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The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism -

MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

The fifth round mutual evaluation report on Georgia was adopted by the MONEYVAL Committee at its 60th Plenary Session

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EXECUTIVE SUMMARY

1. This report provides a summary of the AML/CFT measures in place in Georgia as at the date of the onsite visit (4-15 November 2019). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Georgia's AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

1. In recent years, Georgia has made some significant improvements to its anti-money laundering and counter-terrorist financing (AML/CFT) system, including developing the National Risk Assessment (NRA), addressing technical deficiencies in legislation and by-laws, taking steps to strengthen co-operation between law enforcement agencies (LEAs) and the Financial Monitoring Service (FMS), and refining mechanisms for implementation of the United Nations Securities Council Resolutions (UNSCRs). Many of these improvements were introduced just ahead of the on-site visit. While these have a positive impact on technical compliance, such timing has challenged to a large extent Georgia's ability to demonstrate the effect of these improvements on the AML/CFT systems.

2. Georgia displays a fair understanding of many of its ML and TF risks. The level of risk understanding varies across the public sector, the highest being demonstrated by the FMS, the National Bank of Georgia (NBG), the General Prosecutor's Office (GPO) and the State Security Service (SSS). Shortcomings exist regarding identification and deepening analysis of some threats and vulnerabilities and subsequent understanding of some of the ML/TF risks. The NRA does not fully consider some inherent contextual factors. The overall risk assessment in the NRA may seem reasonable, but not for all the sectorial risks. This will impact the proportionate allocation of resources. Exemptions are either not supported by a risk assessment or are not in line with the NRA results, and they do not occur in strictly limited and justified circumstances. The NRA findings have not all yet been transposed into national policies and activities. Competent authorities co-operate and co-ordinate on ML/TF matters with good spirit, but not routinely and comprehensively enough, and not to the necessary degree regarding proliferation financing (PF).

3. LEAs collect financial intelligence and other relevant information from a wide range of various sources (including from obliged entities and the NBG), and use it to conduct investigations of predicate offences and detecting their proceeds, but to a lesser extent with regard to investigation of ML. Before October 2019, LEAs' access to financial intelligence held by the FMS was very limited followed by a lack of understanding by several LEAs as to the core role of the FMS and the potential analysis it can produce and provide. Since then, powers of some LEAs were enhanced, but only regarding ML/TF and drug offences. A requirement to obtain a court order (based on probable cause) to request financial intelligence from the FMS hinders effective collaboration between the FMS and the LEAs in supporting investigation of ML-related predicate offences. The GPO Criminal Prosecution of Legalisation of Illegal Income Division (GPO AML Division) is the only LEA primarily focused on detection and investigation of ML, and the only one that prevalently uses financial intelligence for investigation of ML. Other LEAs use financial intelligence mostly to investigate proceeds generating crimes and only rarely to investigate complex ML cases. LEAs make good use of financial intelligence spontaneously disseminated by the FMS for investigation of ML/TF and associated predicate offences. Most cases that demonstrated use of FMS disseminations were related to laundering the proceeds of fraud, being in line with the risk profile of Georgia. FMS operational analysis is usually

conducted efficiently but frequently not comprehensively enough. FMS conducts limited strategic analysis. Georgia has taken efforts to enhance the quality of suspicious transaction reports (STRs) in recent years, but concerns remain. Exposure of bank employees to court proceedings is a matter of concern.

4. When potential ML is detected, it is investigated effectively using a range of investigative techniques, primarily by the AML Division at the GPO. There have been some successful cases involving high asset values and complex factors. However, potential ML cases are not sufficiently detected, and the overall number of investigations is modest compared to predicate criminality. The cases that have been taken forward are in line with the country's risk profile only to some extent. There are no legal or structural impediments to taking forward ML prosecutions. The court system is efficient. Georgia has achieved convictions for all types of ML. However, there is low number of convictions involving complex ML. In addition, the proportion of convictions for legal persons is lower than would be expected given that the use of legal persons features in most of the cases. This, together with an overall conviction rate of almost 100% for ML, indicates that prosecutors may be too cautious about the cases they take forward. Georgia effectively applies other criminal justice measures in cases where ML convictions cannot be secured for justifiable reasons.

5. Once detected, TF is generally investigated and prosecuted well using a range of investigative techniques. The majority of TF investigations are triggered by STRs (mostly a match with a terrorism-related sanctions list). There is scope to raise awareness of different types of TF among the LEAs (other than SSS and supervising prosecutors at the GPO) and private sector in order to further increase the detection of potential TF that is linked to other offences. There have been 2 TF prosecutions, involving different types of TF activity resulting in multiple convictions. TF is well integrated into counter-terrorism strategies and investigations, and Georgia makes effective use of alternative measures. Sanctions applied to the persons convicted of TF are sufficiently effective, proportionate and dissuasive.

6. Georgia recognises the importance of confiscation and has the necessary regime in place to address this. Tracing and preserving assets is strongly promoted as a policy objective and measures have been taken to improve effectiveness in this area. While there are concerns about the application of provisional measures in some cases, Georgia has achieved a significant level of confiscation overall, and a wide range of criminal proceeds and instrumentalities is being confiscated, including property in third party hands. No assets outside the jurisdiction have been confiscated (although some cases are pending). The application of value-based confiscation is limited and there are concerns about the understanding of some authorities in this respect. Confiscation results reflect the risks in Georgia to some extent. Georgia's declaration system for cross-border movements of cash or BNIs is not being enforced effectively, as the proportion of non-declared or falsely declared cash or BNIs that is confiscated (or indirectly removed from the party in breach through a fine) is very low.

7. Georgia has a new legislative framework for implementation of the TF and PF UNSCRs. This has addressed the majority of previous deficiencies related to implementation of the TF-related targeted financial sanctions (TFS) and secured the legal basis for implementing PF – related TFS. Georgia implements UN TFS on TF and PF with a significant delay, this mostly explained by the multi-step national mechanism adopted by the country, involving many national actors. Though delays are shortened as a result of the revised legislative framework, this is still not in line with the notion of implementation of UN TFS without

delay – within a matter of hours. Mostly due to the private sector’s responsiveness, weaknesses in the national mechanism do not have a fundamental impact on the system. Detected false positive matches indicate the capability of the obliged entities to prevent assets from being used for TF. Once an STR is filed, it is given a high level of attention by the FMS and the SSS, the latter investigating each notification. Despite having persons convicted for terrorism (T) and TF, Georgia has not designated any within the assessment period.

8. The level of understanding of risks highlighted in the NRA and/or outlined in the AML/CFT Law and guidance notes, was generally good for financial institutions (FIs). Understanding of other ML/TF risks that are not referred to in these sources is more limited, but more sophisticated in the banking sector. FIs which are part of large European Union (EU) groups or large banking and other financial groups have put in place internal systems and controls which effectively mitigate ML/TF risks. However, the risks presented by the high level of cash circulation in Georgia is under-estimated. Significant gaps were observed in the application of customer due diligence (CDD) measures by most designated non-financial businesses and professions (DNFBPs) and National Agency of Public Registry (NAPR) for the property sector. Banks account for the majority of STRs, and the number of reports in this sector (and amongst banks in the sector) seems reasonable. The types of reports made also point to active monitoring of customer activity. Other FIs meet their reporting obligations to a moderate extent. The number of reports amongst DNFBPs has been very low, including for casinos (despite a surge in reports in 2019) and it is not clear that reporting obligations are met in practice.

9. The NBG applies robust “fit and proper” entry checks for the FIs under its supervision (including broad consideration of reputation of the applicant), as well as on-going scrutiny of licencing requirements. It has a comprehensive understanding of sectorial and individual institution risks and applies a fully risk-based supervisory approach through a separate and well-resourced unit. The approach of the Insurance State Supervision Service (ISSS) is broadly similar. The Ministry of Finance (MoF) does not undertake any AML/CFT supervision of casinos in practice and technical deficiencies in licensing requirements seriously undermine their effectiveness in preventing criminals or their associates from controlling or managing a casino. The application of “fit and proper” entry checks amongst other DNFBPs is mixed, and the level of AML/CFT supervision is insufficient and uneven. The NBG’s use of its sanctioning powers appears effective, proportionate and dissuasive. The use of sanctioning powers by other supervisors, however, cannot be considered effective, proportionate and dissuasive. The NBG and ISSS have made a demonstrable difference to the level of compliance in the sectors under their supervision by, e.g., providing extensive guidance and supervisory feedback. The Ministry of Justice (MoJ) and Service for Accounting, Reporting and Auditing Supervision (SARAS) have worked with the FMS with some success to enhance awareness of risk and requirements, whilst other supervisors mainly rely on the FMS.

10. Setting up a legal person in Georgia is straightforward and all information that is necessary for registration is publicly available. Due to the ease of founding a legal person, “gate-keepers” (such as notaries, lawyers or accountants) are often not involved. Whilst the NRA report provides a description of the framework in place and highlights cases where legal persons, particularly limited liability companies (LLCs), have been abused, the authorities have not demonstrated effective identification and analysis of threats and vulnerabilities, though it is universally understood that the use of “fictitious” LLCs in criminal schemes constitutes a significant ML risk. Three mechanisms are available to

obtain information on beneficial ownership (BO) of legal persons established in Georgia. In practice, these cannot be relied upon in all cases to provide adequate, accurate and current BO information.

11. Georgia has a sound legal framework for international cooperation and has mechanisms in place to conduct it. Georgia demonstrated effective cooperation in providing and seeking information, using both formal and informal channels, with a wide range of foreign jurisdictions.

Risks and General Situation

2. Georgia is not a regional or international financial centre. Georgia's finance sector is dominated by two large commercial banks. It also has sizeable gambling and real estate activities – representing 14.7% and 11.4% of GDP respectively. The virtual asset service providers (VASPs) are operating in the country but have not been regulated yet. There is no official information on the size of the VASP sector. Cash is the main means of payment in Georgia. Most legal persons are owned by individuals and fewer than 20% have foreign ownership. Nevertheless, there has been abuse of “fictitious” (shell) companies in Georgia.

3. According to the NRA, Georgia is exposed to medium ML risks. The range of ML activities include third party ML, cash-based ML, and abuse of legal persons (involved in complex criminal schemes). The main proceeds generating predicate offences are fraud, followed by cybercrime, drug trafficking, tax evasion, organised crime, corruption and human trafficking. Whilst most of these criminal activities are committed domestically, fraud, cybercrime and drug trafficking have also a transnational character. Bank accounts and remittance services provided by microfinance organisations and payment service providers (PSPs) are the most common means used to launder criminal proceeds. These sectors nevertheless are considered by the authorities to pose medium and medium-low ML risks respectively.

4. According to its NRA (2019), TF risk in Georgia is low. The incidence of Georgian nationals fighting in Iraq and Syria has sharply reduced due to action taken by the authorities. Organisations supporting terrorist ideology have not been identified. Some convictions achieved by Georgia involve different types of TF activity, involving support provided by Georgian citizens to an international terrorist and his associates.

Overall Level of Effectiveness and Technical Compliance

5. MONEYVAL adopted its fourth-round mutual evaluation report (MER) in July 2012. Georgia was rated partially compliant with 7 core and key FATF Recommendations and partially compliant or non-compliant with 17 other Recommendations. The country began implementing important reforms immediately after adoption of the report, including the adoption of the AML/CFT Strategy and Action Plan in 2014. It has made several amendments to its legislation, including adoption of a new AML/CFT Law. Despite these efforts, Georgia is compliant or largely compliant with 27 of the 40 Recommendations. In particular, there are weaknesses in assessment and mitigation of risks (R.1), the application of TFS (R.6 and R.7), regulation of non-profit organisations (NPOs) (R.8), definition of family members and close associates of politically exposed persons (PEPs) (R.12), regulation and supervision of VASPs and DNFBPs (R.15, R.22, R.23 R.28 and R.35), misuse of legal persons and arrangements (R.24 and R.25), and FMS powers to share information with law enforcement agencies (R.29). The most serious concern to be raised during the follow-up process to the fourth round MER related to former SR.III (now R.6), which continues to be partially compliant.

6. A moderate level of effectiveness has been achieved in implementing all areas covered by the FATF Standards, except for international cooperation (substantial), investigation and prosecution of TF offences (substantial) and prevention of terrorists, terrorist organisations and financiers from raising, moving and using funds and abusing the NPO sector (low).

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, 2, 33 & 34)

7. Georgia displays a fair understanding of many of its ML and TF risks. Shortcomings exist with regard to identification of some threats and vulnerabilities and subsequent understanding of some of the ML/TF risks. The level of risk understanding varies across the public sector. Highest levels of understanding were demonstrated by the FMS, the NBG, the GPO and the SSS. FIs and DNFBPs were to a large extent made aware of the relevant results of the NRA.

8. The NRA analysis does not fully take account of some inherent contextual factors that may influence the risk profile of a country (e.g. prevalence of cash, geographical, economic, and demographic factors). Whilst the methods, tools, and information used to develop, review and evaluate conclusions on risks are adequate to a large extent, the analysis of ML risks could be developed further in the following areas: e.g. use of cash in the economy, real estate sector, trade-based ML (including in free industrial zones of Georgia), legal persons and use of NPOs for ML. The assessment of TF risk in the NRA has focused on TFS and foreign terrorist fighters (FTFs). Authorities did not fully assess all forms of potential TF risk, especially trade-based TF, the origin and destination of financial flows and potential for abuse of NPOs.

9. Whilst the overall risk assessment in the NRA may seem reasonable, this cannot be said for all of the sectorial risks. Although most ML cases in the country identify the use of banks, cash or real estate, most assessments are clustered around medium to medium-low risk ratings. This will impact the proportionate allocation of resources and overlook some other areas where the risks occur in fact.

10. The NRA findings have not all yet been transposed into national policies and activities. The priority actions cover, only to some extent, areas identified as presenting the highest risk. The objectives and activities of the competent authorities are generally, but not always, consistent with evolving national AML/CFT policies and with identified ML/TF risks.

11. Exemptions from application of the AML/CFT measures applied to real estate agents, trust and company service providers (TCSPs), collective investment funds and fund managers, accountants that are not certified, accountants when providing legal advice and VASPs are either not supported by a risk assessment or are not in line with the NRA results, and they do not occur in strictly limited and justified circumstances.

12. Competent authorities co-operate and co-ordinate on ML/TF matters with good spirit, but not routinely and comprehensively enough. They do not do so to the necessary degree with regard to PF.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, 4, 29-32)

13. LEAs collect financial intelligence and other relevant information from a wide range of various sources (including from obliged entities and the NBG), and use it to conduct investigations of predicate offences and detecting their proceeds, but to a lesser extent with regard to investigation of ML. Until October 2019, LEA access to financial intelligence

held by the FMS was very limited followed by a lack of understanding by several LEAs as to the core role of the FMS and the potential analysis it could produce and provide. Since then, powers of some LEAs to request information from the FMS were enhanced, but only for ML/TF and drug offences. The requirement to obtain a court order (based on probable cause) to request financial intelligence from the FMS hinders the effective collaboration between the FMS and the LEAs, including the MoF Investigation Service in supporting investigation of ML-related predicate offences.

14. LEAs make good use of financial intelligence spontaneously disseminated by the FMS, both for investigation of ML and associated predicate offences. Most cases that demonstrated use of FMS disseminations were related to laundering the proceeds of fraud, which is in line with the NRA findings. The number of investigations generated from parallel financial investigations (by sources other than STRs), is modest. The GPO AML Division is the only LEA primarily focused on detection and investigation of ML, and the only one that prevalently uses financial intelligence for investigation of ML. Other LEAs use financial intelligence mostly to investigate proceeds generating crimes and only rarely to investigate complex ML cases.

15. FMS operational analysis is usually conducted efficiently but frequently not comprehensive enough. Several cases presented entailed a data gathering exercise, with limited analytical input and enrichment of the substance of the STR, typically concerning a basic form of criminal activity. The strategic analysis conducted by the FMS is limited.

16. Georgia has taken efforts to enhance the quality of STRs in recent years, but concerns remain. A number of factors contribute potentially to this, including: (i) unsatisfactory feedback, guidance and training; (ii) the resource-intensive process imposed on obliged entities for filing CTRs; and (iii) exposure of bank employees to court proceedings. These concerns are supported by a decrease in the number of STRs used in developing disseminations to the LEAs.

17. When potential ML is detected, it is investigated effectively using a range of investigative techniques, primarily by the GPO AML Division. There have been some successful cases involving high asset values and complex factors such as cross-border criminality, organised crime and the use of legal persons. However, potential ML cases are not sufficiently detected. The total number of ML investigations is modest compared to predicate criminality, although there has been an increase in recent years. The cases that have been taken forward involve predicate offences and types of laundering that are in line with country's risk profile to some extent, there are few cases relating to banking sector employees even though that sector features in most ML cases, and few cases involving some of the predicate offences that are identified in the NRA or observed in Georgia. There are no legal or structural impediments to taking forward ML prosecutions. The court system is efficient and dissuasive sanctions are imposed. Georgia has achieved convictions for all types of ML. However, there is a low number of convictions involving complex ML. In addition, the proportion of convictions for legal persons is lower than would be expected given that the use of legal persons features in most of the cases. This, together with an overall conviction rate of almost 100% for ML, indicates that prosecutors may be too cautious about the cases they take forward. Georgia effectively applies other criminal justice measures in cases where ML convictions cannot be secured for justifiable reasons.

18. Georgia recognises the importance of confiscation and has the necessary legal framework, structures and resources in place to address this. Tracing and preserving assets is strongly promoted as a policy objective and a number of measures have been put

in place to improve effectiveness in this area. Georgia has achieved a significant level of confiscation overall and a wide range of criminal proceeds is being confiscated, including property in third party hands. No assets outside the jurisdiction have been confiscated (although some cases are pending). The application of value-based confiscation is limited and there are concerns about the understanding of some authorities in this respect. The confiscation of instrumentalities of crime is being largely achieved, although there is scope to expand the confiscation of instrumentalities to include a greater range of property.

19. Measures to preserve property are generally taken at an early stage in an investigation and a high volume of assets has been seized or frozen. However, there have been several missed opportunities due to the dissipation of suspected funds which were the subject of STRs. This is potentially due to following factors: (i) the STR is filed after funds have been sent abroad by the obliged entity; (ii) the FMS rarely exercises its power to suspend assets reported as suspicious and relies instead on prosecutors to initiate seizure proceedings; and (iii) LEAs apply emergency seizure measures at the initial stage, but not always promptly enough.

20. Georgia has a declaration system for cross-border movements of cash or BNIs. However, this system is not being enforced effectively, as the proportion of non-declared or falsely declared cash or BNIs that is confiscated (or indirectly removed from the party in breach through a fine) is very low. The confiscation results reflect the risks to Georgia to some extent but, are not fully in line with the country's risk profile as set out in the NRA.

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.1, 4, 5-8, 30, 31 & 39)

21. Georgia has a sound legal and institutional framework for investigating and prosecuting TF. Cases are dealt with by investigators at the SSS and the supervising prosecutors at the GPO who are adequately resourced and have high levels of expertise. There are no legal or structural impediments to taking forward TF cases. The court system is efficient. Georgia has achieved some convictions involving different types of TF activity that are in line with its risk profile, and dissuasive sanctions have been imposed.

22. The investigators at the SSS and the supervising prosecutors at the GPO have a very good awareness of different types of TF and conduct parallel financial investigations in terrorism cases and cases with a suspected terrorism link. However, there is scope to raise awareness of different types of TF among the other LEAs and the private sector in order to further increase the detection of potential TF that is linked to other offences.

23. Overall, Georgia has effective systems for identifying TF. Once detected, TF is generally investigated (role played by terrorist financiers identified) and prosecuted well using a range of investigative techniques. While until recently there were some restrictions on the ability of the SSS to obtain information from the FMS, which may have had a negative impact on the effectiveness of investigations, the extent of this is limited as alternative measures were applied appropriately.

24. Overall, TF is well integrated into counter-terrorism strategies and investigations, and Georgia makes effective use of alternative measures. However, there is scope for some moderate improvements with regard to Georgia's standing task force and the use of TF cases to support designations.

25. Georgia has a new legislative framework for implementation of the TF and PF UNSCRs. This has addressed the majority of previous deficiencies related to implementation of the TF-related TFS and secured the legal basis for implementing PF –

related TFS. Notwithstanding formerly existing legislative obstacles the authorities demonstrated that indeed, in practice, PF-related UN TFS had been dealt with by the Commission in the past, and implementation was ensured through the same mechanism as set for the TF UNSCRs. Lack of legislative basis did not affect also performance of the private sector in this respect, since the PF-related UN TFS were dealt with equally to TF UNSCRs.

26. Georgia implements the TFS through a multi-step mechanism. While the time taken to accomplish each step was revised this overall did not result in action being taken “without delay”. Deficiencies exist in the immediate communication to obliged entities of amendments to the list of persons and entities designated under TF and PF TFS regimes. Overall, the deficiencies in the system are mitigated to a major extent by the private sector’s responsiveness and use of various commercial databases which are updated in a timely manner, irrespective of measures taken at a national level. Competent authorities have not provided specific guidance to ensure compliance by FIs and DNFBPs with their obligations to implement TFS. While implementation of TFS is regularly monitored by the NBS, and sanctions applied within the scope of on-site inspections, the same does not apply to other supervisors. Despite having persons convicted for terrorism and TF, Georgia has not designated any within the assessment period.

27. TF risks emanating from NPOs have not been comprehensively assessed in the NRA, targeting identification of the overarching risk environment in the sector and missing granularities – the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse. A registration and monitoring framework for NPOs and charity organisations is in place, but purely focused on tax compliance. No CFT focussed, or risk-based measures have been developed. There are numerous legislative gaps in regulation of the NPO sector, no outreach conducted, and no guidance provided.

Preventive Measures (Chapter 5 - IO4; R.9-23)

28. The level of understanding of risks highlighted in the NRA and/or outlined in the AML/CFT Law and guidance notes, was generally good for FIs. Understanding of other ML/TF risks that are not referred to in these sources is more limited, but more sophisticated in the banking sector. Most DNFBPs, including casinos, have an insufficient understanding of ML/TF risks. Among FIs which are part of large EU groups or large banking and other financial groups, understanding of AML/CFT obligations is good. However, the approach followed by smaller FIs in determining higher risk factors appeared to be mostly confined to pre-determined criteria set out in the AML/CFT Law and guidance notes. Lawyers, NAPR and dealers in precious metals and stones (DPMS) have a limited or insufficient understanding of their AML/CFT obligations.

29. FIs which are part of large EU groups or large banking and other financial groups have put in place internal systems and controls which effectively mitigate ML/TF risks. However, the risks presented by the high level of cash circulation in Georgia is underestimated. Other FIs have generally less robust and sophisticated mitigating measures and DNFBPs did not generally demonstrate use of an ML/TF risk mitigation framework.

30. Generally, FIs apply CDD requirements and refuse business when CDD is incomplete. Significant gaps were observed in the application of CDD measures by most DNFBPs and NAPR. Record-keeping requirements are applied by FIs and DNFBPs. FIs apply enhanced or specific measures for most higher risk cases called for in the standards. On the other

hand, DNFBPs, including casinos, do not effectively apply all relevant enhanced or specific measures.

31. Banks account for the majority of STRs, and the number of reports in this sector (and amongst banks in the sector) seems reasonable. The types of reports made also point to active monitoring of customer activity. Other FIs meet their reporting obligations to a moderate extent. The level of STR reporting amongst DNFBPs has been very low, including for casinos (despite a surge in reports in 2019) and it is not clear that reporting obligations are met in practice. Internal policies and procedures and training initiatives are in place in FIs to prevent tipping-off, but there is insufficient knowledge of tipping-off provisions amongst DNFBPs.

32. Banks and some non-bank FIs have AML/CFT compliance functions which are properly structured and resourced and involve regular internal audits and training programmes. Not all DNFBPs have appointed AML/CFT compliance officers and most, including casinos, have developed only very basic internal policies and procedures, with AML/CFT expertise remaining very limited.

Supervision (Chapter 6 – IO.3; R. 14, 26-28, 34-35)

33. The NBG effectively applies robust “fit and proper” entry checks for the FIs under its supervision (including broad consideration of reputation of the applicant), as well as on-going scrutiny of licencing requirements. It has a comprehensive understanding of sectoral and individual institution risks, which it applies in the course of supervision planning, undertaking of supervision and awareness raising. The NBG’s approach to AML/CFT supervision is currently fully risk-based and carried out through a separate and well-resourced unit. The supervisory cycle that is set is adequate for the number and characteristics of the institutions and sectors supervised, though the NBG has not yet always met its on-site inspection targets.

34. The level of risk understanding and procedures regarding licencing and supervision by the ISSS are broadly similar to the NBG, though less robust. This is proportionate to the significantly lower risks in the insurance sector.

35. There are no licencing or registration requirements for leasing companies or DPMS and technical deficiencies in licencing requirements for casinos seriously undermine their effectiveness in preventing criminals or their associates from controlling or managing a casino. The MoF, as a supervisor, has a broad general understanding of ML/TF risks for the gambling sector but only a very limited understanding of ML/TF risks for leasing companies and DPMS. It does not undertake any supervision of AML/CFT obligations in practice.

36. The application of “fit and proper” entry checks amongst other DNFBPs is mixed and the level of supervision insufficient and uneven. Certified accountants are not supervised, and general supervision of auditors and notaries covers AML/CFT aspects only to a limited extent. The Bar Association limits its investigation of lawyers to cases where it receives a complaint or is in receipt of negative information. The overall approach to supervision of professionals is seriously hindered by their limited understanding of ML/TF risks.

37. The NBG’s use of its sanctioning powers appears effective, proportionate and dissuasive. The use of sanctioning powers for AML/CFT breaches by other supervisors, however, cannot be considered effective, proportionate and dissuasive.

38. The NBG has made a demonstrable difference to the level of compliance in the sectors under its supervision, and the situation with ISSS is broadly similar. Whilst the MoJ and SARAS have had some success in improving compliance, action taken by other supervisors is not sufficient.

Transparency of Legal Persons and Arrangements (Chapter 7 – 10.5; R. 24-25)

39. Setting up a legal person in Georgia is straightforward and all information that is necessary for registration is publicly available. Due to the ease of founding a legal person, most register directly with the registrar of companies (NAPR), and “gate-keepers” (such as notaries, lawyers or accountants) are often not involved.

40. The NRA report provides a description of the framework in place and highlights cases where legal persons, particularly LLCs, have been abused. However, the authorities have not demonstrated effective identification and analysis of threats and vulnerabilities, though it is universally understood that the use of fictitious LLCs in criminal schemes constitutes a significant ML risk.

41. Nominee shareholdings are not prohibited for LLCs and there is no regulation of their use.

42. Three mechanisms are available to obtain information on BO of legal persons established in Georgia. In practice, these cannot be relied upon in all cases to provide adequate, accurate and current BO information. Changes of shareholdings of LLCs and JSCs (first level of legal owners) take effect only upon entry in the register (maintained by the NAPR, registrar or company) and so basic information will always be adequate, accurate and current. However, the validity of unregistered changes between involved parties is unclear.

43. Effective, proportionate and dissuasive sanctions have been applied by the NBG against banks and registrars for failing to apply CDD measures in accordance with the AML/CFT Law. Given that basic information held in the NAPR register will always be adequate, accurate and current, there is no need for sanctions to be available or applied.

International Cooperation (Chapter 8 – 10.2; R. 36-40)

44. Georgia has a sound legal framework for international cooperation and has mechanisms in place to conduct it. Georgia demonstrated effective cooperation in providing and seeking information, using both formal and informal channels, to facilitate action against criminals and their assets with a wide range of foreign jurisdictions.

45. Georgia provides and in recent years to a greater extent constructively seeks MLA, including BO information, but more so regarding predicate offences and less concerning complex transnational ML or TF cases.

46. Competent authorities are generally proactive and spontaneously disclose financial intelligence to foreign counterparts, however not always using the direct channel between financial intelligence units when appropriate, relying on other competent authorities to do so.

47. The limited extent of domestic exchange of information between LEAs and the FMS has a negative effect on the ability of the FMS to add value, through international cooperation, to complex ML investigations.

48. The NBG proactively cooperates with foreign counterparts, being mostly focused on matters related to licensing. Whilst less cooperation is evident at an operational level, this is in line with the profile of the country’s financial system. The MoF, as a supervisor of

gambling sector, does not exchange information notwithstanding that the sector has a significant foreign footprint (ownership and customers). Other supervisors can exchange information but hardly ever do so, given the profile of their sectors.

While shortcomings identified under IO.5 mean that BO information may not always be available in Georgia, the LEAs, NBG and FMS demonstrated that, in general, when requested they are able to provide BO information.

Priority Actions

a) Georgia should take measures to ensure a better and more equal level of understanding of its identified ML/TF risks across all competent authorities, and should continue improving its understanding of ML/TF risks by conducting further analysis and assessment of: the main proceeds-generating predicate offences, extending focus to include ML threats presented by trade-based ML (including in free industrial zones of Georgia); vulnerabilities and residual ML risks in the real estate sector and linked to the extensive use of cash; ML/TF implications of potential contextual vulnerabilities; TF risks including the risk of TF abuse of NPOs; and risks connected to legal persons.

b) Georgia should rapidly review its decision not to apply the FATF Recommendations to real estate agents, TCSPs, VASPs, accountants that are not certified, accountants when providing legal advice and collective investment funds and fund managers. When considers application of exemptions, Georgia should ensure that these occur in strictly limited and justified circumstances, where there is a proven low ML/TF risk. Respective sectors should be subject to regulation and supervision for compliance with AML/CFT requirements.

c) Georgia should amend the AML/CFT Law to enable the FMS to provide - without a court order - information and analytical results to all LEAs investigating ML, associated predicate offences and TF on request. The FMS should be empowered to disseminate spontaneously information and analytical results to the MoF Investigation Service. Georgia should provide guidance to encourage LEAs to use FMS information and analytical results in the investigation of ML, associated predicate offences and TF. The FMS should improve its operational and strategic analysis of intelligence received and enhance its technical capacities for conducting this analysis.

d) Georgia should improve the effectiveness of parallel financial investigations by: increasing the use and deepening analysis of financial intelligence to identify ML (complex cases of ML); identifying and investigating complex cases of ML and TF; appointing specialist financial investigators and assigning prosecutors who are financial crime specialists to assist the LEAs; making greater use of interagency teams (especially involving tax and customs investigators); and issuing of detailed guidance by the GPO on financial investigations.

e) Georgia should conduct an examination of the process for applying provisional measures to ensure that they are applied to all ML investigations where necessary, and practices of applying emergency freezing measures, to ensure that their respective powers to freeze or seize property urgently are applied in a consistent and effective way. Use of value-based confiscation and the range of assets confiscated as instrumentalities should be widened. Non-conviction-based confiscation should be set as a policy objective. Georgia should review the new regime for cross-border declarations and take the necessary steps to ensure that there are no obstacles to confiscating non-declared or falsely declared cash or BNIs or removing it from the party in breach through a fine.

f) Georgia should ensure that amendments to lists of designated persons and entities pursuant to UNSCRs 1267/1989, 1988, and 1718 and 1737 are implemented without delay and immediately communicated to obliged entities. Georgia should urgently consider designating persons that it has already convicted for TF in Georgia at a national level and proposing designations to the respective UNSCs.

g) Georgia should take appropriate measures to address the ML/TF risks associated with high level cash turnover in the economy, in particular: (i) extensive deposits into, and withdrawals of cash from, bank accounts; (ii) use of currency exchange offices by trading companies to purchase goods in foreign currency; and (iii) use of cash in real estate transactions. Such measures may include setting cash thresholds, greater use of gatekeepers and publication of ML/TF guidance and/or typologies.

h) Mechanisms for holding BO information for legal persons should be reviewed and measures put in place to ensure that adequate, accurate and current information will always be available on a timely basis in Georgia, focusing in particular on companies that do not bank in the country. Measures that might be considered include setting up a centralised systematised database of BO information.

i) The MoF should put in place a comprehensive framework (or significantly improve the existing one) for licensing, fit and proper checks (criminality) and AML/CFT risk-based supervision of casinos. Supervisors of leasing companies and DNFBP sectors should significantly enhance their understanding of sectorial risks. The MoF (leasing companies) and Bar Association (lawyers) should put in place risk-based AML/CFT supervision and SARAS (auditors and certified accountants) and the MoJ (notaries) should significantly enhance their risk-based approach which should be ML/TF risk-oriented.

j) Supervisors and the FMS should broaden their training programmes to raise awareness of specific risks facing each FI and DNFBP sector (including contextual factors) and organisation specific risks which are not referred to in the NRA or AML/CFT Law and guidance notes.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings¹

IO.1 – Risk, policy and coordination	IO.2 – International cooperation	IO.3 – Supervision	IO.4 – Preventive measures	IO.5 – Legal persons and arrangements	IO.6 – Financial intelligence
Moderate	Substantial	Moderate	Moderate	Moderate	Moderate
IO.7 – ML investigation & prosecution	IO.8 – Confiscation	IO.9 – TF investigation & prosecution	IO.10 – TF preventive measures & financial sanctions	IO.11 – PF financial sanctions	
Moderate	Moderate	Substantial	Low	Moderate	

Technical Compliance Ratings²

R.1 - assessing risk & applying risk-based approach	R.2 - national cooperation and coordination	R.3 - money laundering offence	R.4 - confiscation & provisional measures	R.5 - terrorist financing offence	R.6 - targeted financial sanctions - terrorism & terrorist financing
PC	LC	C	LC	LC	PC
R.7- targeted financial sanctions - proliferation	R.8 -non-profit organisations	R.9 – financial institution secrecy laws	R.10 – Customer due diligence	R.11 – Record keeping	R.12 – Politically exposed persons
PC	NC	C	LC	LC	PC
R.13 – Correspondent banking	R.14 – Money or value transfer services	R.15 – New technologies	R.16 – Wire transfers	R.17 – Reliance on third parties	R.18 – Internal controls and foreign branches and subsidiaries
C	LC	PC	LC	LC	LC
R.19 – Higher-risk countries	R.20 – Reporting of suspicious transactions	R.21 – Tipping-off and confidentiality	R.22 – DNFBPs: Customer due diligence	R.23 – DNFBPs: Other measures	R.24 – Transparency & BO of legal persons
LC	LC	C	PC	PC	PC
R.25 - Transparency & BO of legal arrangements	R.26 – Regulation and supervision of financial institutions	R.27 – Powers of supervision	R.28 – Regulation and supervision of DNFBPs	R.29 – Financial intelligence units	R.30 – Responsibilities of law enforcement and investigative authorities
PC	LC	LC	PC	PC	C
R.31 – Powers of law enforcement and investigative authorities	R.32 – Cash couriers	R.33 - Statistics	R.34 – Guidance and feedback	R.35 - Sanctions	R.36 – International instruments
LC	LC	LC	LC	PC	LC
R.37 – Mutual legal assistance	R.38 – Mutual legal assistance: freezing and confiscation	R.39 – Extradition	R.40 – Other forms of international cooperation		
LC	LC	C	LC		

¹ Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

² Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place as at the date of the onsite visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the evaluation team during its onsite visit to the country from 4-15 November 2019.

The evaluation was conducted by an assessment team consisting of:

Assessors:

Ms Catherine Rabey - Crown Advocate Legislative Counsel, Law Officers of the Crown, Guernsey (legal expert)

Ms Lucie Castets - Head of International Affairs, Intelligence Processing and Action against Illicit Financial Networks Unit, France (legal expert)

Mr Yehuda Shaffer – International Consultant (law enforcement expert)

Ms Katerina Pscherova - Senior Legal Expert, Financial Market Regulation Division Financial Market Regulation and International Cooperation Department, National Bank, Czech Republic (financial expert)

Mr Igor Bereza - Director, AML/CFT Department, Head of Financial Monitoring Department, National Bank of Ukraine, Ukraine (financial expert)

MONEYVAL Secretariat:

Ms Ani Melkonyan – Administrator

Mr Andrew Le Brun – Administrator

Mr Uwe Wixforth - Administrator

The report was reviewed by Ms Eva Rossidou-Papakyriacou, Attorney of the Republic, Head of the Unit for Combating Money Laundering (FIU) (Cyprus), Ms Tanjit Sandhu Kaur, Financial Sector Specialist at World Bank, and the FATF Secretariat.

Georgia previously underwent a MONEYVAL Mutual Evaluation in 2012, conducted by the IMF, according to the 2004 FATF Methodology. The 2012 evaluation report of the country and 2015 follow-up report have been published and are available at: <https://www.coe.int/en/web/moneyval/jurisdictions/georgia>.

That Mutual Evaluation concluded that the country was compliant with 3 Recommendations; largely compliant with 20; partially compliant with 14, non-compliant with 2 and 1 Recommendation was not applicable. Following the adoption of the 4th Round MER, Georgia was placed under the regular follow-up process and was removed from the regular follow-up process in 2015.

CHAPTER 1. ML/TF RISKS AND CONTEXT

1.1 ML/TF risks and scoping of higher-risk issues

1. Georgia is located in the Caucasus region. It shares borders with Russia to the north, Azerbaijan to the east, Armenia and Turkey to the south, and has the Black Sea coastline to the west. The capital city is Tbilisi. The population is 3.8 million inhabitants (World Bank estimate, 2018). Georgians form around 86.8%³ of the current population. Georgia's GDP is about USD 17.6 billion (2018 current prices, World Bank⁴). According to the Constitution of Georgia, the official language of Georgia is Georgian and in the Abkhazian region of Georgia, the official languages are Georgian and Abkhazian. The official currency of Georgia is the Lari (GEL)⁵. Georgia consists of nine regions divided into 65 districts and includes the autonomous republics of Adjara and Abkhazia.

2. In April 1991, Georgia separated from the Soviet Union, establishing the "Republic of Georgia"⁶. It has a land area of 69 700 square kilometres, and its Black Sea coastline is 310 kilometres long, this including Abkhazia and the Tskhinvali Region/South Ossetia, which, together, represent close to 20 percent of the total land mass of the country. Due to the lack of effective control of Georgia over Abkhazia and the Tskhinvali Region/South Ossetia, this report only covers the AML/CFT regime in those parts of the country which are under Government control.

3. Georgia is a parliamentary republic. The President of Georgia is the Head of State and is elected for a five-year term. The constitution provides the President with executive powers, such as, among others: appointment of the Prime Minister; appointment of a member of the High Council of Justice; nomination of members of the Board of the National Bank and appointment of its President; and appointment of judges to the Constitutional Court. The Government of Georgia is the supreme body of executive power. The Government consists of a Prime Minister and ministers, appointed in accordance with the Constitution. The Government is accountable and responsible to the Parliament of Georgia. Georgia's legal system is based on civil law principles.

4. Georgia is a member of the United Nations, the Council of Europe, the World Trade Organisation, the Organisation of the Black Sea Economic Cooperation, the Organisation for Security and Cooperation in Europe, the Community of Democratic Choice, the GUAM Organisation for Democracy and Economic Development, the European Bank for Reconstruction and Development, the Asian Development Bank, and other international organisations.

1.1.1 Overview of ML/TF Risks

5. According to its NRA (2019), Georgia is exposed to medium money laundering (ML)

³ Other ethnic groups include Abkhazians, Armenians, Assyrians, Azerbaijanis, Greeks, Jews, Kists, Ossetians, Russians, Ukrainians and Yezidis.

⁴ https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=GE&most_recent_year_desc=true

⁵ For the purpose of this report the exchange rate used is GEL 1= EUR 30 cents.

⁶ Constitution of Georgia, Article 1. "1. Georgia is an independent, unified and indivisible state as confirmed by the Referendum of 31 March 1991 held in the entire territory of the country, including the Autonomous Soviet Socialist Republic of Abkhazia and the former Autonomous Region of South Ossetia, and by the Act of Restoration of State Independence of Georgia of 9 April 1991. 2. The territory of the state of Georgia was determined on 21 December 1991. The territorial integrity of Georgia and the inviolability of the state border is confirmed by the Constitution and laws of Georgia and recognised by the world community of nations and by international organisations. The alienation of the territory of the state of Georgia shall be prohibited. The state border may be changed only by a bilateral agreement with a neighbouring state".

and low terrorism financing (TF) risks⁷. The range of ML activities include third party ML, cash-based ML, and abuse of legal persons (involved in complex criminal schemes). Georgia claims the main proceed generating ML predicate offences to be fraud, theft, and cybercrime. There is no estimate available of the value of criminal proceeds in Georgia overall and for the mentioned three types of offences, in particular. The National Risk Assessment (NRA) though is analysing the following proceeds generating predicate offences: fraud, followed by cybercrime, drug trafficking, tax evasion, organised crime, corruption and human trafficking. ML threats posed by these criminal activities range between medium high to low, respectively.⁸ Whilst most of these criminal activities are committed domestically, fraud, cybercrime and drug trafficking have also a transnational character. Bank accounts and remittance services provided by microfinance organisations (MFOs) and payment service providers (PSPs) are the most common means used to launder criminal proceeds⁹.

6. Georgia is not amongst countries with a high risk of terrorist attacks. However, the regional position and the country's proximity to conflict zones present a threat. In November 2017, an anti-terrorist operation neutralised a group planning a terrorist attack in Georgia and Turkey, targeting the diplomatic missions. Six individuals were convicted of TF for providing material support or resources for terrorist activities. Georgian territory is not considered to be a favourable transit route for foreign terrorist fighters and the incidence of Georgian nationals fighting in Iraq and Syria has sharply reduced due to action taken by the authorities. Organisations supporting terrorist ideology have not been identified.

1.1.2 Country's risk assessment and scoping of higher risk areas

7. Georgia's first NRA was published in October 2019. It has been prepared in accordance with FATF Guidance on National ML and TF Risk Assessments and taking into consideration experience of other countries. A Council of Europe external expert also provided methodological support.

8. Preparation of the NRA was led by the AML/CFT Inter-Agency Council under the Government of Georgia, which is chaired by the Minister of Finance (MoF). An NRA working group was set up within the Council tasked to conduct the risk assessment. The NRA working group consisted of representatives of all competent AML/CFT bodies, including law enforcement agencies (LEAs), supervisory authorities, and other government bodies. The findings of the NRA were discussed with representatives of the private sector prior to adoption. The results of this discussion were reflected in the final NRA report. The risk assessment is publicly available¹⁰.

9. The risk assessment was conducted based on a notion of risk as a combination of threat, vulnerability and consequence. The NRA assessed ML/TF risk at national level and sectorial level. All the risk levels indicated in the NRA are "residual risks", which were determined considering the effectiveness of the legal and institutional system, as well as the quality of compliance control systems across the sectors. The thematic areas presented in the report are interrelated and impact the level of each other's risk. For example, when assessing risk levels in the different sectors, the working group considered

⁷ NRA p. 37

⁸ NRA pp. 25-34

⁹ NRA pp.34-37

¹⁰ NRA in Georgian: <https://matsne.gov.ge/ka/document/view/4693515?publication=0>

risks identified at the national level.

10. Certain shortcomings exist in taking account of some inherent contextual factors that may influence the risk profile of a country (e.g. prevalence of cash, geographical, economic, and demographic factors), and the identification of some threats and vulnerabilities in the NRA (e.g. trade-based ML and FT, real estate sector, potential for abuse of non-profit organisations (NPOs), these leading to limitations in subsequent understanding of some of the ML/TF risks.

11. Most sectorial risk assessments are clustered around medium to medium-low risk ratings, although most ML cases in the country identify the use of banks, cash or real estate. Current ratings will make it harder to identify where the greatest amount of resources should be directed and may encourage stakeholders to focus only on those sectors identified as presenting a medium-high risk.

12. The assessment team identified several areas requiring increased focus in the evaluation through an analysis of information provided by the Georgian authorities (excluding the NRA which was not available at the time) and by consulting various open sources.

13. As explained, the NRA was not available at the time of scoping for the evaluation and so the evaluation team considered the **country's understanding ML/TF risks**. It considered the process followed to assess ML/TF risk, stakeholders involved, the results achieved, action plans and decisions not to apply the FATF Recommendations to some obliged entities.

14. Major proceeds-generating criminal activities were considered, along with authorities' views on ML/TF risks, the extent to which the strategy of the Prosecutor's Office for 2017 to 2021 is in line with risks, as well as challenges in pursuing parallel investigations and prosecution of different types of ML (**law enforcement efforts**). The evaluation team also analysed reasons for discrepancies in the numbers of investigations, prosecutions, and convictions, and the extent to which this is indicative of systemic problems within the criminal justice regime. The practice of confiscating various types of assets (including virtual assets (VAs)), application of non-conviction-based confiscation and asset management were also covered.

15. Given that recent reports have highlighted increasing challenges posed by **cybercrime**, ML/TF risks were considered along with their impact on the financial sector and the authorities' response to this threat.

16. Despite Georgia's geographical position on traditional drug smuggling routes in the Caucasus - which makes it vulnerable to abuse by transnational criminal organisations that continue to traffic various types of drugs - drug seizures have declined since 2016. Money remittance services have also been used by Georgians with criminal records for drug crimes. The evaluation team explored the extent to which ML related to **drug trafficking** is prioritised by LEAs and the way these cases are investigated and prosecuted, parallel financial investigations and reasons for declining drug seizures.

17. A recent report by the European Commission¹¹ states that Georgian nationals are one of the most frequently represented non-EU nationalities involved in serious and organised crime in the European Union (EU). Georgian **organised criminal groups** are highly mobile, and especially active in France, Greece, Germany, Italy and Spain. The evaluation

¹¹ Report from the Commission to the European Parliament and the Council "Second Report under the Visa Suspension Mechanism"

team considered the identification and understanding of risks related to organised criminal groups in the national and international context, and adequacy of measures foreseen in, and taken according to, the National Strategy of 2017 to 2020 for Combating Organised Crime. The level of international cooperation by LEAs and the financial intelligence unit (FIU) was also considered.

18. A GRECO (Council of Europe) report¹² published in 2017 and OECD report¹³ published in 2016 highlight that Georgia has come a long way in creating a framework for fighting **corruption**. It appears that the Government has succeeded in significantly reducing petty corruption, though it has been argued that some of the more complex types of corruption remain a problem. The evaluation team considered whether the risks associated with corruption (committed domestically or abroad) have been properly assessed and understood, and whether mitigating measures have been taken. Technical shortcomings in relation to the application of enhanced customer due diligence (CDD) measures to politically exposed persons (PEPs) have a potential negative impact on the ability to identify and trace corruption-related assets and so were considered. Submission of PEP-related suspicious transaction reports (STRs) and dissemination of the results of the FIU's analyses to law enforcement were also considered. Challenges faced by LEAs in effectively curtailing this corruption were also considered.

19. **Cash** transactions are substantial. The evaluation team considered Georgia's understanding of the ML/TF risks posed using cash and the adequacy of its measures taken to mitigate those risks. Attention was given to the effectiveness of cash border controls to detect false/non-declarations, resulting ML/TF suspicions as well as measures applied by obliged entities to find out the source of funds in cash transactions.

20. **Real estate** agents are not designated as obliged entities because their involvement in property transactions is limited, and function is limited. However, there are many websites offering support (to foreigners) to buy real estate in Georgia. The ML/TF risks are said to be mitigated through the National Agency of Public Registry (NAPR), which is a designated obliged entity. Evaluators focussed on the authorities' understanding of ML/TF risks emanating from the real estate sector, including foreign investment.

21. Given the **abuse of legal persons** in Georgia (including through fictitious (shell) companies), threats and vulnerabilities were considered, including the use made of trust and company service providers (TCSPs).

