carry out measures to preclude violations of law to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity, generalise the practice of application of this law based on the information received from state bodies supervising the activity of persons carrying out financial transactions, and from other organisations, as well as work out proposals to improve it;
- 7.5. penalise, as provided by the legislation, legal entities and physical persons that have violated the legislation to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;
- 7.6. make free use of information data banks of state bodies and other organisations;
- 7.7. where there are sufficient grounds proving a financial transaction to be related to legalisation of illegally acquired proceeds or the financing of terrorist activity, issue an order to suspend it, provided this financial transaction has not been suspended by the person carrying out financial transactions;
- 7.8. take decisions on a suspended financial transaction with regard to either submitting the relevant information and evidence to a prosecuting agency or resuming the suspended financial transaction, within 5 days on receiving a special form to register financial transactions subject to special control completed by a person carrying out financial transactions. The person suspended this financial transaction shall be advised on the decision in writing or in the form of an electronic document;
- 7.9. send the relevant information and materials to a prosecuting agency provided there are sufficient grounds proving the financial transaction to be related to legalisation of illegally acquired proceeds or the financing of terrorist activity;
- 7.10. make use of the information contained in special forms and in other sources, to take measures to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity;
- 7.11. supervise observance by persons carrying out financial transactions of the legislation to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity, as well as check the organisation by such persons of internal control over registration of financial transactions subject to special control;
- 7.12. based on the results of its inspections and within its terms of reference, issue orders and instructions which are compulsory for officials of state bodies, other organisations, as well as for

individual entrepreneurs;

7.13. request from officials of state bodies, other organisations, as well as from individual entrepreneurs the explanation of reasons for violations revealed in the course of inspections;

7.14. request, according to the established procedure, from the competent authorities of foreign states the necessary information in the field of preventing legalisation of illegally acquired proceeds and the financing of terrorist activity;

7.15. provide, in accordance with the legislation, including international treaties, the authorised bodies of foreign states, on their demands or through its own initiative, with the relevant information in case this does not prejudice the national security of the Republic of Belarus and provided that this information will not be used without a prior Department's consent;

7.16. work out and approve methodical recommendations, programs and other documents;

7.17. conclude, as approved by the Chairman of the Committee, and execute, in accordance with the established procedure, international treaties of interdepartmental character on prevention of legalisation of illegally acquired proceeds and the financing of terrorist activity;

7.18. participate, in accordance with the established procedure, in the activity of international organisations;

7.19. be entitled to bring in research and other organisations as well as separate specialists, including hiring on a contractual basis, to make expertise, work out training programs, methodical documentation, soft- and dataware, create information systems in the field of financial monitoring, on condition that the state and other secrecy protected by the law is kept;

7.20. exercise other authorities as provided by the legislation of the Republic of Belarus.

Activity Arrangement

8. The Department is headed by the Director appointed and dismissed by the Chairman of the Committee in agreement with President of the Republic of Belarus. The Director of the Department has a deputy appointed and dismissed by the Chairman of the Committee.

The Director of the Department is an ex officio member of the Board of the Committee.

The Director of the Department is directly subordinated to the Chairman of the State Control Committee of the Republic of Belarus, governs the activity of the Department and is personally liable for fulfillment of tasks and functions imposed on the Department.

9. The Director of the Department shall:

9.1. issue, within his terms of reference, orders and directives, give instructions, approve regulations and other documents concerning the Department's activity arrangement;

9.2. in accordance with the established procedure, submit proposals on the activity of the Department to the Chairman of the Committee;

9.3. present the interests of the Department in the state authorities and other organisations;

9.4. conclude, in agreement with the Chairman of the Committee, international treaties of interdepartmental character on prevention of legalisation of illegally acquired proceeds and the financing of terrorist activity, undertake their execution;

9.5. in accordance with the established procedure, make use of the monetary funds and property of the Department, act on its behalf without a power of attorney, open accounts with banks;

9.6. take measures that the employees of the Department maintain the working discipline;

9.7. exercise other authorities according to the legislation of the Republic of Belarus.