22. Recent reports highlight that Georgia is a popular **virtual currency** mining location. In 2018, the National Bank of Georgia (NBG) prohibited PSPs acting as virtual asset service providers (VASPs) and provided guidance to PSPs to classify clients dealing with virtual currencies as high risk and apply enhanced measures. The evaluation team considered the understanding of ML/TF risk related to virtual assets (VAs) as well as legislative and institutional capacities to deal with abuse.

23. Between 2013 and 2016, there was a significant number of instances when the proceeds from Nigerian social engineering schemes were laundered through Georgia. The perpetrators, mostly non-residents, established fictitious companies and opened bank accounts to launder their criminal proceeds. Non-bank remittance systems were misused for the same purpose. According to the respective investigations, prosecutions and

¹² Fourth evaluation round: Corruption prevention in respect of members of parliament, judges and prosecutors. <https://www.coe.int/en/web/greco/evaluations/georgia>

¹³ www.oecd.org/corruption/georgia-should-focus-on-combating-high-level-and-complex-corruption.htm

convictions the predicate offences were fraudulent “social engineering schemes” committed abroad. In 2017, the Financial Monitoring Service (FMS) (Financial Intelligence Unit of Georgia) identified possible attempts to avoid Iranian sanctions by non-Georgian residents of Iranian origin, or with ties to Iran, who established companies in Georgia to conduct financial transactions with third countries. Accordingly, the team considered **FI’s understanding of ML/TF risk**, effectiveness of risk management systems in place and challenges carrying out CDD, particularly for higher risk customers and products.

24. Following the launch of an investigation by the Prosecutor's Office into the alleged **laundering of illicit income by two controllers of a bank**, the evaluation team discussed what type of ML may have taken place, analysed the effectiveness of supervisory measures of financial institutions (FIs), and considered law enforcement activities and potential challenges.

25. Between 2015 and 2018, casinos and gaming institutions filed over 2 817 currency threshold reports (CTRs) with the FMS but just 28 STRs. This raises questions about compliance with CDD and reporting requirements, as well as the effectiveness of supervision. Evaluators considered whether the authorities understand the risks linked to the expanding **gambling sector** and apply adequate licensing, supervisory and preventive measures, and assessed the effectiveness of risk management systems applied by casinos.

26. The State Security Service (SSS) and media reports suggest that Georgia is closely monitoring terrorism-related matters. The country has initiated several investigations and prosecutions and obtained convictions. The evaluation team explored the extent to which Georgia is exposed to **TF threats and vulnerabilities**, and whether they are adequately reflected in the 2019 National Strategy on Combating Terrorism. The extent to which TF is considered in terrorism investigations was also analysed. Challenges in pursuing TF investigations, prosecutions and convictions (including confiscation of assets) were considered.

1.2 Materiality

27. Georgia has a small, but growing economy (USD 17.6 billion GDP (current) in 2018¹⁴) with an annual GDP growth rate of 4.8% in 2018 and 5.2% in 2019¹⁵.

28. The largest contributors to GDP¹⁶ (current prices) in 2018 were: (i) wholesale and retail – 13.9%; (ii) real estate activities – 11.4%; (iii) manufacturing – 10.2%; (iv) construction – 8.3%; (v) agriculture, forestry and fishing – 8.3%; (vi) public administration and defence trade – 7.5%; (vii) transportation and storage – 6.3%; (viii) financial and insurance activities – 6.1%; and (ix) other sectors – 28.5%.

29. Georgia’s financial sector is dominated by its banks. The ratio of assets to GDP has grown constantly in recent years – from 79% in 2016 to 97% in 2018. By contrast, the ratio of assets of non-bank financial institutions to GDP stood at 6.2% in 2018. Most customers are resident in Georgia and the percentage of banks’ assets held by customers in offshore centres is around 3%.

30. The Georgian capital or securities market is small and includes the Stock Exchange and the National Depository of Securities. The types of products and services available in the capital market are limited since it is in a nascent development stage and currently does not

¹⁴ https://data.worldbank.org/indicator/NY.GDP.MKTP.CD?locations=GE&most_recent_year_desc=true

¹⁵ <https://www.geostat.ge/en/modules/categories/23/gross-domestic-product-gdp>

¹⁶ <https://www.geostat.ge/en/modules/categories/23/gross-domestic-product-gdp>

provide any alternative investment opportunities (e.g. bonds, stocks).

31. Life insurance products are offered only on a very limited basis in Georgia (investment related insurance is not offered at all). Only basic life insurance is offered and this in connection with private health insurance. In addition, contracts and policies are renewable every year (there is, therefore, a very limited possible pay-out in case of cancellation of the policy). The share of the insurance sector in GDP is 1.3%.

32. Very limited data is available for DNFBPs. The share of the gambling sector of GDP is 14.7%, for audit it is 0.11% and for other professional activities of accountants it is 0.15%.

33. There is no official information on the size of the VASP sector, but according to interviews conducted during the on-site visit, the exchange transaction volume can be between GEL 3.5 to 5 million (EUR 1 to 1.5 million) per month.

34. As explained below, cash is the main means of payment in Georgia and estimates of the size of the informal economy vary between 10%¹⁷ (excluding unobservable economy) and over 50%¹⁸ (including unobservable economy). The unobservable economy refers to self-employed individuals who account for almost two-thirds of the Georgian workforce, many of whom are not required to register for tax purposes.

1.3 Structural elements

35. The key structural elements (political stability; high-level commitment to address AML/CFT issues; stable institutions with accountability, integrity and transparency; rule of law; and a capable, independent and efficient judicial system) which are necessary for an effective AML/CFT regime are present in Georgia to differing extents.

36. As noted above, GRECO (Council of Europe) and OECD¹⁹ reports identify an argument that some of the more complex types of corruption remain a problem. The GRECO report highlights apparent mistrust of the judiciary more than other institutions.

37. As a result of the incomplete composition of the Supreme Court of Georgia (due to expired terms of office) and need for Parliament to appoint 18 to 20 new judges (following a change to the constitution which increased the number from 16 to at least 28), the Venice Commission (Council of Europe) issued an urgent opinion in April 2019²⁰ in which it made several recommendations to deal with this “important and very unusual, if not extraordinary, situation”²¹. In particular, it said that: (i) Parliament should only appoint the number of judges necessary to render the work of the Supreme Court manageable; and (ii) information regarding the qualifications of candidates should be made public and the appointment procedure based on the objective criteria on which each candidate is evaluated. This being relevant for the report as there is an established practice of addressing the Supreme Court to uphold hearings on ML²².

¹⁷ In the interview with Forbes, the head of the IMF mission in Georgia confirmed that the Geostat's data on the informal economy is reliable: <https://forbes.ge/news/3782/ramdenad-Crdilovania-saqarTvelos-ekonomika>

¹⁸ <https://www.imf.org/en/Publications/WP/Issues/2018/01/25/Shadow-Economies-Around-the-World-What-Did-We-Learn-Over-the-Last-20-Years-45583>

¹⁹ <https://www.oecd.org/corruption/acn/istanbulactionplancountryreports.htm>

²⁰ [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI\(2019\)002-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-PI(2019)002-e)

²¹ In December 2019, the EU's diplomatic service released a statement on the subsequent appointment of 14 judges in which it states that the selection procedure did not adhere to all recommendations made by the Venice Commission.

²² In July 2020, the Supreme Court of Georgia upheld the convictions of the Court of Appeals against 6 individuals for TF, in Chataev case, by finding their applications inadmissible.

38. In the 2018 survey by the World Bank of Worldwide Governance Indicators²³, the country scored 83% for regulatory quality, 76% for control of corruption, 74% for government effectiveness, 64% for rule of law, 56% for voice and accountability, and 30% for political stability and absence of violence and terrorism.

1.4 Background and other Contextual Factors

39. Georgia is located along traditional smuggling routes in the Caucuses, which makes it vulnerable to abuse by transnational criminal organisations that continue to traffic various types of drugs. In April 2018, 15 metric tons of acetic anhydride were seized at Georgia's port of Poti on the Black Sea – one of the largest seizures in history. Georgia is also part of the trade route to and from Iran.

40. Criminal groups were particularly strong in Georgia in the 1990s and early 2000s when weak and corrupt public institutions created fertile ground for organised crime. Organised crime has declined sharply as a result of an active fight against the criminal world. Georgian criminal groups have found refuge in other countries.

41. Transparency International's corruption perception index ranks Georgia 44th amongst 180 countries²⁴ in 2019. This is the best result in Eastern Europe and the Central Asia region. Amongst recent reforms, the country requires senior officials to publish property declarations, a proportion of which are reviewed by the authorities.

42. There are approximately 7000 active non-profit legal persons operating in Georgia, most focussing on human rights and governance issues. Such organisations have operated in Georgia since the collapse of the Soviet Union, as one of the priorities of international donors has been to strengthen democratic governance in Georgia. According to Government estimates, about 95% of income still comes from international grants, and the European Commission and the US Agency for International Development are the largest donors.

43. Cash is the main means of payment in Georgia. Cash transactions in the financial sector are substantial, though the volume of cashless payments is rapidly increasing. Georgia has also made significant progress in terms of financial inclusion²⁵. Since 2011, the number of bank account holders has almost doubled and, in 2017, 61% of residents held an account. Despite this, the country's "cash box" network has developed rapidly, enabling customers to carry out various types of payments conveniently and quickly. In the absence of proper control mechanisms, pay boxes provide an opportunity for placing cash anonymously into the financial sector, a point recognised by the authorities who plan to introduce a user identification scheme to prevent anonymous use. In 2017, the total volume of transactions carried out through cash boxes was almost GEL 8 billion (EUR 2.3 Billion) (average amount of a transaction - GEL 33 (EUR 10)), 64% of which was credited to bank accounts, 11% related to gambling and 11% used to pay utility company bills.

44. In 2018, the IMF published a working document, estimating the size of the informal economy in Georgia in 2015 to be min 53% of GDP²⁶. The National Statistics Office of Georgia uses a different methodology and separates the informal economy from the so called "unobservable economy", which is outside state control. The authorities have

²³ <http://info.worldbank.org/governance/wgi/Home/Reports>

²⁴ <https://www.transparency.org/en/cpi/2019/results/geo>

²⁵ [World Bank Report on Financial inclusion in Europe and Central Asia for 2019.](#)

²⁶ <https://www.imf.org/en/Publications/WP/Issues/2018/01/25/Shadow-Economies-Around-the-World-What-Did-We-Learn-Over-the-Last-20-Years-45583>

explained that the “unobservable economy” encompasses the Georgian labour force that is self-employed (two-thirds), and which carries out economic activities independently. These are not subject to taxation. Under this method, the informal economy of Georgia is measured as 10% of GDP²⁷. As a result of tax reforms, the share of tax revenue in GDP in recent years has risen from 12% to 25%, a ten-fold increase in nominal terms.

45. Georgia’s tax policy is attractive to foreign investors and, in 2018, foreign direct investment flows to Georgia amounted to USD 1.26 billion. The top 3 investment countries were Azerbaijan (19.5%), the Netherlands (16.5%), and the United Kingdom (14.1%)²⁸. Under Georgia’s tax code, free industrial zones can be established where business-friendly regulations and a favourable tax and customs system apply. Tax obligations are generally minimised in these territorial units; there are no quotas, tariffs or other barriers. These zones can be initiated either by the Government or at the request of any resident or non-resident natural or legal person. The Kutaisi and Poti free industrial zones employ around 30 000 people. Georgia is a popular virtual currency mining location and it is understood that many miners are established in free industrial zones.

46. The financial sector is dominated by two large, sophisticated banks, which operate also in other sectors through wholly-owned subsidiaries. This level of sophistication is less apparent in other financial sectors, and absent in large parts of the non-financial sector. Supervisors of FIs (except leasing companies) are well resourced and proactively supervise compliance with AML/CFT requirements. On the other hand, AML/CFT supervision of DNFBPs is, at best, very limited.

1.4.1 AML/CFT strategy

47. Georgia has published an overarching policy document for combating ML/TF - Strategy for Combating ML/TF for 2014 to 2017. Implementation of strategic goals in the document was supported by a detailed action plan adopted based on the AML/CFT Strategy. Action taken has included improvement of the legislative and institutional framework in the country, extending and strengthening the capacity of obliged entities to apply preventative measures, and enhancement of the effectiveness of investigation and prosecution of ML/TF, including thorough a better use of national and international cooperation frameworks.

48. The AML/CFT Strategy also provided the trigger for conducting the NRA which has identified six priority tasks. These are: (i) monitoring of parallel financial investigation practices for all income generating offences; (ii) improvement of collection of statistics on the type and value of frozen, seized and confiscated property; (iii) improvement of application of targeted financial sanctions (TFS); (iv) improvement of software for operational-strategic analysis by the FMS; (v) implementation of risk-based supervision over the gambling sector and determining appropriate fit and proper criteria for casino owners/administrators; and (vi) improvement of public/private partnership mechanisms for timely exchanges of information on methods and means of crime and other threats.

49. Following adoption of the NRA, an AML/CFT Strategy will be developed to reflect on the findings of the NRA.

50. In addition, the country has adopted a National Strategy on the Fight Against

²⁷ [In the interview with Forbes, the head of the IMF mission in Georgia confirmed that the Geostat's data on the informal economy is reliable: https://forbes.ge/news/3782/ramdenad-Crdilovania-saqarTvelos-ekonomika](https://forbes.ge/news/3782/ramdenad-Crdilovania-saqarTvelos-ekonomika)

²⁸ <https://www.geostat.ge/en/modules/categories/191/foreign-direct-investments>

Terrorism (2019 to 2021). The strategy includes seven basic directions: (i) collection of terrorism-related information; (ii) prevention; (iii) protection; (iv) preparedness; (v) prosecution; (vi) development of legislative framework; and (vii) international cooperation. This strategy focuses on the fight against terrorism and extremism, and also covers TF.

1.4.2 Legal and institutional framework

51. The Inter-Agency Council for the Development and Coordination of Implementation of the AML/CFT Strategy and Action Plan (AML/CFT Inter-Agency Council) is the main coordination mechanism for supervision of fulfilment of the Government's 2014 to 2017 AML/CFT Strategy and Action Plan, as well as AML/CFT recommendations of international organisations, and coordination of activities of public agencies and self-regulatory bodies. Whilst the formal mandate of the AML/CFT Inter-Agency Council ended in 2017, it continues to function and is chaired by the Minister of Finance. Its membership is drawn from senior officials in all AML/CFT agencies. The institutional framework involves a broad range of authorities.

52. With the adoption of the AML/CFT Law in October 2019, the AML/CFT Standing Interagency Commission shall be set up by the Government decision, responsible for development, monitoring of implementation and update of the NRA and the Action Plan. It is yet to be established. It is envisaged that high-ranking officials from all authorities involved in the AML/CFT activities would be represented there.

53. The **Financial Monitoring Service (FMS)** is Georgia's financial intelligence unit. The FMS receives STRs and other information from obliged entities and other sources, and when there are reasonable grounds to suspect ML/TF, sends the results of its analyses to the General Prosecutor's Office, the Ministry of Internal Affairs, the State Security Service, and/or the Revenue Service of the Ministry of Finance.

54. The **Ministry of Finance (MoF)** is the national coordinating body for the development of AML/CFT policies and the NRA. Within the AML/CFT framework, the MoF is acting as: a LEA responsible for combating financial and economic crimes falling under its competence (Investigation Service); an administrative body on tax and revenue matters (Revenue Service), including cross-border movement of cash and securities (the Customs Department of the Revenue Service); and the supervisory authority for casinos, DPMS, leasing companies.

55. The **Ministry of Justice (MoJ)** is the supervisory authority for notaries and the NAPR. It also coordinates the work of the Governmental Commission on the Implementation of UN Security Council Resolutions (Commission).

56. The **General Prosecutor's Office (GPO)** is responsible for investigating ML and prosecuting ML, TF and other offences. In order to ensure criminal prosecution, the General Prosecutor's Office is providing procedural guidance over investigations conducted by LEAs, including on ML and TF. It also exercises supervision of the operative and investigative activities.

57. The **Ministry of Internal Affairs (MIA)** is the investigative authority for all criminal offences that do not fall under the competence of other investigative authorities.

58. The **State Security Service (SSS)** is responsible for combating terrorism, transnational organised crime and international crime threatening state security. It is the investigative authority for several criminal offences including terrorism, TF and

corruption-related offences that it detects (save for high-level officials).

59. The **National Bank (NBG)** is the supervisory authority for all FIs, except leasing and insurance companies. The National Bank is established by legislation and is independent from government.

60. The **Insurance State Supervision Service (ISSS)** is the supervisory authority for insurance companies, insurance brokers and founders of non-state pension schemes. Like the NBG, the ISSS is established by legislation and is independent.

61. The **Service for Accounting, Reporting and Auditing Supervision (SARAS)** has been the supervisory authority for persons providing accountancy and/or auditing services since June 2016. Previously, a self-regulatory body – the Georgian Federation of Professional Accountants and Auditors - was responsible for AML/CFT supervision of accountants and auditors.

62. The **Georgian Bar Association** is a self-regulatory body acting as a supervisory authority for lawyers and law firms.

63. Collective investment funds and fund managers, real estate agents and TCSPs are not designated as obliged entities and have no designated supervisor.

64. A new AML/CFT Law came into force on 30 October 2019. This law aims to approximate Georgia's AML/CFT legal framework to the 4th EU Anti-Money Laundering Directive²⁹ and to implement the 2012 FATF Recommendations. It designates new obliged entities (lenders and insurance brokers), enhances the risk-based approach, strengthens CDD requirements and reforms the regime for implementing UN sanctions.

65. As well as establishing preventative and reporting requirements, the AML/CFT Law sets out: (i) the status of the FMS, how it is to be managed, how it is to be funded, its functions, rights and responsibilities, and basis for cooperating with foreign partners; (ii) functions of supervisory authorities and basis for cooperation and information exchange between supervisors, the FIU and competent authorities; and (iii) how UNSCRs are enforced. The AML/CFT Law is supplemented by several sectorial regulations made by the FMS under that law.

66. The Criminal Code establishes ML, predicate offences and TF offences and provides for respective sanctions. The ML offences in the CC apply on an "all crimes" basis. The Civil Procedure Code also establishes a regime for forfeiture through civil proceedings in certain circumstances. Confiscation of property, including held by third parties is achieved through freezing and seizure powers set out in the Criminal Procedures Code and the Law on International Cooperation in Criminal Matters sets out how mutual legal assistance can be provided in relation to ML, associated predicate offences and TF. The Law of Georgia on Operative-Investigative Activities regulates the procedures for conducting operative-investigative activities by law enforcement authorities.

67. Other relevant laws include: (i) sectorial laws regulating the financial sector, e.g. the Organic Law of Georgia on the National Bank of Georgia and the Law of Georgia on Bank Activities; and (ii) Law of Georgia on Entrepreneurs which deals with the registration and administration of legal persons.

²⁹ On 1 July 2016, the EU-Georgia association agreement came into full force.

1.4.3 Financial sector, DNFBPs and VASPs

68. An overview of the financial and non-financial sector is provided in the table below. There are gaps in information available, particularly for DNFBPs and VASPs (N/A – not applicable).

Table 1.1: Number of private sector obliged entities in Georgia

Obliged entities ³⁰	Number ³¹	Size of sector (2019)
Banks	15	Total assets - GEL 46.3 billion (approx. EUR 14.1 billion)
MFOs	50	Total assets - GEL 1.3 billion (approx. EUR 0.39 billion)
Payment service providers (PSPs)	28	Transactions volume - GEL 4.52 billion (approx. EUR 1.52 billion)
Brokerage firms	9	Total assets - GEL 146.7 million (approx. EUR 45.7 million)
Non-Bank Depository Institutions - Credit Unions	2	Total assets - GEL 2.6 million (approx. EUR 0.79 million)
Lending entities	202	Total assets - GEL 499 million (approx. EUR 151 million)
Currency exchange offices	660	Transactions volume - GEL 1.1 billion (approx. EUR 0.34 billion)
Securities' registrars	4	Maintains share registers for 979 companies
Insurance companies	17(16) ³²	GEL 37 million premium income (approx. EUR 12.3 million)
Non-state pension scheme founders	3	N/A
Insurance/reinsurance brokers	17	N/A
Leasing companies	12 ³³	Total assets – approx. GEL 350 million (approx. EUR 116 million)
Casinos	20	Total revenue – GEL 5 billion (approx. EUR 1.6 billion) - 2016
Entities engaged in trade of precious metals and stones (DPMS)	N/A	N/A
Notaries	269	N/A
Auditors (sole practitioner or partner/employee of audit firm)	458	Income from auditing activities - GEL 49 million (approx. EUR 16 million) and income from other professional activities. - GEL 67 million (approx. EUR 20 million) - 2017
Audit firms (legal persons)	262	
Certified accountants	N/A	N/A
Lawyers	4 696	N/A
Law firms	323	N/A

69. Evaluators ranked the sub-sectors based on their importance given materiality and ML/TF risks. They have used these rankings to inform conclusions, weighting positive and negative implementation issues more heavily for important sectors than for less important sectors. This approach applies throughout the report but is most evident in IO.3 and IO.4.

³⁰ Data provided by supervisors.

³¹ The number of obliged entities is provided as of October 2019.

³² In brackets is given the number of insurance companies holding a licence for life insurance.

³³ Number of leasing companies included into the FMS database of obliged entities.

70. The banking sector is weighted as being the most important in Georgia based on its materiality and risk. In most cases, banks are not a part of a large international banking group. The NBG has assessed the banking sector as presenting a high ML/TF risk and the NRA has assessed a medium residual ML risk and medium-low residual TF risk. Information provided by law enforcement agencies and the FMS indicates that most ML schemes, at some point, involve bank accounts and transactions carried out through banks. The banking sector is **significantly more important** than any other sector.

71. Gambling is weighted as a **highly important** based on its materiality and risk. The sector is rapidly expanding and has emerged as an important sector of the economy (accounting for 14.7% of GDP). Customers of land-based casinos, especially near bordering regions, are mainly citizens of neighbouring countries and the majority of transactions are carried out in cash. A new casino is being built on the border with Russia that may provide a vehicle for the laundering of proceeds from organised crime.³⁴ Compliance control systems are weak and there is no effective AML/CFT supervision (including licensing). Banks view gambling operators as high risk considering the inherent risks involved (non-face to face business in case of online gambling operators) and the large volume of transactions. In the NRA, gambling is weighted as presenting a medium-high residual ML risk (the highest risk assessed in the country) and low residual TF risk.

72. The real estate sector is weighted as a **highly important** based on its materiality and risk. It has grown quickly in recent years, turnover doubling in the past 5 years (to GEL 1.2 billion (EUR 400 million) in 2018) and constituted 10.4% of total foreign direct investment in 2018.³⁵ It accounts for 11.4% of GDP. Real estate contracts can be concluded without the involvement of real estate agents or legal professionals, transactions can be concluded in cash outside the regulated financial sector, and estate agents are not obliged entities. However, real estate is often purchased through mortgage loans. Whilst the NAPR registers property rights in Georgia, there is no effective gatekeeper for the sector. In the NRA, the real estate sector is weighted as presenting a medium residual ML risk and low residual TF risk. Many ML cases in the country identify the use of real estate.

73. PSPs are weighted as a **highly important sector**. Activities of PSPs include payments through self-service kiosks (referred to as “cash boxes” in this report), issuance of payment cards and electronic money, and payment operations. Whilst payment volumes are low when compared to banks, providers play an important part in making small volume (retail) payments, and remittance services have been used to launder criminal proceeds. As well as paying for utility services, cash boxes can be used to credit funds to bank accounts, top up electronic wallets and replenish online casino accounts without identification of the payer (when the amount is under GEL 1 500 EUR 500). Until mid-2018, PSPs were also able to act as VASPs. The NBG has assessed the PSP sector as presenting a high ML/TF risk and the NRA has assessed a medium residual ML risk and medium-low residual TF risk.

74. The following sectors have been weighted as **moderately important**: (i) MFOs (because of their number and size and observed use of remittance services to launder criminal proceeds); (ii) currency exchange offices (because of their number and large use of cash in Georgia); and (iii) accountants, legal professionals, other TCSPs and securities’ registrars (because of their role as gatekeepers for legal persons – assessed as presenting

³⁴ International Narcotics Control Strategy Report Volume II Money Laundering <https://www.state.gov/2019-inctsr-volume-ii-money-laundering-and-financial-crimes-as-submitted-to-congress/>

³⁵ National Statistics Office of Georgia <https://www.geostat.ge/en/modules/categories/191/foreign-direct-investments>

a medium-high risk in the NRA).

75. VASPs are not designated as obliged entities and so are not covered by the AML/CFT Law, notwithstanding that there is a VASP sector present in Georgia. There is no official information on the size of the sector, but according to interviews conducted, the exchange transaction volume can be between GEL 3.5 to 5 million (EUR 1 to 1.5 million) per month. This is significantly lower than the value of VA transactions conducted through PSPs up until mid-2018³⁶ (consisting of exchange and custodial activities). Given the historical prevalence of VASP activities, this sector has been weighted as **moderately important**.

76. Other sectors, including those providing services to capital markets, have been weighted as **less important**, and there are no collective investment funds or managers.

1.4.4 Preventive measures

77. Preventative measures are set under the new AML/CFT Law which came into force on 30 October 2019.

78. The following categories of entities, as recognised by the FATF Recommendations, are not considered as obliged entities under the AML/CFT Law: (i) VASPs; (ii) collective investment funds and fund managers; (iii) real estate agents; (iv) TCSPs; and (v) accountants that are not certified accountants. Certified accountants are exempted from all obligations set in the AML/CFT Law when providing legal advice that relates to an activity listed under c.22.1(d). All other FIs and DNFBPs covered by the FATF Recommendations are designated as obliged entities and referred to as “covered FIs” or “covered DNFBPs” in the TC Annex.

1.4.5 Legal persons and arrangements

79. According to applicable laws of Georgia, the following types of legal person shall be registered in the Registry of Entrepreneurs and Non-Entrepreneurial (Non-Commercial) Legal Entities operated by NAPR under the Ministry of Justice: (i) limited liability company; (ii) joint stock company; (iii) general partnership; (iv) limited partnership; (v) cooperative; (vi) non-entrepreneurial (non-commercial) legal person; (vii) religious association; and (viii) branch of a foreign entrepreneurial or non-entrepreneurial legal person.

80. Basic features are regulated by the Law of Georgia on Entrepreneurs and the Civil Code of Georgia. For the purpose of this assessment, general and limited partnerships are treated as legal persons, even though they do not have a separate legal personality.

³⁶ In the first half of 2018, transactions conducted through PSPs constituted 195 million GEL. [Source: NRA report.]

Table 1.2: Numbers of legal persons registered in Georgia at the end of 2018

Legal form	Number
Limited liability company	238 564
Joint stock company	2 425
General partnership	2 877
Limited partnership	159
Cooperative	3 979
Non-commercial legal person (NPOs)	25 105
Religious organisation	47
Branch of a foreign entrepreneurial legal person	1 621
Branch of a foreign non-profit person	176
Total	274 953

81. Most legal persons are registered as limited liability companies (LLCs) and account for 90% of turnover of business entities. LLCs are subject to less stringent requirements and relatively lower administration costs. Around 130 000 legal persons are inactive. The overwhelming majority of legal persons that are involved in ML cases are registered as LLCs. Fictitious companies (shell companies) are also usually registered as LLCs.

82. Information provided by NAPR shows that around 90% of LLCs are solely owned by individuals. The equivalent figures for partnerships and limited partners are 70% and 84% respectively. Similar information is not available for JSCs.

83. Foreign ownership is marginal in limited and general partnerships (3.77% and 0.45% respectively) and only represented by natural persons. In LLCs, 48 602 LLCs have at least one foreign natural person as shareholder (19.2% of all LLCs) and 2 559 LLCs have at least one foreign legal person (0.9%) in the ownership structure. Information is not available for JSCs.

84. Georgia is not party to the Hague Convention on the Law Applicable to Trusts and their Recognition. Trusts and similar types of legal arrangement cannot be established under Georgian law. Whilst Georgian residents could be operating as trustees for foreign trusts, the number of trusts using financial services in Georgia is almost non-existent³⁷.

85. Georgia recognises the concept of “trusted property” whereby property is transferred by a “trustor” to an entrusted person with unlimited ownership, and the trustor cannot claim restitution of property sold against their interests. This is not considered to be a legal arrangement under the standards.

86. The NRA assesses residual ML risk through legal persons as being medium-high (the highest risk assessed in the country) and residual TF risk as low.

1.4.6 Supervisory arrangements

87. Article 4 of the AML/CFT Law designates the relevant authority to supervise obliged persons with requirements set in the AML/CFT Law through off-site and on-site inspections. Article 38 specifies that the nature and frequency of inspections shall be determined on the basis of the nature and size of the business of the obliged entity and its ML/TF risk level and authorises the supervisor to request and obtain required information and documents from obliged persons. It requires supervisors to take appropriate supervisory measures where preventative measures are not applied.

³⁷ Every six months, the NBG collects information on the number of trusts featuring as customers of FIs or in customers’ ownership structure. The number is less than ten.

88. The NBG is designated as the supervisory authority for banks, MFOs, PSPs, brokerage firms, Non-Bank Depository Institutions - Credit Unions (Credit unions), lending entities, currency exchange offices, and securities' registrars. The ISSS is the designated supervisory authority for insurance companies, non-state pension schemes and brokers. The Ministry of Finance is the designated supervisor for leasing companies.

89. As concerns DNFBPs, the designated competent authority for supervising casinos and DPMS is the Ministry of Finance. Lawyers are to be supervised by the Bar Association, notaries and NAPR by the Ministry of Justice, and auditors, audit firms and certified accountants by the Service for Accounting, Reporting and Auditing Supervision.

90. Amongst others, VASPs, real estate agents and TCSPs are not designated as obliged entities and, therefore, there is no supervisor.

1.4.7 International cooperation

91. The Prosecutor's Office functions as the central authority for the processing of mutual legal assistance and extradition requests. There is an established procedure to deal with the execution of such requests on a timely basis, which are monitored through a general case management system.

92. Georgia has ratified 34 international agreements and concluded 8 bilateral agreements governing mutual legal assistance. Georgia can provide legal assistance to another country based on treaties, individual agreements or the principle of reciprocity. Such assistance includes the search, seizure and confiscation of property, as well as the monitoring of bank transactions and other measures necessary to recover property subject to confiscation.

93. In 2019, a cooperation agreement was concluded with Eurojust in order to facilitate the process of exchange of evidence between Georgia and EU member states and promote a coordinated fight against transnational crime. This followed an agreement in 2017 between Georgia and Europol supporting the exchange of information amongst Georgia and EU Member States.

94. The FMS has been a member of the Egmont Group since 2004 and exchanges operational information with similar units in other countries through its secure communication channel. The FMS is also authorised to provide information to non-Egmont member countries. The FMS does not need to enter into agreements to exchange information but has signed 42 memoranda of understanding with foreign counterparts to further strengthen the cooperation.

95. The NBG is empowered to cooperate with its foreign counterparts within the scope of its authority on AML/CFT matters. It has signed 15 memoranda of understanding with supervisors in 12 countries and one further agreement is under discussion. In practice, it has agreements with countries in which parent institutions are headquartered, and in those in which Georgian FIs operate through branches and subsidiaries.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

2.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 1

- 1) Georgia displays a fair understanding of many of its ML and TF risks. Nevertheless, shortcomings exist with regard to identification of some threats and vulnerabilities and subsequent understanding of some of the ML/TF risks. The level of risk understanding varies across the public sector. Highest levels of understanding were demonstrated by the FMS, the NBG, the GPO and the SSS.
- 2) The NRA analysis is not always methodological enough and does not fully take account of some inherent contextual factors that may influence the risk profile of a country (e.g. prevalence of cash, geographical, economic, and demographic factors).
- 3) Authorities have taken considerable efforts to ensure that the NRA includes in-depth analysis of threats and vulnerabilities. Whilst the methods, tools, and information used to develop, review and evaluate conclusions on risks are adequate to a large extent, the analysis of ML risks conducted by separate working groups was combined within the NRA, but has not been fully correlated and could be developed further in the following areas: e.g. use of cash in the economy, real estate sector, trade-based ML (including in free industrial zones of Georgia), legal persons, use of NPOs.
- 4) The assessment of TF risk in the NRA has focused on TFS and FTFs. Authorities did not fully assess all forms of potential TF risk, especially trade-based TF, the volume, origin and destination of financial flows and potential for abuse of NPOs.
- 5) Whilst the overall risk assessment in the NRA may seem reasonable, this cannot be said for all of the sectorial risks. This is because, although most ML cases in the country identify the use of banks, cash or real estate, most assessments are clustered around medium to medium-low risk ratings. This will make it harder to identify where the greatest amount of resources should be directed and may encourage policy makers, competent authorities and the private sector to focus only on sectors identified as presenting a medium-high risk (gambling sector and legal persons), overlooking some other areas where the risks occur in fact. Without additional guidance, differences in outcomes of the NRA and NBG sectorial risk assessments send a confusing message to obliged entities about risk perception levels in various sectors.
- 6) The NRA findings have not all yet been transposed into national policies and activities. The six priority actions developed following the completion of the NRA cover only to some extent areas identified as presenting the highest risk (relative to others).
- 7) Exemptions for real estate agents, TCSPs, collective investment funds and fund managers, accountants that are not certified, accountants when providing legal advice and VASPs are either not supported by a risk assessment or are not all in line with the NRA results, and they do not occur in strictly limited and justified circumstances.
- 8) The objectives and activities of the competent authorities are generally, but not always, consistent with evolving national AML/CFT policies and with identified ML/TF risks.
- 9) Competent authorities co-operate and co-ordinate on ML/TF matters with good spirit,

but not routinely and comprehensively enough. They do not do so to the necessary degree with regard to the financing of proliferation of weapons of mass destruction.

10) Georgia has ensured to a large extent that FIs and DNFBPs are aware of the relevant results of the NRA.

Recommended Actions

Immediate Outcome 1

1) Georgia should take measures to ensure a better and more equal level of understanding of its identified ML/TF risks across all competent authorities.

2) Georgia should continue improving its understanding of ML/TF risks and its future risk assessments by conducting further analysis and assessment of:

- the main proceeds-generating predicate offences based on comprehensive data (including intelligence from all LEAs, from MLA and direct international cooperation) and identified typologies, extending focus to include ML threats presented by trade-based ML (including in free industrial zones of Georgia);
- the vulnerabilities and residual ML risks in the real estate sector and extensive use of cash;
- ML/TF implications of potential contextual vulnerabilities (integrity levels in the public and private sectors; informal/cash economy and undocumented wealth; geographical, economic and demographic factors; and presence of PEPs and their associates (some of which may be high wealth individuals as in other jurisdictions);
- TF risks, including the volume, origin and destination of financial flows, trade-based TF and abuse of NPOs.

3) Georgia should rapidly review its decision not to apply the FATF Recommendations to certain sectors, and when considers application of exemptions, should ensure that these occur in strictly limited and justified circumstances, where there is a proven low ML/TF risk.

4) Georgia should establish the AML/CFT Standing Interagency Commission in line with the new AML/CFT Law. It should meet routinely and further strengthen the cooperation and coordination between competent authorities on ML and TF matters.

5) Georgia should develop a national AML/CFT strategy and more comprehensive action plan to address ML/TF risks identified in the NRA, in addition to the six priority areas so far identified.

6) Georgia should improve alignment between: (i) the objectives and activities of competent authorities; and (ii) evolving national AML/CFT policies and ML/TF risks.

7) Georgia should develop formal arrangements for better PF coordination between the AML/CFT Standing Interagency Commission and other relevant actors. The AML/CFT Standing Interagency Commission's agenda should cover PF issues on a regular basis, including issues of PF targeted financial sanctions.

96. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34, and elements of R.15.

2.2. Immediate Outcome 1 (Risk, Policy and Coordination)

2.2.1. Country's understanding of its ML/TF risks

97. Georgia understands many of its ML/TF risks to a good extent, but shortcomings still exist, both with regard to identifying some threats and vulnerabilities, and subsequent understanding of some of the risks. The level of risk understanding varies among the public sector representatives. It has been influenced by the fact that the authorities have only recently finalised and communicated the first NRA, thus not allowing enough time for the identified risks to be understood by all authorities. Some authorities displayed a wider appreciation of certain risks than reflected in the NRA itself. Highest levels of understanding were demonstrated by the FMS, the NBG, the GPO and the SSS.

98. Georgia's understanding of ML/TF risk is based on the NRA process and sectorial risk assessments regularly undertaken by the NBG (assessment covers the supervised sectors for the years 2015 to 2018 inclusive). The NRA process has therefore enabled Georgia to consolidate and articulate existing knowledge on risk and to develop a better understanding in various areas.

99. The methods, tools, and information used to develop, review and evaluate conclusions in the NRA have been adequate to a large extent. The country made use of FATF guidance on "National Money Laundering and Terrorist Financing Risk assessment" and the WB NRA public guidance. All competent AML/CFT authorities, including the LEAs, supervisory authorities, and other government bodies were involved in the process. Participation of the private sector was ensured through a data-gathering process conducted on the basis of pre-defined questionnaires, and discussions of the findings prior to adoption of the NRA. Authorities collected a considerable amount of information to analyse the ML/TF risks of the country, especially from the NBG (which collects data every six months to support risk-based supervision). Nevertheless, other sources of information, as outlined in the sub-sections below, have not been sufficiently utilised. Analysis in the NRA includes output from eight separate working groups responsible for assessment of different topics, including: ML risks; TF risks; legal persons; new services and delivery channels; financial institutions; non-financial institutions, etc. The analysis conducted by these working groups was combined within the NRA but did not appear to have been fully correlated.

100. The NRA analysis is not always methodological enough when it comes to analysis of some inherent contextual factors that may influence the risk profile of a country. One of these is integrity in the public and private sectors which is dealt with as a specific ML threat as a predicate offence (corruption) but not as a factor which may influence the effectiveness of supervision and law enforcement in general (to conclude on this Georgia needs to conduct a further analysis of this topic).

101. Another contextual factor not fully and properly analysed in the NRA is the informal economy. It is looked at as an element justifying the level of the Tax evasion threat for ML. Nevertheless, the features of the informal economy are not analysed in conjunction with the extensive use of cash in Georgia. While acknowledging that proceeds from predicate offences are often generated in the form of cash and widely used as a means for paying for real estate (frequent ML typology), which provides an opportunity to disguise the source of cash, the Georgian authorities did not analyse the effect of the informal economy/use of cash on the ML/TF environment, and there is no estimation of the volume of cash generated from, and used for, conducting criminal activities. The NRA acknowledges that steps are being taken to enhance financial inclusion through increasing the use of the

cashless payments. There is, however, no analysis on the impact this has had on reducing the use of cash in criminal activities. On the other hand, Georgia has incorporated mitigating measures to deal with undocumented wealth in its ML offence, but no data or analysis has been included in the NRA regarding the results of use of this legislation (frequency of use of this mechanism, volume of recovered undocumented property, identified vulnerabilities, etc.).

102. Although some geographical and economical elements are described in the NRA, another important example of contextual analysis that is not sufficiently reflected in the NRA is with regard to the geographic, economic, and demographic factors. The geographic proximity of Georgia and its trade routes to areas where terrorist groups are active and to high risk jurisdictions, as well as, data regarding immigration have not been properly addressed in the NRA analysis.

103. The NRA also ignores the ML risks associated with the presence of foreign and domestic PEPs and their associates (some of which may be high wealth individuals as in other jurisdictions). Notwithstanding that: (i) one bank is partially owned by a foreign PEP and a second bank fully owned by a domestic PEP; (ii) domestic PEPs have only recently become subject to enhanced CDD measures; and (iii) open source information available that highlights the recruitment into public service of associates of a domestic PEP³⁸. While some investigations and supervisory actions have in the past been conducted, these contextual factors have not been taken into account in the identification of threats and vulnerabilities in the NRA.

104. The level of understanding of ML risks among competent authorities varies: it is reasonable in the GPO, FMS, SSS and the NBS. Considerable effort was taken to ensure that the NRA includes in-depth analysis of threats and vulnerabilities. Nevertheless, the analysis did not fully and properly analyse all ML risks, e.g. those presented in the real estate sector, by the extensive use of cash in the economy, and by VAs and VASPs. The chapters relating to these topics in the NRA lack sufficient analysis regarding the extent of the threat, the effectiveness of the measures in place to mitigate these threats and the residual risk as a result - analysis which could lead to recommendations, and other policy implications.

105. Conclusions on ML risks identified for legal persons, new services and delivery channels, FIs, and non-financial institutions did not appear to have been fed into the overall assessment of ML risk in the country. Instead, the assessment of national ML risk was based on a study of: (i) proceeds-generating crimes committed in the country (fraud, cybercrime, drug trafficking, tax evasion, organised crime, corruption and human trafficking); and (ii) vulnerabilities – means and methods of committing these crimes but taking account only of use of bank accounts, remittances, legal persons, third parties (money mules) and cash (Chapter III of the NRA).

106. Proceeds-generating crimes included in the analysis of threats in the NRA were selected based on a number of criteria including: (i) scale/number/trends; (ii) estimated proceeds/confiscated funds; (iii) complexity/modus operandi/new trends; (iv) prevalence in STRs, FMS disseminations, ML cases and MLAs; (v) transnational nature; (vi) law enforcement challenges/legislative deficiencies; and (vii) contextual factors (geographic proximity to countries with high levels of criminality). Nevertheless, (while considering the overall crime rate in Georgia is relatively low) not all the information

³⁸ <https://www.transparency.ge/en/blog/ivanishvilis-companies-public-officials-talent-pool-three-years-later>

identified by credible sources seems to have been taken into account when analysing ML threats. The analysis is too focused in many cases on suspicions detected and reported by obliged entities. Other important areas are not reflected in the text of the NRA, for example, detected threats highlighted by incoming international requests (formal and informal), actual criminal cases and direct police-to-police cooperation concerning proceeds of large-scale drug dealing. The NRA does not: (i) identify additional proceeds-generating crimes (e.g. contraband and environmental crime); and (ii) highlight slightly different views shared with evaluators by LEAs during the on-site visit about the prevalence of certain predicate offences and estimated amounts of proceeds. There is also a lack of information and analysis on certain areas such as trade-based ML and proceeds of foreign predicate offences.

107. Strategic financial intelligence has been analysed and used in the NRA. For example, there are analyses of both foreign and resident account holders and related transactions, and of inflows and outflows of funds from and to high risk jurisdictions. However, some further analysis is missing, e.g. international financial flows were not compared with actual international trade data to identify potential financial transfers with no link to actual business, which could indicate the risk of trade-based ML. ML typologies, both international and those developed from domestic cases, were used in the NRA to some extent. The authorities have also conducted analysis of ML risks in free industrial zones of Georgia, where the AML/CFT legislation applies in the full scope. The NRA highlights that in recent years, small number of reports on suspicious transactions submitted to the FMS were related to enterprises in the free industrial zone, but connection to the criminal activities of such enterprises has not been confirmed. Nevertheless, further analysis of financial activities conducted in these areas would be beneficial from the perspective of identification of the potential risk of trade-based ML.

108. The level of understanding of TF risks among competent authorities varies: it is reasonable in the SSS, GPO and the FMS. The approach applied by the authorities to the assessment of TF risks has been similar to ML risk, as described above. Conclusions of the NRA working group on TF risk are based on analysis of actual criminal cases, means and methods used, activities of the NPO sector and implementation of UNSCRs. Conclusions (Chapter IV of the NRA report) do not make use of the findings of other NRA working groups.

109. While the National Strategy on the Fight against Terrorism (Counter-Terrorism Strategy) for 2019-2021 has considered and analysed the geographical challenges the country faces in its fight against terrorism (including the demographic/polarisation of society factors), the results of this analysis have not been fully transposed into the NRA focusing on the financing aspect of terrorism, and the conclusions this analysis may have on the national TF risk assessment (specific threats vulnerabilities etc.). The NRA is overly focused on TF risks related to TFS. It does not fully assess all forms of inherent threat - especially considering the geographical and demographic challenges the country faces, e.g. the geographical proximity of Georgia to the conflict zones where Daesh and other terrorist organisations carry out their activities, and the fact that some Georgians have left the country for Syria.

110. It is not clear whether the assessment of TF risks considered trade-based terrorism financing or examination of relevant mitigating measures. Authorities nevertheless advised that these matters had been considered separately and could not be disclosed given the confidentiality of information. Though all seem aware of potential theoretical

abuse of the Georgian financial system based on its geographical position, only some of the LEAs could transform this into the actual threat presented by trade-based TF.

111. Lastly, it appears that TF risks emanating from NPOs have not been comprehensively assessed in the NRA, targeting identification of the overarching risk environment in the sector and missing granularities – the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse (see also IO 10).

112. Overall, as was mentioned above, Georgia has made considerable efforts to form its understanding of ML/TF risks. This resulted in displaying a fair level of understanding of many of its ML/TF risks. Nevertheless, the gaps highlighted above with respect to the analysis of some contextual factors and certain aspects of ML/TF threats and vulnerabilities impacts the risk understanding of the country to some extent.

113. Whilst the overall risk assessment in the NRA may seem reasonable, this cannot be said for all of the sectorial risks. In the NRA, only gambling and legal persons were assessed as presenting the highest ML risk (medium-high), whereas analysis of the country’s ML/TF typologies indicate also the frequent use of bank accounts, remittance services provided by non-bank financial institutions, the use of real estate and cash. Hence, the results of the NRA may send the wrong message to policy makers, competent authorities and the private sector, encouraging them to focus only on the two sectors identified as presenting a medium-high risk (gambling and legal persons) – at the expense of other areas where there is, in fact, risk, and where a greater amount of resources is needed.

114. The outcomes of the two risk assessment processes: the NRA exercise and NBG sectorial risk assessments are different to a certain extent, when it comes to perception of the ML/TF risk levels. The NBG clarified that both risk assessments are complementary and partially different in the scope. Sectorial risk assessments conducted by the NBG are mainly designed to differentiate risk amongst different sectors and institutions to guide supervisory effort. The NBG considers that its risk assessment is focussed more on inherent risk, whereas the NRA takes greater account of the impact of mitigating measures in place to address risks. The NBG confirmed also that when assessing, applies stricter approach, and allocates its resources accordingly. Without additional guidance, such a difference in the outcomes of the NRA and the NBG risk assessments can create certain confusion as to the risk perception level in various sectors. This was confirmed by the private sector interviewed on-site.

Table 2.1: ML/TF risk level prescription to sub-sectors by NBG’s SRA and NRA

NBG Reporting Entities	ML risk Level		TF risk Level	
	NBG’s SRA	NRA	NBG’s SRA	NRA
Banks	High	Medium	Moderate	Medium Low
PSPs	High	Medium	High	Medium Low
Brokerage firms	High	Medium-Low	Low	Low
MFOs	Moderate	Medium-Low	Moderate	Low
Currency Exchange Bureaus	Moderate	Medium-Low	Low	Low
Securities’ Registrars	Moderate	Medium-Low	Low	Low
Leasing companies	-	Medium-Low	-	Low
Credit Unions	Low	Low	Low	Low
Insurance companies	-	Low	-	Low
Gambling business	-	Medium-High	-	Low

Real estate market	-	Medium	-	Low
DPMSs	-	Medium-Low	-	Low

2.2.2. National policies to address identified ML/TF risks

115. Georgia has demonstrated a high political commitment to fighting ML/TF over the past years, developing an overarching policy document for combating ML/TF - Strategy for Combating ML/TF for 2014 to 2017 (AML/CFT Strategy). The timing of NRA publication has challenged Georgia's ability to update the AML/CFT Strategy and demonstrate the use of its findings by all authorities when developing their policies and activities. This is due to the fact that the NRA, which has been conducted for the first time, was finalised and adopted on 30 October 2019, that is a few days before the on-site visit.

116. Respectively, the aforementioned 2014-2017 AML/CFT Strategy was not based on an assessment of risk. It nevertheless was put in place to strengthen the AML/CFT framework, through establishment of a national framework for combating ML/TF, and to contribute to the prevention, early detection, and reduction of criminal activities. Implementation of these strategic goals was supported by a detailed action plan based on the AML/CFT Strategy. These actions have become an integral part of institutional strategy and policy activities, which include measures for combating ML/TF in line with the authorities' own understanding of ML/TF risks.

117. The 2014-2017 AML/CFT Strategy has provided the trigger for conducting the NRA. It has also provided the basis for: (i) legislative and institutional improvements; (ii) extending and strengthening the capacity of obliged entities to apply preventative measures; and (iii) enhancement of the effectiveness of investigation and prosecution of ML/TF, including through better use of a national and international cooperation framework.

118. After finalising the NRA in 2019, Georgia defined six priority tasks to promote effective management of ML/TF risks. However, the link between these six priority tasks and national and sectorial risks identified in the report (e.g. fraud (medium-high threat), cybercrime (medium threat), gambling sector (medium-high risk), legal persons (medium-high risk), banking sector (medium risk) and PSPs (medium risk), are not always apparent. The six priority tasks are:

- (a) Monitoring of parallel financial investigation practices for all income-generating offences;
- (b) Improving the collection of statistics on the type and value of frozen, seized and confiscated property;
- (c) Improving the practice of applying targeted financial sanctions according to UNSCRs in relation to persons linked to terrorism;
- (d) Improving the software used for operational and strategic analysis by the FMS;
- (e) Implementing risk-based supervision over gambling and determining appropriate fit and proper criteria for casino owners and controllers; and
- (f) Improving the public/private partnership mechanisms for timely exchanges of information on methods and means of crime, and other threats among obliged entities and competent authorities.

119. In October 2019, Georgia adopted an Action Plan for 2020 to 2021. The Action Plan mostly reflects on these six priority tasks and does not address areas identified as

presenting higher risks identified in the NRA, except for the ones related to the gambling sector (see above).

120. Georgia also adopted its Counter-Terrorism Strategy for 2019-2021, along with an action plan, which is broadly in line with the TF risks as outlined in the NRA. The Counter-Terrorism Strategy and related the Action Plan present the country's vision on fighting terrorism and extremism through seven basic directions: (i) collection of terrorism-related information; (ii) prevention; (iii) protection; (iv) preparedness; (v) prosecution; (vi) development of legislative framework; and (vii) international cooperation. One of the goals of the Counter-Terrorism Strategy is the timely detection of dissemination of terrorist/extremist ideology, radicalisation, recruitment, financing of terrorism/extremism and terrorist attacks, and handling them at an early stage. Among others, in order to achieve this goal, the Counter-Terrorism Strategy sets an objective to counter TF. The Counter-Terrorism Strategy adequately identifies the TF potential threats posed by the NPO sector and calls for activities and oversight to mitigate this threat and prevent their abuse for TF.

2.2.3. Exemptions, enhanced and simplified measures

121. The AML/CFT framework of Georgia provides for the possibility to exempt fully or partially a number of activities designated under the FATF Recommendations, such as: (i) VASPs; (ii) collective investment funds and fund managers; (iii) real estate agents; (iv) TCSPs; (v) accountants that are not certified, and (vi) accountants when providing legal advice.

122. There is a lack of analysis of ML/TF risks related to VASPs, collective investment funds and fund managers or TCSPs. As concerns the other activities listed and applied exemptions, the authorities have not always demonstrated that there is a proven low risk of ML/TF and could not demonstrate that any of these exemptions occur in strictly limited and justified circumstances.

123. Despite concluding that the ML risk in the real estate sector is rated as medium, real estate agents are fully exempted from the AML/CFT obligations. This is being based on the fact that such agents have a limited role in real estate transactions and therefore their vulnerability is low. However, at the same time, the authorities have confirmed that the exact number of real estate agents in the market is unknown because they are not registered, and the conclusion reached under IO.3 and IO.4 is that there is no effective gate-keeper in the real estate sector to prevent its use in ML/TF³⁹. No quantitative and qualitative data was provided to support the exemption which does not satisfy the respective conditions under the standard.

124. ML/TF risks associated with the accounting sector are rated as low. These conclusions were based on the analysis of the registered population of accountants, taking into consideration the absence of criminal cases with involvement of accountants, the small size of the total annual income⁴⁰, set entry requirements, and their limited role in transactions. While little is known about activities of the non-certified population of accountants, the NRA also acknowledges that there is no oversight over the activities of the profession⁴¹. There is no indication or supporting evidence that the exemptions are

³⁹ For the majority of the period under review the NAPR was subject to the same obligation to apply preventative measures as other obliged entities.

⁴⁰ According to the Registry of Accounting, Reporting and Audit Supervision Service total annual income of audit firms (including auditing, accounting, business and tax consultations) contributes 0.2824% to GDP. Due to the specificity of the sector, no separate data is available for registered accountants only.

⁴¹ NRA, p. 84

applied strictly in limited cases and/or that it is justified by circumstances. This decision to exempt non-certified accountants and accountants when providing legal advice is not risk-based and, in the case of the former, reflects instead the difficulties in supervising what constitutes a largely unknown population of service providers.

125. NBG provides a regularly updated (last being in May 2019) guideline on the application of a RBA by FIs which are under its supervisory authority. This guideline takes account of sectorial risk assessments conducted by the NBG with input from obliged entities. It is in line with the findings of the NRA. The guideline: (i) lists non-exhaustive factors that obliged entities must consider when assessing customer risk; and (ii) sets out high and low risk scenarios. The RBA guideline also lists products and services by sub-sector that are considered to present an inherently high risk. This includes cross-border transactions and cash deposits and withdrawals, both identified as methods of ML in the NRA. As concerns the high-risk scenarios, the guideline sets out general requirements and does not prevent FIs identifying further high-risk scenarios based on their own business practice.

126. Whilst in general matching with scenarios proposed by the NBG, there were also some examples demonstrated by larger FIs, where obliged entities apply a wider set of high-risk scenarios. The NBG and obliged entities are in regular communication on this subject matter and periodically revise the guidelines. The application of risk-based measures by reporting entities is one of the primary areas of supervisory focus for the NBG. They have confirmed that compliance of implementation of risk-based measures by obliged entities with the NBG guidelines is strengthening.

127. Enhanced or simplified measures applied by other reporting entities (such as insurance and DNFBPs) are guided by the AML/CFT Law and not based on an actual assessment of ML/TF risks.

2.2.4. Objectives and activities of competent authorities

128. The objectives and activities of the competent authorities are generally, but not always, consistent with the evolving national AML/CFT policies and identified ML/TF risks. This is to a large degree as a result of the late finalisation of the NRA.

129. The NBG Supervisory Framework in force since January 2019 formalises a significant process that started in 2015. NBG's approach to AML/CFT supervision is fully risk-based and carried out through a separate and well-resourced unit. Periodic reporting by the supervised population is duly analysed and forms the basis for sophisticated supervisory planning. NBG supervisory cycle is adequate in view of the number and characteristics of FIs and sectors under its purview. NBG efficiently makes use of alternative types of inspections (thematic, ad hoc) to complement regular supervisory actions. The approach applied by the ISSS is similar to the NBG, though less robust, which is proportionate to the context and risks of the sector. (see IO3)

130. NBG has addressed as a matter of priority several ML methods as identified in the NRA report, including the use of fictitious companies, cross-border remittances by PSPs, and extensive use of cash in the financial sector (though more could be done in this respect).

131. There are no similar sectorial AML/CFT policies in respect of leasing company and DNFBP supervisors. Accordingly, country's activities in respect of supervision of casinos and real estate transactions are not in line with the ML/TF risks identified in the NRA. In particular, the MoF has taken only limited action to prevent criminals from owning or

controlling casinos (assessed as presenting a medium-high ML risk) or to extend existing oversight to include AML/CFT supervision. Nor do policies and activities address the inadequate framework for the regulation and supervision of the real estate market (assessed as presenting a medium ML risk).

132. The General Prosecutor's Office has adopted a Strategy of the Prosecutor's Office of Georgia for 2017 to 2021 (Prosecutor's Strategy) which, amongst other actions, has as its target an increase in the effectiveness of the fight against certain crimes, including ML, TF, human trafficking, corruption, terrorism, cybercrime, and drug trafficking. This Strategy is broadly in line with the major proceeds-generating offences highlighted in the NRA. The missing elements are fraud, which is assessed as posing a medium-high ML threat, and tax evasion and organised crime, which are identified in the NRA as posing a medium-low ML threat.

133. Additionally, identification by the GPO of a relatively low value of seized property (tens of millions of GEL) compared to the level of estimated criminal proceeds nationwide is important and it has taken steps to address this through the Prosecutors' Strategy. In order to increase effectiveness of the fight against ML/TF, and in line with the Prosecutors' Strategy, the GPO is expected, among other tasks to: (i) conduct a periodic assessment of ML/TF risks and allocate resources to ensure that these risks are mitigated; (ii) ensure that there are parallel financial investigations into all proceeds generating offences involving ML; and (iii) analyse the effectiveness of finding and seizing criminal property and take steps to increase the effectiveness of these measures. However, no comprehensive information was provided to demonstrate implementation of these measures over the past years.

134. As described throughout the report, not all activities of competent authorities are fully in line with the risks identified in the NRA, and as perception of risks varies amongst competent authorities, so does their focus and prioritisation of activities.

2.2.5. National coordination and cooperation

135. Competent authorities co-operate and co-ordinate on ML/TF issues in good spirit, but not routinely and comprehensively enough. They do not do so to the necessary degree with regard to PF.

136. Since 2013, the AML/CFT Inter-Agency Council served as the main coordination mechanism on AML/CFT issues to facilitate and encourage co-ordination and co-operation at a national level. Despite the mandate being terminated formally at the end of 2017, in practice it has remained functional. The AML/CFT Inter-Agency Council is chaired by the Minister of Finance and comprises of senior officials from all relevant AML/CFT agencies, including LEAs, GPO, FMS, supervisory bodies and SRBs. The AML/CFT Inter-Agency Council has held regular annual meetings aimed at monitoring implementation of the AML/CFT Strategy and action plan, and development of the NRA. While the efforts made by the AML/CFT Inter-Agency Council to fulfil its mandate are commendable, as provided below, co-ordination and co-operation was not conducted routinely and comprehensively enough. In line with the recently adopted AML/CFT Law, Georgia is planning to substitute this committee by establishing a new body - the AML/CFT Standing Interagency Commission and vest it with wider functional responsibilities. Based on the observed past practice, the evaluation team believes this new Commission would need to fulfil the gap, meeting more frequently and further strengthening the co-operation and co-ordination between competent authorities on ML and TF matters.

137. Coordination of efforts to fight various criminal activities, including ML is conducted primarily on the basis of the 2017-2021 Prosecutors' Strategy. In order to implement this, a working group has been set up to provide a platform for policy and operational co-operation and co-ordination between the GPO, MIA, SSS and the FMS. This body, however, does not include all the relevant AML/CFT agencies (e.g., the MoF and supervisory authorities) and evaluators were not given examples of this group's contribution to coordinating national AML/CFT policies or other measures enhancing the effectiveness of the AML/CFT regime.

138. Limitations on the ability of LEAs to routinely request financial intelligence from the FMS (see IO.6) challenge the ability of relevant authorities to coordinate and cooperate on AML/CFT issues. This has been partially addressed in the new AML/CFT Law, which allows such requests to be made for ML, TF and drug-related crime, but not also other proceeds-generating predicate offences. The effect of this limitation has been to isolate the FMS from many LEA efforts and has had a negative impact on inter-agency cooperation.

139. The MoF seem somewhat isolated from many AML/CFT policies and activities. Though they have participated in many investigations and shared information with LEAs, they are neither routinely involved to the necessary extent, nor form an integral part at the policy level of many AML/CFT initiatives (e.g. on the links between tax and ML, trade-based ML etc.).

140. Overall, there are many examples of good bilateral coordination and cooperation activities on ML and TF issues that have achieved results, based on memoranda of understanding (MOUs) and formal gateways, close personal contacts and a positive spirit of cooperation which exists amongst competent authorities.

141. A good example of cooperation is the NBG which maintains close communication with the FMS (based on a MOU) which provides the NBG with necessary information for conducting effective supervision (e.g. prior to the on-site inspection) and provides feedback to the FMS on supervisory findings.

142. At an operational level, based on a MoU, the FMS and the Bar Association (the only SRB), would be expected to exchange all necessary information in the course of inspections and about findings. This has not been transposed into a practice since none of the complaints considered by the Bar Association to date have related to failure to comply with AML/CFT obligations. Nevertheless, the FMS and the Bar Association cooperated when designing an AML/CFT guidance for the respective legal profession.

143. Cooperation and coordination on TF-related matters are conducted through two separate platforms. One is the Permanent Interagency Commission on Elaboration and Monitoring of Implementation of the Counter-Terrorism Strategy and related action plan⁴². Cooperation and coordination in this forum is focused on the Counter-Terrorism Strategy, which, as described above, covers TF. The other platform is the working group

⁴² Permanent Interagency Commission is chaired by the Head of the State Security Service of Georgia and composed of high level representatives of all relevant agencies responsible for prevention and fight against terrorism: Administration of the Government; Ministry of Defence; Ministry of Justice; Prosecutor's Office of Georgia; Ministry of Foreign Affairs; Ministry of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs; Ministry of Education, Science, Culture and Sport; Office of the State Minister of Georgia for Reconciliation and Civic Equality; Ministry of Internal Affairs; Ministry of Economy and Sustainable Development; Ministry of Finance; Ministry of Environment Protection and Agriculture; Ministry of Regional Development and Infrastructure; FMS; Georgian Intelligence Service; Special State Protection Service; LEPL - State Agency for Religious Issues; National Bank of Georgia.

set up under the Prosecutors' Strategy, which is referred to above (there is no single coordinating mechanism dedicated exclusively to TF matters).

144. There is no specific body responsible for the coordination of PF policies and CPF operations. Given Georgia's geographical position, and especially considering its location on the trade route to, and from, Iran, this represents a shortcoming. Limited coordination in this area is however achieved through the Inter-Ministerial Expert Committee, chaired by the Ministry of Defence, with participation of other relevant ministries (MIA, SSS, MoJ, MoF, GPO, Customs and the Nuclear Safety Agency). Whilst this commission deals primarily with licensing issues regarding imports and exports related to proliferation, it has no regard to the financial aspects of proliferation.

145. There are some concerns that important intelligence is not available to the Inter-Ministerial Expert Committee on licensing and export control issues to facilitate policymaking because some relevant authorities (i.e. the FMS and supervisors) are not involved in its deliberations. In particular, evaluators consider that information on applications for licences and refusal of licences to export proliferation-sensitive goods could usefully be shared with the FMS, supervisory bodies and the AML/CFT Standing Interagency Committee on a regular basis for intelligence purposes, policymaking on PF financing, and possible operational coordination.

146. The arrangements for better coordination between the AML/CFT Interagency Council and other relevant actors in the PF field are not formalised. The AML/CFT Interagency Council's agenda does not cover PF issues routinely, including how PF targeted financial sanctions may be evaded. This is an area where the to be established successor of the AML/CFT Interagency Council's - AML/CFT Standing Interagency Commission would need to fulfil the gap.

2.2.6. Private sector's awareness of risks

147. FIs and to a lesser extent DNFBPs (casinos, accountants/auditors) – are generally aware of the NRA findings. The report is publicly available. Representatives of all types of obliged entities have attended workshops organised by authorities.

148. FIs were mostly familiar with the content specific to their sector, and most indicated broad agreement with the NRA risk ratings as well as the key threats and vulnerabilities identified. DNFBP awareness of the NRA was lesser. Many indicated that they found the NRA useful, but some suggested that it would benefit from including examples of ML/TF typologies applicable to different sectors (see also analysis under IO4).

149. Despite the NRA report having been finalised shortly before the start of the on-site visit, the understanding of risks highlighted in the NRA was generally good for all FIs. This can be attributed to: (i) early communication of preliminary findings; (ii) periodic communication of sectorial risk assessments conducted by the NBS; and (iii) publication of the NRA report. During 2019, the NBS communicated preliminary findings of a draft version of the NRA report and full versions of sectorial risk assessments to financial sector representatives.

Overall Conclusion on IO 1

150. Georgia has a fair understanding of many of its ML/TF risks. Nevertheless, a number of identified shortcomings suggest that major improvements are needed. Concerns remain with regard to the identification of threats and vulnerabilities and the risk rating assigned to ML and TF risks. The level of risk understanding varies in the public sector. Georgia has demonstrated a high-level political commitment to fighting ML/TF in the past few years

and has developed an overarching policy document for combating ML/TF – the AML/CFT Strategy. However, the timing of adoption of the NRA has challenged Georgia’s ability to demonstrate use of the NRA when setting priority actions. Georgia applies some exemptions to the application of preventative measures, which are not substantiated by a proven low ML/TF risk, and not occur in limited and justified circumstances. There are various platforms set-up for coordination and cooperation at a policy level and operational level. On a policy level, Georgia would benefit from more coordinated activities on PF matters. At an operational level, wider gateways for cooperation amongst LEAs, the FMS and supervisory bodies would enhance effectiveness of the system.

151. Georgia has achieved a moderate level of effectiveness for IO.1.

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

1) LEAs access a wide variety of sources of financial intelligence and other relevant information (including from obliged entities and the NBG) when conducting investigations of predicate offences and detecting their proceeds, but to a lesser extent with regard to investigation of ML. LEA access to financial intelligence held by the FMS was (during most of the period under review, until 30 October 2019) very limited followed by a lack of understanding by several LEAs as to the core role of the FMS and the potential analysis it can produce and provide. Since then, powers of some LEAs to request information from the FMS were enhanced, but only with regard to ML/FT and drug offences.

2) Use of financial intelligence is an inherent part of every investigation of proceeds-generating offences, applied to identify property owned by perpetrators, and to a lesser extent to locate more remote proceeds of crime. The GPO AML Division is the only LEA primarily focused on detection and investigation of ML, and the only one that prevalently uses financial intelligence for investigation of ML. Other LEAs use financial intelligence mostly to investigate proceeds generating crimes and could demonstrate using financial intelligence to conduct an in-depth and sophisticated analysis to investigate complex ML cases only rarely.

3) LEAs make good use of financial intelligence spontaneously disseminated by the FMS, both for investigation of ML and associated predicate offences, but do not provide the FMS with proper feedback. Requirement to obtain a court order (based on probable cause) to request information from the FMS hinders the effective collaboration between the FMS and the LEAs, including the MoF Investigation Service, in supporting investigation of the ML-related predicate offences. The number of FMS disseminations that have led to investigations has decreased in recent years. TF-related disseminations are all carefully analysed, and investigated by the SSS, but relate mostly to persons designated under various regimes and linked to high-risk jurisdictions.

4) FMS operational analysis is usually conducted efficiently but frequently not comprehensive enough. Several cases presented entailed a data gathering exercise, with limited analytical input and enrichment of the substance of the STR, typically concerning a basic form of criminal activity. There is no formal procedure to follow for conducting analysis, nor enough sophisticated analytical tools available for data mining and analysis of financial intelligence. The strategic analysis conducted by the FMS is limited. Use of information included in CTRs and cross-border cash declarations is basic.

5) Georgia has taken efforts to enhance the quality of STRs in recent years, but concerns remain about the number (from sectors other than banks) and, particularly, quality of reporting. A number of factors contribute potentially to this, including: (i) unsatisfactory feedback, guidance and training provided to the private sector by the FMS; (ii) the resource-intensive process imposed on obliged entities for filing CTRs, as also identified by the authorities; and (iii) exposure of bank employees to court proceedings. These concerns are supported by a decrease in the number of STRs used in developing disseminations to the LEAs.

6) There have been several missed opportunities due to the dissipation of suspected funds which were the subject of STRs. This is potentially due to following factors: (i) the STR is filed after funds have been sent abroad by the obliged entity; (ii) the FMS rarely exercises its power to suspend assets reported as suspicious and relies instead on prosecutors to initiate seizure proceedings; and (iii) LEAs apply emergency seizure measures at the initial stage, but not always promptly enough.

7) FMS premises and computer systems are considered in Georgia to be critical infrastructure and, as such, are protected from cyber-attacks. Nevertheless, these need to be further upgraded to enable the storage and analysis of classified information.

Immediate Outcome 7

1) Georgia has a sound legal and institutional framework for investigating and prosecuting ML. The investigative and prosecutorial bodies, particularly the GPO, are adequately resourced, and their levels of commitment and professionalism are high.

2) When potential ML is detected, it is investigated effectively using a range of investigative techniques, primarily by the specialist AML unit at the GPO. There have been some successful cases involving high asset values and complex factors such as cross-border criminality, organised crime and the use of legal persons.

3) However, potential ML cases are not sufficiently detected. The total number of ML investigations is modest compared to predicate criminality, although there has been an increase in recent years. The cases that have been taken forward involve predicate offences and types of laundering that are in line with country's risk profile to some extent, but there are few cases relating to banking sector employees even though that sector features in most ML cases, and few cases involving some of the predicate offences that are identified in the NRA or observed in Georgia. During the assessment period there were restrictions on the ability of the LEAs to obtain information from the FMS (although this was recently improved, to some extent, by the introduction of the new AML/CFT Law), and the number of investigations generated by sources other than STRs, such as from parallel financial investigations, is modest.

4) There are no legal or structural impediments to taking forward ML prosecutions. The court system is efficient and dissuasive sanctions are imposed. Georgia has achieved convictions for all types of ML. While, the majority of convictions involve domestic predicate offences and self-laundering, a substantial proportion involve foreign predicate offences and a reasonable number involve third party or autonomous ML. However, there is low number of convictions involving complex ML. In addition, the proportion of convictions for legal persons is lower than would be expected given that the use of legal persons features in most of the cases. This, together with an overall conviction rate of almost 100% for ML, indicates that prosecutors may be too cautious about the cases they take forward.

5) Georgia effectively applies other criminal justice measures in cases where ML convictions cannot be secured for justifiable reasons.

Immediate Outcome 8

1) Georgia recognises the importance of confiscation and has the necessary legal framework, structures and resources in place to address this. Tracing and preserving assets is strongly promoted as a policy objective and a number of measures have been put in place to improve effectiveness in this area.

2) The jurisdiction has achieved a significant level of confiscation overall and a wide range of criminal proceeds is being confiscated, including property in third party hands. No assets outside the jurisdiction have been confiscated (although some cases are pending). The application of value-based confiscation is limited and there are concerns about the understanding of some authorities in this respect. The confiscation of instrumentalities, of crime is being largely achieved, although there is scope to expand the confiscation of instrumentalities to include a greater range of property.

3) Georgia's legal framework allows for the application of non-conviction-based confiscation, although limited use had been made of this mechanism in practice.

4) Measures to preserve property are generally taken at an early stage in an investigation and a high volume of assets has been seized or frozen. However, inconsistent information was provided about whether emergency freezing measures are properly applied in all cases after an STR has been made.

5) Georgia has a declaration system for cross-border movements of cash or BNIs. However, this system is not being enforced effectively, as the proportion of non-declared or falsely declared cash or BNIs that is confiscated (or indirectly removed from the party in breach through a fine) is very low.

6) The confiscation results reflect the risks to Georgia to some extent but are not fully in line with the country's risk profile as set out in the NRA.

Recommended Actions

Immediate Outcome 6

1) Georgia should amend the AML/CFT Law to enable the FMS to provide - without a court order - information and analytical results to all LEAs investigating ML, associated predicate offences and TF, on request. The FMS should be empowered to disseminate spontaneously information and analytical results to the MoF Investigation Service. Georgia should provide guidance to encourage LEAs to use FMS information and analytical results in the investigation of ML, associated predicate offences and TF.

2) Georgia should continue improving the quality of parallel financial investigations and increase the use and deepen analysis of financial intelligence to identify ML. This includes also identification and investigation of complex cases of ML and TF.

3) Georgia should review the policy, court practice, and security issues arising when obliged entities' officials are called to give evidence in court proceedings, with regard to their AML/CFT obligations, to prevent this unless absolutely necessary. Consideration should be given in this review to issuing guidelines to practitioners on the parameters for permitting such testimony and the permissible questioning.

4) The FMS and the LEAs should develop a mechanism to ensure that timely feedback is given to the FMS about the quality and use of financial intelligence that it provides to LEAs. The FMS should continue holding periodic meetings with LEAs to discuss the use of FMS analysis products.

5) The FMS should: (i) improve its operational analysis of STRs, CTRs, cross-border cash declarations and other information to identify suspicious activities and typologies; (ii) develop formal procedure for conducting operational analysis of financial intelligence and its prioritisation; (iii) enable the storage and analysis of classified information, and consider classifying its analysts to enable handling sensitive information both in paper and in digital form; (iv) the FMS should develop strategic analysis to identify emerging

trends, patterns, typologies, and vulnerabilities (such as bottlenecks in the system) to support the operational needs of LEAs, supervisors, and for dissemination to obliged entities; and v) enhance its technical capacities (IT tools) for conducting analysis;

6) The FMS, in coordination with all relevant competent authorities, should enhance efforts to increase the quality (based on agreed criteria) and quantity of ML/TF STRs so that these more frequently cover typology-based suspicion of ML and TF. This should include (i) analysis of sector specific needs of obliged entities; (ii) provision of more frequent feedback on the quality and use of STRs; (iii) provision of targeted guidance and training; (iv) further development of CTR criteria to facilitate automated detection and submission to the FMS; and (v) further application of supervisory measures.

7) Georgia should introduce guidelines to ensure coordination amongst obliged entities, the FMS and the LEAs to prevent the dispersion of suspected funds which are the subject of an STR.

Immediate Outcome 7

1) Georgia should improve the effectiveness of parallel financial investigations, such as, by appointing specialist financial investigators and assigning prosecutors who are financial crime specialists to assist the LEAs on parallel financial investigations, making greater use of interagency teams (especially involving tax and customs investigators) and issuing detailed guidance by the GPO on financial investigations.

2) The GPO should continue to improve the detection of ML. Measures targeted at specific predicate offences and types of ML should be included in its AML strategy.

3) Georgia should analyse centralised nationwide statistics on underlying predicate offences and types of activity involved in ML investigations and prosecutions, to assist in monitoring the extent to which ML cases are in line with Georgia's risk profile.

4) Prosecutors should review their criteria and practices for taking cases forward in order to improve the range of cases that are prosecuted, especially cases involving difficult or complex factors.

Immediate Outcome 8

1) Georgia should review the practices of all authorities in connection with emergency freezing measures, to ensure that their respective powers to freeze or seize property urgently are applied in a consistent and effective way.

2) Georgia should make a greater use of value-based confiscation and the range of assets confiscated as instrumentalities should be widened. This should be supported by guidance and training on value-based confiscation and instrumentalities, to all authorities, including the judiciary, and by maintaining specific statistics in these areas.

3) Georgia should review the new regime for cross-border declarations and take the necessary steps to ensure that there are no obstacles to confiscating non-declared or falsely declared cash or BNIs or removing them from the party in breach through a fine.

4) The GPO should supplement the Prosecutors' Strategy to include taking forward non-conviction-based confiscation as a policy objective, accompanied by guidance and training on this.

152. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this

section are R.1, R. 3, R.4 and R.29-32 and elements of R.2, 8, 9, 15, 30, 31, 34, 37, 38, 39 and 40.

3.2. Immediate Outcome 6 (Financial intelligence ML/TF)

3.2.1. Use of financial intelligence and other information

153. The LEAs access a wide variety of sources of financial intelligence and other relevant information when conducting investigations. However, access to FMS data was very limited during most of the period under review (until 30 October 2019). This is due to: (a) a lack of sufficient understanding by several LEAs as to the core role of the FMS - the analysis it can produce and provide; and (b) legal limitations which hinder the ability to access information held with the FMS. While parallel financial investigation is an inherent part of investigations of proceeds generating offences, the LEAs (the GPO to a lesser extent) displayed difficulties in identifying ML and were mostly focused on detecting property related to perpetrators of the predicate offences. On a positive note, spontaneous disseminations by the FMS have, on many occasions, lead to ML investigations, followed by successful prosecutions and convictions.

154. The LEAs (GPO, SSS, MIA and MoF Investigation Service) routinely obtain financial and other information from directly accessible databases⁴³ and regularly request financial information from obliged entities, particularly banks and MFOs, as well as the NBG. On the other hand, they very rarely address the FMS to obtain information, and not to obtain financial intelligence and analysis. Most authorities explained that the first reason is the requirement to obtain information from the FMS on the basis of a court order. This requires meeting criminal evidential standard of probable cause, which is a high threshold, as in practice would imply convincing the court (*ex parte in camera*) that the FMS is in the possession of such information for the court to issue the order. The second reason is that having sufficient powers and capacity to obtain all the necessary information directly from the primary source (obliged entities and NBG) and having sufficient financial expertise to analyse it, several LEAs did not see the value of requesting it from the FMS. When asked about this, the FMS argued that, though the information exchange should be improved, they encourage a cautious approach in using sensitive FMS information, intelligence and analysis, in appropriate cases but not in every investigation.

155. During the period under review, the LEAs were able to access information held by the FMS only on the basis of a court order. There were only 5 occasions (2 requests from the GPO and 3 requests from the MoF)⁴⁴ when the LEAs addressed the FMS with a request based on court order for “seizure of information”, to obtain data on a certain person and his/her transactions held in the FMS database. Except for one occasion when request

⁴³ These include: (i) credit records database, which contains credit records of natural and legal persons; (ii) asset declarations of public officials and their family members, which contains information about their assets and annual income; (iii) NAPR registry of legal persons, which contains basic information on legal entities registered; (iv) NAPR real estate database, which contains information concerning owners, estimated value and types of real estate, date of registration and mortgages; (v) criminal records database (maintained by the MIA), which contains information on detained, prosecuted and convicted persons, and the data about firearms registration, missing individuals and vehicles; (vi) police database (maintained by the MIA), which contains the identification data of Georgian citizens including passports and photos, and the data about vehicle registration and border crossing, as well as to the (vii) tax database (maintained by the MoF), which includes the financial records of legal persons and individual entrepreneurs, declared revenues and paid taxes, and the import/export data; (viii) electronic criminal case managements system, which keeps information about the criminal cases.

⁴⁴ Information was obtained from the FMS to pursue: ML (CC 194) - 1 case; tax evasion (CC Art. 218) – 1 case; fraud (CC Art. 180) – 2 cases; and misappropriation or embezzlement (CC Art. 182) -1 case.

concerned investigation of ML, all others concerned investigation of predicate offences and were not seeking financial intelligence and analysis from the FMS.

156. This approach indicates a clear lack of understanding by several LEAs as to the core role of the FMS, the analysis it can produce and provide, i.e. the potential value of financial intelligence that can be offered by the FMS, which could also enable the LEAs to receive much more valuable financial information and intelligence from domestic and international sources they might be aware of. This also deprives the LEAs from receiving typology-based analysis from the FMS, all which could assist in developing more complex ML cases.

157. The previous AML/CFT Law in force during the period under review, provided an extremely limited access to financial intelligence held with the FMS, and limited competent authorities' ability to request information from the FMS – as a result, the FMS was isolated and unaware of ML, TF and predicate crime investigations conducted and could not therefore assist these even spontaneously.

158. On 30 October 2019, a new AML/CFT Law was adopted, which widens the possibilities for the GPO, SSS and MIA to request information from the FMS without a court order, when there is an ongoing investigation of ML, TF and drug-related offences. The effect of this amendment, however, was not yet tested on-site due to its recent nature. This does still not provide access to LEAs without a court order when dealing with any other predicate offences associated with ML. Most notably, this concerns the MoF Investigation Service, which is responsible for investigation of one-third of FATF-designated categories of predicate offences⁴⁵, and as indicated below between 2014 and 2019 conducted 52 ML investigations. The Georgian authorities argue that this amendment is an incremental solution to the problem, and that the channel of using a court order is always available in relevant cases. Nevertheless, concerns remain that this amendment is of a limited scope. Arguably the option of obtaining a court order does exist, but, as demonstrated so far, this has not been an effective channel for smooth exchange of financial intelligence.

159. Parallel financial investigation is an inherent part of investigations of proceeds generating offences. All the LEAs displayed awareness of the multiple measures taken by the Georgian authorities to promote this. The LEAs are led by a “follow the money” policy. Their investigations generally have an objective to identify criminal proceeds owned by the perpetrator or their family members and associates using all the means and sources of information as provided above. This would include identifying all movable and immovable property owned by the perpetrator or his family members and analysis of transactions through bank accounts, including source of funds. The LEAs have broad access to and make use of the financial and other experts, as required. Several cases were presented demonstrating this ability to identify property owned by the perpetrator, family members and associates and, to a lesser extent, to use financial intelligence to locate more remote proceeds of crime, with only a handful leading to successful investigation of ML.

160. LEAs (other than the GPO AML Division) could rarely demonstrate in-depth and sophisticated analysis of financial intelligence, e.g.: making full use of FMS analytical capabilities or information held by FIs (e.g. CDD information); identifying ML typologies;

⁴⁵ Offences related to fraud (CC Art. 182 and 219), counterfeiting and piracy of products (CC Art. 189, 189.1, 196 and 197), extortion, illicit trafficking in stolen and other goods, smuggling (CC Art. 214), and forgery (CC Art. 210), Illicit trafficking in stolen and other goods (CC Art. 200) and commercial bribery (CC Art. 221).

or gathering evidence regarding potential involvement of more remote third parties or professional money launderers.

161. In some instances, ML investigations were triggered by an incoming foreign state financial intelligence disclosure. Thus, demonstrating the use of international cooperation as a source of financial intelligence to pursue ML (see also IO 2).

162. As to financial intelligence relating to VAs, the LEAs have established a cybercrime division which demonstrated a good level of experience in investigating the financial aspects of these crimes and obtaining financial intelligence involving VAs (see also IO 7).

163. Between 2014 and 2019, 52 ML investigations by the MoF Investigation Service and 22 ML investigations by the GPO were triggered by information other than spontaneous disseminations by the FMS. The provided statistics doesn't make it evident, how many of these ML cases investigated by the GPO include the ones that were initially identified by the MIA and the Anticorruption Agency of the SSS. The following cases demonstrate LEA's ability to make use of financial intelligence independently without FMS input (see also Box 3.8 cases initiated by MIA).

Box 3.1: Financial intelligence generated and used by the MoF

(Fraud and ML)

In 2016, a criminal investigation was initiated by the MoF Investigation Service following the fraudulent registration of land with the NAPR.

G.T., N.T. and A.A. had committed fraud by obtaining title to 600 sq. m of state-owned property valued at GEL 89 611 (EUR 30 000) through deceit. After misappropriation, G.T. and N.T. had drafted a fraudulent contract to sell the property to A.A. in order to conceal its illegal origin. A parallel financial investigation was able to determine the proceeds received by the offenders from the sale of the plot of land.

The MoF Investigation Service accessed a range of financial and other information sources to advance the investigation, including obtaining information from the NAPR, National Agency of State Property Management, various directly accessible databases and verbal information provided by various actors.

G.T., N.T. and A.A. were convicted for fraud and ML and sentenced to imprisonment. The real estate involved was confiscated in favour of the state.

Box 3.2: Financial intelligence generated and used by the MoF

(Fraud, misappropriation and ML)

In 2014, a criminal investigation was initiated by the MoF Investigation Service based on the Internal Audit Office of the Ministry of Refugees and Accommodation of Georgia⁴⁶ report.

Two directors of a construction company that won state procurement tenders had provided incorrect/false data in respect of four construction projects which had not been properly verified by public officials. This allowed to fraudulently misappropriate GEL 3 111 383 (EUR 1 000 000) from the state. A parallel financial investigation was carried

⁴⁶ Dissolved in 2018.

out revealing ML, whereby illegally obtained funds had been used to acquire various properties.

The MoF Investigation Service accessed a range of financial and other information sources to advance the investigation, including various directly accessible databases, the website of public procurement, which allowed tracking the transfer to and use of funds by the tender-winning company and identifying the attempt of legalisation of funds. Income and expenditure of both directors, their family members and related persons were fully identified and analysed using information on accounts held by the former provided by banks; information on registered vehicles provided by MIA; data on obtained immovable property provided by NAPR.

The two directors were convicted for fraud, misappropriation and ML and sentenced to imprisonment. Real estate and vehicles overall totalling around GEL 237 000 (EUR 80 000) were confiscated. Two government officials were also convicted for negligence and abuse of power.

Box 3.3: Financial intelligence generated and used by the GPO

(Fraud and ML - self-laundering, domestic predicate offence)

In 2016, the GPO AML Division initiated an investigation based on the complaint submitted by two individuals (A.M. and M.D.) that had been defrauded by the same bank employee I.A.

Both individuals had placed deposits with the bank (USD 1 million and USD 800 000). I.A. had then arranged for associates to apply on his behalf to the bank for loans totalling USD 655 000, using both deposits as collateral and eventually to fund repayment.

The GPO AML Division collected all electronic information and documents held with the bank branch, which was sufficient for prosecution and conviction of the bank employee.

I.A. was convicted for fraud and ML and sentenced to 7 years of imprisonment.

164. As for the use of financial intelligence in FT, the SSS suggested that, whenever they come across a terrorism-related case, they would also look at the financing aspect. Based on information accessed and intelligence formed, so far, there was one complex case of terrorism identified by the SSS from which there were separated 2 FT cases. In total, 9 persons were charged with TF and all were convicted (see details and example in IO. 9).

165. Spontaneous dissemination of intelligence by the FMS forms the main source of ML investigations conducted by the GPO AML Division – the main recipient of such intelligence. On receipt of a case from the FMS, the GPO AML Division determines if there are signs of crime, and if so, whether this would support investigation into ML or a predicate offence. Where signs of ML are identified, the case is investigated by the GPO AML Division and, in case other criminal activities are detected, the case is taken over by the respective LEA, subject to its criminal subordination. No delays were noted in this process. Statistics on the use of FMS dissemination are provided below.

Table 3.1: Use of FMS spontaneous disseminations

Year	Disseminated ML/TF cases by FMS	Investigated ML cases by all LEAs	Investigated TF cases by SSS	Investigated predicate offences by all LEAs	Disseminations leading to investigations
2019 (1 Nov)	116 Total 111 ML and 5 TF	17	0	11	28 Total (24%)
2018	137 Total 123 ML and 14 TF	31	2	23	56 Total (41%)
2017	147 Total 119 ML and 28 TF	31	1	32	64 Total (44%)
2016	118 Total 103 ML and 15 TF	29	1	40	70 Total (59%)
2015	103 Total 96 ML and 7 TF	26	2	52	80 Total (78%)

166. The LEAs provided some case examples that demonstrated a successful use of FMS intelligence that led not only to launching an investigation⁴⁷, but also to prosecution, conviction and confiscation of assets (see also Box 3.11).

Box 3.4: Financial intelligence generated by FMS and used by the GPO

(Fraud and ML)

In 2016, the GPO AML Division initiated an investigation based on information provided by the FMS, into fraud and ML by an international organised crime group and a "money mule" in Georgia.

An unidentified individual had gained the trust of F.A.P. (a non-resident) on the social network LinkedIn and persuaded them to transfer USD 489 324 to I.K.'s bank account in Georgia. I.K. was acting as a "money mule" for O.R.E. in exchange for a financial reward. Once received the funds were transferred in small amounts to family members of O.R.E. in two African countries. The mastermind behind the scam was O.R.E.'s brother - H.G.O. and his accomplices.

The GPO AML Division collected all electronic information and documents held with the recipient/sender Georgian bank, interviewed I.K., and conducted MLA requests and used other international cooperation mechanisms, surveillance and postponed arrest of O.R.E., H.G.O. and other members of the group. H.G.O., and his/her accomplices and O.R.E. were arrested upon arrival to Georgia.

Five individuals were convicted for fraud and ML, sentenced to imprisonment for 11 and 12 years and fined with EUR 150 000. Moveable property and funds with a value of EUR 50 000 were confiscated and EUR 90 000 returned to F.A.P. - the victim of the fraud.

167. Five disseminations by the FMS in 2018 and 2019 were based on STRs, and a CTR received from the PSPs and banks, that concerned use of VAs in criminal activities. These were investigated by the GPO and MIA. One dissemination involved a large network of drug addicts buying narcotics on an underground trade platform and paying with VAs. Another was of a complex nature, concerning non-resident individuals conducting

⁴⁷ Between 2016 and 2019, the MoF Investigation Service conducted 15 investigations (ML and predicate offences) based on FMS disseminations that were referred by the GPO or the MIA.

fiat/VAs exchange. One of the individuals appeared to be charged for drug distribution in a foreign jurisdiction.

168. Most cases that demonstrated use of FMS disseminations were related to laundering the proceeds of fraud. Whilst in line with the findings of the NRA, which classifies fraud as presenting the highest threat (assessed as medium-high), no statistics were provided on the use of FMS disseminations for other proceeds-generating offences highlighted in the NRA, such as a cybercrime, drug trafficking, tax evasion, corruption and human trafficking. This was not confirmed also through the provided examples of cases.

169. TF-related cases are sent simultaneously to both GPO and SSS. The FMS has disseminated 69 FT cases. The majority of these had been investigated in the framework of 6 TF investigations as pertaining to similar conduct. In all cases, the SSS checked the intelligence disseminated against available sources of information, including foreign counterparts and documents seized from a bank. The typology identified was an attempt to conduct an outgoing/incoming transaction or open a bank account where a persons' data fully or partially matched with the information in the external database. Although, a thorough analysis of the retrieved financial intelligence was carried out, suspicious circumstances and signs of the crime, have not been established (see also IO.9).

3.2.2. STRs received and requested by competent authorities

170. The authorities have taken efforts in recent years to enhance efficient STR reporting. Nevertheless, concerns remain both with regard to quantity (concerning obliged entities other than banks) and with quality of reporting (see IO 4). The authorities' perception is of an increasing quality of STRs - though no written criteria exist within the FMS as to what would be considered a high-quality report. On the other hand, several indicators exist suggesting there is much room for improvement: (i) statistics demonstrate a decrease in the number of STRs used in developing disseminations to the LEAs; (ii) except for banks, other relatively higher ML risk sectors do not feature prominently in FMS disseminations, which rarely include suspicion of sophisticated ML or high-level analysis by obliged entities of ML or TF typologies or indicators; and (iii) many STRs are defensive in nature and reported after funds were sent abroad. Hence, the actual contribution of STRs to successful investigation, prosecution and conviction of ML/TF and associated predicate offences is at a moderate level.

171. The FMS is the central authority for the receipt of the STRs and currency transaction reports (CTRs). The FMS is also the recipient of declarations on the cross-border transportation of cash and bearer negotiable instruments (BNIs).

Table 3.2: Total number of STRs and CTRs submitted by the obliged entities to the FMS⁴⁸

Year	2015	2016	2017	2018	2019 (1 November)
STRs	972	993	911	837	977
CTRs	158 203	174 354	199 868	235 619	196 980

STRs

172. Annual number of reported STRs over the last three years has followed a downward trend. Nevertheless, in 2019, the total number of submitted STRs grew as a result of a change in the reporting behaviour of the gambling sector, which is a growing sector in

⁴⁸ A detailed table on STR and CTR reporting by each type of obliged entity is provided under IO.4.

Georgia. While until 2018, the level of reporting by the gambling sector was very low it has sharply increased in 2019, reaching 251 STRs filed as of November 2019.

173. The authorities attribute this downward trend to a reduction in the number of defensive STRs and growing quality of reports. The authorities consider the improving quality to be a result of targeted measures taken by the FMS and the NBG (see IO 4). In addition, since 2016 the FMS has studied typologies through analysis of STRs, criminal cases, and international requests. Results for 2015-2016 were communicated to the banking sector and, since 2013, these typologies have also become part of the FMS's annual report which is widely distributed. As for the growing number of STRs filed by the gambling sector, the FMS advised that, recently, guidance was developed in the form of red flags and typologies, and meetings were conducted to raise awareness of the sector, which triggered active reporting by gambling operators.

174. While these efforts are acknowledged, concerns remained on the quantity (with regard to obliged entities other than banks) and the quality of reporting. The sectorial regulations issued by the FMS for reporting entities do not provide the obliged entities with sufficiently detailed and granular guidance on STR requirements or on ML/TF typologies to support the detection of suspicious activity or circumstances. Many of the obliged entities were not aware of STR reporting typologies or indicators and showed that improvement was needed regarding guidance available and feedback provided. As to the gambling sector, obliged entities confirmed receipt of materials and a close engagement with the FMS, however, they expressed a low level of satisfaction (mentioning that the international typologies used were old and not adapted to the products offered on the Georgian market – though they have had a clear effect). No materials were provided that would evidence targeted and bespoke training on reporting; rather training was conducted under the joint EU and Council of Europe project: “Partnership for Good Governance (PGG) - Strengthening anti-money laundering institutions in Georgia” between 2016 and 2018.

175. Amongst obliged entities, banks displayed the highest level of understanding of their reporting obligations. The sector files the majority of STRs which is in line with the size of its market share and volume of conducted transactions. The annual average number of STRs submitted by the banking sector is 570. Non-bank FIs demonstrated a moderate level of understanding of their reporting obligations, which was also confirmed by a low level of STR reporting: the annual average number of STRs submitted by non-bank FIs together is just 66. DNFBPs displayed the lowest level of understanding of their reporting obligations, and respectively, the lowest level of reporting (see IO.4, Table 5.1) The low level of reporting by lawyers may be the effect of legislative amendments introduced in 2018 in the Law on Lawyers with respect to legal privilege (see also IO.4). In the absence of statistics, it is not possible to analyse distribution of STR reporting within each sector to conclude whether this is homogeneous. Analysis of the number of STRs confirms that there is further room for improvement.

176. In addition to these obliged entities, NAPR (which registers real estate transactions and is the only gatekeeper in the property sector) is also required to file STRs and has done so (880 STRs between 2015 and 2019). There has been a steady downward trend, from 309 in 2015 to 33 in 2019. This trend was explained as being due to the improving quality of STRs and gradual improvement of the peculiar situation with land registration rights in Georgia (unregistered land cultivated by farmers). The STRs submitted by the NAPR were basic and concerned only a mismatch between market and contractual prices and matches of purchasers or sellers to external databases. One STR concerned possible

TF (false positive match). Whilst the NRA concludes that the ML risk in the real estate market is at a medium level and the use of real estate features in ML-related criminal cases rather frequently, NAPR – the only gatekeeper in the real estate sector, is no longer required to file STRs under the new AML/CFT Law. This is a matter of a serious concern.

177. On a general note, the evaluation team considers that exemptions applied by the AML/CFT Law for preventative measures for real estate agents, TCSPs, collective investment funds and fund managers, accountants that are not certified, certified accountants when providing legal advice, and VASPs, described in IO.1 and R.1, will deprive Georgia of an important source of information with a potential negative impact on the ability to effectively detect and pursue ML, related predicate offences and TF.

178. Another factor that impacts the quality and quantity of STR reporting is, as also identified by the authorities, a rather complex regime set for reporting of threshold transactions (see detailed analysis below).

179. Analysis of the use of STRs by the competent authorities (see table below) highlights a downward trend – from 24% in 2017 to 12% in 2019(10 months). This calls into question the quality of STRs and does not support the conclusion of the Georgian authorities of improving it. There are no risk indicators attached to each STR, which makes it difficult to assess if these are generally aligned with the ML/FT risk profile of the country.