10. For the purpose of assessing the effectiveness of measures taken to prevent legalisation of illegally acquired proceeds and the financing of terrorist activity, as well as working out suggestions to improve them, research and advisory councils can be founded at the Department, with their regulations and composition be approved by the Chairman of the Committee.

ANNEX 4: List of key laws, regulations and other material received

The financial legislation

1. The Bank Code of Byelorussia № 441-Z (2000, revised 2007);
2. The Law on Currency Regulation № 226-Z (2003, revised 2008);
3. The Law on Commodity Exchanges № 1516-XII (1992, revised 2004);
4. The Law on Declaring Physical Persons № 174-Z (2003, revised 2006);
5. The Law on Securities and Stock Exchange № 1512-XII (1992, revised 2002);
6. Regulation of RB NB on the organization of AML/FT measures by banks № 34 (2008);
7. Regulation of RB NB on conformity assessment of candidates for the position of the head and of the chief accountant of a bank № 140 (2006);
8. Letter of RB NB on recommendations for organization of internal control over banks № 21-20/367 (2006);
9. Regulation NB RB on the procedure of opening and closing of bank accounts № 127 (2007, revised 2008);
10. Regulation of RB NB on the procedure of registration and licensing of banks and NCFO № 75 (2001, revised 2006);
11. Regulation of RB NB on bank transfer № 66 (2001, revised 2007);
12. Regulation of RB NB on amendments to the Instruction for Use of a Cheque - Book № 147 (2006);
13. Regulation of RB NB on procedure of issuing by the NB of instructions and application of enforcement measures to banks and NCFO № 195 (2006);
14. The Regulation of RB Council of Ministers on definition of the list of persons engaged in terrorist activity;
15. The Decree of RB President on measures on strengthening of the departmental control № 293 (2000, revised 2007);
16. The Decree of RB President on offshore zones № 353 (2006, revised 2007);

Legalization of criminal gains

17. The Regulation of the RB State Committee on Property on typical rules of internal control № 1 (2006);
18. The AML/FT Law 426-Z (2000, revised 2007);
19. The Regulation of the Ministry for Communications and Information on rules of internal control № 9 (2006);
20. The Regulation of the Ministry for Sports and Tourism on rules of internal control № 6 (2007);
21. The Regulation of the Ministry of Justice on rules of internal control № 33, № 27 (2006);
22. Regulation of RB NB on the procedure of suspension of financial transactions № 34 (2006);
23. Letter of RB NB on rules of internal control № 21-20/367 (2006);
24. The Regulation of KGB on the list of persons involved in terrorist activity № 13 (2006);
25. The Regulation of RB Council of Ministers on the procedure of drawing up the list of states which are not participating in the international AML/FT cooperation № 259 (2006, revised 2007);
26. The Regulation of RB Council of Ministers about the procedure of drawing up the list of persons involved in terrorist activity № 336 (2006, revised 2007);
27. The Regulation of RB Council of Ministers about general requirements for rules of internal control № 352 (2006);
28. The Regulation of RB Council of Ministers about approval of the form of the special data card № 367 (2006, revised 2008);

29. The Decree of the President on establishing of Department of Financial Monitoring № 408-Z (2003, revised 2006);
30. The Regulation of Committee for Securities on rules of internal control № 08/II (2006);

The legal law

31. The Law on Fight against Corruption № 165-Z (2006);
32. The Law on Organized Crime № 244-Z (2007);
33. The Law on Fight against Terrorism № 77-Z (2002, revised 2007);
34. The Law on Operative and Search Activity № 289-Z (1999, revised 2006);
35. The Law on Internal Affairs Agencies № 263-Z (2007);
36. The Law on State Security Agencies № 102-Z (1997, revised 2007);
37. The Law on Agencies for Financial Investigations № 30-Z (2001, revised 2007);
38. The Law on Office of the Public Prosecutor № 220-Z (2007);
39. The Law on Counteraction to Extremism № 203-Z (2007);
40. Administrative Offences Code № 194-Z (2003, revised 2008);
41. Code of the Execution Procedure № 194-Z (2006, revised 2008);
42. The executive order of the Ministry of Internal Affairs on criteria of executive staff assessment № 167 (2004, revised 2007);
43. The Customs Code № 204-Z (2007);
44. The Criminal Code № 275-Z (1999, revised 2008)