Table 3.3: Number of STRs received and cases disseminated

Year	STRs received	ML-related STRs used in disseminations	TF-related STRs used in disseminations	Total number of STRs used in disseminations	Disseminated cases
2019 (incl. October)	977(18)	138	6	144(12%)	116 Total 111 ML and 5 TF
2018	837(19)	166	12	178(21%)	137 Total 123 ML and 14 TF
2017	911(35)	185	34	219(24%)	147 Total 119 ML and 28 TF
2016	993(46)	NAV	46	NAV	118 Total 103 ML and 15 TF
2015	972 (19)	NAV	18	NAV	103 Total 96 ML and 7 TF

180. As is demonstrated below in the table, banks (medium risk for ML), and, to lesser extent, MFOs (medium-low risk for ML) file STRs of greatest use to the FMS for developing and disseminating cases. The downward trend however confirms that more attention to enhancing the quality of reported STRs would be beneficial.

181. A positive trend is observed with respect to use of STRs filed by PSPs (medium risk for ML) and gambling sector (medium-high risk for ML). Reporting by these two sectors increased over the last period of time, and so did the use of the filed STRs. While modest number of successful reporting does not suggest the system is effective, the authorities are commended on achieving some results, especially in gambling sector, in such a short period of time.

Table 3.4: Number of STRs used in disseminated cases per type of obliged entity

Year	Banks	MFO	Online casino	PSP	NAPR	Insurance	Notary	Brokerage firms	Total number of STRs used in disseminations
2019 (1 Nov.)	111	5	15	11	1	1	-	-	144
2018	151	14	-	9	-	1	1	2	178
2017	193	25	-	-	-	1	-	-	219

182. Examples of STRs considered by the FMS to be of high quality (from all reporting sectors) were discussed with the authorities. Rarely did these examples include suspicion of sophisticated ML or high-level analysis by obliged entities of ML or TF typologies or indicators. Many were defensive in nature and some, reported after funds were sent abroad. The most valuable STRs seen are those identifying predicate crimes such as fraud, typically committed abroad using a Georgian bank account into which the funds are paid. In these types of case, the STR is filed as a result of a report by the fraud victim to a foreign bank (many times by the foreign bank from which the funds were sent) which is highlighted to the bank in Georgia. Some of these STRs were being successfully used for FMS disseminations and being further pursued by the LEAs (see Table 3.1).

Box 3.5: STRs submitted by different banks on the same subject

(FMS spontaneous dissemination)

The FMS received STRs from three banks (Bank Z, Bank Y and Bank X) concerning Company A – a payment service provider registered in Georgia with the NBG and owned by a non-resident.

Bank Z was concerned by a reference on Company A’s website that the bank acted as a correspondent for the company and by its failure to provide sufficiently detailed support for transactions conducted through its bank account.

Bank Y reported that it had been called as a defendant to a case in Country B regarding fraudulent transfers of funds, including to accounts held by Company A and Company D.

Bank X also submitted a STR in respect of Company A when funds had been received from Company D and then immediately transferred to Company E (having a very similar name to Company D) through a bank account in another country. This report was followed by two others involving proposed transfers between Company E and Company A. Under the first, Company A would receive an “intermediary” commission of EUR 2 700 000 before transferring the funds to Company F, and, under the second, funds would be subsequently used to construct resorts and a network of car maintenance and technical inspection centres. Bank X refused to carry out both transactions.

These STRs were analysed, merged in one case and disseminated by the FMS to LEAs.

183. Turning specifically to STRs reported on suspicion of TF, discussion with the authorities and the private sector, and also, case examples provided, highlight that most reports are linked to name matches with external databases, and transactions or parties in the transaction having links with high-risk countries. Recognising the need to enhance the quality of reporting, the FMS has developed guidance (not made available in English) for FIs on the identification of TF, which draws on both domestic and international experience, and provides risk-indicators that could suggest TF-related activity.

184. Considering the nature of the offence, the authorities explained that all parties act cautiously with suspicion of TF. Obligated entities and the authorities act promptly on the first sign of TF: reporting the STR and then conducting verification and further investigation into the offence. Use of STRs on TF and rate of dissemination by the FMS to LEAs is high, as demonstrated in tables above. Whilst this does not entail detailed analysis at the initial stage or point to an ability to identify sophisticated TF schemes, this demonstrates that a higher level of attention is paid to TF, although it being rated as posing a low risk according to the NRA.

185. Many of the obliged entities met on-site (especially non-banks) indicated that improvement was needed with regard to the feedback provided on STR reporting. Many obliged entities noted that they would benefit from a more systematic feedback from the FMS on a case by case basis. Considering the relatively low number of STRs received per year, the evaluation team considers that the FMS should be able to provide feedback more systematically.

186. On several occasions, when STRs have been disseminated and investigated, compliance officers of banks told the evaluators that they had appearing before the court on behalf of the bank to explain the basis for their suspicion, factual circumstances and/or banking formalities if the case so requires (though the GPO suggested that bank officials testimonies were not aimed at explaining the basis for their suspicion). Banks expressed their concern with this approach and its negative potential effect, though the LEAs advised that it is the decision of a bank to send its compliance officer. The evaluation team considers that obliged entities should be kept outside the court proceedings to provide explanations, especially regarding their AML/CFT obligations, unless absolutely necessary, as such a practice may discourage reporting of STRs and compromise the security of bank officials.

CTRs

187. The annual number of CTRs made has followed a constant upward trend throughout the observed period (see table in IO.4). The growing number of CTRs is explained by two major factors: growing level of economic activity; and supervisory focus, where delays in reporting are strongly sanctioned.

188. CTRs are rarely used in identifying ML/TF or predicate offences. Whilst the FMS uses CTRs as an additional source of information when examining a case, there is no targeted analysis thereof to identify ML/TF suspicions and complex, well masked ML/TF schemes. This is an area for improvement.

189. CTR reporting is a resource-intensive exercise for obliged entities. The FMS has set sophisticated criteria for CTR reporting, such that it is not possible for obliged entities to automate the reporting process. Consequently, compliance officers dedicate much of their time and efforts to CTR reporting at the expense of the detection and reporting of quality STRs. The FMS acknowledges that the reporting process is burdensome and costly, and, following an amendment to the AML/CFT Law, has initiated a revision of the applied criteria based on discussions with obliged entities. This process was ongoing at the time of the on-site visit, hence the effectiveness could not be assessed.

Cross-border reports

190. The FMS receives incoming and outgoing cross-border declarations on the transportation of cash and BNIs, and information on undeclared cash/BNI and false declarations from the Revenue Service of MoF (see the table in IO.8). The FMS did not

conduct specific analysis of such reports to identify ML/TF suspicion and disseminate cases to the LEAs. The FMS advised that these reports have served as an additional source of information when examining a case. They helped to establish a subject's business activities, source of funds, possible geography of business links, etc. As for strategic analysis, these reports give a broader picture of cash inflows and outflows, geography of main foreign sources/destinations of cash, etc.

191. The Revenue Service of MoF has conducted strategic analysis of declarations, which has been fed into the NRA. It was clarified also that, at an operational level, if any suspicion of a criminal activity is observed with respect to a declaration, the Revenue Service of MoF, in cooperation with the MIA, initiates an investigation (see also IO.8).

3.2.3. Operational needs supported by FIU analysis and dissemination

192. Spontaneous FMS disseminations have led to a number of successful investigations and prosecutions of ML and some predicate offences (see Table 3.1). However, there is a need to increase the number of investigations launched based on FMS disseminations and to enhance the ability of the FMS in detecting more sophisticated ML cases. The same applies to TF, as currently disseminations are only related to a match regarding listed persons or a link to a high-risk country. In order to better serve the purpose of feeding financial intelligence into cases detected autonomously by the LEAs, the FMS should consider further improving its accessibility. It should develop a culture of sharing information, intelligence and analyses that it holds with the LEAs in an appropriate manner and in appropriate cases.

193. Whilst the FIU enjoys operational independence - so that it is not subject to undue influence - it seems to be under-resourced. The FMS currently has 31 employees, including 6 analysts - a staff with a long-standing experience. Nevertheless, especially considering the additional workload expected after amendments of the AML/CFT Law, the FMS needs a significant increase in manpower, budget and IT tools for the following reasons: (i) enhancement of cooperation with LEAs under the new AML/CFT Law will trigger more requests and demand engagement more frequently in in-depth analysis of complex ML cases; and (ii) there is a need for better and more comprehensive strategic analysis; (iii) the expanding gambling sector would increase the number of filed STRs and CTRs; (iv) exempted sectors (real estate agents, TCSPs, collective investment funds and fund managers, accountants that are not certified and when providing legal advice, and VASPs) where a proven low ML risk has not been confirmed, may need to be brought into the reporting field (see IO 1).

194. The FMS has sufficient access to various types and sources of information. These include a direct access to: (a) a very broad range of databases which support conducting analysis and developing financial intelligence⁴⁹; and (b) a number of international commercial databases. The FMS receives STRs and CTRs from obliged entities, NAPR and the Revenue Service via its electronic reporting system. In the course of case analysis, the FMS also requests and receives additional information from obliged entities.

Operational analysis

195. There are no written procedures, based on criteria and indicators, covering: (i) actions to be taken at every stage of operational analysis (e.g. if there is a need for postponement of transactions); (ii) prioritisation of cases; or (iii) depth of analysis warranted - depending on the complexity and importance.

⁴⁹ Same databases as available to LEAs, except electronic criminal management system – see section 3.2.1.

196. The analysis procedure is driven by practice. While it is efficient, given the relatively low quantity of STRs, it is frequently not comprehensive enough. The process is broken down into two stages: (i) preliminary analysis conducted by the Data Processing Department; and (ii) substance analysis performed by the Analytical Department.

197. At the first stage, the FMS receives STRs via its electronic reporting system. The Data Processing Department performs manual data cleansing and integrity checks to ensure that all the required fields of an STR are completed and that the reports meet the necessary requirements. If data is missing, the respective obliged entity is immediately informed. The FMS receives, on average, 10 STRs per day and all are read and processed promptly before being handed over to the Analytical Department.

198. The CTRs received by the FMS are dealt with under the same procedure as STRs. The FMS receives, on average, 650 CTRs per day. All these CTRs are processed manually and read by the Data Processing Department staff in order to ensure that forms are filled in correctly. Further communication with the obliged entity is conducted in case information needs to be corrected or supplemented. The CTRs are further handed over to the Analytical Department and included in the analytical database.

199. At the second stage, the Analytical Department receiving the STR conducts a prioritisation based on the judgement of the Head of the Department (using extensive experience) in consultation with his colleagues. Though no formal procedure exists for this and no formal deadlines are in place, STRs are reasonably looked at and prioritised. Nevertheless, there needs to be a formalised and automated procedure and structure for prioritisation, and analysis of STRs developed.

200. Upon receipt, all STRs are checked against the databases available to the FMS. Further on in the course of analysis, additional databases may be used, such as foreign company registers and whistle-blower databases. Foreign FIUs will also be requested to provide information, if links to other countries are identified.

201. The FMS has no difficulty in requesting information from obliged entities in the absence of an initial STR, and, in the course of case analysis, it requests and receives information from obliged entities. When a case is opened, in order to verify if any assets are held by the person or their family in any other institution, or they are known otherwise to the institution, a request is sent either to all banks, MFOs or the casino sector. Information is provided in a timely manner - within 2 days - and, overall, the FMS expressed satisfaction with its collaboration with obliged entities and with the quality of provided information.

202. Statistics were not provided on the use of such circular requests to identify property of the person under scrutiny, in order to make appropriate conclusions. Nevertheless, there are doubts as to the level of effective use of the CTR database, and effectiveness of the threshold reporting mechanism itself since it does not seem to provide the FMS with sufficient information required to conduct its activities on a daily basis. While no concrete facts were detected, this circular requesting mechanism can also potentially increase the risk of tipping-off.

203. The table below reflects on the number of targeted, as opposed to circular, requests made by the FMS to obliged entities. The figures provided seem to correspond with dominant position of banks and the MFOs respectively, in the financial sector.

Table 3.5: Additional information obtained (number of requests per institution)

	2015	2016	2017	2018	2019 (1 Nov.)
NBG	1	-	-	-	1
Banks	96	153	104	103	116
MFO	17	43	26	21	14
Securities Registrars	-	-	-	1	6
PSPs	1	1	-	1	-
Online Casinos	-	3	-	-	1
NAPR	-	7	1	1	-
Revenue Service	-	4	1	2	-
MoF	-	-	-	-	2
Ministry of Economics	-	2	-	1	-
NAPR	-	1	-	-	-

204. The Head of the Analytical Department further decides which analyst shall deal with each case, taking into consideration its complexity. Respectively, more complex cases are dealt with by more experienced analysts. The length of this two-phase analytical process varies depending on the nature and complexity of the case - between 7 and 10 days on average.

205. The FMS demonstrated few instances when there was a complex analysis conducted in a case (see an example below). Several cases presented entailed a data gathering exercise, with limited analytical input and enrichment of the substance of the STRs, and mostly concerning a basic form of criminal activity.

206. Over the assessed period the FMS did not have sophisticated enough analytical tools, including IT tools for data mining and analysis of financial intelligence. The evaluators were presented with a new, self-developed more robust system developed in house, which was however at the testing stage at the time on the on-site, hence its effectiveness was not assessed.

**Box 3.6: FMS case analysis
(customer data theft)**

Bank 1 filed a STR concerning its customer - Person A - a citizen of Country A. According to the STR, Person A's business activity was trade and construction. The FMS also obtained information from public sources that Person A owned a network of shops selling furniture in Country Z. Person A's bank account had been credited with USD 2 500 000 by a customer of Bank 2 (also a domestically licensed bank) - Company B - based on a loan agreement. A few days later, Person A visited a branch of Bank 1 and sought to change the identification data recorded by the bank from that of Country A's passport to Country Z's passport (in which the name of Person A was Person AA).

Later, the FMS received a STR from Bank 2 concerning Company B, which had transferred USD 500 000 to Company C (to an account in Country X). Company B was incorporated in Country W and had Person B as the beneficial owner. On the same day, those funds had been returned to Company B's account by an intermediary bank - due to a breach of its internal policies.

Notably, the FMS identified that the last names of Person AA and Person B were the same. Thus, it was assumed that they could be close relatives.

Bank 2 conducted further examination of its customer's beneficial owner - Person B - and found (through an external data source) that Person C was involved in hacking the databases of FIs in Country W and had been charged with customer data theft, an investment scam and large-scale ML. Bank 2 informed the FMS that Person B and Person C were parent and son/daughter.

A search through the FMS's database resulted in the identification of transactions involving large amount of funds between Person B and Person C.

The FMS disseminated the case to the LEAs on the ground of potential ML. Shortly after, a request for information was received from the FIU in Country W concerning Person C. The FMS provided this information and advised that a case file involving the subject of the request had been disseminated to the LEAs. With the consent of the foreign FIU, the FMS informed Georgian LEAs about their request.

Strategic analysis

207. There is no separate strategic analysis department at the FMS, and all analysts conduct strategic work, especially the more experienced ones. Only limited strategic analysis has been performed by the FMS: (a) to support the NRA process, (b) to outline observed schemes in the FMS annual reports, and (c) to satisfy the internal needs of the FMS (e.g. analysis of CTRs to and from high risk jurisdictions, incoming and outgoing transactions conducted by NPOs). Typical strategic work is very limited in scope. It includes Excel-based analysis of FMS data, typically without more in-depth analysis from additional external information, reaches no specific conclusions, and is ultimately shared only within the Analytical Department. This is insufficient to support the work of other competent authorities such as supervisors - to assist them in their supervision of FIs and DNFBPs, or to LEAs - regarding ML or TF typologies identified. No strategic analysis has been conducted in cooperation with other competent authorities.

Dissemination

208. In line with the AML/CFT Law the FMS disseminates detected cases to the GPO, MIA and SSS, and not to the MoF Investigation Service which is responsible for conducting investigation of 1/3 of the types of FATF designated categories of predicate offences. The Georgian authorities are aware of this but claim that ML-related disseminations and those concerning predicate offences are disseminated to the Revenue Service of MoF (administrative body). Since both, the Revenue Service and Investigation Service (which is the one vested with investigative powers) operate within the MoF, the FMS considers the Revenue Service to be an appropriate intermediary for communication. While not having statistics and case examples on hand due to the very recent change of the legislation, the evaluation team, nevertheless, is concerned with the intention to use the Revenue Service of MoF as an intermediary. The Revenue Service of MoF is responsible for administrative tax matters and not placed (is not staffed by the investigators having sufficient knowledge in ML and respective predicate offences) to analyse and detect cases that would fall under the competence of the MoF Investigation Service. Hence, this arrangement can hinder effective use of FMS intelligence to develop criminal cases and associated ML by one of the key LEAs.

209. When analysis of a case is completed, it is the Head of the FMS who takes a decision, consulting with the analyst and the head of the Analytical Department, to disseminate intelligence to LEAs. Cases are immediately disseminated to LEAs (GPO, SSS, and MIA) as soon as there are reasonable grounds to suspect ML/TF or any other criminal offence.

210. Table 3.1 shows the number of investigations launched based on FMS disseminations falling from 78% in 2015 to 41% in 2018 (and 24% to November 2019). This suggests there is room for major improvement in: (a) analysis conducted by the FIU, including detection of sophisticated ML schemes; and (b) use of FMS financial intelligence by the LEAs to launch investigations based on the FMS disseminations.

211. After cases are disseminated, the FMS appears not to receive appropriate feedback from the LEAs about their use. While the FMS and GPO have jointly designed a feedback form, it does not provide the FMS with feedback on the quality and relevance of disseminations. Instead, the form confirms receipt of the case by the GPO and whether an investigation has been launched. Lack of appropriate feedback hinders the FMS's ability to develop better-quality cases.

Suspension of suspected funds

212. Discussions have revealed several instances where suspected funds were released by obliged entities before preventative measures had been taken. There appeared to be three possible reasons for this: (i) The STR is filed after the funds have been transferred out of Georgia (though the FMS explained that it considers each such case and applies sanctions where appropriate); (ii) the FMS suspends funds only rarely, in order to limit impact on investigations (between 2015 and 2018, the FMS suspended transactions 6 times, 5 at the request of a foreign jurisdiction.); and (iii) the LEAs apply emergency seizure measures at this initial stage (but not always promptly enough).

213. Better coordination is needed between obliged entities, the FMS and the LEAs to prevent missed opportunities. This might include enhancement of the expertise of the obliged entities in prompt detection of suspicion and stopping funds before released; intensifying the frequency and instances or application of the suspension powers by the FMS; and issuing of guidelines which will ensure the promptness of LEAs in application of seizure when appropriate to prevent the dissipation the suspected assets (see also analysis and recommended action in IO 8).

3.2.4. Cooperation and exchange of information/financial intelligence

214. A good spirit of cooperation exists among all competent authorities, but this has not so far been translated frequently enough into effective investigations using financial intelligence. As described above, this is mostly because of the legal restrictions on exchange of information, which considerably have isolated the FMS from most investigations of ML and TF conducted by the LEAs.

215. The legal constraints described above preventing LEAs requesting information from the FMS have been partially addressed in the new AML/CFT Law, which is limited to ML, TF and drug related crime, and not other predicate offences. Due to very recent nature Georgia has not yet been able to demonstrate effective implementation of this recent amendment. In the meantime, limitation for access to information by LEAs when investigating other predicate offences needs to be urgently addressed, both by amending legislation, and until then, by issuing guidelines to encourage LEAs to seek court orders requesting information from the FMS in these cases.

216. Another area for potential improvement of cooperation is lack of involvement of the MoF, FMS and supervisory bodies in the Permanent Working Group, a taskforce created in 2018 to develop further cooperation and exchange information regarding specific cases.

217. A good example for cooperation is between the FMS and the NBG, which maintain close communication. This is based on a favourable environment set out in law, and

further strengthened by a MoU. On this basis, the FMS and the NBG exchange all necessary information for conducting effective supervision (e.g. prior to an on-site inspection) and, afterwards, the FMS receives inspection findings and details of identified deficiencies. In addition, the FMS proactively approaches the NBG where, e.g., there are indications that CDD had not been carried out adequately.

Table 3.6: Information exchange between the FMS and the NBG

Year	Information sent by the FMS	Information sent by the NBG
2018	7	108
2017	16	306
2016	15	268
2015	11	1066 ⁵⁰

218. The FIU and competent authorities protect the confidentiality of the information they exchange and use, but major improvements are needed in this respect. One specific issue which should be addressed is the security level of the FMS. The FMS premises and computer systems are considered in Georgia to be critical infrastructure and, as such, are protected from cyber-attacks. Nevertheless, there is a need for further upgrade of security, taking all necessary steps to enable the analysis of classified information in its premises, including not only physical security aspects, but also the necessary IT steps to protect the classified network and the ESW, as well as guidelines and procedures for classifying employees and handling sensitive information both in paper and in digital form.

Overall Conclusion on IO.6

219. While LEA utilise financial intelligence in many cases major improvements are needed to improve the effective exchange of information and intelligence, and the operation between the FMS and LEA. The decreasing success rate of financial intelligence turning into investigations based on STRs, questions the quality of the STRs and of their analysis. FMS operational analysis is usually conducted efficiently but frequently not comprehensive enough. Several cases presented entailed a data gathering exercise, with limited analytical input and enrichment of the substance of the STR, typically concerning a basic form of criminal activity. This highlights that Improvements are needed regarding the operational level of the FIU. Whilst demonstrated that financial intelligence is used to target fraud, which is in line with the findings of the NRA, not much is done with respect to other respective proceeds generating offences.

220. **Georgia has achieved a moderate level of effectiveness for IO.6.**

3.3. Immediate Outcome 7 (ML investigation and prosecution)

221. Georgia has well-established legal and institutional systems in place to investigate and prosecute ML. Since its last evaluation, measures have been put in place to improve effectiveness in this area, including enhanced training, a 2015 Recommendation "On Certain Measures To Be Carried Out In Criminal Proceedings" from the GPO requiring all LEAs to conduct parallel financial investigations when investigating predicate offences, and a 2017-2021 Prosecutor's Strategy applicable to all agencies with responsibility for investigating and prosecuting ML.

⁵⁰ The figure is explained as a result of NBG supervisory activities over the currency exchange offices.

222. The GPO AML Division is the main body responsible for investigating ML. The investigative divisions of the following agencies investigate predicate offences and are also competent to investigate ML: MoF Investigation Service, MIA and the SSS.

223. Tasking decisions for ML cases are taken by the GPO and depend on the nature of the case. The GPO investigates and prosecutes autonomous or complex ML cases. Cases of medium complexity identified by the LEAs are investigated jointly with the GPO. ML is only investigated by the LEAs alone where it is not complex, and the LEAs carry out these investigations under the close supervision of prosecutors. Cooperation between the different authorities was enhanced under the 2017-2021 Prosecutor’s Strategy by the creation of a standing task force involving the GPO, the LEAs and the FMS.

3.3.1. ML identification and investigation

224. The authorities advised that potential ML cases may be identified from various sources such as STRs and other financial intelligence, parallel financial investigations, mutual legal assistance requests, reports from the public to the LEAs and open source information. Once detected, investigations are prioritised according to a number of risk factors. Cases involving large asset values are given a high priority, as are cases featuring complex factors such as the number of offenders, the involvement of organised criminal groups, multiplicity of criminal acts and new ML trends. The authorities have adequate resources and access to the information they need to progress investigations effectively, including specialist financial expertise such as assistance from forensic accountants. There are ongoing training programmes, including on emerging issues of concern such as cybercrime and VAs.

225. The total number of ML investigations between 2015 and 2019 (1 November) was 190, with annual numbers of between 30 and 45 in most years. The authorities confirmed that most ML investigations were carried out by the GPO. The majority of investigations resulted from STR information, with just under a third resulting from other sources, i.e. parallel financial investigations, reports from the public and open source information (although no information was provided about the proportion of cases attributable to each of these sources). In addition, 2 investigations were initiated on the basis of an MLA request.

Table 3.7: Number and sources of ML investigations

	2015	2016	2017	2018	2019 (1 Nov)	Total
Total number of ML investigations	35	44	42	44	25	190
Number from STRs	26	29	31	31	17	134
Number from MLA requests	0	0	0	2	0	2
Number from other sources	9	15	11	11	8	54

226. The LEAs and the GPO are staffed with teams of highly experienced and committed professionals. They have a wide range of investigatory powers available to them that enables them to discharge their functions effectively.

227. Investigation is facilitated by the fact that under Georgian law, it is possible to convict people for ML on the basis of laundering activity involving undocumented property, i.e. property whose origin is not demonstrated. The authorities explained that

this had been done to enshrine in law the fact that undocumented property can support a charge of ML, rather than leaving it to be taken into account as part of the circumstantial evidence in a case. The use of this legal provision demonstrates the jurisdiction's commitment to tackling ML. Its effect is that ML investigations may be opened even where there are weak initial indications of predicate criminality. The authorities provided examples where this provision has been relied on to open investigations in cases where the assets remained in the possession of the person under investigation and also in cases involving the transfer of assets by third parties with no obvious purpose.

228. The willingness and ability of the authorities, especially the GPO, to take forward complex ML investigations was demonstrated by the case studies which they provided (see also Box.3.4 in IO.6). Some of the cases involve on-going investigations so further details cannot be included in this report. However, the assessment team was satisfied from the information provided to them that Georgia investigates cases involving factors such as transnational organised crime, cybercrime, VAs) cooperative working with other authorities or jurisdictions and the use of special investigative techniques such as postponing arrest, surveillance, informants and undercover agents. Some of these cases involve very large asset values. Most cases involve the misuse of the banking sector, often by parties outside the jurisdiction (see also Box 3.8). Georgia regularly seeks assistance from other jurisdictions to support investigations, (see IO.2).

Box 3.7: Case study involving complex ML investigations

(Organised crime, int. cooperation, use of legal person)

(Foreign predicate offense, autonomous ML and self-laundering)

In 2016, the GPO AML Division initiated an investigation into fraud and ML. A non-resident individual - A.D. - had opened a bank account in Georgia using a false passport. Shortly afterwards, the account received fraudulent fund transfers totalling USD 90 397 from a foreign country. A.D. then withdrew these funds in cash and on the same day paid them into the bank account of another non-resident – Z.C., who proceeded to transfer these funds to an account of K.C. in a neighbouring country.

Using MLA requests and other international cooperation mechanisms, the investigation established that other banks accounts had been opened in Georgia using forged passports provided by K.C. A similar pattern was observed: funds were received into the account and then allocated to Z.C. The investigation also highlighted the use of a PSP registered in Georgia and owned by Z.C. which had received funds via MoneyGram and Western Union and distributed these to non-residents using forged passports. In total, the criminal group had received USD 1 063 917 and EUR 988 917, the majority of which was eventually used to purchase real estate in Georgia in the name of group members and related parties.

The property was traced, frozen and subsequently confiscated. In addition to the conviction of six individuals for fraud and ML, the PSP involved was convicted for autonomous ML. It was fined EUR 35 000 and prevented from trading.

229. The case studies provided by the authorities demonstrate that when ML is detected, it is investigated effectively. This is supported by the fact that a high proportion of ML investigations resulted in prosecutions. However, the overall number of investigations is moderate, particularly when compared with the number of investigations into predicate offences. This indicates deficiencies in the process for identifying potential ML cases.

230. Most ML investigations since 2015 resulted from STR information. However, access to financial intelligence by the LEAs is limited. Some agencies, such as the anti-corruption

division of the SSS, do not receive disseminations directly from the FMS but only via the GPO (although this is mitigated to some extent by the fact that the GPO has competence to investigate corruption-related ML and looks at this when considering FMS disseminations). In addition, until immediately before the onsite visit it was not legally possible for the LEAs to obtain information from the FMS without a court order and in practice, some did not appear to understand the value of financial intelligence which the FMS can provide. As explained under IO 6, these issues restrict the lines of enquiry that might be revealed by piecing together different forms of information held by the FMS and the LEAs.

231. In order to detect possible ML from incoming MLA requests the GPO forwards all incoming requests to the LEAs for consideration of domestic criminality. There have been 2 cases where an investigation has been initiated based on information from incoming MLA requests. During the assessment period there were a further 14 MLA requests that did not lead to an ML investigation because they related to cases where such investigation had already been opened. Therefore, there were 16 cases in which information from MLA requests was used to support an ML investigation. During the same period, fewer than 100 incoming MLA requests were linked to property in some way (with only about 20 of these involving property located in Georgia). When seen against these figures, 16 ML cases using information from incoming MLA requests appears a reasonable proportion.

232. Aside from intelligence information, there is clearly scope to improve the use of parallel financial investigations. The LEAs stated that they routinely carry out parallel financial investigations when investigating predicate offences, especially since the GPO's 2015 Recommendation "On Certain Measures to be Carried Out in Criminal Proceedings". However, the number of ML investigations that have resulted from parallel financial investigations is lower than would be expected given the number of investigations into predicate offences. For example, at the time of the onsite visit there were 60 to 70 ongoing corruption investigations but only 2 related ML investigations, and 50 ongoing drug trafficking investigations but only 5 related ML investigations. In addition, there are very few ML investigations involving the proceeds of tax evasion, which suggests that the ML possibilities in this area are not being properly explored. The authorities indicated that in some cases, parallel financial investigations have resulted in a prosecution for ML without the initiation of a formal ML investigation., and confirmed that this applied to the majority of people prosecuted for ML in 2019, (27 out of 35). However, no corresponding information was provided for the rest of the assessment period, and the information for 2019 did not specify what proportion of the cases in that year this represented, or the type of cases involved. Therefore, the extent to which parallel financial investigations led to ML prosecutions without the initiation of a formal ML investigation was not demonstrated.

233. The need to improve the detection rate for ML cases has been recognised by the authorities and concern about it led to the creation of a permanent mechanism for electronic monitoring by the GPO as part of the 2017-2021 Prosecutors' Strategy. Monitoring for 2018 indicated that parallel financial investigations were being carried out. The monitoring mechanism also found valid reasons to explain why some parallel financial investigations have not led to ML investigations (e.g. where corruption cases were identified at the point at which bribes were being paid, so no proceeds were generated, or where a case involved a small amount of drugs that did not generate any ML activity). However, this is insufficient to explain the discrepancy between the number of investigations into predicate offences and the number of ML investigations, and the

explanation about low value drugs cases does not appear fully in line with Georgia's geographical location on a transit route for drugs as described in the NRA). Given the confirmation from the authorities that parallel financial investigations are being carried out in most cases, this discrepancy indicates that the effectiveness of these investigations needs improvement.

234. There also appears to be a lack of proactivity by some of the LEAs in looking for potential ML cases. The assessment team was informed about a number of cases where activities (e.g. moving money from one bank account to another before withdrawing it in cash, or funding legitimate activity with the proceeds of tax evasion) by a person who was under investigation for a domestic or foreign predicate offence suggested ML, but no ML investigation had been pursued. The GPO has put in place training programmes and other measures to improve the detection of ML, which is commendable and should be continued. There are signs that these measures are beginning to have a positive effect. As the statistics above demonstrate, the proportion of ML investigations identified from sources other than STRs was higher in 2019 than in previous years, and a similar pattern can be seen in the prosecutions in 2019, where out of 35 persons prosecuted for ML in 2019, 27 were identified without a prior FMS dissemination.

235. However, in the view of the assessment team additional measures are necessary. These measures could be appointing specialist financial investigators and assigning specialist prosecutors, greater use of interagency investigative teams (especially involving tax and customs investigators) and/or the issuing of detailed guidance on financial investigation.

236. In addition, it was apparent during the onsite visit that there have been difficulties regarding the way in which statistics are maintained. Until shortly before the onsite visit there were no clear, centralised, readily accessible and consistent nationwide statistics on ML cases, cases involving predicate offences or parallel financial investigations. This negatively affected the extent to which monitoring could be properly carried out to identify problems in the system. However, in September 2019 this was remedied by the introduction of a new electronic case management programme, which is equipped with sophisticated data processing tools and enables the collection and maintenance of detailed statistics in these areas. This includes the number of ML investigations and related cases, the source of the investigation, numbers of ML prosecutions involving natural and legal persons, and details about those persons (e.g. citizenship, age, place of incorporation), and information about the use of provisional measures and details of the property involved.

3.3.2. Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

237. The authorities provided some high-level statistics on the underlying predicate offences involved in ML convictions from 2015 to 2019 (1 November). Apart from that, the assessment team was not provided with any statistics or other breakdown of the predicate offences and type of laundering activity involved in ML cases. However, predicate offences and types of laundering activity were identified in the ML case studies that were provided. On the basis of this information, coupled with the high-level statistics on the predicate offences involved in convictions, the assessment team was able to reach some conclusions on this point.

Table 3.8: High level statistics on predicate offences in ML convictions

	2015	2016	2017	2018	2019 (1 Nov.)
Total number of convictions (by person)	9	4	16	23	10
Types of predicate offences involved	Fraud, misappropriation	Fraud	Fraud, tax crimes	Fraud, misappropriation	Fraud, tax crimes

238. According to the NRA, the predicate offences that present the main ML threats to Georgia are (in descending order of severity) fraud, cybercrime, drug trafficking, tax evasion, organised crime, corruption and human trafficking. The most likely means and methods of ML identified in the NRA are through bank accounts, remittance services from non-bank financial institutions, the use of legal persons, the use of third parties (usually students or non-residents with low incomes), and cash.

239. Georgia's AML policies on investigations and prosecutions are currently set out in the 2017-2021 Prosecutors' Strategy. This aims to increase the overall number of ML cases and it builds on previous initiatives, including the 2015 Recommendation from the GPO to the LEAs on parallel financial investigations, greater provision of training and the implementation of measures to improve the use of information from MLA requests. These various measures have led to an increase in the number of persons convicted for ML in 2017 and 2018. Therefore, some investigations and prosecutions have been brought in line with Georgia's AML strategy. However, neither the strategy nor the other initiatives target specific predicate offences or types of ML.

Box 3.8: Case studies in line with threats and risk profile

(Fraud and cyber-crime, use of banking sector)

In 2016, the GPO AML Division initiated an investigation into fraud linked to cyber-crime, based on information from the FMS.

A non-resident, V.B., registered a company in Georgia of which he was the beneficial owner. The company then proceeded to open several bank accounts in the country. Soon afterwards, USD 449 994 was transferred from a company registered in the Country U to one of those accounts. This transfer was fraudulent as the sender's account had been hacked by cyber criminals. V.B. and two accomplices – E.B. and U.J, were arrested leaving the bank after withdrawing those funds in cash.

Using information obtained via MLA, all three members of the criminal group were convicted and fined. The funds were returned to the victim.

(State procurement - fraud and corruption)

In 2014, as a result of a criminal investigation into fraud and corruption by the directors of a company involved in four state-funded construction projects, the MoF Investigation Service carried out a parallel financial investigation. This revealed ML through the acquisition of property in the names of those under investigation and their family members and associates, and it resulted in fraud and ML convictions against the directors of the construction company (one of whom was extradited from a foreign country to stand trial). Further details are set out under IO.6, Box 3.2.

(Drug trafficking and ML)

In 2018, the relevant investigative unit of the MIA initiated an investigation into the illegal purchase and storage of drugs, aiding in illegal purchase and storage of firearms and ammunition and ML. The MIA also worked closely with the GPO AML Division.

I.Q. was the director of a private hospital and fictitiously assigned J.K. as an ambulance driver. G.G., with the financial support of I.Q., went to a neighbouring country where he purchased a large amount of drugs. I.Q. then organised an emergency cross-border transfer of a patient using J.K. to drive the ambulance and import the drugs.

The investigation was able to trace the criminal proceeds from selling the imported drugs and real estate acquired shortly after by I.Q. for USD 350 000 along with two motor vehicles.

The offenders were prosecuted for importing drugs to Georgia and the traced property frozen by the court. The investigation into ML is ongoing.

(Human trafficking, use of VAs)

In 2019 the relevant investigative unit of the MIA initiated an investigation into human trafficking (child pornography) and ML. The case involved an organised crime group in Georgia whose members were CJW, a citizen of Country U, and a number of Georgian citizens.

Indecent images of children were created which CJW then distributed over the internet in exchange for payment in VAs. These payments were subsequently converted into US dollars and shared with other members of the group. In total the group received funds worth approximately EUR 113 000. Some of this was laundered through the acquisition of apartments and vehicles. All of these forms of property and funds in bank accounts of members of the group were frozen during the course of the investigation.

The investigation involved collaboration with the GPO, the Georgian tax authorities, Europol and law enforcement agencies in the Country U and Country A.

At the time of the onsite visit the case was ongoing. (In May 2020 the gang members were convicted of human trafficking offences and ML).

240. In the majority of ML case studies provided by the authorities, the predicate offences are fraud and cybercrime, and in some cases organised criminal groups are involved. The means and methods of ML in the case studies are broadly in line with those identified in the NRA. Therefore, the authorities are clearly taking forward cases that are consistent with Georgia's threats and risk profile. However, ML cases involving drug trafficking, tax evasion, corruption and human trafficking are either very low in number or non-existent. It is also noteworthy that there has only been one concluded ML case involving a party within the banking sector who was convicted of self-laundering, (although the assessment team was given details of a significant case involving possible ML by bank employees that is currently being investigated). The number of cases taken forward against persons working in the banking sector is lower than would be expected bearing in mind that the sector features in the majority of cases and there have been examples of bank employees being in breach of AML/CFT requirements (see under IO3). Therefore, the ML cases that have been pursued are not fully in line with the threats to Georgia or with its risk profile.

3.3.3. Types of ML cases pursued

241. Georgia's legal system allows for all types of ML cases to be pursued (see Boxes 3.3, 3.7, 3.9 and 3.11). ML cases are assigned to specialist divisions within the courts and are heard by judges who are trained in this area. The court system works efficiently, and cases must be heard within 2 years, or within 9 months if the defendant is imprisoned. As a result, there is no backlog of cases awaiting trial.

Table 3.9: Number of ML prosecutions (all)

	2015	2016	2017	2018	2019 (1 Nov)	Total
By person	20	15	26	5	35	111
By case	11	10	12	4	14	51

242. The authorities explained that the low figure for prosecutions in 2018 was attributable to some particularly complex cases under investigation at that time. This meant that it took longer than usual to bring the cases to trial, and they are reflected in the figures for 2019 (which also explains why the figure for that year is higher than in previous years). The authorities also confirmed that the 35 prosecutions brought in 2019 are not included in the figures for convictions below as they were still ongoing as at November 2019.

Box 3.9 Case studies demonstrating different types of ML prosecutions and convictions

(Autonomous ML)

In 2015, based on information from the FMS, the GPO AML division initiated an investigation into forgery and ML by O.L.L, a Nigerian citizen.

The investigation found that O.L.L had used a forged passport to register a company and to open bank accounts in Georgia. Funds totalling just under EUR 200 000 were received into these accounts, which O.L.L, then withdrew and sent to country A and B in his real name using SWIFT and wire transfers. The investigation could not determine the source of the funds, therefore O.L.L. was prosecuted for ML of undocumented property based on the circumstantial evidence. He was convicted and sentenced to 10 years imprisonment.

(Foreign predicate offence, conviction of legal person)

In 2017, the GPO AML division launched an investigation into fraud and ML based on information from the FMS about a transfer of USD 1 million from a foreign bank into a bank account in Georgia in the name of "P.F." Ltd.

After the funds had been transferred to another country, the bank received information from the foreign bank which suggested that the funds were the proceeds of fraud. The GPO obtained information about the account and about S.K., the beneficial owner of "P.F". Ltd. The GPO was subsequently informed by the FMS about 2 further transfers into the account from the foreign bank totalling USD 225 000. This was frozen.

As a result of collaborative working with the FMS and by obtaining MLA from various countries, SK was convicted of fraud and ML, for which he received a sentence of 10 years imprisonment. "P.K." Ltd was convicted of ML, for which the sanction imposed was liquidation.

243. The statistics and case studies demonstrate that prosecutors have the capacity to take all types of cases forward. This is consistent with the views expressed by members of the judiciary during the onsite visit that the calibre of prosecutors is high, and cases are generally well prepared and presented.

244. Prosecutors are also greatly assisted by the undocumented wealth element of the ML offence as referred to above. This has been relied on in approximately 25% of all ML prosecutions since 2014. The authorities explained that there is no reversal of the burden of proof in these cases and the prosecutor is required to demonstrate that there are no documents confirming the lawful origin of the property in question. All other elements of ML, such as acts like conversion, use or transfer of property etc. must also be proved in the same way as other forms of ML. The undocumented wealth provision is typically used to prosecute autonomous ML in both self-laundering and third-party laundering cases where it is difficult to identify or prove a predicate offence.

245. While the majority of convictions involve self-laundering by individuals of domestically generated proceeds and have been prosecuted together with the predicate offence, a reasonable proportion involve third-party laundering or autonomous laundering (approximately 30%) and predicate offences committed abroad (approximately 40%)., which is further evidence of the fact that the authorities are committed to prosecuting different types of ML.

246. The ability and the willingness of the authorities to take forward all types of cases (including by the use of circumstantial evidence in many cases) is commendable. However, the number of complex ML cases (especially cases involving professional money launderers or transnational organized crime) is low. In addition, between 2015 and 2019 (1 November) only 2 legal persons were prosecuted for ML even though legal persons were used for laundering in several case studies. This suggests that prosecutors may be too cautious in the cases they choose to prosecute. The assessment team was informed that the GPO has a 100% conviction rate for ML (including one case where there was an acquittal at first instance that was overturned on appeal) and there is approximately a 90% conviction rate for non-GPO cases. The members of the judiciary whom the assessment team met were unable to recall any particularly difficult ML cases that had come before them. These factors further support the view that prosecutors may be taking a too cautious approach.

Table 3.10: Types of ML convictions by case and person (All)

	2015		2016		2017		2018		2019		Total	
	by case	by person										
Total number of ML convictions (a)-(c)	5	9	4	4	12	16	14	23	8	10	43	62
(a) Number for self-laundering	3	7	2	2	9	12	12	20	3	5	29	46
(b) Number for third party laundering	1	1	1	1	0	0	1	1	2	2	5	5
(c) Number for autonomous laundering	1	1	1	1	3	4	1	2	3	3	9	11
Total number for laundering proceeds from abroad (all types of case)	2	2	3	6	3	3	7	14	5	5	20	30

3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions

247. There is a wide range of sanctions available for ML, including unlimited fines and terms of imprisonment ranging from 3 to 12 years. It was clear from meetings with members of the judiciary during the onsite visit that they take ML seriously and there are no practical impediments to the imposition of any type of sanction.

Table 3.11: Total penalties imposed for ML (natural persons)

Types of imposed sanctions	2015	2016	2017	2018	2019
Number of prisons sentences imposed	2	8	10	16	2
Average length of prison sentences imposed in months	100	110	45	104	104
Number of suspended custodial sentences	6	1	8	2	3
Average length of suspended custodial sentences in months	44	24	53	60	56
Number of fines imposed	3	1	9	10	2
Average level of fines imposed (in EUR)	71 000	1 200	4 500	19 600	1 250
Deprivation of right to hold office or carry out certain activities	0	0	1	2	0

Table 3.12: Range of custodial sentences and fines imposed for ML (natural persons)

Range of sanctions imposed	2015	2016	2017	2018	2019
Highest custodial sentence in months	120	132	120	132	132
Lowest custodial sentence in months	24	12	7	36	24
Highest fine (in EUR)	200 000	1 200	11 000	52 600	1 250
Lowest fine (in EUR)	6 500	1 200	1 100	1 750	1 250

Table 3.13: Penalties imposed for ML (legal persons)

Types of penalties	2015	2016	2017	2018	2019
Number of cases	0	0	0	1	1
Level of fine imposed (in EUR)	-	-	-	35 000	
Liquidation	-	-	-		✓
Deprivation of right to carry out activities	-	-	-	✓	
Confiscation	-	-	-		

248. As the tables demonstrate, a wide range of penalties has been imposed on natural persons, including some prison sentences near the top of the available scale. The authorities explained that for cases involving natural persons, the courts use imprisonment as the primary sanction and treat fines as an additional sanction as appropriate. The range of fines includes some significant amounts and were imposed alongside other penalties. For cases involving both ML and another offence such as fraud, the penalties imposed for the ML offence are higher. The authorities gave several examples of this. Where penalties at the lower end of the scale have been imposed, this has been the result of a plea bargain in cases where a defendant's cooperation has assisted the authorities, for example in identifying other members of an organised criminal group. Examples of this were provided.

249. The courts have also recently begun to make use of their power to restrict the activities of individuals convicted of ML. These penalties, which are in line with or exceed those imposed for other serious offences in Georgia, are sufficiently effective, proportional and dissuasive. With regard to the 2 cases where legal persons were convicted, the legal person was fined and prohibited from carrying out activities in the first and liquidation was applied in the second. The authorities explained that the fine in the first case was not

higher because the legal person did not own any property so a higher fine would not have had any impact and the additional sanction of prohibition of carrying out activities was therefore more effective. They also explained that in the second case, liquidation was imposed as a sanction because the court found that the sole reason for the existence of the legal person was to carry out criminal activities. The sanctions imposed in these 2 cases are in line with or exceed the penalties that have been imposed on legal persons convicted of other serious offences. Subject to the fact that the very small number of cases restricts the extent to which firm conclusions can be drawn, the sanctions imposed on legal persons appear to be effective, proportional and dissuasive.

3.3.5. Use of alternative measures

250. Georgia considers applying alternative criminal justice measures when it is not possible to prove ML and demonstrated this by reference to several cases. Georgia provided statistics demonstrating 28 cases involving the use of alternative measures from 2014 to 2018. In all of these cases, ML had been investigated but could not be pursued due to a lack of evidence. Specific details were provided about 4 cases. These cases demonstrate an effective use of alternative measures, which varied according to the nature of the case. In one case, the director of a company was suspected of laundering assets misappropriated from the company by investing in real estate purchased by family members. As the family members had alternative sources of assets, it was not possible to rule out a lawful source for the funds to purchase the real estate. Therefore, as an alternative measure the defendant was charged with misappropriation of funds and received a fine which was equal to the amount of money that had been misappropriated. In another case involving an individual in Georgia suspected of laundering the proceeds of foreign predicate offending through the account of a Georgian legal person, it was not possible to obtain the necessary evidence from the foreign jurisdiction to prove the predicate offending. Therefore, as an alternative measure the individual was prosecuted for fraud and tax offences relating to the activities of the legal person and received a substantial prison sentence and fine. (See the case study below). In a third case, a person associated with an organised criminal group whose involvement in ML was suspected but could not be proved on the evidence available was prosecuted for aiding fraud and using false documents and received an 18 months prison sentence. In a fourth case, involving suspected trade-based ML which could not be proved on the evidence available, an individual was convicted of tax evasion as an alternative measure and received a 4 years prison sentence and a EUR 20 000 fine.

Box 3.10: Case study demonstrating use of alternative measures

(Fraud and ML)

In 2018 the GPO initiated an investigation into ML and fraud involving the transfer of USD 3 400 from country A into an account in Georgia in the name of GG Ltd. The Georgian bank then informed the authorities that it had received notification from a bank in country B that a client had been defrauded into sending funds to the account of GG Ltd in Georgia.

The investigation established that GG Ltd had been established by a foreign national, X. The authorities suspected that GG Ltd had been established for ML purposes and issued a request for MLA. The response to the MLA request did not provide the information necessary to proceed with a charge of ML, and the Georgian authorities considered that a prosecution for fraud alone would not enable a sufficiently high sanction to be imposed because of the low value of the assets involved. Therefore, the investigation focused on an allegation of tax evasion, and established that GG Ltd had been used to evade significant amounts of tax.

X was convicted of fraud and tax evasion, for which he was sentenced to 5 years imprisonment and a EUR 480 000 fine.

Overall Conclusion on IO.7

251. Georgia's systems for the investigation of ML function well once cases have been identified. However, there are serious deficiencies at the identification stage, primarily arising from the need to improve the use of financial intelligence and parallel financial investigations. As a result, ML relating to some predicate offences that are either prevalent in Georgia or identified as a threat in the NRA is not being identified. This means in turn that the ML cases being investigated and prosecuted are not fully in line with Georgia's risk profile. The number of cases involving third party laundering and autonomous laundering is reasonable, although the low number of convictions for complex cases and other factors suggest that prosecutors may be too cautious at times about the cases they take forward. Overall, the systems for prosecuting and sanctioning ML are effective. Georgia has also effectively used other criminal justice measures in cases where it has not been possible to secure a conviction for ML.

252. **Georgia has achieved a moderate level of effectiveness for IO.7.**

3.4. Immediate Outcome 8 (Confiscation)

253. There are extensive powers under Georgia's legal system to seize/freeze and confiscate all forms of property, including proceeds of crime, instrumentalities and property of equivalent value. Non-conviction based confiscation of property is also possible in some circumstances, and in some cases of non-conviction based confiscation, the burden of proof as to the origin of assets is reversed.

254. All of the LEAs and the GPO deal with asset recovery measures. They are able to use their full range of powers to identify and seize/freeze proceeds of crime, instrumentalities and property of equivalent value.

255. Georgia has a threshold-based declaration system for cross-border movements of cash and BNIs, which is administered by the Customs Department of the Revenue Service (MoF). Under this regime, non-declared or falsely declared cash and BNIs are liable to confiscation.

256. The management of seized property is the responsibility of the LEAs and the GPO. Confiscated property is managed and may be sold by a Service Agency of the MoF in the case of moveable property, and by a department of the Ministry of Economy in the case of immovable property.

3.4.1. Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

257. The authorities advised that freezing/seizure of the proceeds of crime is strongly promoted as a policy objective. The effectiveness of the confiscation regime was enhanced by the requirement to carry out parallel financial investigations in the GPO's 2015 Recommendation "On Certain Measures to be Carried Out in Criminal Proceedings" (see IO.7) This specifically extends to the identification and tracing of property that may be subject to confiscation. The Recommendation also requires LEAs to inform the GPO of any cases where there is a reasonable suspicion of facts that might give rise to civil confiscation, to ensure that criminal or civil confiscation proceedings are initiated as appropriate.

258. The importance of tracing and seizing/freezing criminal property was recognised in the 2017-2021 Prosecutor’s Strategy. The strategy acknowledged that although there had been some substantial seizures of criminal proceeds, under the previous approach the amount that had been seized/frozen was considerably lower than the estimated amount of criminal proceeds generated nationwide. The strategy’s objectives include analysing the efficiency with which criminal property is identified and seized/frozen and providing training in this area to investigators and prosecutors. In addition, the monitoring mechanism set up under the strategy as described above under IO.7 also applies to the tracing and seizure/freezing of criminal proceeds.

3.4.2. Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

259. Confiscation orders are regularly made following convictions for both ML and predicate offences. Most cases involve property in bank accounts, although some cases involve other assets such as cash, real estate and moveable property. Georgia provided case studies, together with statistics on confiscation orders (including awards to victims) for ML and predicate offences from 2015 to 2019 (1 November). Additional statistics on confiscation orders for predicate offences alone were provided, for 2016 to 2019 (1 November). The authorities explained that in practice there was no difference between the figures for confiscation and those for assets actually recovered because the courts only make confiscation orders in respect of retrievable property, i.e. frozen property or other property that is available for confiscation at the time of conviction. Any criminal property found to be retrievable after conviction would be recovered under civil proceedings, and Georgia provided two case examples (one finalised case, and one on going case – see para. 269).

260. Georgia’s confiscation regime allows for restitution to victims. Such payments are included in the table below, and case examples were also provided, including restitution to victims in other countries (see Box 3.11). Repatriation and asset sharing is also possible, and the authorities provided an example where discussions are ongoing with another jurisdiction in a complex case involving assets held in a number of different accounts.

Table 3.14: Confiscation -ML and predicate offences (all cases)

	2015	2016	2017	2018	2019 (1 Nov.)	Total
Value of confiscation orders/payments to victims in EUR (ML and predicate offence)	3 641 000 (8 cases)	562 000 (5 cases)	1 305 000 (8 cases)	1 200 000 (7 cases)	1 340 000 (7 cases)	8 048 000 (35 cases)
Value of confiscation orders in EUR (predicate offences only)	No info.	15 476 500 (2 965 cases)	19 273 400 (3 420 cases)	31 549 500 (4 341 cases)	8 667 000 (2 899 cases)	80 796 940 (13 625 cases)

Box 3.11: Case studies on confiscation of criminal proceeds

(Restitution to victims abroad)

(Third party ML, foreign predicate offence)

In 2014, the GPO AML Division initiated an investigation based on information provided by the FMS.

A non-resident company – O.S.L. – had purchased assets from a second non-resident company – “T” – at an over-inflated price and was defrauded of USD 160 million. Part of the proceeds of the fraud were laundered by T.G. – a citizen of Georgia – who allowed his bank account to be credited with USD 10 100 000. These proceeds were then transferred to the foreign bank account of a “fictitious” non-resident company, before being transferred again (including an amount to an account opened by T.G. in Georgia). Funds totally just over USD 1.2 million were frozen during the course of the investigation.

T.G. was convicted for ML (third party) based on a foreign predicate (fraud). The funds that had been frozen during the investigation were returned to the victim.

(Fraud and ML)

A GPO investigation into fraud and ML established that individuals in 5 different foreign countries had been defrauded by an organised criminal group of funds totalling USD 183 195 and EUR 4 407 for computer – related services that were never provided. The funds were sent via MoneyGram to X.L. and three other individuals who were foreign nationals temporarily residing in Georgia. The funds were then transferred abroad to unknown persons. A total of 111 transactions were involved.

All four members of the group were convicted of fraud and ML, including one in absentia. As the funds had been transferred outside Georgia, other property belonging to the group was confiscated. This property comprised 2 cars, 14 cell phones, 6 laptops and USD 20 000 in cash.

261. The LEAs take a “follow the money” approach to criminal proceeds, as was demonstrated in case studies and by the statistics. From 2015 to 2019 (1 November) assets worth just under EUR 90 million were confiscated (which does not include the 2015 confiscations for predicate offences). This is a significant figure, particularly when considered in the economic context applicable to Georgia.

262. As would be expected, the figures are lower for confiscation than for seizure/freezing (see Tables 3.16 and 3.17). In the case of the figures for ML offences, the difference is particularly marked. Just over EUR125 million was seized/frozen over a 5 years period, whereas the overall figure for confiscation in ML cases combined with predicate offences in the same period was just over €8 million. However, the figures for seizure/freezing in ML cases include approximately €108 million that is attributable to 10 particularly high value cases. 6 of these cases, which involve seizures with a combined value of over €88 million are still pending, while in the remaining 4 cases, confiscation was not possible as no criminality could be established. Leaving aside these 10 cases, the confiscation rate for ML and predicate offences combined is slightly under 50%. For predicate offences alone, from 2016 to 2019 EUR 80 796 940 was confiscated, compared with €167 880 700 of seized/frozen assets, i.e. a confiscation rate of approximately 48%. On that basis, for both ML and predicate offences the discrepancy between seized/frozen assets and confiscated assets appears to be reasonable.

263. The number of ML cases where confiscation orders have been made is largely in line with the number of ML convictions in the same period, which indicates that confiscation orders are regularly made in ML cases (although this is subject to the fact that the overall number of ML cases is moderate, as explained under IO.7). This confirms the explanation of the authorities that the freezing/seizure to confiscation ratio for assets in ML cases is attributable to the proactive approach to freezing/seizure taken by the GPO in some individual cases, rather than to any deficiency in the confiscation process for ML cases. Confiscation orders were made in all types of ML cases, including autonomous and third

partly laundering and cases involving foreign predicate offences. A significant number of the cases involves the use of Georgian bank accounts by non-residents to launder the proceeds of foreign criminality, initially from cybercrime committed against foreign companies and, more recently, by fraudulently inducing individuals to transfer funds (See Box 3.8).

264. For predicate offences alone, a comparison between the number of cases where confiscation orders were made from 2016 to 2019 – 13 625 (see Table 3.14), and the number of cases of convictions for predicate offences in the same period demonstrates a high confiscation rate - just over 75%.

265. Confiscation of assets in third party hands is permitted under Georgian law and prosecutors stated that it was looked at as a matter of course in financial investigations. No statistics were available, but the authorities identified cases where this had occurred. This included one case where the assets in question comprised real property registered in the name of relatives of members of a criminal group. In another case, the confiscated assets were held by companies under the control of a defendant. These cases indicate that there are no practical impediments to confiscating assets held by third parties and the courts are willing to make such orders (see Box 3.7 and 3.11).

266. Although no statistics were available about the confiscation of instrumentalities, the authorities confirmed that this was regularly done, and the confiscation rate is high (approximately 75%). They also provided several examples where property such as cars or drug paraphernalia had been confiscated. However, in some cases the authorities did not seem to have considered confiscating physical items used by criminals to communicate such as cell phones and computers. Some LEAs also did not seem to have considered treating intangible items such as a company or legitimate funds in a bank account that were used to disguise criminal proceeds as instrumentalities of crime. However, representatives from the GPO confirmed that this would be possible under the law of Georgia and further confirmed that they were not aware of any instances to date where this would have been an option in practice on the facts of the case.

Box 3.14: Case study on confiscation of instrumentality

In 2018 representatives of the MIA arrested SK. for storing and transporting large amounts of heroin, which was found in a car under his control. The investigation established that the owner of the car was a leasing company but at the moment of committing the drug related offence the car was in SK's temporary possession. The car was seized during the course of the investigation. SK was subsequently convicted of storing and transporting drugs and the car was confiscated as an instrumentality of crime.

267. The statistics on confiscation do not specify whether any of the cases involved property of equivalent value. Although this is permitted under Georgian law, the authorities identified only 3 cases where a prosecutor had requested this, 2 of which had resulted in the court ordering the confiscation of the relevant property (see Boxes 3.7 and 3.11). The authorities recognise that this is an area where improvements are required, particularly in non-GPO cases. The issue is being monitored and training has been provided. However, the assessment team was informed that in the unsuccessful case, the grounds for rejecting the request were that there was no evidence that the property had been acquired through criminality. If so, this is concerning as it suggests an imperfect understanding or lack of acceptance by some members of the judiciary of the principles involved in value-based confiscation.

268. No property located abroad has yet been confiscated. However, this is an area where the authorities are beginning to be more proactive. To date, there are 4 cases in which requests to seize assets have been made to other jurisdictions (to a total value of EUR 5 200 000), involving requests to 8 different jurisdictions. 2 requests did not succeed because the jurisdiction concerned indicated that the relevant assets could not be found, and the case was closed. The other cases are ongoing.

269. Non-conviction-based confiscation, which is recognised internationally as another powerful tool in removing assets from criminals, is possible under Georgian law. However, during the assessment period limited use of this had been made in practice and the sums involved were modest. With the exception of one case in 2015 where assets were taken from a person deemed to be a "thief in law" on the basis that he had acquired real estate despite having no lawful source of income and could not demonstrate the origin of the funds used to acquire the property, and another case relating the proceeds of drug trafficking which is ongoing, non-conviction-based confiscation has only been used to recover assets at the stage of court hearings, where the hearing could not proceed due to the death or insanity of the accused person. The authorities have taken steps to improve things in this area, which is commendable. The measures taken by the GPO as outlined above under IO.7 to improve the effectiveness of the system (such as training and monitoring) cover non-conviction-based confiscation. In particular, the 2015 Recommendation "On Certain Measures to be Carried out in Criminal Proceedings", requires LEAs to notify the GPO when they are aware of possible criminal proceeds, to enable the GPO to consider taking forward proceedings for non-conviction-based confiscation. The GPO is monitoring this but to date, only three cases have been taken forward as a result of these measures (the ongoing drug trafficking case and thief in law case referred to above, and a case where an initial application was made for non-conviction based confiscation but the relevant assets were subsequently subject to criminal confiscation, so no order for non-conviction based confiscation was made).

Table 3.15: Cases of Non-Conviction Based Confiscation

	2015	2016	2017	2018	2019 (1 Nov)
Recovery of assets during court hearing due to death/insanity of accused in EUR	27 100 (10 cases)	14 400 (15 cases)	1 800 (15 cases)	0	22 300 (30 cases)
Other use of non-conviction based confiscation in EUR	20 000 (1 case)	0	0	0	0

270. No problems had been experienced with the management of seized or confiscated assets. All property is accurately registered by the responsible bodies and both the MoF and the Ministry of Economy have effective systems in place to manage and dispose of property. However, there are no policies or procedures in place for the active management of property such as running a company or looking after livestock. While this has not caused any problems in practice to date, it means that the jurisdiction is not fully equipped to deal properly with all types of property that may be seized or confiscated.

271. The confiscation regime is underpinned by extensive powers to take measures for the preservation of property during an investigation. This includes powers to seize or freeze assets on an urgent basis without the need for a court order. Broadly speaking the authorities demonstrated a good understanding of the need to apply preservation measures, and they confirmed that these measures are usually taken at an early stage in

an investigation. This was subject to one issue concerning transfers from bank accounts after an STR has been made. The LEAs identified several cases where, by the time a freezing order on a bank account was in place, the assets had already been transferred, often out of the jurisdiction. Inconsistent information about the reasons for this was provided to the assessment team. According to representatives from the banking sector, banks wait for 3 days after making an STR before carrying out a request to transfer funds. According to the FMS, it always notifies the GPO about STRs in sufficient time to allow an emergency freezing order to be obtained within the 3-day window before funds are transferred. According to the GPO, apart from cases where there might be an operational need to allow funds to be moved, emergency freezing measures are applied, whenever necessary, immediately after receiving an STR. This inconsistent information indicates that this is an aspect of the system that needs to be examined urgently and practices revised as appropriate to prevent the dissipation of assets (see also the analysis and recommendations under IO.6 on this point).

272. Statistics were provided for seizure/freezing in ML cases and also for predicate offences. However, the statistics for ML cases only included seizure/freezing orders obtained by the GPO, although the assessment team was informed that other authorities also obtain seizing /freezing orders for ML as well as for predicate offences. (See Boxes 3.8 and 3.10).

Table 3.16: Application of provisional measures in ML cases (GPO only)

	2015	2016	2017	2018	2019 (1 Nov.)	Total
Number of ML investigations	No info.	33	37	37	17	124
Number of applications for provisional measures	No info.	18	22	23	17	80
Number of cases where provisional measures imposed	No info.	7	15	20	17	59
Value of assets subject to provisional measures in EUR	53 000 000	1 300 000	22 205 000	42 171 000	8 255 406	126 391 406

Table: 3.17 Application of provisional measures for predicate offences (all)

	2015	2016	2017	2018	2019	Total
Value of property seized/frozen in EUR	No info.	40 155 700 (6214 cases)	15 561 200 (4100 cases)	42 462 300 (7437 cases)	69 701 500 (6416 cases)	167 880 700 (24 167 cases)

273. The statistics demonstrate that a significant volume of assets has been seized/frozen since 2015. The figure for ML cases is largely attributable to a number of particularly high value cases, as explained above. Average asset values in relation to predicate offences are much lower (approximately EUR 5 500). Case studies provided by the authorities demonstrate a willingness to pursue the recovery of criminal proceeds in a

range of circumstances, including cases involving organised crime, domestic and foreign predicate offences, and emerging technologies such as VAs.

274. While the value of the assets seized/frozen in ML cases is high, the number of cases where assets were seized/frozen is low compared to the number of ML investigations. There were 124 ML investigations by the GPO from 2016 to 2019 but only 59 cases where seizure/freezing measures were applied, although provisional measures were requested in a further 21 cases. However, the authorities explained that in cases where provisional measures were requested but not applied, this was not because the court had refused to make an order for provisional measures (the GPO could not recall any case where this had happened). Instead, these are cases where provisional measures were obtained as a preventive measure to capture any assets that might come into person's possession in future, but there were not any assets available to seize or freeze at that time.

275. In the 44 investigations where no application was made for provisional measures, this was for justifiable reasons. In the majority of cases this was because when the GPO received the FMS notifications the relevant bank accounts were either closed or in the process of closing, or because money transfer services had been used for conducting transactions, and no other property that could be made subject to potential confiscation was identified. In the remainder of the cases, provisional measures were not applied due to the interests of investigation, for example where the potential perpetrators could have been alarmed while they were under surveillance and the respective bank accounts were monitored. The authorities confirmed that had been no dissipation of assets in any of these 44 cases as a result of the lack of provisional measures. (see Box 8.1)

276. With regard to predicate offences, no statistics or other information was provided about the annual number of investigations so the extent to which provisional measures are routinely applied in these cases was not demonstrated.

3.4.3. Confiscation of falsely or undeclared cross-border transaction of currency/BNI

277. As explained under Recommendation 32, with effect from 1 September 2019 a new Customs Code and secondary legislation based on EU requirements was introduced to govern declarations of cross-border movements of currency and BNIs. Given its recent introduction (i.e. only two months before the onsite visit in November 2019), the effective implementation of this new regime could not be demonstrated. The assessment team therefore assessed the effectiveness of the previous declaration regime that was in place under the Tax Code and secondary legislation.

278. Under the previous declaration regime, persons crossing the Georgian border were obliged to declare cash, cheques or other securities with a value above GEL 30 000 (EUR 10 000). Following a 2015 Order from the Ministry of Finance, this included information about the origin and intended use of these assets.

Table 3.18 Cross-border declaration (all).

Year	Number of Incoming cash declarations	Volume in EUR	Number of Incoming securities declarations	Number of Outgoing cash declarations	Volume in EUR	Number of Outgoing securities declarations
2019	3 537	127 781 170	0	4 208	162 777 398	0
2018	3 392	163 569 010	0	3 979	150 340 074	0

201 7	3 030	211 290 191	0	3 441	176 936 551	0
201 6	2 562	201 665 782	0	2 257	126 719 930	0
201 5	2 886	188 820 076	0	1 964	102 506 998	0

279. The intended use most commonly cited was the purchase of vehicles or real estate, holiday spending and gambling, although there had been a small number of cases where the intended use was investment in a business. The authorities considered that the reason significant sums were quite often involved was due to difficulties in making wire transfers in some neighbouring countries, and the fact that the purchase of high value items with cash, including real estate, was common in Georgia.

280. The authorities advised that border officials would stop people and ask follow-up questions whenever they had concerns about undeclared assets or the origin or intended use of declared assets. Except for risk profiles about particular individuals based on confidential intelligence, there were no formal processes to govern this. The authorities indicated that an official would be expected to ask questions where a person was systematically moving money across the border. Otherwise it would be down to an official's judgment whether to ask for further information, based on observations made about a person's conduct or other relevant circumstances at the time.

281. Where assets were not declared or were falsely declared, the available sanctions were confiscation or administrative financial penalties. Depending on the value of the undeclared or falsely declared assets, the applicable level of administrative penalties ranged from GEL 3 000 (EUR 1 000) to GEL 5 000 (EUR 1 670), or 10% of the value of the assets where this was in excess of GEL 100 000 (EUR 33 000).

282. In addition to discharging their own powers to impose penalties and confiscate assets, the Customs Department of the Revenue Service liaised with other authorities, particularly the FMS. It is a legal requirement to provide information on declarations and on undeclared amounts to the FMS. The authorities confirmed that this was done on a daily basis. However, there is no legal requirement to provide any additional information obtained by border officials. The authorities stated that this would not be provided to the FMS unless requested.

283. Where there were suspicions of criminality, either about declared assets or about undeclared assets that had been discovered, this would be passed on to the LEAs. No details were provided about the frequency with which this has occurred, but the authorities referred to one case in 2018 involving undeclared assets which led to an ongoing investigation.

284. The main reason for hiding assets when crossing the border was concern about security, i.e. fear of the assets being stolen, rather than to avoid making a declaration. In most cases where assets had not been declared, the person concerned was unaware of the declaration requirement.

285. The authorities explained that the Customs Code did not permit both confiscation and a fine to be applied in the same case. They further explained that confiscation would only be applied where there were aggravating circumstances. The table below sets out the annual value of non-declarations or false declarations and the sanctions that were applied (either confiscation or a fine).

Table 3.19: Statistics on cases of breach of declaration requirements

Year	2015	2016	2017	2018	2019 (1 Nov.)
Number of cases where customs sanction (fine or confiscation) applied	126	147	213	217	308
Number where confiscation applied	2	3	3	11	1
Annual value of undeclared/falsefully declared assets in EUR	4 583 071	3 029 121	6 008 715	6 201 599	5 746 626
Annual value of confiscation orders in EUR	414 913	119 851	651 097	1 486 847	48 772
Number where fines were applied	126	147	213	217	309
Annual value of fines in EUR	212 000	271 000	439 000	575 000	487 734

286. In addition, a case study was provided about the most significant breach identified by the authorities, which was concluded in 2014 (this is not included in the table above as the breach and initial sanction occurred in 2013).

Box 3.15: Case study on undeclared cash

In 2013 a passenger bus operated by H.A., a citizen of Iran, entered the customs territory of Georgia. A search of the vehicle revealed USD 100 000 hidden under the driver's seat. H.A. failed to provide any reliable information on the origin and intended use of the money. Further enquiries revealed that H.A. often crossed the customs border of Georgia, so would have been familiar with customs procedures (and had previously been fined for small-scale smuggling of goods, namely 50 plugs and 3 sets of taps).

The sanction imposed by the Customs Department of the Revenue Service was the confiscation of the USD 100 000. H.A. appealed the decision, but it was upheld and it entered into force in December 2014.

287. The figures show that during the assessment period the total value of undeclared or falsely declared cash was approximately EUR27.5 million. In the same period approximately EUR2.7 million was confiscated and fines totalling just over EUR 2 million were applied. Therefore, less than 1/5 of undeclared or falsely declared cash was removed from parties in breach (whether by confiscation or indirectly by fines). This is a very significant discrepancy, for which no reason was given (although the authorities explained that sanctions are regularly appealed, which results in a review by the court of their legitimacy, proportionality and expediency). Irrespective of the reason, both the confiscation rate and the rate of indirect removal by fines for undeclared or falsely declared cash is very low and indicates that the declaration system is not being enforced effectively.

3.4.4. Consistency of confiscation results with ML/TF risks and national AML/CTF policies and priorities.

288. The upward trend in the application of confiscation orders and provisional measures since the introduction of the GPO's 2015 Recommendation and the 2017-2021 Strategy are indications that these measures are being effectively implemented and have begun to yield results. Although no overall breakdown was given of the predicate offences involved in the confiscation cases, the case studies that were provided by the authorities

principally involve the proceeds of foreign fraud via the banking system, and some feature organised criminal groups, so are in line with the risk profile of the country as set out in the NRA. In addition, some specific figures were given in relation to drug trafficking and corruption. The authorities advised that from 2016 to 2018, there were just over 5,300 drug trafficking related confiscations, with a total value in excess of EUR 6.3 million, and in the same period there were 98 corruption related confiscations with a total value of approximately EUR 212 706. On the basis that there are between 60 -70 corruption investigations a year (see under IO7) the total number of confiscations for the three-year period appears reasonable, but this does not include any high value cases. The authorities also advised that the total amount of drug trafficking proceeds was made up of low level cases (which gives an average value of just over EUR 1000) rather than by the inclusion of significant cases. This is consistent with the pattern of offending described by the authorities in drug trafficking investigations (see under IO7), but is less consistent with Georgia's geographical location on a transit route for drugs as set out in the NRA, where more high value seizures might be expected. No information was provided about confiscation involving other offences that feature in the NRA such as tax evasion. Furthermore, the low level of confiscations (or indirect removal by fines) for undeclared or falsely declared cash is inconsistent with the risks to Georgia from cash, given that Georgia's economy is heavily cash based and the use of cash is identified as an ML risk in the NRA. Therefore, Georgia's confiscation results are not fully in line with the country's risk profile.

Overall Conclusion on IO. 8

289. Georgia treats confiscation as a priority and in several respects its systems in this area function well. Generally speaking, provisional measures are being effectively applied in GPO cases, but the overall process for obtaining emergency freezing measures sometimes breaks down, resulting in assets being removed from the jurisdiction. In addition, the confiscation of property of an equivalent value is extremely limited, and to date Georgia has not confiscated property outside the jurisdiction (although some cases are pending). While these factors inevitably reduce the extent to which confiscation orders are being made, and the use of non-conviction based confiscation is limited, a high volume of assets has nonetheless been confiscated, including property in third party hands. However, the underlying criminality in these cases is not fully in line with Georgia's risk profile. Overall instrumentalities are successfully confiscated with only minor deficiencies being identified, and the technical limitation identified in Recommendation 4 has not had any effect in practice. Only a very small proportion of undeclared or falsely declared cross-border movements of cash or BNIs result in the assets being confiscated or indirectly removed from the party in breach by fine. This is a significant concern given that the economy of Georgia is heavily cash based.

290. **Georgia has achieved a moderate level of effectiveness for IO.8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

1) Georgia has a sound legal and institutional framework for investigating and prosecuting TF. Cases are dealt with by investigators at the SSS and the supervising prosecutors at the GPO who are adequately resourced and have high levels of expertise. There are no legal or structural impediments to taking forward TF cases. The court system is efficient. Georgia has achieved some convictions involving different types of TF activity and imposed dissuasive sanctions. The law enforcement efforts to deter TF activities are broadly in line with Georgia's risk environment.

2) The investigators at the SSS and the supervising prosecutors at the GPO have a very good awareness of different types of TF and conduct parallel financial investigations in terrorism cases and cases with a suspected terrorism link. However, there is scope to raise awareness of different types of TF among the other LEAs and the private sector in order to further increase the detection of potential TF that is linked to other offences.

3) Overall, Georgia has effective systems for identifying TF. Once detected, TF is generally investigated (role played by terrorist financiers identified) and prosecuted well using a range of investigative techniques. While until recently there were some restrictions on the ability of the SSS to obtain information from the FMS which may have had a negative impact on the effectiveness of investigations, the extent of this is limited as alternative measures were applied appropriately.

4) In general, TF is well integrated into Counter-Terrorism Strategy and investigations, and Georgia makes effective use of alternative measures. However, there is scope for some moderate improvements with regard to Georgia's standing task force and the use of TF cases to support designations.

Immediate Outcome 10

1) Georgia now has a new legislative framework for implementation of the UNSCRs that addresses the majority of deficiencies it had previously. Georgia implements the TF-related TFS through a multi-step mechanism involving a Commission, Tbilisi City Court and the National Bureau of Enforcement (NBE), this causing delays for implementation of the UNSCRs. Authorities maintained this mechanism also after the revision of the legal framework, except that the period of time given to each of the participant in the process has been limited to ensure that actions are taken immediately. The example of implementation of the UNSCRs after the revision of legislation, while demonstrating an improvement, does not amount to action being taken "without delay".

2) Despite having persons convicted for T and TF, Georgia has not designated any within the assessment period at a national level pursuant to UNSCR 1373 or proposed designation of a person or entity pursuant to UNSCR 1267/1989, 1988.

3) Deficiencies exist in the immediate communication of amendments to the list of persons and entities designated under UNSCR 1267/1989, 1988 to obliged entities. This, however, is mitigated to a major extent by the private sector's responsiveness and use of various commercial databases which are updated in a timely manner, irrespective of

measures taken at a national level. Use of automated systems is widely promoted by the national authorities.

4) Larger FIs demonstrated a sound level of understanding of implementation obligations. The same cannot be confirmed for the other smaller FIs and DNFBPs. Several DNFBPs confirmed not to conduct any checks against their customer bases, and not be aware of freezing or reporting obligations at all.

5) Whilst no positive matches against UNSCRs were identified, a number of false positive hits were detected, assets frozen and reported to the FMS, thus demonstrating that the system is operational. In all instances, reports were turned into FMS disseminations and were thoroughly analysed by the SSS.

6) TF risks emanating from NPOs have not been comprehensively assessed in the NRA, targeting identification of the overarching risk environment in the sector and missing granularities –the subset of NPOs potentially vulnerable to TF abuse. Georgia has established a registration and monitoring framework for NPOs and charity organisations. However, the authorities' approach towards these entities is purely focused on tax compliance. There are no CFT focused, or risk-based measures developed. There are numerous legislative gaps in regulation of the NPO sector impacting effectiveness of the system. There was no outreach conducted to the sector and no guidance provided.

7) The measures adopted do not appear to be fully commensurate with the TF risk that the country faces.

Immediate Outcome 11

1) Recent amendments to legislation have secured the legal basis for implementing UNSCRs relating to PF. Currently only moderate legislative shortcomings have been identified. Considering that the new regime came into force only before the on-site visit, and no new designations occurred pursuant to the respective UNSCRs by the end of the onsite visit, Georgia could not demonstrate how these newly established measures could ensure effective implementation of the PF-related TFS, without delay.

2) Despite the formerly existing legislative obstacles the authorities demonstrated that indeed, in practice, PF-related UN TFS had been dealt with by the Commission in the past, but with a considerable delay.

3) Information about the implementation of the PF-related TFS was communicated only via NBE Debtor Registry, with a considerable delay (because of the time taken to implement designations at a national level). Nevertheless, the fact, that majority of the obliged entities heavily rely on the automated systems for implementation of their obligations on detecting and freezing assets of designated persons and entities, and that these automated systems widely cover various UN sanctions, in practice this delay did not have an impact on the obliged entities' performance.

4) Competent authorities have not provided specific guidance to ensure compliance by FIs and DNFBPs with their obligations to implement PF-related TFS.

5) Whilst the majority of obliged entities did not demonstrate awareness regarding PF-related TFS requirements, some entities, in particular larger FIs, relied on the use of commercial databases and automated screening systems to implement UNSCR and report potential matches with UN PF lists. In two cases, STRs were submitted to the FMS not on the basis of the simple match with designated persons and entities, but rather suspicion formed on the bases of analysis of the clients' transactions.

6) There was no legal basis for supervisory authorities to conduct their activities until recently, when the legal framework for implementation of PF TFS was established. Nevertheless, the obliged entities applied the same mechanism for implementation of various UN TFS regimes, including the PF-related one. The NBG demonstrated that it regularly monitors implementation of UN TFS and applies sanctions within the scope of on-site inspections (e.g. where screening databases were not operating properly), thus, in practice, insuring compliance of the supervised population of FIs with their obligations. The same, however, does not apply to authorities supervising other FIs and DNFBPs.

Recommended Actions

Immediate Outcome 9

- 1) In order to further increase the detection of potential TF, Georgia should provide guidance, training and typologies on different types of TF, in particular TF linked to other forms of criminality, to the private sector, the LEAs and other relevant authorities such as the tax and customs authorities.
- 2) Georgia should widen membership of the standing task force to include all authorities whose functions are relevant to TF. Consideration should also be given to creating separate task forces for ML and TF, to ensure that the attention given to each type of activity is sufficiently detailed and focused.
- 3) The TF offence should be amended to put beyond doubt that it applies when foreign terrorist fighters do not cross the Georgian border.

Immediate Outcome 10

- 1) Georgia should urgently consider designating persons that it has already convicted for TF in Georgia at a national level and proposing designations to the respective UNSCs.
- 2) Georgia should ensure that amendments to lists of designated persons and entities pursuant to UNSCRs 1267/1989 and 1988 are implemented without delay and immediately communicated to obliged entities. Georgia should prioritise this task, strengthen functionality of the mechanism or re-consider its functioning, advance promptness of cooperation and coordination among the respective participants, and constantly monitor implementation of TF-related UN TFS to ensure the overall promptness of the process.
- 3) Georgia should comprehensively assess the risk of TF abuse of the NPOs, develop and implement a risk-based approach to monitor the NPO sector.
- 4) Georgia should reach out to NPOs and the donor community about TF threats and vulnerabilities within the sector.
- 5) Georgia should provide guidance and conduct regular outreach to obliged entities in order to enhance their awareness and understanding of the national mechanism for implementation of the TF-related UN TFS, and their own obligations.

Immediate Outcome 11

- 1) Georgia should ensure that amendments to lists of designated persons and entities pursuant to UNSCRs 1718 and 1737 are implemented without delay and immediately communicated to obliged entities. Georgia should prioritise this task, strengthen functionality of the mechanism or re-consider its functioning, advance promptness of cooperation and coordination among the respective participants, and constantly monitor implementation of PF-related UN TFS to ensure the overall promptness of the process.

2) Georgia should provide guidance and conduct regular outreach to obliged entities in order to enhance their awareness and understanding of the national mechanism for implementation of the PF-related UN TFS, and their own obligations.

291. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5-8, 30, 31 and 39, and elements of R.2, 14, 15, 16, 32, 37, 38 and 40.

4.2. Immediate Outcome 9 (TF investigation and prosecution)

292. Since its last evaluation, Georgia has made substantial amendments to the legal framework with regard to the criminalisation of terrorism and TF. There is now a sound legal basis for the investigation and prosecution of these offences. The monitoring mechanism referred to under IO 7 covers TF, which is also included in the remit of the standing task force created by the GPO. In addition, Georgia has produced a 2019-2021 Counter-Terrorism Strategy, which also makes reference to the suppression of TF.

293. The legal framework and the Counter-Terrorism Strategy are underpinned by a well-established institutional framework for investigation and prosecution. Cases of terrorism and TF are investigated by the investigative unit of the Counter-terrorism Centre of the SSS and are prosecuted by TF specialists within the GPO. As with ML, prosecutors are involved from the beginning of an investigation and work very closely with investigators throughout the life of a case.

294. The relevant departments of the GPO and the SSS are adequately resourced to deal with terrorism and TF. Staff are well trained and have impressive levels of knowledge, professionalism and commitment. They have a wide range of legal powers to obtain information and work closely with other authorities, particularly the police, customs and the FMS. They also liaise regularly with foreign authorities and intelligence services. The SSS routinely monitors new global tendencies in TF and treats the identification of threats at an early stage as a priority.

4.2.1. Prosecution/conviction of types of TF activity consistent with the country's risk-profile

295. According to the NRA and the Counter-Terrorism Strategy, the principal TF risks to Georgia arise from its geographical proximity to conflict zones or other destabilised regions, and from returning foreign terrorist fighters or other radicalized citizens within Georgia. While small amounts of funds may be involved, the means and methods identified for TF are the same as those identified for ML, i.e. use of bank accounts, remittance services from non-bank financial institutions, the use of legal persons, the use of third parties (usually students or non-residents with low incomes), and cash. The findings of the NRA and the Counter-Terrorism Strategy are consistent with the views expressed by the authorities during the onsite visit.

296. Both the NRA and the Counter-Terrorism Strategy examine the issue of foreign terrorist fighters in the context of Georgia and highlight the fact that several dozens of Georgian citizens have fought with armed groups supporting terrorist organisations in Syria and Iraq. This is identified as a key TF risk. The provision of funding to foreign terrorist fighters leaving or crossing Georgia is a TF offence. The authorities advised that TF had been investigated in connection with some of these individuals, although no statistics were provided. None of these investigations resulted in prosecutions because it transpired that the individuals had financed their own travel. While the TF offence does not specifically cover the provision of funding for foreign terrorist fighters that do not

cross the Georgian border (see Recommendation 5), this has not arisen as an effectiveness issue as no cases involving this activity have been detected to date. Furthermore, the authorities advised that if such a case were to arise, they could rely upon the generic TF offence because it applies to the provision of material support to a terrorist organisation. However, in the absence of any case examples it is unclear whether the court would interpret the TF offence widely enough to cover this situation, and it would be advisable to amend the TF offence to put the issue beyond doubt.

297. There have been 2 TF prosecutions in other circumstances, both resulting in multiple convictions. These were the Chataev case and the case of X and Y. In total 9 persons were charged with TF and all were convicted. The authorities provided the assessment team with details about both of these cases.

Box 4.1: Case Studies on TF prosecutions and convictions (Chataev case)

In 2017 the SSS conducted a counter-terrorism operation against an international terrorist, Akhmed Chataev, and his associates. According to information gained as a result of examination of audio recordings retrieved from various electronic data storage devices, the aim of the group was to carry out terrorist attacks in Georgia and in Turkey, including attacks on diplomatic missions. This was prevented by the counter terrorism operation, which resulted in the death of two foreign terrorist fighters and Chataev himself. The SSS launched a TF investigation, involving information from the FMS, the banking sector and from other jurisdictions. The investigation identified a number of Georgian citizens who had supported Chataev and his group members by providing transportation within Turkey, in entering into Georgia and travelling to Tbilisi. These same individuals had also been involved in providing weapons, accommodation, and household items to Chataev and the other group members during their stay in Tbilisi. This resulted in 8 individuals being detained in 2017 and 2018. 6 were charged with financing of terrorism and the provision of other material support or resources to a terrorist organisation and were subsequently prosecuted and convicted.

Box 4.2: TF case involving payment of cash (X and Y case)

In 2011, the Ministry of Interior of Georgia launched an investigation into the possible preparation of terrorist acts. The investigation established that in the first half of 2011, D, B and N paid cash to T, A and M (around EUR 180) to organise the explosion of certain administrative buildings and adjacent territories located in the western part of Georgia. According to the agreement, if the terrorist acts were carried out successfully, T, A and M would receive additional cash payments (around EUR 4 000). For conducting the terrorist offence, the said individuals started the transportation of explosives to the places of destination. However, they were not able to commit the terrorist acts as based on law enforcement intelligence all three were arrested before the attempt.

Consequently, in 2011 T, A and M were prosecuted and convicted for preparation of terrorist acts and transportation of explosives, while D, B and N were prosecuted and convicted for TF in 2011 and in 2017 respectively.

298. These cases demonstrate that the authorities have the capacity to take forward TF cases successfully. The Chataev case in particular is an example of Georgia's willingness to prosecute different types of TF activity, including the provision of non-monetary support to terrorists. The investigated cases are linked to the country's geographical location and involve the use of cash and low-income third parties. More broadly, the assessment team was also satisfied on the information provided by the authorities during the onsite visit

that the extent the TF activity prosecuted, and offenders convicted is broadly in line with Georgia's risk profile.

4.2.2. FT identification and investigation

299. The authorities advised that they look at a range of sources in order to identify potential TF cases, including counter-terrorism operational information, information from the FMS, parallel financial investigations, information from domestic authorities dealing with matters such as immigration, customs and tax, and information from other jurisdictions or international bodies.

300. In order to assist with the identification of potential TF cases, especially those involving trade-based TF or cross-border cash movements, there is an SSS liaison officer deployed within the Ministry of Finance. This is a legal requirement under a 2015 government Ordinance. According to the authorities this results in highly effective information exchanges. Any information received about suspicious facts or circumstances is analysed by the SSS and checked against the various databases to which the SSS has access. The information is then examined to see whether there are possible links to terrorism or TF, including via international cooperation with other countries. To date, no links to terrorism or TF have been identified through this process.

301. The Chataev case was an example of a case that was identified from counter-terrorism operational information. However, the majority of cases are identified from STRs. When making notifications about STRs the FMS includes any relevant additional information. If possible TF activity is unclear from a notification from the FMS, the SSS will consider operational information before opening a TF investigation, and this may take up to 9 months or so. A TF investigation will be opened immediately whenever there is a hit on a terrorism-related sanctions list, or in any case where there the SSS has suspicions of TF. The SSS advised that while they have a good working relationship with the FMS, which provides them with valuable information, they would welcome more developed analysis from the FMS before notifications are made to assist them in identifying suitable cases for investigation.

Box 4.3: Case Studies on TF investigations

(Cases of self-financing)

4 Georgian nationals who travelled from Georgia to Syria and Iraq to fight for terrorist organisation from 2013 to 2015 were investigated and prosecuted and 3 convicted for terrorism-related offences (1 case is pending hearing on merits before the court⁵¹). TF was a key line of inquiry that was pursued as a matter of priority by the SSS during the investigation. Special investigative techniques, intelligence sources and international cooperation mechanisms were used to conduct a careful study of the financial aspects of crime. This involved looking at the financial situation of the individuals in question and their associates, including their sources of income and any property they owned. As a result, the investigation established the exact routes, transportation means and costs related to the travel of offenders. The accused persons legally travelled from Georgia and due to the geographical proximity to Georgia of the regions adjacent to the conflict zone, their travel costs were only around 20-30 USD per individual. The investigation further found out that the persons in question did not receive payment of their travel costs from anyone else, but rather they financed their travel themselves from their own financial sources. Therefore, it was not possible to prosecute any other person for TF. However, based on the evidence, collected during the investigation the 4 individuals were

⁵¹ Georgian national T

prosecuted and 3 subsequently convicted for participation in the activities of terrorism organisation and joining a terrorism organisation. They received prison sentences ranging from 10 to 16 years.

(Case of AG)

In 2016 the SSS launched a TF investigation based on information provided by the FMS and its own operational information. AG, a Georgian citizen, attempted to transfer EUR 50 via Moneygram. AG was listed by World-Check on that grounds that the individual was designated as affiliated with terrorism by a third country. The investigation established that AG had previously lived in the third country, where she had married a person who subsequently fought with a terrorist organisation in the Middle East and died in the course of combat operations. The investigation involved the interrogation of AG and others, analysis of bank records relating to AG and her associates, information received from the FMS about attempted transactions and international cooperation. The investigation established that the purpose of the transactions was related to household expenditure and no links to terrorism were identified.

(Case of X)

A Georgian citizen whose name and surname matched with information held by World-Check. was receiving money from a third country. A TF investigation was opened immediately which found that the money was for the purpose of house construction and no terrorism links were established.

(Hawala case)

In the course of monitoring various matters, several Iranian citizens resident in Georgia have come to the attention of the SSS. In 2018 an investigation was launched into the activities of some of them and in the course of the investigation, it was established that they were carrying out illegal entrepreneurial activities, as a result of which they received high levels of income. This involved using Iran’s internet banking system from Georgia to conduct money transactions for which they were giving and receiving cash as so-called commission fees, without the necessary permit and registration required under Georgian law and bypassing the Georgian bank system. This activity generated income in one year alone of GEL 2 097 000. A court order was obtained for the search of the individuals concerned and the offices and apartments rented by them. Large quantities of money were seized together with accounting documentation. With the cooperation of international partners, links to terrorism, terrorist organisation and TF were investigated but were not established. As a result of the investigation the individuals were charged with illegal entrepreneurial activities, as ML could not be confirmed. All were convicted and the money found at their offices was confiscated.

302. Statistics were provided for the total number of TF investigations since 2013, and the authorities also provided details during the onsite visit of some concluded and current TF investigations. In the case of current TF investigations, information was also provided about their source.

Table 4.1: TF investigations

	2015	2016	2017	2018	2019 (1 Nov)
FT investigations	2	1	2	4	0

Table 4.2: Source of current TF investigations

Source of information	Number of cases
FMS notifications	6
Counter –terrorism operational information	0
Parallel financial investigations – terrorism	3
Parallel financial investigations – other offences	0
Customs/immigration/tax information	0
Information from other jurisdictions/international bodies	0

303. The statistics on current cases demonstrate that, as indicated above, the majority of cases are identified from STRs. These are primarily from banks. The 6 FMS-related current cases derived from a total number of 69 notifications. The discrepancy in these numbers is smaller than it appears, because some investigations are linked to several notifications where there are similar issues.

304. 95% of the notifications from the FMS relate to STRs about possible hits with terrorism-related sanctions lists. Sanctions hits of this kind are clearly a valuable source of possible TF cases and the fact that they are being reported is a positive sign. However, a large number of the notifications from the FMS are false positives. The authorities attribute this to the cautious approach taken by the FMS to potential TF, and they confirmed that, as indicated above, the FMS includes any relevant additional information in all notifications. Nevertheless, while there was no indication that the notification of false positives had negatively affected the ability of the SSS to investigate TF to date, the high number suggests that there may be scope for both greater analysis from the FMS and a more targeted approach to the use of financial intelligence in this area. The points made under IOs 6 and 7 about restrictions on access to information held by the FMS and the effective use of financial intelligence are also relevant here, although as explained below, their effect is largely mitigated by the use of alternative measures.

305. The authorities confirmed that all LEAs are obliged to carry out parallel financial investigations, have access to all relevant databases and cooperate well with the SSS counter-terrorism centre, prosecutors and other authorities. All relevant institutions were also involved in the development of the NRA and the Counter-Terrorism Strategy. To date, all TF investigations from parallel financial investigations have been carried out by the SSS counterterrorism centre in parallel to terrorism cases. While this type of parallel financial investigation is obviously the most likely to lead to the detection of TF cases, the SSS counterterrorism centre also demonstrated a good awareness of international typologies about activities such as fraud, corruption, drug trafficking and organised crime being carried out to raise funds for terrorism. Some of these offences are identified in the NRA as presenting a risk to Georgia. The awareness of the other LEAs on this point was more limited, which will inevitably affect their focus on TF and means that there is a risk that TF may not always be properly considered during parallel financial investigations related to these offences. However, this risk is mitigated to some extent by the close working relationship and liaison on TF issues between the SSS counterterrorism centre and other LEAs, including the anti-corruption agency within the SSS itself.

306. The case studies and other information provided by the authorities during the onsite visit (some of which cannot be included in this report for reasons of operational sensitivity) demonstrate that overall, Georgia has effective systems for identifying TF. Nevertheless, there is scope for improved outreach to all interested parties, in particular the provision of typologies. Although the Chataev case has been analysed and discussed in a number of

different domestic and international meetings, including by representatives of all domestic authorities at a meeting of the Permanent Interagency Commission under the leadership of the Head of the SSS, no typologies have been issued to the LEAs more widely or to the private sector in respect of the cases that Georgia has successfully taken forward.

307. Once possible TF has been detected, investigations appear to be very thorough. The authorities confirmed that they look closely at the financial affairs of suspects and their family members and associates, and make use of financial intelligence, special investigative techniques and requests for mutual legal assistance. Specific examples were provided. They were also able to demonstrate good inter-agency working with the customs authorities and others, as well as close collaboration with other jurisdictions and international organisations such as Interpol. As shown by the Chataev case, TF investigations are not confined to monetary support for terrorism but also extend to the provision of other forms of material support such as housing, food and household items.

308. The authorities also confirmed that the specific role played by terrorist financiers is one of the key areas of focus during intelligence gathering and when conducting criminal investigations into terrorism, drawing on the various sources of information and inter-agency working outlined above. This is demonstrated by the Chataev case, where during the course of a counter-terrorism operation the specific roles of a number of individuals in supporting terrorist activities were identified (see above) and also by the details about the case of X and Y and some on-going investigations that were provided to the assessment team. On the basis of this information, the assessment team was satisfied that role played by terrorist financiers is investigated effectively.

309. As indicated above, until very recently there have been restrictions on obtaining information from the FMS without a court order. In practice, this has been mitigated by the ability of the SSS to obtain information via a court order from financial institutions directly, or from the NBS if it is unaware which financial institution is involved. Therefore, it is unlikely in practice to have had any material effect on the ability of the SSS to get immediate access to all necessary information in the course of an investigation. However, it may have meant that there were situations where the SSS was unaware of information held by the FMS which might be relevant to the investigation, such as intelligence from other FIUs or CTR information.

4.2.3. FT investigation integrated with -and supportive of- national strategies

310. As indicated above, the suppression of TF is referred to in Georgia's 2019-2021 Counter-Terrorism Strategy. This is a comprehensive and well-researched document. Its objectives include countering the financing of terrorist and extremist organisations/groups, *inter alia* by strengthening the monitoring over money transfers from abroad and advancing the control system for suppressing the transfer of cash and securities, bypassing or circumventing the system of remittances and customs control on the border. These objectives fall under the prevention pillar of the Counter-Terrorism Strategy and its Action Plan.