Other legislation

45. The Civil Code № 218-Z (1998, revised 2007);
46. The Decree of the President on licensing of certain types of activity № 17 (2003, revised 2007);
47. The Decree of the President on regulating of the state registration and liquidation of subjects of economic activities № 11 (1999, revised 2007);
48. The Law on State Registration of Real Estate № 133-Z (2002, revised 2007);
49. The Law on Political Parties № 3266-XII (1994, revised 2007);
50. The Law on Consumers' Cooperative Society № 93-Z (2002, revised 2007);
51. The Law on Trade Unions № 1605-XII (1992, revised 2007);
52. The Law on Republican State and Public Associations № 150-Z (2006, revised 2007);
53. The Law on Joint Home Ownership № 135-Z (1998, revised 2007);
54. The Law on Chamber of Commerce and Industry № 208-Z (2003, revised 2006);
55. The Law on Economic Societies № 2020-XII (1992, revised 2006);
56. The Law on Public Associations № 3254-XII (1994, revised 2007);
57. The Law on Auditor Activity № 3373-XII (1994, revised 2007);
58. The Law on Book Keeping and Accounting № 3321-XII (1994, revised 2007);
59. The Law on Currency Regulation and Currency Control № 226-Z (2003, revised 2008);
60. The Law on Turnover of Transfer Notes and Promissory Notes № 341-Z (1999, revised 2005);
61. The Law on State Regulation of Foreign Trade Activity № 347-Z (2004);
62. The Law on State Support of Small Business № 685-XIII (1996);
63. The Law on Precious Metals and Jewels № 110-Z (2002, revised 2007);
64. The Law on Natural Monopolies № 162-Z (2002, revised 2006);
65. The Law on Measures for Protection of Economic Interests in Foreign Trade in Goods № 346-Z (2004);
66. The Law on Peasant (Farmer) Enterprise № 611-XII (1991, revised 2007);
67. The Law on Anti-Monopoly Activity and Development of Competition № 2034-XII (1992, revised 2008);
68. The Law on Notaries and Notaries Activity № 305-Z (2004, revised 2008);
69. The Law on Postal Service № 258-Z (2003, revised 2007);

70. The Law on Business Activity № 813-XII (1991, revised 2007);
71. The Law on Advertising № 225-Z (2007);
72. The Law on free economic zones № 213-Z (1998, revised 2006);
73. The Law on custom rates № 2151-XII (1993, revised 2007);
74. The Law on goods exchange № 1516-XII (1992, revised 2004);
75. The Law on brands and marks № 2181-XII (1993, revised 2004);
76. The Law on trade № 231-Z (2003, revised 2006)
77. The Law on financial commercial groups № 265-Z (1999);
78. The Law on business community № 2020-XII (1992, revised 2006);
79. The Law on securities and stock exchange № 1512-XII (1992, revised 2002);
80. Act of economic insolvency № 423-3 (2000, last version of the 2007);
81. Decree of the Council of Ministers of the Republic of Belarus on approval of the plan for expansion of connection for 2006 – 2010 № 1395 (2006);
82. Decree of the Council of Ministers of the Republic of Belarus on approval of the list of administrative procedures carried out by the State Committee on property № 1578 (2007);
83. Decree of the Council of Ministers of the Republic of Belarus on special issues of the Ministry of Finance № 982 (2006, last version of the 2007);
84. Decree of the Council of Ministers of the Republic of Belarus on approval of the principles of precious metals and stones businesses;
85. President Decree on approval of the act on gambling industry activities in the Republic of Belarus № 9 (2005, last version of the 2007);
86. President Decree on approval of the list of administrative procedures № 152 (2006, last version of the 2008);
87. President Decree on insurance activities № 530 (2006, last version of the 2008).