311. In addition to including TF in the prevention pillar, the Counter-Terrorism Strategy sets objectives with regard to developing the existing legislative framework on the fight against TF, as well as with regard to the collection and analysis of terrorism-related information (including networks and methods being exploited for this purpose) and prosecution. The Counter-Terrorism Strategy also recognises that the threat of terrorism is constantly changing, with certain organisations and their supporters resorting to new methods which are unknown to the LEAs. In order to address this process, the Counter-

Terrorism Strategy envisages that Georgia will continuously assess its prosecution capabilities and where it identifies new methods and threats, it will act accordingly. The Action Plan underpinning the Counter-Terrorism Strategy could not be provided for security classification reasons, but the authorities confirmed that it contains specific measures to achieve these objectives, including budgets, timelines and responsible agencies.

312. There are additional indications of Georgia's willingness to coordinate counter-terrorism strategies, such as the identification of TF cases from counter-terrorism operations, the deployment of SSS liaison officials in other agencies and the use of parallel financial investigations in terrorism cases. However, there are concerns about the extent to which TF cases are being used to support designations of terrorists and terrorist organisations, as described under IO 10. Another coordinating measure that Georgia has put in place is the inclusion of TF in the remit of the standing task force. However, this might benefit from some modest structural changes. It does not currently include some key authorities such as customs and tax whose contribution would be useful. In addition, it is unclear whether a single task force for both ML and TF is sufficient to enable the different features of the two types of activity to be fully considered.

4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions

313. Sanctions applied to the persons convicted of TF are sufficiently effective, proportionate and dissuasive. The available sanctions for TF range from terms of imprisonment of 10 to 17 years (or life imprisonment in exceptional cases). The authorities confirmed that the custodial sentences imposed (as set out in the table below) are comparable to those imposed for the most serious crimes under the Georgian legal system. The lower sentence in the 2018 case (an immediate prison sentence of 3 years and a 5-year suspended sentence) was the result of a plea bargain.

Table 4.3: Custodial sentences imposed for TF- individual sentences

	2015	2016	2017	2018	2019
Number of persons sentenced	0	0	3	6	0
Length of each sentence	0	0	13 years 6 months 13 years 6 months 13 years 6 months	10 years 11 years 12 years 12 years 13 years 3 years (plus 5 years suspended)	0

4.2.5. Alternative measures used where FT conviction is not possible (e.g. disruption)

314. While no cases were identified where alternative measures such as non-conviction based asset recovery measures or the application of targeted financial sanctions had been used as alternatives to obtaining a criminal conviction, the authorities identified several cases involving the use of disruptive measures. Four Georgian nationals who travelled outside Georgia to fight for terrorist organisations have been prosecuted for terrorism – related offences. The investigation found out that the persons in question did not receive payment of their travel costs from anyone else, but rather they financed their travel themselves from their own financial sources. Therefore, it was not possible to prosecute any other person for TF. Three were convicted and sentenced to terms of imprisonment ranging from 10 to 16 years, and the fourth case is pending (see Box 4.3 and 4.4). Georgia

has also applied expulsion or non-admission measures against foreign nationals who are considered to present a terrorist threat to Georgia.

Box 4.4: Georgian national T (pending)

Investigations by the SSS revealed that in 2014 T, a Georgian national, had left Georgia for a country in the Middle East in order to join a terrorist group and take part in its combat activities. In 2019, T was charged in absentia of participation in a terrorist organisation. Investigations further revealed that T had subsequently travelled to another European country. As a result of cooperation between the SSS and the authorities in that country, T was arrested there and detained. At the time of the onsite visit extradition proceedings were ongoing to secure his return to Georgia (he has since been extradited).

Box 4.5: Alien A

In 2018, monitoring by the SSS established that alien A, a foreign student initially lawfully studying at a Georgian university, had joined a closed group on social media and was sharing posts and messaging supporting ISIS. The case was analysed by the SSS and information was obtained from partner countries. However, no activity was identified that would constitute a criminal offence under Georgian law. Therefore, as an alternative to prosecution, the expulsion of Alien A from Georgia on the grounds of state security was sought. This was ordered by the first instance city court and the order was upheld on appeal. Due to Alien A's failure to leave the country voluntarily, the expulsion order was subject to compulsory execution under Georgian law. Alien A was expelled from Tbilisi via a flight to the destination country through a transit country, and relevant authorities of both the transit and destination countries were informed of this by the Ministry of Foreign Affairs.

315. Georgia has also taken steps to reduce its attractiveness as a transit route for foreign terrorist fighters. Since 2015 crossing the Georgian border to participate etc. in terrorism has been criminalised and this has been underpinned by strengthened border controls, enhanced interagency coordination and effective international cooperation. The authorities advised that, as a result, there has been a significant reduction in recent years of individuals with affiliations to terrorism cases attempting to use Georgia as a transit jurisdiction. This was confirmed by information provided to the assessment team, which cannot be included in this report for reasons of operational sensitivity.

316. In addition, Georgia has made impressive efforts to prevent radicalisation and violent extremism. Preventive measures are a priority under the Strategy referred to above and the assessment team was provided with details of a large number of initiatives to support this. These include programmes targeted at education in schools, civil participation and integration, the preservation of the culture of minorities, promotion of interreligious dialogue, rehabilitation projects and awareness raising campaigns.

Overall Conclusion on IO. 9

317. Georgia's systems for identifying, investigating, prosecuting and sanctioning TF function well. The law enforcement efforts to deter TF activities are broadly in line with Georgia's risk environment. Convictions have been achieved in line with the country's risk profile and the technical deficiency identified under Recommendation 5 has not caused any difficulties in practice to date. TF is pursued as a distinct criminal activity and investigations focus on the role of terrorist financiers, although there is the need to improve the awareness of some aspects of TF among the private sector and the LEAs (other than the SSS and the supervising prosecutors at the GPO). Until recently there were

technical restrictions on access to financial intelligence as described under IO 6, but these restrictions were largely mitigated in practice by other measures. Overall, TF is well integrated into national counter-terrorism measures, although there is scope to improve this by creating separate standing task forces for ML and TF and widening membership to include all relevant authorities.

318. Georgia has achieved a substantial level of effectiveness for IO.9.

4.3. Immediate Outcome 10 (TF preventive measures and financial sanctions)

4.3.1. Implementation of targeted financial sanctions for TF without delay

319. Georgia implements the TF-related TFS through a multi-step mechanism involving the Commission, the Tbilisi City Court and the NBE. As explained below, authorities maintained this mechanism also after revision of the legal framework. However, as demonstrated below, this mechanism prevents Georgia from implementing the UN TFS without delay – within a matter of hours.

320. Georgia implements TFS primarily in accordance with the Administrative Procedures Code (APC) and the AML/CFT Law. Before 30 October 2019 (days before the on-site visit), when legislation was revised, the system had multiple deficiencies, including long procedural timelines for each authority involved in the multi-step mechanism chain. There were also no adequate mechanisms in place for implementation of UNSCR 1373. Amended legislation has rectified the majority of deficiencies, including considerably shortening the procedural timelines, and introducing a domestic designation mechanism. The example of implementation of the UNSCRs after the revision of legislation (see the table below), whilst demonstrating a considerable improvement, does not amount to action being taken “without delay”.

321. The Commission is the coordinating body for implementation of the UNSCRs. During 2011-2019, management of the Commission has been provided by different governmental agencies. The authorities advised that, despite these changes, the Commission was always operational. Since 2018, the Commission has been chaired by the Minister of Justice. This Commission includes representatives from the competent authorities, including the MIA, the GPO, the Border Police, the MoD, the MFA, the MoF and the FMS. The Commission meets regularly, on an annual basis. At an operational level, the Commission’s functions with respect to implementation of the UNSCRs were ensured by the Secretariat. The latter is entitled to monitor the TF-related TFS subject to amendment in the UN lists of designated persons and entities, translate these into Georgian and prepare the motion for the Tbilisi City Court. The Deputy Ministers of the MoJ are vested with a responsibility for signing and addressing a motion to the Tbilisi City Court. Hence, the fact that the Commission was formally meeting only once a year did not hinder implementation of the UNSCRs.

322. Considering the recent nature of the legislative amendments, the further analysis in this report reflect the practice of implementation of the UNSCRs applied by the authorities before 30 October 2019.

323. Authorities advised that the Secretariat closely monitors the UN designations (conducting three checks a day) in order to ensure that these are promptly processed. Nevertheless, the evaluation team was informed that the overall process being challenging, could take several days delays before being accomplished.

324. Receiving the Commission's motion, the Tbilisi City Court issues an administrative freezing order. Authorities advised that the court takes its decision within 1-2 days of receipt of the motion.

325. Overall, examples of provided court orders for 2019 (except for the latest freezing order) demonstrated that, the administrative freezing order was issued within 14 to 19 days after the UN designation took place, thus not amounting to implementation without delay.

Table 4.4: Implementation of TF – related UNSCRs in 2019

Date	Measure	Regime	Tbilisi City Court	NBE (publication)	FMS
05.11.2019 SC/14014	Amendment (Removal)	ISIL (Da'esh) & Al-Qaida	08.11.2019 №3/8389-19 3 days from designation	The MoJ letter №16572 08.1.2019 sent to the NBE for execution	Decree 06.11.2019 Publication 08.11.2019
11.10.2019 SC/13984	Amendment	ISIL (Da'esh) & Al-Qaida	No action	No action	Decree 15.10.2019 Publication 17.10.2019
20.08.2019 SC/13924	Amendment	ISIL (Da'esh) & Al-Qaida	No action	No action	Decree 04.09.2019 Publication 05.09.2019
14.08.2019 SC/13918	Designation	ISIL (Da'esh) & Al-Qaida	04.09.2019 N3/6522-19 19 days from designation	16.09.2019 A19162030 31 days from designation	
09.08.2019 SC/13914	Amendment	ISIL (Da'esh) & Al-Qaida	No action	No action	
14.05.2019 SC/13806	Designation	ISIL (Da'esh) & Al-Qaida	04.06.2019 N3/3904-19 19 days from designation	21.06.2019 A19102492 36 days from designation	Decree 21.05.2019 Publication 22.05.2019
14.05.2019 SC/13808	Amendment (Removal)	ISIL (Da'esh) & Al-Qaida			
01.05.2019 SC/13799	Amendment	ISIL (Da'esh) & Al-Qaida	No action	No action	Decree 08.05.2019 Publication 14.05.2019
01.05.2019 SC/13798	Designation	ISIL (Da'esh) & Al-Qaida	15.05.2019 N3/3505-19 14 days from designation	06.06.2019 A19091847 37 days from designation	
22.04.2019 SC/13787	Amendment (Removal)	ISIL (Da'esh) & Al-Qaida	No action	No action	
17.04.2019 SC/13784	Amendment	ISIL (Da'esh) & Al-Qaida	No action	No action	
13.04.2019 SC/13779	Amendment (Removal)	ISIL (Da'esh) & Al-Qaida	No action	No action	
29.03.2019 SC/13758	Amendment	ISIL (Da'esh) & Al-Qaida	No action	No action	Decree 11.04.2019 Publication 12.04.2019
22.03.2019 SC/13744	Designation	ISIL (Da'esh) & Al-Qaida	02.05.2019 N3/2905-19 41 days from designation	21.05.2019 A19081852 60 days from designation	Decree 25.03.2019 Publication 27.03.2019

326. As made evident from the table above, the national mechanism does not ensure the introduction of amendments into the system when there has been a change of information

with respect to a designated person. Thus, it prevents effective identification of UN designated persons and entities by the responsible stakeholders.

327. Taking into consideration that the authorities maintained this multi-institutional mechanism also after revision of the legal framework (targeting among others the procedural timeframes), the evaluation team remains concerned that this approach may affect the ability of the authorities to ensure implementation of the UNSCRs without delay if additional measures are not taken. These might include prioritising this task at every step of the process, strengthening functionality or reconsidering the mechanism, advancing promptness of cooperation and coordination amongst the participants (competent authorities and the private sector), and conducting a constant monitoring of its implementation, to ensure the overall process is prompt.

328. Despite having persons convicted for T and TF, Georgia has neither designated them at a national level pursuant to UNSCR 1373, nor proposed a designation to the relevant UNSC. While discussing with the agencies whose operational prerogatives would make them the most relevant ones to propose designations (either at the UN or national level), they did not demonstrate considering so. The assessment team is of the opinion that Georgia would benefit from more thorough consideration for designating persons when there is reasonable suspicion that a person is involved in terrorism or TF.

329. No foreign jurisdiction has ever requested application of restrictive measures by the Georgian authorities. Nevertheless, the authorities demonstrated knowledge of the procedures in place, and advised that, if requested, the following process would apply: the Commission would assess the possibility to accept the request and, if so, would submit a motion to the Tbilisi Court, which would then issue a freezing order according to the process described above.

330. Georgia applies diverse mechanisms for communicating designations to FIs and DNFBPs. The court order is published on the Court's website and on the NBE Debtor Registry, for enforcement. The latter includes court decisions in the Debtor Registry, which is a publicly available consolidated database of persons and entities against whom there is enforcement initiated on the basis of a court order or another act. While legislation requires the court order be reflected on the NBE Debtor Registry promptly, the table above suggests practice differs.

331. In parallel, to compensate the deficiency of the system, independently from the national implementation procedure, the FMS publishes information about the amendments made in the UNSCRs on its website (<https://www.fms.gov.ge/eng/news/>). Whilst, as demonstrated in the table above, this does not occur promptly, the FMS has gradually improved its performance. In addition, the FMS and the NBG communicate information on designations to obliged entities directly: the FMS does so via its electronic information-sharing system, and the NBG – via its AML Portal.

332. Discussions with obliged entities confirmed that only banks, notaries and the NAPR (in the capacity of a real estate registry) consult the NBE Debtor Registry for the purpose of implementation of TFS-related measures. No other obliged entity demonstrated awareness and use of the NBE Debtor Registry and communication mechanism. The evaluation team concluded, that such a disconnect between the measures taken by the Commission and the awareness of obliged entities about the use of the NBE for the enforcement of UN TFS could be the result of: (i) legislative deficiencies, which do not make clear obligations of obliged entities to follow the NBE publications and implement

these; and (ii) lack of knowledge amongst obliged entities about the national mechanism of UNSCR implementation.

333. Most obliged entities, including banks, casinos⁵², MFOs, PSPs, exchange offices and leasing companies, make use of commercial databases from third-party vendors to ensure availability of the most up-to-date information on UN designated persons and entities. They confirmed consulting FMS notifications as a secondary source of information. Independent legal professionals and law firms suggested relying on information provided by the Bar Association, which, in turn, consults the FMS notifications. Other small DNFBPs suggested conducting internet searches of UN lists instead. Taking into consideration the business model of these DNFBPs and the cost of access to commercial databases, this approach is deemed to be adequate.

334. Most FIs, including banks, MFOs, PSPs, exchange offices, etc., rely on automated systems to screen customer information and transactions. These automated systems are immediately delivering results without dependence on the NBE Debtor Registry. Indeed, the authorities confirmed that they largely promote use of automated screening systems by FIs and further monitor implementation of these measures. Amongst DNFBPs, casinos operate like FIs. Other DNFBPs conduct manual checks of their clients. Taking into consideration the nature of activities of the latter, and their limited client base, this does not raise concerns.

335. Hence, while concerns remain with respect to the promptness of measures taken by the national authorities for implementation and communication of UN TFS, mostly due to the private sector's responsiveness, these do not have a major impact on the system.

336. Larger FIs demonstrated a sound understanding of implementation of TFS obligations. The same cannot be confirmed for other FIs and DNFBPs. Whilst larger FIs apply appropriate measures to identify designated persons and entities, including BOs and their assets, there are concerns with the appropriate application of TFS-related obligations by other FIs and DNFBPs. Indeed, many smaller FIs informed that they verify the client against UN designations only upon on-boarding and at the time of conducting transactions. Some also check their full client-base against the list of UN designated persons and entities regularly, but not on every occasion of a change in the UN list. Real estate agents (which are not obliged entities) and DPMS did not demonstrate that they understand their obligations with respect to implementation of TFS. They do not conduct any checks against their customer base at all and were not aware of any sanctions lists or material provided by the authorities in this regard (see also IO.4).

337. While VASPs are not regulated in Georgia, they do operate in practice. Discussions with them suggested that some operate as members of larger financial groups or formerly operated as PSPs. Ones that are members of the financial group apply group measures. VASPs formerly operating as PSPs indicated using FMS notifications as a source of information, and operating automated overnight screening mechanisms, ensuring timely identification of a match with UN designated persons and entities.

338. While the use of automated systems by obliged entities potentially assists in detecting UN designated persons and entities, discussions confirmed that these screening systems incorporate not only the UN-related sanctions, but also extend to various other lists, such as published by OFAC and the EU, and all of these are treated equally – as a basis

⁵² Smaller representatives of the gambling sector suggested relying on the FMS notification as a primary source of information.

for raising TF suspicion. Such an understanding demonstrated by the majority of obliged entities (apart from larger banks) raises concerns and confirms a need for providing clear guidance on the nature of the UN TFS regime and difference from others, also in terms of the adequate response required. So far, the authorities have not provided specific guidance to ensure compliance by FIs and DNFBPs with their obligations to implement TF-related TFS.

339. As also provided under IO 4 analysis identification of BO information varies among obliged entities. The large FIs routinely use wide range of sources to establish BOs, thus performing better than smaller FIs, in particular non-Core Principles FIs that rely on the NAPR to foreign register to identify the BO. As concerns the DNFBP sector they mostly encounter some difficulties with this respect. This respectively reflects on the ability to identify the TF designated person or entity that would be indirectly benefiting from the services provided by these obliged entities.

4.3.2. Targeted approach, outreach and oversight of at-risk non-profit organisations

340. TF risks emanating from NPOs have not been comprehensively assessed in the NRA, targeting identification of the overarching risk environment in the sector and missing granularities.

341. Authorities noted in the NRA that NPOs work in several vulnerable local communities, whose members have travelled to Syria and Iraq to fight. They also indicated that most of the NPOs operate in Tbilisi, focus on human rights and governance issues, and over rely on international donors, which is a challenge for their sustainability. While the Counter-Terrorism Strategy adequately identifies the TF potential threats posed by the NPO sector overall, the country has not clearly identified the subset of NPOs that are vulnerable to TF abuse, including by virtue of their activities or characteristics. For example, Georgia has not clearly identified the sectors where NPOs could be more vulnerable and the methods and sources of funding that could expose NPOs to TF risks.

342. In Georgia, all NPOs (including NPOs that are charities) must be registered by the NAPR. There are around 25 000 NPOs currently registered, of which 7 000 are active NPOs. NPO can apply to become a charity after one year of existence in order to benefit from tax exemptions. There are currently around 115 registered charities in Georgia. According the Georgian Tax Code, charitable organisations are subject to an obligation to file annually activity reports, financial reports on revenues and audited financial statements, as well as to publish such activity reports and financial statements. During the registration process, only founding members shall be registered by the NAPR, while subsequent members – which can hold decision-making powers – are not registered. This creates a potential significant gap in the authorities' ability to properly assess the risks of this sector and efficiently monitor it.

343. Georgia has not adopted risk-based measures to protect NPOs from being abused for TF purposes. The authorities' approach towards NPOs (charitable or not) is focused on tax compliance, not on combating TF. Apart from the fact that the NAPR checks for the potential presence of the founder(s) and director(s) on the UNSCR lists (checked against the Court order, not the UN website) upon registration, the documents filled by these entities only focus on tax issues and are used only at the registration stage. Thus, the authorities having the widest access to information relating to NPOs do not assume any monitoring functions. According to the authorities, appropriate systems of internal control have been introduced "in the majority of operating organisations", mainly at the request of international donors, but this does not amount to Georgia having clear policies to promote

accountability, integrity, and public confidence in the administration and management of NPOs.

344. While all types of NPOs can engage in economic activities, it is not mandatory for them to declare the type of activity they are involved in, except for a few sectors, mainly related to public health and safety (construction, food products, etc.). According to the authorities, the main source of income for charities are donations, but there is no mechanism to report and control the source of funds and how they are collected.

345. The understanding of the competent agencies (save for SSS) and the sector's representatives about potential TF threats related to such organisations is very limited. Competent agencies do not provide guidance or conduct any specific outreach towards this sector. NPO representatives met by the evaluation team during the on-site mission expressed concern that they were not involved in the NRA process and expressed a need for more preventive and outreach measures from the authorities and, more generally, greater transparency in this sector.

346. Finally, there seems to be a poor level of understanding and monitoring of TF risks related to NPOs amongst obliged entities, including banks, which is all the more detrimental as the authorities informed that the vast majority of NPOs were relying on banks to operate.

4.3.3. Deprivation of TF assets and instrumentalities

347. No assets have been frozen pursuant to the sanctions regime under UNSCR 1267/1989 and 1988. During the assessed period, several obliged entities reported detecting possible matches with relevant UN lists of designated persons and entities and filing a STR to the FMS, postponing the transaction accordingly. Most of the matches concerned subjects holding the same or a similar (nick) name as the designated person. By holding-up the transaction and postponing it until clearance was achieved, obliged entities demonstrated that they would be capable of identifying and freezing assets in the case of an actual match. Thus, obliged entities also demonstrated that the technical shortcomings with respect to freezing requirements do not have a negative effect on the applied practice.

348. There were, overall, 69 instances when, based on STRs related to matches with UN and other organisation's designation lists or links to high-risk jurisdictions, the FMS disseminated cases to the SSS for investigation. The FMS indicated that all reports were studied and that, even when it appeared as "false positive" after a first internal analysis within the FMS, it almost systematically (in 90% of cases) transmitted cases to the SSS. The SSS confirmed that all these disseminations were analysed in detail. The majority of them had been investigated in the framework of 6 TF investigations as pertaining to similar conduct. The authorities confirmed that none of these were related to a positive match with UN designated persons or entities. Two case examples were provided on investigations launched into a false positive match with a UN designated person, one, presented below, concerning the ISIL (Da'esh) & Al-Qaida regime.

**Box 4.6: Investigation into a false positive match with person designated
under UNSCR 1267/1989**

In July 2017, the citizen of country X, M.A. opened an account with a PSP. No transactions were conducted from the account.

The PSP detected a partial match of its client's personal data with a person designated pursuant to UNSCR 1267/1989, and filed an STR. The FMS analysed and checked information against its available databases and disseminated the case to the SSS as it concerned possible TF.

SSS looked into the financial aspects of the possible crime, using all available intelligence sources, investigative techniques, databases, analytical capacity as well as checking information with international partners, including through Interpol. It gathered criminal intelligence and verified and examined demographic data and financial information, including the financial situation of the individual in question and his associates (income, property owned etc.).

Information obtained was carefully examined in order to identify possible links to terrorism, including TF and it was established that the STR was a false positive match with the person designated by the UNSCR 1267/1989 Sanctions Committee.

349. Georgia does not have experience in fully or partially unfreezing funds as no assets have been frozen pursuant to the UN TFS regime. Authorities indicated that, should the case arise, the process would be handled by the Commission: the person whose assets are frozen would have to approach the Commission, which would apply to the relevant UN Committee and would wait for three days before asking the Tbilisi City Court to unfreeze the funds (in case of an absence of answer or a positive one from the Committee). This was a newly established process made publicly available by adoption of the new AML/CFT Law, which perhaps caused the reason for the representatives from the Court not being aware of this process.

4.3.4. Consistency of measures with overall TF risk profile

350. Authorities seem aware of potential TF abuse of the Georgian financial system, notably based on the country's geographical position and proximity to conflict zones; for example, the NRA highlights that several dozen Georgian citizens had travelled to conflict zones to join terrorist groups and some of them have become influential members of terrorist organizations affiliated with Da'esh and Al-Qaida. They also identified Georgian terrorist fighters returning to the country as a challenge.

351. However, there are some doubts as to the comprehensiveness of understanding of TF risks (see also IO.1). For example, the NRA did not fully assess all forms of potential TF risk (especially trade-based TF and the origin and destination of financial flows) and the evaluation team has not seen articulated evidence that the TF risks emanating from NPOs have been comprehensively assessed.

352. In this context, deficiencies in the UNSCR implementation system, including passive approach towards designating persons and entities under the TFS regime when there are reasonable grounds to do so, and absence of targeted measures towards the NPO sector lead to the assessment that the country cannot demonstrate consistency of measures with its TF risk profile.

Overall Conclusion on IO. 10

353. Georgia implements TFS with a significant delay, this mostly explained by the multi-step national mechanism adopted by the country, involving many national actors. Though improvement was demonstrated under the revised legislative framework, which allowed for shortened delays, this is still not in line with the notion of implementation of TFS without delay – within a matter of hours. Communication of designations by the NBE is an issue. The FMS and the NBG conduct parallel activities to ensure communication of

designations to FIs and DNFBPs, which compensates for the performance of the NBE. While concerns remain with respect to promptness of measures taken by the national authorities, mostly due to the private sector’s responsiveness, these do not have a fundamental impact on the system. False positive matches detected by obliged entities indicate the capability of the system to prevent assets from being used for TF. Once an STR is filed, it is given a high level of attention by the FMS and the SSS, the latter investigating each notification.

354. TF risks emanating from NPOs have not been comprehensively assessed in the NRA, targeting identification of the overarching risk environment in the sector and missing granularities – the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse. Accordingly, no focused and proportionate measures are applied to NPOs. This has a major bearing on the overall rating for this immediate outcome.

355. **Georgia has achieved a low level of effectiveness for IO.10.**

4.4. Immediate Outcome 11 (PF financial sanctions)

356. Georgia considers that it is not exposed to potential PF activities as: (i) it is not home to high-technology industries that produce proliferation-sensitive goods; and (ii) there is no nuclear power production or any nuclear-related industries, although such industries do exist in some neighbouring countries. However, during the on-site visit, authorities acknowledged the risk of potential exposure due to the country’s geographical position and the existence of trade routes. Georgia has no trade relationships with the Democratic People’s Republic of Korea (DPRK) but has growing trade relations with Iran.

4.4.1. Implementation of targeted financial sanctions related to proliferation financing without delay

357. Georgia currently utilises a similar mechanism for implementing proliferation-related UN TFS as for TF. Amendments in the legislation adopted on 30 October 2019 secured an appropriate legal basis for implementation of the UNSCRs relating to PF. Taking into consideration that no PF-related designations were made between 30 October 2019 and the end of the on-site visit, the evaluation team could not test the effectiveness of the system in terms of promptness of implementation by Georgia of amendments to the list of designated persons and entities.

358. Indeed, while previously the Government mandated the Interagency Commission to coordinate implementation of PF-related TFS, the former AML/CFT Law (which created the Commission, previously called “Inter-agency Commission”) limited its mandate only to activities related to TF. Thus, it did not provide a sound legal basis for the Commission to implement TFS related to PF.

359. Despite this legislative obstacle, the authorities demonstrated that indeed, in practice, the PF-related UN TFS were dealt with by the Commission and provided also the respective court orders for freezing of assets. These court orders were issued, however, with 15 to 87days delays.

Table 4.5: Implementation of PF – related UNSCRs

Date	Measure	Regime	Tbilisi City Court	NBE (publication)
08.08.2018	Amendment	1718 (2006)	No action	No action
09.07.2018	Amendment	1718 (2006)	No action	No action
23.05.2018	Amendment	1718 (2006)	No action	No action

30.03.2018	Designation	1718 (2006)	18.04.2018 №3/2230-18 19 days from designation	03.05.2018 A18051818 34 days from designation
15.02.2018	Amendment	1718 (2006)	No action	No action
22.12.2017	Designation	2397 (2017)	19.03.2018 №3/1410-18 87 days from designation	05.04.2018 A18039891 134 days from designation
11.09.2017	Designation	2375 (2017)	26.09.2017 №3/6427-17 15 days from designation	29.09.2017 A17113342 18 days from designation
05.08.2017	Designation	2371 (2017)	21.08.2017 №3/5786-17 16 days from designation	29.08.2017 A17100220 24 days from designation
05.06.2017	Amendment	1718 (2006)	No action	No action
02.06.2017	Designation	2356 (2017)	21.06.2017 №3/4364-17 19 days from designation	06.07.2017 A17077047 34 days from designation

360. Unlike TF related TFS, information about the implementation of PF-related TFS was communicated only via the NBE Debtor Registry. This was a residual effect of the AML/CFT legislation which until recent amendments covered only aspects related to ML and FT. Respectively the mandates of the FMS and NBG did not extend to PF either. It is currently extended due to amendments in the AML/CFT Law which enhances the scope of the coverage.

361. Nevertheless, as explained in detail under IO.10, because the majority of obliged entities heavily rely on the use of commercial databases and automated systems for implementation of their obligations on detecting and freezing assets of designated persons and entities, in practice, effectively, they were implementing their obligations regarding PF-related TFS at all times, in a timely manner.

4.4.2. Identification of assets and funds held by designated persons/entities and prohibitions

362. Georgia has identified persons linked to the PF-related regimes, but none of them were related specifically to the UN TFS regime.

363. During the on-site visit, the FMS mentioned receipt of a few STRs from several FIs (banks and a MFO) flagging potential matches with another country's list of designated persons and entities related to PF. In addition, there were two cases shared with the evaluation team that concerned STRs filed by obliged entities not on the basis of a match with designated persons and entities, but rather on suspicion formed on the bases of analysis of the clients' transactions.

Box X.1: Non-sanctions related – STR on suspicion of PF

In 2016, the MFO filed a STR concerning Person A – an Iranian citizen - who applied for a loan in the amount of USD 20 000. When asked by the MFO, Person A stated that he/she intended to spend the money purchasing "IT-related hi-tech equipment" (hardware, etc.) in Georgia to export to Iran. Person A also stated that, since the import of this equipment from Europe to Iran is prohibited, the intention was to buy it in Georgia. The MFO refused the loan, filed a STR and provided all relevant documents in its possession.

The case was disseminated to the GPO and the SSS as possible PF.

Box X.2: Non-sanctions related – STR on suspicion of PF

In 2018, a STR filed by a bank involved Company A, which was registered in Georgia with Person A as its BO, who was born in Iran, but had citizenship of a third country.

The bank received a SWIFT message to credit Company A's account with approx. EUR 600 000 from an account located in Country G. The transferring - Company B - had its address in the Country Z. The purpose of the transaction was to pay a "control valves fee". The bank requested additional information and documents. Company A then produced invoices which showed that payments were made to firms in Country Z, Country I and one other country, for spare parts of certain equipment. Company A's representative also stated that they intended to buy equipment from Country I and to transport this to Country Q or Country P. The bank has sent the funds back, filed a STR and also provided available documents (e.g. invoices) obtained from Company A.

Neither Person A nor Company A were on any sanctions lists, but the FMS suspected that they could have been violating sanctions concerning Iran by using a Georgia-registered legal person. The case was disseminated to the GPO and the SSS as possible PF.

364. Although, as demonstrated above, there were no cases detected or assets frozen by obliged entities with respect to UN PF-related TFS, the authorities did demonstrate that some have proved their capacity to detect not only designated persons and entities on the basis of various matches with UN TFS, but going further, being vigilant towards transactions related to higher risk countries and activities, in particular Iran.

4.4.3. FIs and DNFBPs' understanding of and compliance with obligations

365. Larger FIs demonstrated a good level of understanding of implementation of TFS obligations. The same cannot be confirmed for other FIs and DNFBPs. See further detailed analysis under IO.10.

366. The larger FIs apply appropriate measures to identify the assets of designated natural persons and entities, including BOs and their assets. They regularly monitor their client base. Smaller FIs informed screening of clients only upon on-boarding and at the time of conducting transactions. Some also periodically check their full client-base. Some DNFBPs (including casinos) conduct screening when apply CDD measures, i.e. for casinos, when client enter the casino and and/or withdraw money. DPMS and real estate agents did not demonstrate an understanding of their obligations with respect to implementation of TFS. They do not conduct any checks against their customer base at all and were not aware of any sanctions lists or material provided by the authorities in this regard. In contrast, the VASPs that are members of financial groups operate automated overnight screening mechanisms (see also IO.10 and IO.4).

367. In line with TF-related designations, the majority of obliged entities confirmed not relying on the NBE Debtors Database, and except for banks did not demonstrate any awareness of this mechanism.

368. Authorities have not provided specific guidance to ensure compliance by FIs and DNFBPs with their obligations to implement PF-related TFS.

4.4.4. Competent authorities ensuring and monitoring compliance

369. The NBG reported that the implementation of TFS is regularly monitored within the scope of its on-site inspections. The NBG inspectors have appropriate knowledge to verify compliance by obliged entities with their obligations with respect to detection and freezing assets related to the UN TFS regimes. NBG staff is undergoing regular training on this subject matter, and also conducts ongoing monitoring of the international standards, requirements and developed practices.

370. When conducting supervision in FIs, the adequacy of software is verified to ensure that UN designations are complete and up to date. Test data is used by the supervisor to ensure that systems would detect matches with sanctioned individuals (in the process of this simulation use is also made of lists of previous periods, as well as the lists from the latest renewals).

371. Nevertheless, the fact that the PF-related UN TFS regime was not part of legislative requirements imposed on obliged entities, respectively, there were no grounds for the authorities to conduct supervisory measures towards a monitoring of implementation of PF-related TFS regime. Accordingly, if identified a deficiency, no sanction for non-compliance could have been applied.

372. The NBG advised that it has not identified any instances of non-reported matches. Breaches were identified only in 2 non-bank FIs, where screening databases were not operating properly. The NBG applied sanctions to them (GEL 40 000 (EUR 13 000)). Thus, these measures impacted the effectiveness of implementation of UN TFS mechanisms applied by these two FIs, irrespective of the specific regime concerned.

373. The evaluation team has not been made aware of any specific actions taken, and sanctions applied, by authorities supervising other FIs and DNFBPs regarding compliance with TFS related to the PF regime.

Overall Conclusion on IO. 11

374. Recent amendments to legislation have secured the legal basis to implement UNSCRs relating to PF. Despite the technical gap that used to exist in the system, Georgia demonstrated that, in practice, PF-related UNSCRs were implemented, although with a considerable delay. This delay was, however, effectively mitigated by use in the private sector of automated systems containing timely information on various UN TFS regimes. Whilst noting that with respect to PF TFS specifically, legal basis was established only recently, the NBG demonstrated having strong capacity to conduct monitoring and, when necessary, apply sanctions for breaching compliance with TFS requirements when identified, thus impacting the effectiveness of implementation of UN TFS mechanisms, irrespective of the specific regime concerned.

375. Georgia has achieved a moderate level of effectiveness for IO.11.

CHAPTER 5. PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 4

1) The level of understanding of risks outlined in the AML/CFT Law and guidance notes, and those additional risks highlighted in the NRA, was generally good for FIs. Understanding of other ML/TF risks that are not referred to in these sources is more limited, which may reflect the very recent introduction of a requirement for obliged entities to conduct organisational risk assessments. The level of understanding is more sophisticated in the banking sector. Most DNFBPs, including casinos, have an insufficient understanding of ML/TF risks.

2) Among FIs which are part of large EU groups or large banking and other financial groups, understanding of AML/CFT obligations is good. However, the approach followed by smaller FIs in determining higher risk factors appeared to be mostly confined to pre-defined criteria set out in AML/CFT Law and guidance notes. Lawyers, NAPR and DPMS have a limited or insufficient understanding of their AML/CFT obligations.

3) FIs which are part of large EU groups or large banking and other financial groups have put in place internal systems and controls which effectively mitigate ML/TF risks. However, the risks presented by the high level of cash circulation in Georgia is underestimated. In many cases, large sums of cash can be withdrawn from, or paid into, bank accounts for customers without the application of additional measures.

4) Other FIs have generally less robust and sophisticated mitigating measures. During the period under review, transfers of under a set threshold were initiated by PSPs through “cash boxes” without identification and verification of the payer, which can present a ML/TF risk in view of the use of such boxes to purchase VAs and load e-currency wallets, e.g. for online gambling or VA transactions. Legislation now requires the identity of any payer to be verified when any transaction through a cash box is initiated in cash, however, this requirement was not enforced at the time of the on-site visit and not applied by all FIs in practice. Generally, DNFBPs did not demonstrate use of an ML/TF risk mitigation framework.

5) Generally, FIs apply CDD requirements and refuse business when CDD is incomplete. However, smaller FIs do not fully apply a risk-based approach and tend to find out the identity of beneficial owners using mainly information held in the NAPR register. Significant gaps were observed in the application of CDD measures by most DNFBPs and NAPR. Record-keeping requirements are applied by FIs and DNFBPs.

6) FIs apply enhanced or specific measures for most higher risk cases called for in the standards. However, the application of CDD measures to domestic PEPs has been hindered by legislative shortcomings (important in the context of corruption risk that is identified as a threat in the NRA (see IO.1) and prosecutions). Also, non-bank FIs tend to have less developed controls in place when introducing new products and practices and have an incomplete understanding of TFS. DNFBPs, including casinos, do not effectively apply all relevant enhanced or specific measures.

7) Banks account for the majority of STRs, and the number of reports in this sector (and amongst banks in the sector) seems reasonable. The types of reports made also point to

active monitoring of customer activity. Other FIs meet their reporting obligations to a moderate extent and some were not able to elaborate on ML/TF STR typologies, which may lead to under-reporting and/or low-quality reports. The level of STR reporting amongst DNFBPs over the evaluation period has been very low, including for casinos (despite a surge in reports in 2019). Even taking account of ML/TF risks in some sectors, it is not clear that reporting obligations are met. Internal policies and procedures and training initiatives are in place in FIs to prevent tipping-off. However, there is insufficient knowledge of tipping-off provisions amongst DNFBPs.

8) Threshold (CTR) reporting has been based on specific indicators included under the AML/CFT Law and some indicators have required manual processing that makes CTR reporting very time consuming and burdensome for FIs and limits their ability to produce high quality STRs. This has already been acknowledged by the authorities who are addressing this point.

9) There have been several occasions when compliance officers (through the obliged entity) have been called before the court to explain the basis for their reporting of suspicion. This may discourage reporting (see also IO.6).

10) Due to NBS efforts, banks and some non-bank FIs have AML/CFT compliance functions which are properly structured and resourced and involve regular internal audits and training programmes. At the same time, the AML/CFT compliance officer does not always have a direct reporting line to the chief executive officer or the supervisory board. Not all DNFBPs have appointed AML/CFT compliance officers and most, including casinos, have developed only very basic internal policies and procedures, with AML/CFT expertise remaining very limited. Data privacy requirements may, at least to some extent, impede information exchange.

11) There is no effective gate-keeper for the real estate sector. Real estate agents are not covered by the AML/CFT Law and, instead, NAPR is the obliged entity in the field of real estate purchase and sale. Real estate contracts and related transactions can be concluded in cash outside the regulated financial sector.

12) Whilst the NBS has taken action to prevent FIs from conducting VASP activities, VASPs are not covered by the AML/CFT Law. There is no official information on the size of the sector, but according to interviews conducted, the transaction volume can be between GEL 3.5 to 5 million (EUR 1 to 1.5 million) per month.

Recommended Actions

1) Georgia should take appropriate measures to address the ML/FT risks associated with high level cash turnover in the economy, in particular: (i) extensive deposits into, and withdrawals of cash from, bank accounts; (ii) use of currency exchange offices by trading companies to purchase goods in foreign currency; and (iii) use of cash in real estate transactions. Such measures may include setting cash thresholds, greater use of gate-keepers and publication of ML/FT guidance and/or typologies.

2) Supervisors and the FMS should broaden their training programmes to raise awareness of specific risks facing each FI and DNFBP sector (including contextual factors), organisation specific risks which are not referred in the NRA, risk associated with VASPs, as well as requirements and obligations under the recently adopted AML/CFT Law.

3) The FMS, in consultation with other authorities, should take appropriate measures to enhance understanding of organisation risk by all obliged entities by providing more granular sectoral guidance and training on: (i) implementing preventive measures; and

(ii) sector specific ML/TF typologies, including areas identified as presenting a threat in the NRA report.

4) The FMS should continue with CTR automation in order to allow obliged entities more time to spend on analysis of suspicious activity.

5) The NBG should take measures to confirm that NBG Regulation No. 253/04 (covering wire transfers) is implemented by all relevant FIs in order to address the risk associated with the use of cash boxes.

6) Supervisors should monitor that requirements in the new AML/CFT Law are implemented, e.g. strengthening the role and independence of the AML/CFT compliance function and application of enhanced CDD measures to domestic PEPs.

7) Confidentiality provisions in the Law on Lawyers should be reviewed and revised as appropriate to ensure that professional secrecy does not interfere with AML/CFT obligations.

376. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23, and elements of R.1, 6, 15 and 29.

5.2. Immediate Outcome 4 (Preventive Measures)

377. Georgia's finance sector is dominated by its banks. As of 31 December 2018, 15 banks were licensed in Georgia with total assets of GEL 39.7 billion (EUR 12.9 billion). Among 15 licensed banks, 12 are subsidiaries of foreign banks or of foreign parent (holding) companies⁵³. The two biggest banks hold 72,8% of the total assets of the banking sector⁵⁴.

378. The Georgian Post Office is not separately designated as an obliged entity and not covered by the AML/CFT Law. It provides international postal (post office – to - post office) money remittance services but the annual volume of transactions is not material (less than GEL 70 000 (EUR 23 000)).

379. Gambling and real estate sectors are the largest sectors among DNFBPs. Real estate agents are not designated as obliged entities. Instead, the NAPR is the obliged entity in the field of real estate purchase and sale. VASPs are not designated as obliged entities and so are not covered by the AML/CFT Law, notwithstanding that there is a VASP sector present in Georgia. (see IO 1). This means that VASPs are not required to comply with the requirements set out in R.10 to R.21, as qualified by c.15.9. Other sectors that are not designated as obliged entities are analysed under IO.1. Chapter 1 provides information on the relative importance of each sector.

380. Assessors' findings on IO.4 are based on interviews with a range of private sector representatives, supervisory findings and enforcement actions, and information from the Georgian authorities (including the NRA).

5.2.1. Understanding of ML/TF risks and AML/CTF obligations

Financial institutions

381. The level of understanding of ML/TF risks and AML/CFT obligations varies across sectors depending on the size of the institution, the products and services they provide and their geographical footprint. The level of understanding of ML/TF risks is more

⁵³ Azerbaijan, Germany, Kazakhstan, Netherlands, Russia, Turkey, the UAE and UK.

⁵⁴ Bank of Georgia and TBC Bank, parents of which are listed on the London Stock Exchange (LSE).

sophisticated in the banking sector, followed by non-bank FIs and then the insurance sector. Overall, the understanding of risks outlined in AML/CFT legislation and guidance (in particular the NBS Guidance on RBA) and in the NRA was generally good. The understanding of AML/CFT risks not outlined in these sources, but which may be present in individual obliged entities, is more limited, and this may reflect the only very recent introduction of a requirement for obliged persons to conduct organisational risk assessments (along with comprehensive guidance).

382. Even though the NRA report had been finalised by the Georgian authorities just before the on-site visit, the knowledge and understanding of risks highlighted therein was generally good for all FIs. Some FIs were consulted in the process of undertaking the NRA.

383. Across the sectors, FIs which are part of large EU groups, or large banking and other financial groups (domestic and foreign), have a good understanding of their ML/TF risks and AML/CFT obligations. They periodically identify, assess and review their exposure to ML/TF risks, in line with their business, products and services, customer base and geographical footprint (through organisational risk assessments).

384. Other smaller FIs supervised by the NBS, especially non-Core Principles FIs, demonstrated a less sophisticated understanding of their ML/TF risks, particularly those not outlined in the NRA and related to TF, and AML/CFT obligations. They seem to be too focused on mitigating risks identified in legislation, guidance and the NRA and meeting all formal obligations, and do not fully consider other contextual ML/TF risks that may be relevant to the organisation, e.g. high level of cash circulation in Georgia, integrity levels in the public and private sectors, presence of PEPs and their associates (some of which may be high wealth individuals), and cross-border risks of their customers, products and services, etc.

385. In discussions, many FIs indicated that gambling, NPOs and charitable organisations generally presented a higher risk. Notwithstanding this, their own risk classifications for NPOs and charitable organisations did not reflect this general risk assessment: most assigned a medium risk level to such category of clients.

386. Many PSPs met on-site did not demonstrate a good understanding on how money could be laundered through them. Moreover, those operating cash boxes did not consider that some financial activities conducted through them presented an inherently higher ML/TF risk. Whilst cash boxes are used predominantly to pay for utility services, amongst other things, they can be used by anonymous payers to deposit cash of GEL 1 500 or less (approximately EUR 500): (i) into bank accounts; (ii) to purchase VAs, e.g. from VASPs; and (iii) to load customer e-currency wallets (e.g. to be used for online gambling or VA transactions). In the view of the evaluation team, the use of cash boxes can present an ML/TF risk. This is acknowledged by the authorities who have taken mitigating measures (see section 5.2.2).

387. The risk presented by the high level of cash circulation is underestimated by most FIs. Many FIs met on-site advised that cash circulation outside the regulated segment of the economy is significant (not as high as 5 to 10 years ago - but still significant) and transactions, including illegal transactions, can be performed relatively easily in cash. Whilst many banks identified cash transactions as presenting a ML risk, internal thresholds to start applying enhanced CDD measures for cash transactions are rather high (see section 5.2.2). Accordingly, large sums of cash can be easily withdrawn or deposited from/to bank accounts.

388. Two banks met on-site claimed in marketing material to provide “mortgage loans that do not require any proof of income”. Whilst this was explained as being “just a marketing trick”, it was acknowledged that a large percentage of people working in Georgia are self-employed and cannot independently prove their source of income when called upon to do so. A similar point was made about Georgians working abroad. Despite this, the ML risks involved in repayment of loans with illicit funds (without proper source of funds verification) did not appear to be fully recognised.

389. Based on its on-site supervision programme, the NBG considers that obliged entities are classifying AML/CFT risk appropriately at customer level in most cases.

DNFBPs

390. DNFBPs’ understanding of ML/TF risks and AML/CFT obligations is less developed than in the financial sector. Notaries and larger firms of accountants/auditors demonstrated a sound understanding of their ML/TF risks and the AML/CFT obligations and were aware of the NRA results. On the other hand, the understanding of lawyers (including firms), smaller accountants/audit firms, NAPR and DPMS of their AML/CFT risks and obligations appeared to be limited or insufficient, perhaps reflecting the limited extent to which there is AML/CFT supervision of DNFBPs in Georgia (see IO.3).

391. Casinos met on-site were aware of the NRA results but did not agree with the NRA risk rating for their sector (medium-high), which they believed should be lower. They thought that ML risk would be low unless a casino itself was part of a ML scheme. Their understanding of risks, such as the extensive use of cash and presented by PEPs, was limited.

5.2.2. Application of risk mitigating measures

392. Obligated entities across the financial and DNFBP sectors have implemented AML/CFT preventive measures to mitigate their ML/TF risks. However, the extent to which these preventive measures are adequately applied varies between, and within, these sectors. With respect to TF, some smaller banks, non-bank FIs and DNFBPs use only sanction screening tools to mitigate their TF risks without having sufficient knowledge or understanding of TFS and the different sanction lists that are used in practice.

Financial institutions

393. FIs which are part of large EU groups, or large banking and other financial groups (domestic and foreign) have put in place internal systems and controls to mitigate ML/TF risks. In particular, the two largest banks (publicly traded on an international exchange) and banks which are part of large EU groups have developed more sophisticated AML/CFT systems and controls. Their AML/CFT policies and procedures include a broad range of measures to mitigate ML/TF risks and a “three lines of defence” (business, compliance and audit) approach has been established for ML/TF risk management involving also boards and senior management. They typically use a risk scoring model for customers, which categorises customers’ risk profiles (typically high, medium and low risk), and apply differentiated mitigating measures: for high risk customers more scrutiny is applied, such as obtaining additional information, more frequent reviews of customer files, escalation procedures and stricter monitoring rules. They have implemented sophisticated automated systems for sanctions screening and (scenarios-based) transaction monitoring to screen and monitor transactions of their customers.

394. Whilst smaller banks still assess customer risk and develop profiles, in general these assessments and ML/TF risk mitigating measures in place are less structured and

sophisticated. For example, they have relatively weaker transaction monitoring and internal control procedures. One small bank met on-site does not have an automated transaction monitoring system at all and, given the number of customers and risk profile, manually performs customer transactions monitoring. Nevertheless, the number of customers is in excess of 50 000 and number of daily transactions around 8 000.

395. Most banks (like other FIs), indicated the use of cash as a risk given the volume of cash transactions in the financial sector is still very substantial (notwithstanding that the use of cashless payments is rapidly increasing). According to the NRA report, cash is still the main means of payment in Georgia, and it is common for companies importing goods into Georgia to withdraw cash in one currency, to exchange that cash with a currency exchange office for another currency, and then to pay the latter into a separate account held with the bank (see below). Banks apply different thresholds to perform enhanced CDD on cash transactions (receipts and payments). For example, for cash withdrawals from accounts, banks thresholds can be as high as GEL 100 000, GEL 200 000 or even GEL 500 000 (respectively EUR 33 000, EUR 65 000 and EUR 160 000). This means that, in many cases, large sums of cash can be withdrawn from, or paid into, bank accounts for customers without the application of additional measures.

396. In the view of the evaluation team, obliged entities have insufficient sector specific cash transaction-related ML/FT guidance, typologies and indicators to mitigate the risk of use of cash.

397. In general, the situation in non-bank FI sectors is similar to the banking sector; non-bank FIs which are part of large EU groups, or large banking and other financial groups (domestic and foreign) have put in place much better internal systems and controls to mitigate ML/TF risks and better AML/CFT programmes. Other non-bank FIs have generally less robust and sophisticated AML/CFT systems. They tend to approach their risk mitigating measures (based on customer risk assessments) in a rules-based manner and primarily focus on obtaining basic CDD information and addressing certain risk factors according to risk criteria provided by NBG.

398. All non-bank FIs have appointed at least one individual who is accountable and responsible for overseeing all aspects of the FI's AML/CFT systems.

399. As mentioned above, cash boxes found mostly in the capital city have allowed anonymous payers to deposit cash (GEL 1 500 or less (approximately EUR 500)) into bank accounts or electronic wallets and perform other financial activities. In response, the authorities: (i) tightened requirements for transferring funds in November 2018 (payers' verification), though these changes had not been implemented by all FIs because they are not expected to do so until 1 March 2020; (ii) have amended the AML/CFT Law (October 2019) to apply CDD requirements to business relationships, such that the identity of the recipient of the transfer will have been found out and verified, and account subject to ongoing monitoring; and (iii) have specified that services related to VAs may be provided only to a person whose identity has been found out and verified. Most of the FIs (PSPs and banks) met on-site said that they had not yet implemented requirements for payers' verification for technical reasons.

400. Extensive use is made of currency exchange offices to perform cash-to-cash exchange transactions for "walk-in" individuals and legal persons. Banks offer uncompetitive exchange rates and so it is not uncommon for trading companies to withdraw cash (GEL) from their bank account, to exchange this for foreign currency at an exchange office (most commonly into US dollars) and then to pay this foreign currency

into a separate account held with the bank. The bank is then requested to pay the supplier in foreign currency for the goods that its customer purchased. This widespread use of cash, and the proliferation of small currency exchange offices, increases ML/TF risk, but enhanced CDD measures are not applied by exchange offices. Legal persons can exchange cash up to the value of GEL 500 000 (EUR 160 000).

DNFBPs

401. The risk mitigating measures taken by DNFBPs (including casinos) present a mixed picture. Whilst one member of a large international accounting firm and notaries (represented by two individuals with significant supervisory background) were able to give examples of measures put in place to address identified risks, other DNFBPs (including NAPR, which is the obliged entity in the field of real estate purchase and sale) did not demonstrate knowledge about, or use of, the key constituents of an ML/FT risk mitigation framework (though some elements of such a framework are in place for casinos).

5.2.3. Application of enhanced or specific CDD and record-keeping requirements

402. Banks and non-bank FIs demonstrated good knowledge of the applicable requirements in the AML/CFT Law and relevant regulations related to CDD and record keeping. Some of the FIs (e.g. currency exchange offices, securities' registrars, MFOs and brokerage firms) confirmed using face-to-face identification only. Some banks, as well as PSPs offering certain types of services, referred to the limited use of non-face-to-face identification practices. To establish relationships with their clients, they use different digital channels and methods such as on-line applications, cash boxes, etc., as well as different mitigating techniques such as requesting clients to perform the first payment from a bank account in the customer's name, limiting the amount of transactions accepted in cash through cash boxes (e.g. GEL 1 500 (approximately EUR 500)), etc.

403. FIs which are part of large EU groups, or large banking and other financial groups (domestic and foreign) apply more comprehensive CDD measures, including ongoing monitoring, adopting a risk-based approach and focusing on the risks posed by their customers, products and services as well as distribution channels used. Smaller FIs, particularly those outside the banking sector, demonstrated a less sophisticated implementation of CDD requirements, including ongoing monitoring, and do not fully apply a risk-based approach taking account of inherent risks arising from their own customers, products, services and distribution channels. Non-bank FIs (e.g. securities' registrars, PSPs) seem to rely to some extent on banks as a gatekeeper, for example, for verification of the source of funds when the money of a client is transferred through a bank.

404. Where the customer is a legal person or legal arrangement, the large FIs find out the identity of the beneficial owners by conducting online Internet searches, obtaining an ownership or corporate structure chart identifying the natural person (if any) who ultimately owns or controls the customer, and requesting relevant documents, e.g. trust deed. Smaller FIs, in particular non-Core Principles FIs, tend to find out the identity of beneficial owners using information on legal persons which is publicly available in Georgia's register held by the NAPR, which publishes registered shareholder information for LLCs and partnerships, or foreign equivalent. The ability to find out legal persons' BO in the case of complex structures or when the legal person is owned by a foreign legal person was reported as the biggest challenge for most FIs.

405. FIs are aware that they should refuse to establish, or terminate, a business relationship if the CDD process cannot be completed, and then should consider filing an STR with the FMS. Some FIs, including banks, did refuse business relationships in practice. Nevertheless, it appears that FIs did not consider filing an STR with the FMS in all these cases.

406. The revision/renewal of CDD information by all FIs is generally performed in line with NBG Guidance on CDD. The frequency depends on the risk level assigned to the client (1, 2 to 3 and 3 to 5 years – respectively for high, average and low risk levels).

407. Based on supervisory findings identified by the NBG (e.g. failure to examine ownership and shareholding structures, to properly verify customer documents/information, and collection of incomplete documentation from TCSPs), the NBG believes that violations of CDD requirements took place only in the case of a limited number of clients and the number of such violations in relation to the total volume of customers of particular banks is minimal.

408. All FIs have good knowledge and understanding of record-keeping requirements. According to the previous AML/CFT Law in place for most of the period under review, CDD records were required to be kept for 6 years from the date of termination of transactions or business relationships. The new AML/CFT Law requires CDD records to be kept for 5 years. In practice, they maintain documents for the period required by the law.

409. There were no violations identified by NBG and ISSS regarding the documenting/recording-keeping process in banks and only a limited number of violations for the non-banking and insurance sector.

DNFBPs

410. Basic CDD practices, including ongoing monitoring, varied among DNFBPs. Certain DNFBPs demonstrated little understanding of their CDD obligations and found the requirements difficult to understand. Significant gaps were observed in the application of CDD measures by: (i) lawyers and on-line casinos, where identification measures were applied only to the extent necessary to deliver their services; and (ii) DPMS where measures were not applied at all. Land casinos identify and register clients when they enter the premises of the casino, regardless of whether they intend to gamble. Online casinos apply distance identification and verification methods, allow non-verified clients to gamble, but restrict the withdrawal of money for non-identified and non-verified clients.

411. The NAPR demonstrated a low level of understanding of the CDD requirements set by the law. The CDD measures applied by the NAPR are not consistent with the requirements of the AML/CFT Law in terms of CDD, including identification of ultimate beneficial owners. NAPR performs post factum registration of all real estate purchase and sale transactions upon presentation of only basic information on the transaction by participants. The assessment team was not convinced that the NAPR would (or could legally) refuse registration of a real estate transaction in a case where insufficient CDD was made available. Accordingly, NAPR's gate-keeper role is not effective.

412. Poor application of CDD measures by many DNFBPs is the presumed direct result of their insufficient knowledge in the area of AML/CFT as well as the direct consequence of the absence of appropriate AML/CFT supervision in the sector.

413. DNFBPs met (except DPMS) were aware of the record-keeping requirements and kept records for the necessary period (6 years (now reduced to 5 years)).

5.2.4. Application of EDD measures

PEPs

414. With regard to PEPs, the application of CDD measures has been hindered because of legislative shortcomings the majority of which were addressed in legislation just ahead of the on-site visit : (i) the definition of PEP did not include domestic PEPs or persons who are, or have been, entrusted with a prominent function by an international organisation; (ii) individuals entrusted with a prominent public function would lose their PEP status period one year after they had relinquished that function; and (iii) a limited definition of “close associate”.

415. Application of the PEP requirements varies depending on the size and geographical footprint of FIs. All FIs met on-site confirmed that they had classified only foreign PEPs in the past (notwithstanding the availability of property declarations for Georgian officials and their families) and will change that approach in line with new AML/CFT Law requirements. At the same time, those FIs that are part of large EU groups or large banking and other financial groups applied a more conservative approach and applied longer periods for foreign PEPs classification (e.g. once a PEP always a PEP).

416. All banks have a good understanding of the enhanced measures required in relation to PEPs, and they have adequate measures in place to determine whether the customer and the beneficial owner are PEPs. Many representatives of non-bank FIs (all PSPs, currency exchange offices, securities registrars, MFOs) also demonstrated sufficient knowledge on PEP-related requirements but, according to information received during the on-site, did not have any client classified as a PEP, which was the result of applying measures only to foreign PEPs. All FIs confirmed that they would request approval from a senior manager before establishing or continuing business relationships with such customers and establish the source of wealth and funds connected with the business relationship or transaction.

417. Many of those FIs interviewed mentioned that they use commercial databases from third-party vendors to identify PEPs (e.g. Dow Jones, World-check, Factiva, etc.). It is also common practice amongst FIs to obtain a self-declaration by the customer as to whether he/she is considered as a PEP (as part of “know your customer” questionnaires that are required to be submitted during the on-boarding process and regularly updated thereafter). These sources will identify cases where existing customers become PEPs after a business relationship has been established.

418. Based on supervisory findings, the NBG has evaluated positively the measures taken by banks in relation to the application of requirements and approaches with regards to PEP customers.

419. Most of the DNFBPs (including casinos) met on-site have a very basic understanding of PEP-related requirements. A limited number of DNFBPs (i.e. certain representatives of land casinos) use automated screening programmes to identify PEPs. But most of them have had not identified customer relationships with PEPs, which was the result of applying measures only to foreign PEPs and not having adequate measures in place. The NAPR has no internal policy related to PEPs. One law firm met on-site was not familiar with the PEP definition at all.

Opening and maintaining correspondent relations

420. The two biggest Georgian banks met onsite (with 70% of the market) act as a correspondent for institutions in Georgia (outside scope of this assessment) and CIS

countries. They demonstrated a good understanding of the enhanced AML/CFT requirements and of the risks involved. It should be noted that Georgian Law does not allow for payable through accounts, and these do not appear to be operated within the jurisdiction in practice.

421. Based on supervisory inspection results, one bank was requested by the NBG to close correspondent relationships with other banks. The NBG has advised that deficiencies highlighted in this bank are not reflective of a general problem with Georgian banks offering correspondent services.

422. There does not appear to be similar correspondent-type relationships outside of banks.

New Technologies

423. The NBG's guidance on RBA requires FIs subject to NBG supervision to manage the risks associated with the introduction and use of new and existing products, business practices or technologies. The controls described by banks appear to be comprehensive and positive. Non-bank FIs and certain DNFBPs tend to have less developed controls in place when introducing new products and practices (e.g. on-line casinos apply distance customer acquisition technologies) and seem more focused on technological possibilities than the ML/TF risks involved. Since 2017, all FIs have been asked by the NBG to provide AML risk assessments and procedures to reduce risk when implementing a new product and to seek prior consent.

424. VASPs are not covered by the AML/CFT Law, notwithstanding that the VASP sector is present in Georgia. Whilst some VASPs have already started to apply some basic preventative measures for reputational purposes (because of criminal cases of VAs usage for the purchase of drugs), this is not the case across all the sector.

Application of wire transfer rules

425. In Georgia, money remittance services are provided through: (i) banks; and (ii) PSPs and MFOs as agents of global MVTs providers (MoneyGram, Western Union, Unistream, etc.). Banks and non-banking MVTs who met with the evaluation team appeared to have a generally good understanding of the Funds Transfer Regulation and the requirements imposed under R.16. They advised that all wire transfer information (incoming and outgoing) is automatically screened by the system to ensure that wire transfers (incoming and outgoing) contain all required data. Checks for data are also carried out periodically post transfer. In cases of missing information on incoming transfers, FIs contact the originator's institution and request additional information, before proceeding with the transfer. The requirements under R.16 appear to be followed in practice.

426. Georgia Post Office also provides international (post office - to - post office) money remittance services. The Post Office is not separately designated as an obliged entity and does not apply the AML/CFT Law. At the same time the annual volume of such transactions is not material (less than GEL 70 000 (EUR 23 000)).

Implementation of Targeted Financial Sanctions

427. Banks (especially those which are part of large EU groups, or large banking and other financial groups (domestic and foreign) have a sound understanding of their requirements in relation to TFS relating to TF and have measures in place to screen before the establishment of a business relationship and during that relationship (where there are transactions) for potential hits. They use commercial databases from third-party vendors

(as for PEPs) to screen: (i) their customers and beneficial owners; and (ii) transactions, against the lists of persons and entities designated under UNSCR lists as well as designations of other countries and jurisdictions, e.g. OFAC and the EU. Many banks confirmed that they have periodic processes for entire customer base re-screening, but such processes are not always frequent or undertaken when there is a change to UN sanction list designations.

428. Other FIs and DNFBPs (including casinos) demonstrated an incomplete understanding of TF TFS obligations. Many non-bank FIs and DNFBPs confused UNSCR lists dealing with TF and PF and did not understand the different statutory basis and requirements applying to UNSCR lists compared to those of other countries and jurisdictions. Use is made of internal tools enabling searches of, at least, persons and entities designated under UNSCR lists and other methods of identifying TF activities, such as profiling of higher risk customers, are not used to mitigate TF risks. At the same time, only a limited number were able to provide information on the number of false positive matches and internal transliteration processes applied. Some of them mentioned that they have periodic processes for entire customer base re-screening, but such processes are not connected to the timing of UN sanction list updates.

429. Lawyers (including firms) have a very low level of understanding of TF risks. Lawyers (including firms) appeared not to have any internal procedures on UN list screening; they refer to the Bar Association website when checking clients. The DPMS do not perform UN lists screening. IO 10 considers also application of TFS to real estate agent and VASPs which are not types of obliged entity under the AML/CFT Law.

430. Several FIs reported possible matches with relevant UN lists of designated persons to the FMS and froze assets accordingly. Although the reports appeared to be false positives, this demonstrates the readiness of obliged entities to implement TFS.

431. Non-bank FIs and DNFBPs reported to the assessment team that little training has been organised by the authorities on TFS, and there is significant room for improvement in this respect.

Approach towards jurisdictions identified as high-risk

432. In accordance with the AML/CFT Law, the NBG maintains a list of “watch zone” countries, which includes jurisdictions with weak AML/CFT systems and all high-risk and monitored jurisdictions in the FATF’s public statements. The list of “watch zone” countries is also extended by the NBG to include offshore jurisdictions identified as high risk by the FMS.

433. Those FIs which are involved in international business (e.g. the large FIs and those which are part of large EU groups, or large banking and other financial groups (domestic and foreign), appeared to have a very good understanding of countries which have been identified as posing a higher risk for ML/FT by the FATF and advised that enhanced measures would be applied in these cases. At the same time, not all smaller FIs and DNFBPs were aware of the relevant FATF public statements and did not know which countries included in the NBG “watch zone” list were subject to the FATF’s countermeasures or classified by the FATF as having higher risks.

434. Banks have automated systems and tools to monitor incoming and outgoing transactions based on specific parameters set within the system. This allows transactions to “watch zone” countries (and any other countries covered by internal lists) to be flagged

and followed-up. However, not all PSPs appear to take reasonable measures to monitor payments, for example, made to high risk countries.

435. EDD measures taken by FIs in relation to clients or transactions or FIs located or associated with “watch zone” countries focus on determining the purpose and nature of transfers, and the source of funds involved in the transfers. Some FIs advised that they would not accept clients from the higher-risk countries identified by FATF. Some DNFBPs (lawyers, casinos and DPMS) did not refer to the application of any specific EDD measures.

436. The NBG identified a number of deficiencies in this area for banks and non-bank FIs. Overall, it believes that such violations took place only in the case of a limited number of clients and the number of such violations in relation to the total volume of customers of banks and non-bank FIs is minimal.

5.2.5. Reporting obligations and tipping off

437. The FMS has published Regulations for each sector to explain to obliged entities how to apply the reporting requirements in the AML/CFT Law. In addition, FMS has provided the evaluation team with guides and reporting indicators for some sectors (referred to at R.34). However, these do not include sector specific guidance or typologies, including in areas identified in the NRA report as presenting a threat to the country, and indicators to promote the quality of STR reporting are not available for all sectors. In the view of the evaluation team, the FMS does not provide obliged entities (FIs or DNFBPs) with sufficiently detailed and granular guidance on STR requirements or on ML/FT typologies to help properly identify and disclose suspicious transactions. The STR specific professional training provided to obliged entities was also limited (and no statistics or training material were provided to the evaluation team). Many of the obliged entities were not aware of STR reporting typologies or indicators and indicated that improvement was needed regarding guidance available and feedback provided by the FMS.

Table 5.1: Number of STRs submitted by obliged entities to the FMS

Year	2015		2016		2017		2018		2019 (1 Nov)	
	All	TF	All	TF	All	TF	All	TF	All	TF
FINANCIAL INSTITUTIONS										
Banks	565	19	549	35	623	29	571	17	545	6
MFOs	39	0	65	11	113	6	80	0	83	4
Insurance Companies ⁵⁵	6	0	0	0	2	0	2	0	1	0
Brokerage Firms	7	0	1	0	3	0	4	0	0	0
Securities' Registrars	1	0	5	0	10	0	6	0	11	0
Currency Exchange Offices	0	0	0	0	5	0	8	0	13	0
MVTS operator/ PSP ⁵⁶	30	0	2	0	2	0	33	0	40	8
Credit Unions	0	0	0	0	0	0	0	0	0	0
Leasing Companies	14	0	46	0	14	0	10	0	0	0
FIs Total	662	19	668	46	772	35	714	17	693	18
DNFBPs										
Gambling Operators ⁵⁷	0	0	27	0	0	0	1	0	251	0

⁵⁵ Statistics includes reporting by Insurance Companies⁵⁵ & Non-State Pension Scheme Founders.

⁵⁶ Now licenced as PSPs.

Real Estate Agents ⁵⁸	N/A	N/A								
DPMSS	0	0	0	0	0	0	0	0	0	0
Lawyers	0	0	1	0	1	0	0	0	0	0
Notaries	1	0	1	0	3	0	3	0	0	0
Accountants	N/A	N/A	0	0	0	0	0	0	0	0
Auditors	N/A	N/A	0	0	0	0	0	0	0	0
TCSPs ⁵⁹	N/A	N/A								
DNFBPs Total	1	0	29	0	4	0	4	0	251	0
OTHER OBLIGED ENTITIES										
Revenue Service ⁶⁰	0	0	0	0	0	0	0	0	0	0
NAPR	309	0	296	0	135	0	107	0	33	0
Other Total	309	0	296	0	135	0	107	0	33	0
All Total	972	19	993	46	911	35	837	17	977	18

Table 5.2: Number of CTRs submitted by obliged entities to the FMS

Year	2015	2016	2017	2018	2019 (1 Nov)
FINANCIAL INSTITUTIONS					
Banks	84 744	91 857	100 231	127 693	106 583
MFOs	26 124	30 434	30 833	34 217	27 758
Insurance Companies ⁶¹	43	75	145	159	111
Brokerage Firms	13	396	389	293	314
Securities' Registrars	370	336	360	399	301
Currency Exchange Offices	26 646	30 843	33 517	31 935	22 169
MVTS operator/ PSP ⁶²	56	120	945	1 878	1 183
Credit Unions	89	49	28	21	7
Leasing Companies	697	856	834	673	0
FIs Total	138 782	154 966	167 282	197 268	158 426
DNFBPs					
Gambling Operators ⁶³	209	255	513	1 840	3 483
Real Estate Agents ⁶⁴	N/A	N/A	N/A	N/A	N/A
DPMSS	0	0	0	0	0
Lawyers	0	1	0	0	0
Notaries	5 319	5 104	5 203	6 112	6 334
Accountants	0	0	0	0	0
Auditors	0	0	0	0	0
TCSPs ⁶⁵	N/A	N/A	N/A	N/A	N/A
DNFBPs Total	5 528	5 360	5 716	7 952	9 817
OTHER OBLIGED ENTITIES					

⁵⁷ Land-based and online Casinos, and betting shops.

⁵⁸ Real Estate Agents are not obliged entities under the AML/CFT law. Instead the National Agency of Public Registry in charge of registering real estate has been designated as an obliged entity.

⁵⁹ TCSPs are not obliged entities under the AML/CFT law.

⁶⁰ MoF Revenue Service is reporting STRs related to cross-border movement of cash and BNIs

⁶¹ Statistics includes reporting by Insurance Companies⁶¹ & Non-State Pension Scheme Founders.

⁶² Now licenced as PSPs.

⁶³ Land-based and online Casinos, and betting shops.

⁶⁴ Real Estate Agents are not obliged entities under the AML/CFT law. Instead the National Agency of Public Registry in charge of registering real estate has been designated as an obliged entity.

⁶⁵ TCSPs are not obliged entities under the AML/CFT law.

Revenue Service ⁶⁶	4 934	5 105	6 695	7 562	7 743
NAPR	8 959	8 923	20 175	22 827	18 319
Other Total	13 893	14 028	26 870	30 389	26 062
All Total	158 203	174 354	199 868	235 619	196 980

Financial institutions

438. Georgian reporting requirements are divided into two types: (i) currency transaction reports (CTRs), specific transactions specified by AML/CFT legislation, including those exceeding a threshold of GEL 30 000 (EUR 10 000); and suspicious transaction reports (STRs).

439. The principles of reporting of suspicious activity and attempted suspicious activity seem to be well understood by banks. The statistical data in Table 5.2 shows that approximately 70% of all STRs made to the FMS are submitted by banks. However, it also should be noted that most financial transactions in Georgia are undertaken by the banking sector. The number of reports in this sector (and amongst banks in the sector) seems reasonable. According to information provided by the NBG, the majority of STRs made in the past three years have related to: (i) activities outside customers' expected profiles; (ii) unexplained sources of funds; (iii) the availability of negative information about the customer; and (iv) alleged fraud. Use of these triggers points to banks actively monitoring customer activity and making reports where there is suspicion. Banks met on-site were also able to provide the evaluation team with examples of relevant situations where STRs were completed and sent to the FMS.

440. Non-bank FIs seem to have a moderate understanding of the STR requirements. There are notable differences in the number and quality of STRs submitted by sectors. In some cases, this can be explained by lower risk and materiality, e.g. credit unions which have never filed a STR and insurance companies that have submitted few reports. However, it is not clear why the numbers of STRs submitted by some other sectors are so low: (i) PSPs made just four STRs in 2016 and 2017 despite being assessed as presenting a medium ML risk in the NRA (along with banks) and, until mid-2018, having active involvement in VC activities; (ii) currency exchange offices made just 13 reports between 2015 and 2018, despite exchanging large amounts of cash and generating a substantial number of CTRs; and (iii) brokerage firms which made no reports in 2019, notwithstanding that the NBG assesses the inherent ML risk of this sector as high (see table 6.3). The reporting picture has improved for PSPs in 2018 and 2019, and for currency exchange offices in 2019, both coinciding with the introduction of a risk-based approach to supervision by the NBG. As noted above (section 5.2.3), it appears that FIs did not consider filing an STR with the FMS in all cases where CDD could not be completed.

441. There are also strong indications that the quality of reports by non-bank FIs is not always satisfactory. Some PSPs met on-site reported cases related to card fraud and phishing as STRs, and this is supported by information collected by the NBG which indicates that most reports relate to the abuse of products rather than handling of criminal proceeds. One institution advised that its STRs mainly related to clients registered in "watch zones" (irrespective of suspicion). Some non-bank FIs also were not able to elaborate on typologies, transactions or activities that would give rise to an STR which may lead to under-reporting and/or low-quality reports. As noted above, examples provided by the FMS of high-quality reports did not refer to sophisticated ML or include

⁶⁶ MoF Revenue Service is reporting STRs related to cross-border movement of cash and BNIs

high level analysis. The evaluation team also has doubts about the quality of STRs submitted by non-bank FIs to the FMS is satisfactory.

442. Mindful of this, the NBG has taken significant efforts to focus FIs on suspicious transaction reporting, the quality of which, they believe, has improved in recent years. At the same time, the NBG accepts that there is still room for improvement.

443. CTR volumes are very significant (more than 99.5% of all reports made to the FMS). CTR reporting is based on specific indicators that were included under the previous AML/CFT Law. According to new AML/CFT Law, the FMS will be authorised to determine the types of transactions that will be reported in future by obliged entities. As explained by many FIs met during the on-site visit, whilst some CTRs can be automated, others cannot, and this calls for manual processing which involves significant resources. As a result, currency transaction reporting is very time consuming and burdensome for FIs and limits their ability to produce high quality STRs. Those FIs that file the highest numbers of CTRs feel that the resources they allocate to the CTR reporting process is disproportionate to the benefits that are perceived to be derived therefrom. The NBG has also picked up many breaches of CTR requirements through on-site examinations.

444. The FMS acknowledges this issue and is discussing with obliged entities how to automate threshold reporting so that more resources are devoted to identifying and reporting suspicious transactions.

445. Also, interviews with FIs identified several occasions when compliance officers had been called before the court (through the obliged entity) to explain the basis for their reporting of suspicion to the FMS (see also IO.6). The evaluation team considers that such a practice may discourage reporting of suspicion and, as a result, may negatively impact the quality of AML/CFT compliance.

446. Considering all the above, there is room for improvement in terms of the number and quality of suspicious transaction reporting for the banking and non-banking FI sectors.

447. FIs generally displayed good knowledge regarding the obligation not to tip-off and ensure compliance by staff with this obligation through internal policies and procedures and training initiatives.

DNFBPs

448. The level of suspicious transaction reporting amongst all DNFBPs over the evaluation period has been very low.

449. Accountants (for which little information is held on activities), auditors and DPMSs have never made a STR, and no STRs were reported by lawyers from the start of 2018 up to 2019 (1 November), perhaps as a result of very broad client confidentiality provisions in the Law on Lawyers (considered to be very important by the legal profession). Even taking account of ML/TF risks in these sectors (assessed as low or medium-low in the NRA), it is doubtful that reporting obligations are met.

450. As reflected in c.23.1 in the TA, the evaluation team believes that the ability of lawyers to submit a STR is very limited as they do not have a “gateway” for making STRs. According to the Law on Lawyers, lawyers cannot disclose information obtained in the course of carrying out professional activities without their client's consent, which would constitute tipping-off if consent was sought. Whilst such consent can be requested in advance, this may not always be done.

451. Until 2018, the level of reporting by casinos has also been very low, and terrestrial casinos met on-site advised that they had not reported any STRs. The sudden increase in reporting in 2019 reflects efforts made by the FMS (in collaboration with the professional association for gambling operators) to publish reporting guidance, and suggests that there has been significant levels of under-reporting in earlier periods, taking account of the moderate-high ML assessment of this sector in the NRA report. Whilst casinos acknowledged that they had received some basic training and typologies from the FMS, typologies given were said to be not relevant or out-of-date, though they have had a clear effect.

452. NAPR (in the role that it has for registering real estate transactions) makes a large number of reports to the FMS. As CTRs, NAPR reports all real estate transactions which exceed GEL 30 000 (EUR 10 000) (cash as well as non-cash settlements). Prior to making STRs, analysis conducted is limited and, e.g., NAPR advised that it would report suspicion when it picked up an inappropriate value for a real estate transaction (e.g. price for land much lower than expected in the region).

453. Many DNFBPs (including casinos) were unable to elaborate on typologies, transactions or activities that would give rise to a STR, which, in the view of the evaluation team, is the result of insufficient understanding of risks and AML/CFT requirements.

454. The knowledge of DNFBPs regarding the obligation not to tip-off was at a basic and insufficient level.

5.2.6. Internal controls and legal/regulatory requirements impeding implementation Financial institutions

455. Banks have a good understanding of the internal controls and procedures needed to support compliance with AML/CFT requirements. Banks which are part of large EU groups or large banking and other financial groups (domestic and foreign) have sophisticated group-wide internal controls and procedural programmes that are well documented and reviewed. Due to NBG efforts, banks and some non-bank FIs are giving high priority to AML/CFT compliance functions, which are properly structured and resourced and are subject to internal audits. They generally have screening programmes for staff on recruitment and ongoing training programmes on AML/CFT matters. At the same time, the AML/CFT compliance officer does not always have a direct reporting line to the chief executive officer or to the supervisory board.

456. Non-bank FIs, except for those that are part of large EU groups or large banking and other financial groups (domestic and foreign) seem to have less sophisticated programmes.

457. The NBG during on-site inspections have identified some deficiencies related to the scope of training provided as well as some shortcomings in automated monitoring processes for small banks and non-bank FIs.

458. The application of data privacy requirements in Georgia may, at least to some extent, impede information exchange between different FIs within the same financial group. Two FIs, members of large Georgian financial groups, explained that, because of data protection requirements, they require customer consent before information can be exchanged within the group, and there are also limitations on sharing STR information within the group. In one case, it was noted that a Georgian parent (FI) had not been made aware of a SAR by its subsidiary (also a FI). However, the supervisor has clarified that the data privacy requirements should not impede information exchange.

DNFBPs

459. DNFBPs (including casinos), except one accountant/auditor that is part of an international network, have developed only very basic internal policies and procedures, with some not having an AML/CFT compliance officer, structured compliance function, or providing training. These internal policies and procedures are not always periodically updated.

Overall Conclusion on IO. 4

460. Understanding of risk and the application of AML/CFT preventative measures is strongest amongst FIs, in particular, in the banking sector, which is significantly more important than any other sector in Georgia based on materiality and risk. However, the evaluation team is concerned that smaller FIs do not consider all relevant factors, including context, when assessing ML/TF risk. There are also significant concerns about the application of AML/CFT preventative measures by DNFBPs, in particular by casinos and in the real estate sector (where there is no effective gate-keeper) which, respectively, are considered to be the second and third most important sectors in Georgia based on their materiality and risk (though much less so than banking). Generally, the risks involved in the extensive use of cash in the country, an important contextual factor, are under-estimated in all sectors.

461. As such, taking into account all the above, the evaluation team believes that IO.4 is achieved to some extent and major improvements are needed.

462. **Georgia has achieved a moderate level of effectiveness for IO.4.**

CHAPTER 6. SUPERVISION

6.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 3

- 1) The NBG effectively applies robust “fit and proper” entry checks for the FIs under its supervision (including broad consideration of reputation of the applicant), as well as on-going scrutiny of licensing requirements (both for applicants, as well as existing owners and controllers). For brokers and registrars, changes in owners or controllers or their fit and proper status are not subject to prior approval, but once notified, the NBG would react immediately.
- 2) The NBG has a comprehensive understanding of sectoral and individual institution risks, which it applies in the course of supervision planning, undertaking of supervision and awareness raising.
- 3) Since 2015, the NBG’s approach to AML/CFT supervision has developed significantly and is currently fully risk-based and carried out through a separate and well-resourced unit. Periodic reporting by the supervised population is duly analysed and forms the basis for sophisticated supervisory planning. The supervisory cycle that is set is adequate for the number and characteristics of the institutions and sectors supervised, and the NBG efficiently makes use of alternative types of inspections (e.g. thematic, ad hoc) to complement its regular supervisory actions. However, the NBG has not yet always met its on-site inspection targets (level of supervisory attention). It has demonstrated a proactive approach to non-standard situations.
- 4) The level of risk understanding and procedures with regard to licensing and supervision by the ISSS are broadly similar to the NBG, though less robust; this is proportionate to the significantly lower risks in the insurance sector.
- 5) Whilst the Ministry of Finance (MoF) is assigned as a supervisor of leasing companies, casinos and DPMS, it does not undertake any supervision of AML/CFT obligations in practice. It has a broad general understanding of ML/TF risks for the gambling sector but only a very limited understanding of ML/TF risks for leasing companies and DPMS. There are no licensing or registration requirements for leasing companies or DPMS. The technical deficiencies for licensing requirements of casinos seriously undermine the effectiveness of preventing criminals or their associates from holding, or being the beneficial owner of, a significant or controlling interest, holding a management function in, or being an operator of, a casino. This is particularly serious given the importance of this sector in Georgia (as this is the second most material after the banking sector).
- 6) There are no registration or licensing obligations for certified accountants or law firms (distinct from individual lawyers). Individual lawyers, notaries and auditors are registered, and absence of a criminal record is required (subsequent checks are, however, not properly considered for notaries and auditors). The level of supervision amongst these sectors is uneven. Certified accountants are not supervised. Whilst the SARAS and the MoJ include, to a limited extent, AML/CFT aspects in their general supervision of auditors and notaries respectively, no AML/CFT specific inspections have taken place and ML/TF risks are not considered independently of other risks. Auditors do, though, undertake relevant activities under FATF Recommendations only to a limited extent. The Bar Association limits its investigation of individual lawyers to cases where it receives a complaint or is in

receipt of negative information (none of which, to date, have included breach of AML/CFT obligations), and does not appear to directly supervise law firms. The overall approach to supervised entities by the SARAS, MoJ and the Bar Association is seriously hindered by their limited understanding of ML/FT risks in their respective sectors and absence of a clear supervisory framework for AML/CFT.

7) The NBG has applied a broad range of remedial actions and sanctions to FIs under its supervision, including revocation of licences. It has also applied sanctions to directors of obliged entities. The NBG's use of its sanctioning powers appears effective, proportionate and dissuasive. The ISSS and the MoJ have also applied remedial actions and sanctions for breaches. Their use of sanctioning powers for AML/CFT breaches, however, cannot be considered effective, proportionate and dissuasive. The sanctioning powers for AML/CFT breaches of other supervisors are hindered by significant technical deficiencies and lack of supervision in practice; hence, sanctions have not been applied.

8) The NBG has made a demonstrable difference to the level of compliance in the sectors under its supervision and is developing autonomously a significant amount of guidance and supervisory feedback, providing training, and conducting individual meetings with obliged entities. The situation with ISSS is broadly similar. The MoJ and SARAS also endeavour to enhance awareness of obligations and risks of the sectors under their supervision, mainly in cooperation with the FMS, with some success. Other sectors rely mainly on the FMS which, without further supervisory input, is insufficient. There is a good cooperation between supervisors and the FMS, as well as between obliged entities and their respective supervisors and the FMS.

9) Fund managers, collective investment funds, TCSPs, real estate agents, accountants that are not certified accountants, accountants when providing legal advice, and VASPs are exempted and this is not in line with the identified ML/TF risks, does not occur in strictly limited and justified circumstances.

Recommended Actions

1) The NBG should maintain the high-level of its efforts. In particular, it should ensure that it achieves the on-site inspection targets that it sets itself. Given the significant impact of its activities to date and the maturity of the majority of sectors under its supervision, it should also consider further enhancing the ownership of obliged entities of their own assessments of risk.

2) The MoF should put in place a comprehensive framework (or significantly improve the existing one) for licensing, fit and proper checks (criminality) and AML/CFT risk-based supervision with regard to all entities subject to its supervision, in particular casinos.

3) Georgia should rapidly review its decision not to apply the FATF Recommendations to some sectors. In the circumstances required by the FATF Recommendations, TCSPs, real estate agents, all accountants and VASPs should be subject to supervision for compliance with AML/CFT requirements. In particular, an effective framework should be put in place for the real estate sector and the creation and management of legal persons.

4) Supervisors of leasing companies and DNFBP sectors should significantly enhance their understanding of sectorial risks.

5) The Bar Association, MoJ and SARAS should review their fit and proper checks to ensure criminals are fully prevented from acting as notaries, accountants or owners or controllers of law or audit/accounting firms.

6) The Bar Association (lawyers) should put in place risk-based AML/CFT supervision and SARAS (auditors and certified accountants) and the MoJ (notaries) should significantly enhance their RBA to supervision which should be AML/CFT risk-oriented.

7) Georgia should review powers given to all supervisors (except for the NBG) in order to ensure that there is a range of proportionate and dissuasive sanctions in place to deal with failure to comply with AML/CFT requirements.

8) Respective supervisors should put in place systematic and comprehensive training of leasing companies and DNFBPs. Their overall outreach with regard to these sectors should be enhanced.

463. The relevant Immediate Outcome considered and assessed in this chapter is IO.367. The Recommendations relevant for the assessment of effectiveness under this section are R.14, 15, 26-28, 34, 35 and elements of R.1 and 40.

464. The introduction to IO.4 provides a brief overview of sectors that are subject to the AML/CFT Law. It explains that VASPs are not designated as obliged entities and so are not covered by the AML/CFT Law notwithstanding that there is a VASP sector present in Georgia (see IO.1). This means that VASPs are not required to be licenced or registered, nor subject to regulation and risk-based monitoring, and not subject to a sanctioning regime. Chapter 1 provides information on the relative importance of each sector.

6.2. Immediate Outcome 3 (Supervision)

6.2.1. Licensing, registration and controls preventing criminals and associates from entering the market

Financial institutions

465. The NBG applies robust controls when licensing FIs under its supervision (all FIs except for insurance companies and leasing companies). The NBG conducts fit and proper checks on owners and controllers of FIs: (i) persons in the ownership structure, including beneficial ownership; and (ii) directors and senior management, in the ownership structure, a direct or indirect share of 10% or more is considered, so structured ownership would be covered. In addition, connected persons (such as business partners, family members, etc.) are also considered in the context of persons “acting in concert”.

466. As part of these checks, the NBG requires proof of the absence of a relevant criminal record (certificate) for owners and controllers and this certificate must be provided for all the relevant jurisdictions that such a person has been connected to (nationality, previous employment, etc.). In case of doubt about on-going criminal investigations, it can also consult the LEAs, which would take place on an *ad-hoc* basis (though this has not happened in practice). The NBG is also given a broad general power to refuse applicants which pose a threat to the economic activity in respective sectors, so it assesses the overall reputation of the person (and possible association with criminals would be considered in this context). In this respect, it consults open source information, e.g. WorldCheck, and this is taken into account in its final decision (which must be well-reasoned and documented). The NBG confirmed that it has used this power on several occasions and its broad scope for discretion has not been questioned.

⁶⁷ When assessing effectiveness under IO.3, assessors should take into consideration the risk, context and materiality of the country being assessed. Assessors should clearly explain these factors in Chapter One of the mutual evaluation report under the heading of Financial Institutions, DNFBPs and VASPs, as required in the instructions under that heading in the Methodology.

467. Where relevant, the NBG also requests information about previous activity in financial markets outside Georgia by proactively requesting information from foreign supervisors (this was the case, for example, with the Financial Conduct Authority, UK). Whilst it has received full cooperation with respect to the banking sector, just one out of three requests from the NBG have been answered by foreign securities supervisors due to the absence of necessary MoUs in this sector. The NBG is currently preparing to sign the IOSCO Multilateral MoU in order to remedy these difficulties.

468. In all the sectors supervised by the NBG, the requirements of trustworthiness for owners and controllers to the extent described above (in particular the absence of a criminal record, but also other fit and proper aspects, such as reputation) continue on an ongoing basis. The NBG continuously and regularly verifies whether its licensing requirements continue to be met.

469. Changes in ownership and control must be reported to the supervisor, as well as criminal proceedings in respect of existing owners and controllers. There are some differences in this respect between sectors: changes in relevant persons are subject to prior approval by the NBG, except for brokers, registrars and currency exchange offices where the NBG is notified of all proposed changes (which would, where appropriate, prompt an immediately reaction within its supervisory powers). These differences are described in detail under R.26 and delays in informing the NBG could potentially affect the effectiveness of the system (though its powers to react are appropriate). In cases of changes of ownership and control, the NBG undertakes the same checks as within the licensing procedure.

470. In addition to the obligation for FIs under the supervision of the NBG to report changes in owners and controllers and fit and proper information, the NBG also actively seeks publicly available information concerning possible non-reported changes and periodically undertakes criminal record checks on existing owners and controllers.

471. With regard to banks and (since 2017) brokerage companies, the NBG also examines the source of capital that is used to fund the business. This measure efficiently assists in preventing illicit funds entering the financial market. For MFOs, source of capital is considered on a discretionary basis, but uncertainty about it can be a ground for refusing an application; also the origin of income and financial position of the owners has to be provided with the licence application. Source of capital is not considered at all for exchange offices and PSPs at the licensing stage; for PSPs this information can be requested and examined as part of the supervisory activity of the NBG. In addition, the NBG examines the business model of each applicant and covers a number of other areas in its licensing procedure (minimal capital, internal procedures and processes, IT requirements, etc.) and these are particularly robust for the banking sector. With regard to banks, the NBG also pays significant attention to the independence of managers and board members in order to prevent conflicts of interest and potential abuse of their position within the bank (a comprehensive questionnaire used in this respect has been provided to the evaluation team). These measures also assist to prevent the establishment and existence of “shell” institutions, in particular “shell” banks.

472. The table below depicts in further detail the applications received, processed and refused by the NBG in the period under review. As can be seen, the NBG does refuse applications when not fully satisfied with an applicant. However, it is rare to refuse on the basis of lack of fitness and propriety of owners and controllers of the applicant; rather applications are rejected on the basis of faults in the proposed business model, e.g. brokerage firms and PSPs. The authorities explained that these were predominantly forex

trading companies which tried to obtain a licence from the NBG for one of the aforementioned types of entities, but their business model was not considered to be adequate.

473. In addition, the evaluation team was informed that, on a number of occasions, only preliminary consultation took place with prospective applicants and, when informed about the requirements of the NBG's licensing procedures, applications were not received. Numbers are not recorded by the NBG.

Table 6.1. NBG licensing statistics

Sectors	Applications	2015	2016	2017	2018	2019 (1 Nov)
Banks	received	-	-	1	1	-
	processed	-	-	1	1	1
	approved	-	-	1	-	-
	rejected	-	-	-	-	-
Brokerage firms	received	1	-	4	11	5
	processed	1	-	3	12	5
	approved	1	-	2	2	-
	rejected	-	-	1	10	5
Securities' registrars	received	-	1	-	-	-
	processed	-	1	-	-	-
	approved	-	1	-	-	-
	rejected	-	-	-	-	-
Credit unions	received	-	-	-	-	-
	processed	-	-	-	-	-
	approved	-	-	-	-	-
	rejected	-	-	-	-	-
MFOs	received	6	19	28	1	-
	processed	6	19	28	1	-
	approved	5	16	21	1	-
	rejected	1	3	7	-	-
Currency exchange offices	received	280	297	338	171	162
	processed	280	297	338	171	162
	approved	278	294	323	165	158
	rejected	2	3	15	6	4
PSPs	received	7	45	52	25	10
	processed	7	45	52	25	9
	approved	7	24	20	9	2
	rejected	0	21	32	16	7

474. Fit and proper requirements are not in place for collective investment funds or fund managers (they must, however, register with the NBG). However, there are currently no participants in this market and a full review of the legal framework is underway.

475. It is to be noted that the NBG has had a higher degree of risk-appetite in the past as concerns the owners of financial institutions. There are two banks that are partially or fully owned by PEPs, and a large number of smaller financial institutions (PSPs and, to a lesser extent, currency exchange offices) are owned by non-resident persons. The NBG, nonetheless, considers these factors within its risk assessment of each FI and, for example, in 2017 currency exchange offices with non-resident ownership were prioritised for inspections. In addition, where serious concerns were identified in the operation of a FI, the NBG has also used its power to revoke a licence (see below in section 3.2.4).

476. The ISSS also applies robust entry procedures, which mirror those of the NBG described above. The only exception is that, according to current legislation, the ISSS is not given the discretion to look beyond the criminal conviction of an owner or controller and, therefore, associates of criminals cannot be prevented from owning or controlling an insurance company. The ISSS does not request information from its foreign counterparts within the licensing process, notwithstanding that some insurance companies are foreign-owned. It has not refused an application for a licence in the period under review, as all 5 applicants complied with licensing requirements.

477. Leasing companies are not subject to registration or licensing requirements.

DNFBPs

478. The MoF licenses terrestrial and on-line casinos. A proof of absence of criminal record is required only for direct owners (legal or natural persons) and the persons who are listed in the NAPR (companies registry) as representatives of the legal person (this would not necessarily cover all directors and senior managers, and allows the casino to exclude as representatives individuals with a criminal record). Ongoing criminal proceedings are not considered. The absence of a criminal record is considered only for Georgia, and no other countries. In addition, the MoF does not take into consideration possible criminal convictions or proceedings after the licence is obtained. The above-mentioned present significant deficiencies as not all beneficial owners and other persons in the chain of ownership, or relevant managers would be assessed. Importantly, even though casinos in Georgia have to be established as Georgian companies, in practice, their ownership structure is mostly foreign (about 50% of the casinos have a foreign element in their ownership and/or management). In this context, it is even more problematic that the absence of criminal convictions in foreign jurisdictions is not being considered. There are, therefore, some measures in place (outlined above), nonetheless, these do not adequately ensure that criminals would not own or control casinos in Georgia's large casino sector.

479. Notaries are subject to appointment by the MoJ and there is a *numerus clausus*, with each notary appointed to a specific regional location. Notaries have to be Georgian citizens with a legal education and cannot have been convicted of a criminal offence. Lack of criminal record is checked prior to appointment and the MoJ would be informed of subsequent criminal proceedings involving notaries by the LEAs directly. In the unlikely event that a notary had a foreign connection, no proof of absence of a criminal record from relevant foreign jurisdictions would be requested and the MoJ would rely on spontaneous disclosure by foreign jurisdictions, which does not seem to be effective. Notaries do not form legal persons and notarial bureaux consist only of individual notaries working jointly.

480. Lawyers (attorneys) are admitted to the Bar Association and cannot practice without being a member thereof. They cannot have been subject to a conviction for a criminal offence (though may be subject to an ongoing criminal proceeding). After admission, the court reports any subsequent conviction of members to the Bar Association, and this provides the legal basis for terminating membership. Since 2015, there have been six such terminations. Lawyers may form legal persons (as law firms) also with non-lawyers, and criminals would not be prevented in that case from owning or controlling those legal persons should they not be lawyers.

481. Accountants are not required to be registered or licenced. However, certified accountants will be a member of a professional body accredited in Georgia (e.g. the ACCA which is based in the United Kingdom) and criminal record check undertaken as part of

this membership. Auditors are required to be registered with the SARAS. Where the registered person is an individual, the SARAS requires proof that they have not been convicted of a criminal offence; it does not, however, check absence of criminal record after registration. Audit firms may include owners and controllers who are not registered auditors; criminal record checks are not undertaken for such individuals.

482. DPMS, real estate agents and TCSPs (other than the professions listed above) are not subject to registration or licensing requirements.

6.2.2. Supervisors' understanding and identification of ML/TF risks

Financial institutions

483. The NBG has a comprehensive understanding of the sectors that it supervises, and the ML/TF risks connected with them. It had initiated sectoral risk assessments even prior to the work on the NRA and its sectoral risk analyses were one of the key sources for the NRA itself. However, its understanding of risk may be limited by shortcomings identified under IO.1 regarding identification of some threats and vulnerabilities, and consideration of some contextual factors at national level.

484. As part of its supervisory planning, the NBG has developed an off-site AML/CTF supervisory tool which it utilises to obtain information on the activities of the FIs it supervises. This consists of a portal through which it also gathers information for the purpose of off-site AML/CTF supervision and promoting its risk understanding. All the sectors submit extensive off-site questionnaires twice a year, which enable the NBG to understand the type of business, clientele, etc. of the individual institutions (the introduction of this approach in practice was initiated: in 2015 for banks; in 2016 for MFOs, brokerage firms, securities' registrars and credit unions; in 2017 for PSPs; and in 2018 for currency exchange offices).

485. The off-site questionnaires are sector specific and consist of several categories of data - some quantitative and some qualitative. The key parts are related to customers, products offered, geographic area of business and type of business of customer. Detailed breakdowns of information are provided on the number of customers and volume of transactions with regard to the aforementioned specific categories. Other sections of the questionnaire collect information on transactions, STRs submitted, correspondent relationships, and there are open questions regarding further consideration of risk by the institution itself and result of follow-up on remedial measures applied by the NBG.

486. Through these questionnaires, the NBG collects significant information. The quantitative data related to the four key groups of information is then automatically analysed and extracted into charts and graphs. The receipt of information is fully automated, as well as its analysis which can then be generated in different dashboards and charts through the software used. Using this data, a percentage is calculated of elements identified as presenting a higher risk, which gives each institution an initial risk rating. This risk rating is then combined with a coefficient which is based on the relevance and materiality of each institution in order to achieve a comparable result amongst all FIs (for example, a large MFO would have the same coefficient as a small bank). Subsequently, the aforementioned risk ratings are grouped together by sector, which leads to a risk rating for an entire sector (this rating may be revised manually based on quantitative information and expertise of the supervisory team). This sectoral risk is then factored into the individual ratings given to each of the institutions. A further step is assessment of the quality of policies and procedures of the institution (compliance level of internal control

system). The aggregate of the aforementioned then results in the residual risk rating of a specific institution, which can be high, moderate - high, moderate - low or low.

487. This quantitative analysis is followed by qualitative consideration by NBG staff of the rating for residual risk, which takes into account: (i) further characteristics of individual institutions (known both from the off-site questionnaire and from on-site experience)(ii) compliance with recommendations given by the NBG in previous supervision; (iii) open source information (such as from the media); and (iv) information from other authorities, typically the FMS. This discussion can still lead to an amendment of the risk level of the individual institution (for the moment, risk ratings have always been only increased).

Table 6.2: Risk rating of FIs (residual) - excluding currency exchange offices

Year ⁶⁸	Risk Level	Banks	MFOs	PSPs	Credit unions	Brokerage firms	Securities registrars
2016	High	4	5	-	-	-	-
	Moderate-high	10	24	-	1	3	-
	Moderate-low	2	26	-	5	2	3
	Low	-	13	-	2	-	1
2017	High	3	4	5	-	-	-
	Moderate-high	7	18	11	1	3	-
	Moderate-low	6	29	13	7	1	4
	Low	-	21	2	-	2	-
2018	High	3	3	7	-	3	-
	Moderate-high	6	8	8	-	2	-
	Moderate-low	6	13	7	-	2	2
	Low	-	45	4	2	1	2
2019 (1 Nov.)	High	3	3	2	-	2	-
	Moderate-high	6	8	6	-	1	-
	Moderate-low	6	13	4	-	2	2
	Low	-	45	14	2	3	2

488. The NBG also uses information collected through questionnaires to inform its understanding of cross-cutting issues (such as international transfers). The NBG duly analyses the information received and can observe trends and changes in the behaviour of individual institutions and sectors.

489. The NBG also conducts group-wide risk assessments. Should all members of the group be under the supervision of the NBG, it uses its own information sources, otherwise it requests relevant information from other supervisory bodies, foreign counterparts or the institution under its supervision. Whilst the individual risk level of institutions will always be considered, it is complemented by information gathered and analysed for the entire group. This is information related to risks connected with the respective group members, their interdependence, as well as the quality of processes and control systems of the group. This information is used for supervision planning and in the course of carrying out inspections.

490. The table below presents the risk assessment of the NBG for individual sectors. More information on the use of the off-site assessments for the purposes of supervision planning is provided under section 3.2.3 below.

⁶⁸ Risk levels were not measured before 2016.

Table 6.3: Sectoral risk assessment of the NBG – inherent risk

NBG Obligated Entities	ML Risk Level	TF Risk Level
Banks	High risk	Moderate risk
Payment service providers	High risk	High risk
Brokerage firms	High risk	Low risk
MFOs	Moderate risk	Moderate risk
Currency exchange offices	Moderate risk	Low risk
Securities' registrars	Moderate risk	Low risk
Credit unions	Low risk	Low risk

491. As discussed under IO.1, the sectoral risk assessments of the NBG differ from ones concluded in the NRA (which were partially based on those provided by the NBG). This difference is not problematic, as both risk assessments are complementary and partially different in scope. The assessment of the NBG is mainly designed to differentiate risk amongst the different sectors and institutions for the purpose of their supervision and is focussed more on inherent risk, whereas the NRA risk assessment takes greater account of the impact of mitigating measures in place (i.e. residual risk). In addition, there were differences in the formal methodologies used (e.g. number of risk categories). Accordingly, there will be differences in assessments of risk levels, even though NBG data and experience have been relied upon extensively in both risk assessment processes.

492. The NBG also reacts proactively to new information and trends (e.g., see below with regard to fictitious legal persons). It is crucial that the NBG maintains these efforts in order to keep its risk-understanding up-to-date, whilst increasing its focus more deeply and objectively also at the risks posed by some aspects considered as typical to Georgian society (such as cash withdrawals and deposits for the purpose of money exchange), as these appear to be considered only superficially and the obvious explanation is taken for granted.

493. The ISSS has also implemented an off-site monitoring system similar to the one of the NBG with regular reporting twice a year. It has a broad understanding of the risks connected with the sector and individual institutions. It is to be mentioned, though, that the relevant type of products offered (life insurance) is very limited in Georgia (investment related insurance is not offered at all). Only basic life insurance is offered and this only in connection to private health insurance. In addition, the contracts and policies are renewable every year (there is, therefore, a very limited possible pay-out in case of cancellation of the policy). The risks connected to the sector are hence very low, which is also the understanding of the supervisor and it is confirmed in the NRA. The ISSS has shown a comprehensive understanding of the business and products offered by insurance companies in Georgia. It is also familiar with international standards, typologies and risk factors for the insurance sector, nonetheless, after a careful consideration, it discarded the majority as irrelevant in the context of Georgia. Notwithstanding the low risk, the ISSS actively endeavours to promote and expand the insurance market and is already considering the risks which future changes in the business model would entail.

DNFBPs

494. The department of the MoF responsible for (prudential) supervision of casinos has a broad general understanding of the ML/FT risks connected with the terrestrial and on-line gambling sectors. As no supervision of compliance with AML/CFT obligations is undertaken in practice though, ML/FT risks are not considered individually in relation to the different institutions; the only differentiation made being between land-based and remote operators (with the latter being considered as presenting a high-risk by the

supervisor). The knowledge of the sector by the MoF appears to be mainly informed by its prudential supervision.

495. The MoJ, Bar Association and the SARAS consider the ML/TF risks connected with the sectors under their supervision as low, mainly based on the assumption that, if sufficient mitigating measures (which consist predominantly of basic CDD measures) are put in place, this remedies fully possible risks. Their assessment of risk also considers elements other than ML/TF, e.g. the SARAS is focussed on the quality of audit opinions. This approach to understanding risks is insufficient. No consideration is given to possible differences in ML/TF risks between the individual institutions.

496. There is no appointed AML/CTF supervisor in practice for leasing companies, accountants (other than auditors), DPMS, real estate agents and TCSPs (other than the professions listed above). Whilst there is proven risk connected with the real estate sector and legal persons which are regularly abused for money laundering (see analysis under IO.7), sufficient consideration is not given by the authorities to the regulatory and supervisory framework currently in place, including absence of effective gate-keepers.

6.2.3. Risk-based supervision of compliance with AML/CTF requirements

NBG supervision planning

497. The NBG has a dedicated AML/CFT Supervision Department, which, at the time of the on-site visit, consisted of 26 staff (with 33 posts approved). It is further divided into three divisions: Methodology and off-site; On-site of banks and PSPs; and On-site of other entities. The Methodology and off-site division has 10 staff and undertakes comprehensive individual and strategic analysis of available information. It is also in charge of communication with supervised sectors and awareness raising and training activities. Its staff members participate on an ad-hoc basis also in on-site inspections both for training purposes, as well as to support the on-site inspectors. In the on-site supervision divisions, inspectors are assigned to specific inspections based on the Annual Supervision Plan, nonetheless, for systemic banks, particular inspectors are responsible on a continuous basis for specific institutions. It appears that the AML/CFT Supervision Department of the NBG is well resourced and its staff is knowledgeable and engaged. Specialists in mathematics and statistics assisted in preparing the off-site monitoring tool and analysing obtained information.

498. The approach of the NBG to supervision has been subject to significant changes since the last evaluation. Since 2015, the NBG has started to apply a risk-based approach to its AML/CFT supervision with regard to all sectors. As mentioned above in section 6.2.2, the introduction of this approach in practice was initiated: (i) in 2015 for banks; (ii) in 2016 for MFOs, brokerage firms, securities' registrars and credit unions; (iii) in 2017 for PSPs; and (iv) in 2018 for currency exchange offices. Currently, the approach is consistent across sectors. The entire supervision process is based on the NBG AML Supervisory Framework, which contains high-level principles for the planning and undertaking of supervision (for further information, please refer to the analysis under R. 26).

499. For the purposes of supervision, the NBG has issued manuals for its supervisory staff to follow for off-site supervision (analysis of off-site reporting data) and undertaking of on-site inspections. These manuals are issued specifically for each sector.

500. In periods before initiation of the fully RBA approach, where comprehensive off-site data was not available, mainly materiality of the institutions and sectors were taken into consideration when planning inspections, together with experience from previous

inspections about the relevant institutions. These were complemented by more general horizontal reviews which would give priority to certain institutions (e.g. in 2017 focus was given to currency exchange offices with non-resident ownership).

501. Currently, for the purposes of planning its supervisory activities, the NBG first assesses the risks connected to individual FIs, as described above in section 6.2.2. This leads to a risk level being attributed to each FI.

502. A further discussion is then led about the “supervisory attention level”, where further contextual information is considered (for example, prevalence of non-resident beneficial ownership of FIs). Whilst the “supervisory attention level” largely reflects the results of the risk assessment, it can slightly differ, as it also takes into consideration the actual resources available to the NBG and possible higher-level priorities for the relevant year. The supervisory attention level for each FI then provides the basis for the supervisory plan for the upcoming year (Annual Supervisory Plan), which contains a detailed plan of supervisory actions with regard to all institutions, including the number of dedicated staff for each on-site visit. The Annual Supervisory Plan is approved by a legally binding act of the Governor of the NBG.

503. Regardless of the Annual Supervisory Plan, should specific events take place in the course of a year, the NBG is pro-active in undertaking ad-hoc inspections of individual institutions or horizontal reviews of specific sectors with regard to identified issues. Information has been provided on a number of cases where the NBG initiated ad hoc inspections based on information it received either from its own activities or following a notification from the FMS.

504. The type of supervisory actions taken by the NBG depends on the level of supervisory attention attributed to a specific institution. These can include regular meetings with the management of the institution, thematic horizontal inspections, complex inspections and “quick-checks” (mainly as part of the follow-up process to an on-site inspection). The size, risk and complexity of the FI and thematic scope determines the size of the on-site inspection team (2 to 5 persons).

505. The table below shows the minimum target set out by the NBG Supervisory Framework for supervisory actions for FIs in a particular risk category, which are then complemented by ad-hoc, thematic and other non-complex inspections.

Table 6.4: Level of supervisory attention

Level of supervisory attention	Off-site reports	On-site inspections (complex)	Additional supervisory measures
High	2x year	1x year	Interview with the management or MLRO twice a year
Moderately high	2x year	Every 2 year	Interview with the management or MLRO once a year
Moderately low	2x year	Every 4 year	Interview with the management or MLRO once a year
Low	2x year	Every 5 year	Interview with the management or MLRO once a year

506. It should be noted, though, that the number of inspections undertaken during the period under review has differed to the periodicity foreseen above⁶⁹. It has been explained

⁶⁹ This calculation can be done only approximately (as it depends on the supervisory cycle, date of last visit and movement between risk groups), but as an illustration, approximate numbers of expected and undertaken visits for banks (calculated on the average for each risk category) are: (i) in 2017 - 8 expected and 4 undertaken; in 2018 - 7.5 expected and 5 undertaken; and in 2019 - 7.5 expected and 6 undertaken. The discrepancies for other sectors have been more substantial.

by the NBG that the number of on-site inspections actually undertaken does not correspond to the attributed level of supervisory attention mainly due to the process of increasing human resources within the period under review (hence the number of inspections has been lower and should gradually reach the targeted level). An additional aspect was the consideration of supervisory cycles where, since the introduction of the new approach in 2015, the NBG endeavoured to set a base line, i.e. prioritising first the inspection of all banks (as the most material sector). Whilst this explains to a certain extent the differences, it should still be noted that, at the time of the on-site visit, the foreseen methodology of on-site inspections did not fully correspond to the actual inspections undertaken in practice (even though the difference between numbers of foreseen and actual visits reduces each year).

NBG on-site supervision

507. The procedure for undertaking inspections is set out in the sector-specific on-site supervision manuals of the NBG. Before an on-site inspection takes place, this is communicated to the FMS which provides the NBG with current feedback concerning the specific institution (in particular with regard to compliance with reporting obligations). Within the inspection, internal policies and rules are reviewed and a cross-cutting sample of files selected and checked. The sample is chosen based on analysis of off-site reporting and focusses on possible areas of higher risk (complex structures of legal persons, PEPs, etc.). This approach would mainly apply to complex inspections, whilst other types of inspections conducted - ad-hoc, thematic inspections and quick-checks (which had a broad scope) - would be more focused on pre-determined topics (nonetheless, both internal procedures and practical cases would generally be always reviewed).

508. Complex inspections in banks would generally cover at least the following aspects: (a) practical implementation of obligations (cash operations and wire transfers, suspicious transactions, BO identification process, measures related to PEPs, etc.); (b) policies and procedures (CDD, transaction monitoring, correspondent relationships, identification of suspicious transactions, internal organisation, etc.); (c) IT systems (see below); (d) training; (e) AML/CFT compliance unit (resources, position of the MLRO, level of independence, etc.); (f) management (engagement of management in AML/CFT issues); and (g) Internal audit.

509. In a complex inspection in a FI, inspectors test the functioning of the IT system in use in order to ensure that the institution's internal policies are implemented in practice (for example, by testing the transaction monitoring scenarios using dummy transactions).

510. The final inspection report would contain not only identified breaches of specific relevant legislative provisions, but also an assessment of the risk which the specific breach poses to the institution.

511. The table below shows the total numbers of inspections undertaken by the NBG (all types of inspections). It is considered that the NBG has now established an effective supervisory cycle and conducts a proportionate number of inspections given the size and materiality of the sectors under its supervision. This is further enhanced by the fact that the supervisory plan is fully risk-based, and it is, therefore, ensured that FIs with higher risk are prioritised. As has been mentioned above, however, the actual number of on-site inspections does not correspond to the targets set by the NBG. As described below these inspections have led to a significant improvement in compliance.

Table 6.5: Number of inspections by the NBG (all types of inspection)

Year	Number	Banks	MFOs	PSPs	Currency exchange offices ⁷⁰	Money remittance entities ⁷¹	Credit unions	Brokerage firms	Securities' registrars
2019 (1 Nov)	Operating	15	53	28	730	-	2	9	4
	Inspected	6	13	1	28	-	-	-	-
2018	Operating	15	67	28	1,016	72	2	9	4
	Inspected	5	2	9	38	-	-	4	4
2017	Operating	16	75	38	1,126	85	8	8	4
	Inspected	4	6	7	96	32	-	-	-
2016	Operating	16	81	38	1,200	118	11	7	4
	Inspected	1	13	-	111	9	-	-	-
2015	Operating	19	70	24	1,159	45	15	8	3
	Inspected	1	-	-	491	30	11	-	-

512. In addition to complex inspections, supervisory activities of the NBG have also been driven by further general threats and vulnerabilities that it has identified from off-site reporting, the media, input from other authorities, or other sources. As an example, it can be mentioned that the NBG has been placing significant attention on the establishment of relationships with legal persons with non-resident ownership, cross-border transfers of funds, and risk categorisation of customers (which has also been identified as a potential issue by the evaluation team, see analysis under IO.4 in this respect). These have led to horizontal thematic inspections focusing on specific sectors or institutions. For example, there were themed inspections of banks in 2018 covering areas such as beneficial ownership of complex legal persons, international transactions and risk classifications. The NBG confirmed that appropriate follow-up action was taken with regard to the deficiencies identified (such as reliance on insufficient documentation to support the ownership and control structure of customers, insufficient mitigation measures with regard to the identified risk, etc.).

Box 6.1: Supervisory action - Bank A

Whilst all other banks in Georgia have an automated monitoring system, there remains one smaller bank (Bank A) which does not. The NBG reviewed its internal processes during a complex examination and was not satisfied with the procedures and mechanisms Bank A had in place.

Consequently, the NBG increased the risk rating of Bank A and, thus, increased its monitoring regime. It regularly meets with the senior management and AML/CFT Supervision Department. Currently an action plan is being prepared to agree a remediation timeframe and remedial actions to be taken by the bank. Given the support from senior management and the size of the bank improvement is expected.

Notwithstanding this, as an interim measure, the NBG placed restrictions on the operations of Bank A in order to mitigate the vulnerabilities posed by its internal systems.

⁷⁰ 2019 figure excludes branches. Earlier years include branches.

⁷¹ Numbers include branches which were also required to be registered. Accordingly, numbers operating can vary from period to period. In 2017, ahead of changes to legislation a number of money remitters (also registered as PSPs) surrendered licences.

⁷² Due to enacted legislative changes, abovementioned type of financial institutions are not registered separately as money remittance entities, but instead, the service provided by them is now conducted by payment service providers.

In particular, it placed restrictions on certain types of operations (for example, international transactions with offshore zones).

Supervision by the ISSS

513. The ISSS also has a dedicated AML/CFT supervision department which consists of 3 persons. Given the context and risks of life insurance in Georgia, this seems to be adequate. Supervision is also planned on a yearly basis based on results of an off-site questionnaire (submitted by insurance companies twice a year); it is also set out in an annual supervision plan. Based on the off-site information, the ISSS also assigns risk ratings to individual institutions, which is then used to prioritise them when planning inspections (together with information from previous inspections). Given the fact that offered products are identical amongst the insurance companies, the main factors differentiating them are materiality and structure of clientele. During on-site examinations, procedures are checked, as well as samples of customer files. Overall, the approach is similar to the NBG, though less robust, which is proportionate to the context and risks of the sector.

Table 6.6: Number of inspections by the ISSS

	2015	2016	2017	2018	2019 (Oct)
Number of entities	14	14	17	17	17
Number of on-site inspections	7	7	6	3	3

Leasing companies

514. According to the AML/CFT Law, the MoF is the supervisor for leasing companies. However, there are no practical arrangements in place to take up and perform these statutory duties.

Other supervisors (DNFBPs)

515. The MoF supervises casinos only for compliance with their general “licensing requirements” (such as use of CCTV cameras, protection of safes, etc.) which do not include compliance with obligations resulting from the AML/CFT Law. No AML/CFT supervision is, therefore, in place for casinos, one effect of which has been the weak application of preventative measures.

516. The MoJ is the authority responsible for supervision of notaries’ activities. All notaries use an electronic database which provides them with access to information in the public registries and enables the MoJ to communicate with the sector. This database is also used to undertake the majority of notarial functions (it has different components which each serve a different purpose within the same database). The MoJ is able to access this database and could, therefore, undertake some off-site supervision of compliance with AML/CFT obligations (such as verifying whether all CDD information regarding a customer was entered properly). However, it is not clear whether this takes place on a regular systematic basis. The MoJ delegates some of its supervisory duties to the Chamber of Notaries, which provides initial training to recently appointed notaries and conducts an inspection within 6 months of appointment. It appears, though, that this inspection is limited to ascertaining whether the electronic database is correctly used. On-site supervision remains with the MoJ which confirmed that it undertakes inspections of notaries. Inspections, however, are limited to supervising compliance with general notarial duties and compliance with AML/CFT obligations would be assessed only to the extent they are relevant to notarial duties (e.g., identification of customers for the purpose

of registering real estate in the NAPR) or certain rule-based obligations (e.g. reporting of CTRs). Between 2012 and June 2019, 361 notaries have been subject to inspection. Even though 345 disciplinary penalties have been applied in this context, only 6 were for AML/CFT breaches, out of which all related to non-compliance with the CTR reporting obligation. This supports the conclusion of the evaluation team on the formalistic approach to inspections undertaken.

517. Lawyers are supervised by the Bar Association, through its Ethics Commission. Inter alia, the Ethics Commission, has the power to investigate: (i) with respect to reported complaints; and (ii) on its own initiative - based on negative information (which has happened on five occasions since 2015). The scope of a particular investigation is also restricted to the subject of the original complaint or negative information held (even if it identifies other deficiencies in the activities of the inspected lawyer). None of the complaints considered to date have related to failure to comply with AML/CFT obligations. In addition, the view expressed by the Bar Association to the evaluation team was that lawyers are an independent profession and, as such, supervision of their activities should remain restricted to investigation of complaints, thus not be conducted proactively or risk based. Law firms (distinct from individual lawyers) are not supervised.

518. Certified accountants (but not other accountants) have an assigned supervisor, which is the SARAS. The SARAS, however, does not undertake supervision with regard to accountants in practice (some purely conduct-type oversight could be performed by a professional association that the accountant is a member of; there are 3 such associations). There is, therefore, no supervision for AML/CFT purposes of this sector.

519. The SARAS does, however, undertake supervision of auditors. Before its establishment in 2016, there had been no supervision at all. Since then, it has launched a number of supervisory activities. Initially, it focussed solely on auditors permitted to undertake audits of public interest entities that had still to be registered (there was an urgent need for confirmation of compliance with auditing standards in order to allow for their further operation). Since then, the SARAS has initiated regular supervision of the auditing sector. For the time being, however, supervision of compliance with obligations in the AML/CFT Law is ancillary to inspection of compliance with general duties of auditors (especially the quality of audit reports and compliance with ethical obligations). This would include, to a certain extent, CDD measures, but, it appears, would not go further.

520. There is no risk-based approach based on ML/FT risks applied in the supervision of any of the aforementioned DNFBP sectors.

521. According to the AML/CFT Law, the MoF is the supervisor for DPMS. However, there are no practical arrangements in place to take up and perform these statutory duties. Real estate agents and TCSPs (other than the professions listed above) are not regulated for AML/CFT purposes at all (without appropriate justification of proven low risk, and without being applied in limited and justified circumstances). In particular legal persons and real estate have been repeatedly abused in practice for money laundering (see cases described under IO.7) and there is no effective gate-keeper in place, which is considered to present a serious vulnerability.

6.2.4. Remedial actions and effective, proportionate, and dissuasive sanctions

Financial institutions

522. When it identifies breaches in the course of inspections, the NBG consistently applies remedial measures, which are targeted and proportionate. Principally, the NBG endeavours to enhance compliance and understanding of supervised FIs with their AML/CFT obligations and, therefore, inspections would generally be followed by a designated action plan containing issues which have to be remedied, together with a timeline (this action plan is proposed by the institution and approved by the NBG). The NBG duly follows up on compliance with the agreed schedule.

523. If the deficiencies in place present significant vulnerabilities, the NBG regularly: (i) sets mandatory requirements - conditions that must be met in pre-determined timeframe; and (ii) places restrictions on the types of activities that can be conducted - as has been described in the case study under section 3.2.3 and presented in the table below.

524. Whilst the use of remedial and restrictive measures (mandatory requirements, restrictions and written warnings) has been the predominant focus since the beginning of the NBG's review of its approach to AML/CFT supervision (application of the risk-based approach, etc., as described above), it also accompanies systematically these measures with monetary sanctions (which is currently the rule in almost all cases). As stated in the TC annex, the NBG can apply monetary fines only with regard to individually identified breaches (with the exception of the banking sector, where a significantly larger fine may now be imposed for systematic deficiencies). This system of fining for individual breaches appears to put more burden on the NBG, which has to count individual breaches even in the case of a systematic problem in the institution (even though it can also sanction, in some instances, the systematic breach itself). It also does not give supervised entities legal certainty, because it is left to the discretion of the NBG how many files it will take into consideration in an on-site examination. In practice, the NBG does not consider that the system presents administrative difficulties.

525. This being said, it is to be noted that the sanctioning regime of the NBG in practice for non-bank FIs appears proportionate and dissuasive. Based on historic data, banks have been fined around GEL 300 000 (EUR 100 000) and smaller institutions subject to lower fines ranging from GEL 20 000 to GEL 100 000 (EUR 7 000 to EUR 33 000) which is considered to be appropriate in the context of Georgia (for comparison, the average profit of MFOs, which are the largest non-banking financial sector, has been around GEL 500 000 (EUR 160 000) per year). Fines would always be accompanied with aforementioned recommendations for improvement. In addition, the NBG has demonstrated use of further remedial measures, such as application of monetary fines to directors (shown as management fines in the following table) or their removal from office, even though this practice is not very common.

526. The NBG has also revoked the FI licences for AML/CFT reasons on a number of occasions. As can be observed from the table below, this has been predominantly the case with currency exchange offices and PSPs. This was mainly due to systematic deficiencies in internal control systems identified by the NBG, linked to fit and proper concerns about owners and controllers that could not be addressed through the licensing process in place at that time.

Table 6.7: Sanctions applied by the NBG for breaches of AML/CFT obligations⁷³

		Banks	MFOs	PSPs	Currency exchange offices	Money remittance	Credit Unions	Brokerage Companies	Securities Registrars
2019 (1 Nov)	Amount of fine	959 000	496 300	-	177,100	-	-	-	-
	Management fines	1	3	-	-	-	-	-	-
	Mandatory requirements	35	112	-	111	-	-	-	-
	Restrictions	2	2	5	-	-	-	-	-
	Written warning	6	13	1	28	-	-	-	-
	Termination of licence/registration	-	-	-	-	-	-	-	-
2018	Amount of fine	596 000	291 700	256 400	456 600	-	-	42 700	71 100
	Management fines	1	-	2	-	-	-	-	-
	Mandatory requirements	28	14	44	266	-	-	33	52
	Restrictions	2	-	3	-	-	-	-	-
	Written warning	3	-	3	31	-	-	-	-
	Termination of licence/registration	-	-	-	6	-	-	-	-
2017	Amount of fine	2 040 700	287 800	-	359 850	65 100	-	-	-
	Management fines	-	4	-	-	-	-	-	-
	Mandatory requirements	42	72	-	642	181	-	-	-
	Written warning	4	4	1	-	-	-	-	-
	Termination of licence/registration	-	-	6	65	1	-	-	-
2016	Amount of fine	-	757 500	-	413 700	140 250	-	-	-
	Management fines	-	-	-	-	-	-	-	-
	Mandatory requirements	-	121	-	726	58	-	-	-
	Written warning	1	12	-	111	-	-	-	-
	Termination of licence/registration	1	-	-	70	-	-	-	-
2015	Amount of fine	200	-	-	127 550	19 000	15 950	-	-
	Management fines	-	-	-	-	10	-	-	-
	Mandatory requirements	17	-	-	2 857	114	69	-	-
	Written warning	1	-	-	480	27	11	-	-
	Termination of licence/registration	-	-	-	7	-	-	-	-

527. The NBG has also demonstrated a proactive approach to handling ad-hoc cases, where it reacted outside its supervisory plan due to identified non-standard circumstances.

⁷³ Fine is provided in Georgian national currency (GEL). GEL 1= EUR 30 cent.

Box 6.2: Banking licence withdrawal - Bank B

Pursuant to data obtained from off-site monitoring, the NBG noticed significant changes in the business undertaken by Bank B in 2015. In particular, the number of customers increased by 3.4 times and the volume of transactions by 1.5 times in the course of one reporting period (6 months); also, the number of customers from high-risk jurisdictions and transactions to/from high-risk jurisdictions increased considerably (mainly offshore countries). In addition, most of the new customers were assigned a low risk rating. Furthermore, there was a significant increase in the percentage of the customer base represented by non-account holder customers (with low levels of total transaction volume, but high average volume per transaction) and these transactions were being conducted mainly in cash and by non-residents. The bank explained that these variances were due to it running a currency exchange office at the airport.

Based on the above, the NBG decided that the customer acceptance and risk categorisation policy of Bank B should be subject to an on-site inspection.

In the course of the inspection, it was ascertained that the level of compliance with AML/CFT obligations presented serious deficiencies, in particular with regard to risk classification and undertaking of CDD measures. In addition, Bank B had opened a number of accounts for fictitious legal persons, the beneficial ownership of which was connected to the BO of the bank. These companies were on-boarded without proper CDD checks and appropriate monitoring of their activities.

Pursuant to these findings, the NBG required a replacement of the management and BO of Bank B and, subsequently, in 2016, the licence of Bank B was revoked due to serious deficiencies.

Box 6.3: Appointment of administrators - Bank C

An AML/CFT on-site inspection of Bank C in 2013 highlighted serious deficiencies in the adequacy of internal control systems. Initially, the NBG appointed two temporary administrators (NBG employees). Following their appointment, powers of all governing bodies and administrators of the bank were suspended.

528. The NBG also constantly reconsiders the effect of the measures it applies. This has led to amendments to the sanctioning powers of the NBG on several occasions and to an increase in the level of fines the NBG can apply for AML/CFT breaches, the possibility to apply sanctions to banks for systematic failures in systems and controls, as well as to the introduction of an obligation to publish the applied sanctions (currently this does not include the name of the sanctioned entity).

529. Overall, it can be concluded that the sanctioning powers of the NBG are appropriate and it uses them effectively in practice by applying a range of sanctions in a proportionate and dissuasive way. The NBG also has proven impact on the compliance of entities under its supervision (see core issue 3.5).

530. In 2015-2016 the ISSS mostly focused on increasing compliance with AML/CFT obligations and, therefore, mainly recommended actions to be taken (“written warnings” in the table below). Since then, it has also applied monetary fines, but these are very low, as can be seen in the table below. No other sanctions have been applied. Despite the materiality and context of the insurance sector and its low risk profile, it cannot be concluded that these sanctions are dissuasive.

Table 6.8: Sanctions applied by the ISSS

	Inspections	Inspections with findings	Written warnings issued	Number of issued fines	Value of fines (in EUR)
2015	7	7	1	-	-
2016	7	7	4	-	-
2017	6	6		6	9 700
2018	3	3	1	2	3 430
2019	3	3	2	1	1 470

DNFBPs

531. As mentioned above, 6 AML/CFT disciplinary penalties have been imposed on notaries by the MoJ in the period under review, all for breach of the CTR reporting obligation. In all the cases, suspension of notarial functions was applied (from 1 to 8 months). This, to a certain extent, could be considered as dissuasive (as the result might be stronger than a monetary fine). Notwithstanding this, overall, it cannot be concluded that remedial actions and sanctions are applied in practice to notaries, given the limited scope of the AML/CFT aspects considered in inspections (due to which no breaches are identified).

532. No other supervisors have applied sanctions for breaches of AML/CFT obligations which is mainly due to the lack of effective supervision with regard to compliance with AML/CFT obligations (as described above) and technical impediments to their sanctioning powers (as described in R.28 and R.35).

6.2.5. Impact of supervisory actions on compliance

533. As can be observed from the more detailed analysis under IO.4, the level of understanding of risks and level of compliance with AML/CFT obligations of obliged entities is linked to the level of supervision applied by the respective supervisor.

534. By far the largest impact has been demonstrated by the NBG, which is continuously involved in influencing the risk appetite of the entities under its supervision, e.g. through guidance, interpretative materials and significant awareness raising efforts. This is complemented by agreed action plans and follow-up inspections after supervisory activities. The sectors under its supervision are well aware of the materials issued by the NBG and use them in practice (as an example can be mentioned the NBG guidance on BO). In addition, horizontally, the NBG has undertaken significant efforts to tackle systematic problems, such as on-boarding of legal persons without a demonstrated connection to Georgia (fictitious companies) which have been translated into closing of such business relationships or their refusals, e.g. one bank has closed and/or refused to establish relationships with around 1,000 fictitious companies. The NBG guidance is prepared in cooperation with the private sector representatives and it draws also upon risks identified by FIs. On the other hand, as is discussed in further detail in IO 4, some institutions appear to over-rely on the guidance of the NBG in particular with regard to their risk assessments.

535. The NBG confirmed that it has seen a significant improvement in compliance in the period under review - as a result of its efforts (which can be measured through information collected on a six-monthly basis). The number of staff involved in AML/CFT and engagement of management has increased in FIs. It has also noted increased understanding of risks, mainly by banks. The NBG has noted some improvement in the understanding of the reporting obligation and it is focusing on the quality of STRs, as this

still remains an issue. FIs made positive comments to the assessment team about the NBG's approach to supervision which they say has improved significantly in recent years.

536. The ISSS also actively communicates with its supervised population and promotes understanding of AML/CFT risks and obligations, of which the insurance companies were well aware. It has also confirmed that its remedial measures and follow-up actions always results in an increased compliance of the supervised entity, though inspections continue to identify some breaches.

537. Other designated supervisors have been unable to demonstrate that their actions have had an effect on compliance.

6.2.6. Promoting a clear understanding of AML/CTF obligations and ML/TF risks

538. Overall, there is a good cooperation between supervisors and the FMS, as well as between obliged entities and their respective supervisors and the FMS.

539. The NBG is involved in a significant number of outreach initiatives, some of which it undertakes jointly with the FMS. It has published an extensive number of guidance documents, distributes official documents (e.g. legislation, NRA, sanctions lists; mainly through its communication portal) and provides general recommendations or warnings, such as with regard to the risks connected to the VASP sector, gambling sector and e-commerce – this mainly in connection to abuse of fictitious companies).

540. It also engages actively in promoting the understanding of AML/CFT risks and obligations, both at horizontal and sector specific levels. It does so through regular and ad-hoc training, informal meetings with representatives of respective sectors, meetings with representatives of individual institutions, etc. In the period under review, 19 training sessions were held by the NBG, and 46 group meetings arranged between 2015 and 2019. The authorities have provided information on topics covered in training, numbers of attendees and sectors represented for 2017 to 2019. Training was provided to all types of FI supervised by the NBG on: (i) beneficial ownership guidelines; (ii) RBA guideline; and (iii) draft NRA (threats and vulnerabilities). In addition, sector specific training was provided to: (i) banks - Guidelines on due diligence measures, and risk bearing products and delivery channels; (ii) MFOs - use of the AML portal, CDD requirements and application of a risk-based approach; (iii) PSPs - ML/TF risks in the sector and risk bearing products and delivery channels; and (iv) currency exchange offices - use of the AML portal, CDD requirements and application of a risk-based approach. The numbers attending training varied, from 25 to 122 attendees. Obligated entities are aware of, and appreciate, the training activities of the NBG, which are considered to be effective by the evaluation team.

541. The NBG has not provided this information for earlier years, nor the following for the entire period under review: (i) number of group meetings by sector and examples of topics discussed; (iii) number of individual meetings with other institutions; and (iv) details of other outreach activities.

542. The NBG actively endeavours to ensure high participation of the private sector in its outreach activities, for example with regard to training on the NRA it checked that all obliged entities had attended the training that it organised, and it has run additional sessions to ensure this. In the group meetings (informal meetings with sectoral representatives), the NBG presents information on new changes, new trends, but also takes in feedback from the industry on identified risks or problematic issues.

543. All the FIs met were well aware of all the outreach activities undertaken by the NBG, which they generally very much appreciated. In addition, the message of the NBG was well received and understood. Given the positive effect of the NBG's activities in promoting a generally high level of understanding of risks and obligations and the apparent maturity of the majority of its supervised population, it will be beneficial in the up-coming stage for the NBG to refocus on enhancing the "ownership" by obliged entities of their own assessment of risks going beyond the NBG guidance.

544. The ISSS also provides training and other types of awareness raising activities (including frequent communication, issuance of guidance) with regard to insurance companies.

545. The Notary Chamber (under the auspices of the MoJ) organised in 2018 and 2019 a series of training sessions related to suspicion transaction monitoring (indicators of suspicious transactions) and reporting of STRs. The number of participants was 67 and 42 in the two years, respectively.

546. With regard to other sectors, obliged entities rely solely on the efforts of the FMS (training and meetings connected to the NRA and awareness raising activities connected with reporting obligations). Accordingly, these other supervisors do not promote a clear understanding of AML/CFT obligations and ML/TF risks (but would, sometimes, participate in activities organised by the FMS, for example the SARAS).

Overall Conclusion on IO.3

547. The NBG is now undertaking supervision following a fully risk-based model, and the approach of the ISSS is broadly similar. Some issues have, however, prevented the NBG meeting its on-site inspection targets (level of supervisory attention) in the period under assessment. The NBG has demonstrated a significant positive impact with its activities amongst its supervised population. There are, however, number of sectors which are not regulated at all, or do not have an appointed supervisor in practice (in particular, there is no efficient gate-keeper for the real estate sector and the creation and management of legal persons, which are highly relevant in the context of Georgia); these exceptions have not been justified by a proven low risk. In addition, existing DNFBP supervisors are supervising for AML/CFT purposes to a very limited extent.

548. By far the most material sector is banking, which benefits from the NBG's efforts. Nonetheless, it is considered a serious deficiency that there are insufficient licensing requirements and no AML/CFT supervision for casinos, and no effective supervision of the real estate sector. Both are important sectors in the context of Georgia based on materiality and risk, and the real estate sector has featured on a number of occasions in actual ML cases.

549. **Georgia has achieved a moderate level of effectiveness for IO.3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

7.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 5

1) Setting up a legal person in Georgia is straightforward and all information that is necessary for registration is publicly available. Most legal persons are registered as limited liability companies (LLCs) which account for 90% of turnover of business entities according to the NRA. Amongst other forms of legal person, joint stock companies (JSCs) and NPOs may also be formed in Georgia. Information on the creation and types of legal persons found in the country is available on the NAPR's website.

2) Due to the ease of founding a legal person, most register directly with the registrar of companies (NAPR), and "gate-keepers" (such as notaries, lawyers or accountants) are often not involved. Except for the aforementioned, TCSPs are not designated as obliged entities.

3) The NRA report includes an assessment of the risk of legal persons where it provides a description of the framework in place. It also highlights cases where legal persons, particularly LLCs, have been abused. However, the NRA does not systematically consider a number of important matters, including the extent to which TCSPs administer legal persons in Georgia, and the authorities have not demonstrated effective identification and analysis of threats and vulnerabilities in order to support the country's understanding of ML/TF risk. It is, however, universally understood by competent authorities and obliged entities that the use of fictitious LLCs in criminal schemes constitutes a significant ML risk and, in general, attention is paid by them to complex ownership and control structures.

4) Nominee shareholdings are permitted for JSCs which must use a nominee that is an obliged person and regulated and supervised by the NBS. Nominee shareholdings are not prohibited for LLCs and there is no regulation of their use.

5) All legal persons register with the NAPR. The NAPR holds basic information on representatives (directors) of all legal persons. It also holds information on direct shareholders or partners of legal persons (first level of legal owners), except for JSCs, cooperatives and NPOs where only founding shareholders/members are registered. Changes to basic information take effect only after their registration by NAPR, so basic information held in the register is always adequate, accurate and current and available to competent authorities. Whilst, the validity of unregistered changes of ownership between involved parties has not been tested, this is not considered to materially affect effectiveness.

6) A JSC which has more than 50 shareholders, or has issued public securities, uses a registrar that is regulated and supervised by the NBS to maintain its share register (and as such the registrar applies full CDD requirements to all direct shareholders). All other JSCs maintain a private register of direct shareholders themselves. Changes of shareholdings of JSCs take effect only upon registration in the register and so basic information in the register is always adequate, accurate and current and available to competent authorities. NPOs register only founding members in the NAPR, and a list of other members is not explicitly required to be maintained. This is not effective.

7) Three mechanisms are available to obtain information on beneficial ownership of legal persons established in Georgia: (i) through a public registry - NAPR (which records direct legal shareholders); (ii) through obliged entities (banks and registrars) (which are subject to CDD and record-keeping requirements); and (iii) directly from the legal person (which records direct legal shareholders and not BO information). Mechanisms used cannot be relied upon in all cases to provide adequate, accurate and current beneficial ownership information.

8) There is proven abuse of legal persons in Georgia, including through the use of “fictitious” companies. Measures have been taken to prevent this misuse, in particular through raising awareness of FIs and application of dissuasive sanctions by the NBG when inadequate CDD measures have been applied to relationships involving such companies. Nonetheless, the extent to which this vulnerability remains has not been demonstrated and cannot be addressed solely by improving the implementation of CDD measures by banks since not all legal persons hold a bank account in Georgia.

9) No legal arrangements are recognised under Georgian legislation and the use of trusts in the country is very limited.

10) Effective, proportionate and dissuasive sanctions have been applied by the NBG against banks and registrars for failing to apply CDD measures in accordance with the AML/CFT Law. Given that basic information held in the NAPR register will always be adequate, accurate and current, there is no need for sanctions to be available or applied.

Recommended Actions

1) Georgia should extend efforts to comprehensively identify, assess and understand the risks connected with legal persons (including fictitious companies) and legal arrangements, including methodological issues that have been identified (see section 7.2.2). It should also assess the extent to which legal arrangements are administered or managed in the country.

2) Georgia should address vulnerabilities presented by fictitious companies established in the country which do not hold bank accounts there.

3) Georgia should consider the use and types of TCSPs operating in Georgia and their involvement in company formation and management with a view to subjecting them to AML/CFT obligations in line with FATF Standards.

4) Georgia should implement effective measures to regulate nominee relationships for LLCs.

5) Georgia should review the system and implement measures to ensure that adequate, accurate and current BO information will always be available to the competent authorities on a timely basis, focusing in particular on companies that do not bank in Georgia. Measures that might be considered include setting up a centralised systematised database of BO information.

6) Georgia should test whether unregistered changes of ownership and directors of legal persons may be considered valid and enforceable and apply any necessary preventive measures.

550. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25, and elements of R.1, 10, 37 and 40.

7.2. Immediate Outcome 5 (Legal Persons and Arrangements)

551. Georgia ranks 7th in the world in the “Ease of doing business” World Bank study⁷⁴, a part of which includes an assessment of the procedures for setting up business. In general, setting up a legal person in Georgia is straightforward. As it is highlighted in the NRA, registration of a legal person is undertaken within one business day, it can be done through more than 400 service points, which are acting under the designated authority of the NAPR (including authorised banks and notaries) and the registration fee is only GEL 100 (EUR 33). The registration application does not have to be notarised and lawyers, accountants and other TCSPs do not have to take part in the process of establishment and registration.

552. The types of legal persons which can be established in Georgia are set out in Chapter 1. All the mentioned entities, as well as branches of foreign legal persons, have to be registered in the NAPR register.

553. Most legal persons are registered as limited liability companies (LLCs) and account for 90% of turnover of business entities.

554. Out of all corporate customers of banks (which bank two-thirds of legal persons in Georgia), only 2% have ownership/control structures that are relatively “complex” (two or more tiers of ownership). Information provided by NAPR shows that around 90% of LLCs are solely owned by individuals. The equivalent figures for partnerships and limited partners are 70% and 84% respectively. Similar information is not available for JSCs.

555. Foreign ownership is marginal in limited and general partnerships (3,77% and 0,45% respectively) and only represented by natural persons. In LLCs, 48 602 LLCs have at least one foreign natural person as shareholder (19,2% of all LLCs) and 2 559 LLCs have at least one foreign legal person (0,9%) in the ownership structure. Information is not available for JSCs.

556. As concerns business activities of legal persons, this information is generally not collected. With regard to some sectors, however, a specific permission or licence is needed, and register kept of these activities.

557. Whilst the analysis below assesses the transparency of all types of legal person available in Georgia, its main focus is on LLCs. This type of legal person is most prevalent in terms of numbers registered and use observed in ML cases in Georgia.

7.2.1. Public availability of information on the creation and types of legal persons and arrangements

558. The types of legal persons which may be established in Georgia are set out in the Law on Entrepreneurs and the Civil Code. These laws also contain the full procedures for the establishment of such legal persons, with more detailed information being set out in the Decree on Registration with the NAPR. The NAPR publishes on its website a summary of functioning of the different types of legal persons, as well as basic information regarding the documents which must be provided upon registration. The NAPR also has on its website a section for frequently asked questions, which tackle some basic areas. All the necessary information for the establishment of a legal person in Georgia is, therefore, publicly available.

⁷⁴ <https://www.worldbank.org/en/news/press-release/2019/10/24/georgia-ranks-7th-in-the-world-for-ease-of-doing-business-says-latest-world-bank-study>

559. Trusts cannot be established under Georgian law. Whilst Georgian residents could be operating as trustees for foreign trusts, based on the knowledge of the authorities and private sector, the number of trusts using services of FIs in Georgia is almost non-existent⁷⁵. Whilst this is not conclusive on the number of trusts actually operating in Georgia, it points to a low materiality for their operation in the country. This view has been supported by the authorities and private sector representatives met on-site.

7.2.2. Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

560. The NRA report includes an assessment of risk connected to the possible misuse of legal persons. However, the analysis contained therein is rather basic. It contains a factual overview of relevant legislation, types of legal persons found, and numbers of legal persons established. In addition, it also mentions the number of inactive legal persons identified by the Revenue Service and inactive corporate accounts in banks, together with the fact that, in most of the investigated and prosecuted ML cases, legal persons were misused in the laundering schemes (in particular LLCs).

561. The NRA mentions that, out of the above-mentioned legal persons established in Georgia, 130 000 (47%) are inactive (predominantly LLCs – 104 889 companies). In addition, 8 000 inactive corporate accounts with banks have been identified by the NBG in 2018. This information has not led to any further conclusions about vulnerabilities except for the statement that this is the case because the procedure to wind-up a company is more complicated than its establishment.

562. In addition, the NRA concludes that BO information is easily accessible through the information that must be obtained by obliged entities under their CDD obligations and through the NAPR register (since the majority of Georgian companies have a simple ownership structure (around 90% of LLCs are owned directly by natural persons), in which case information concerning, for example, LLCs may be available directly in the NAPR register). It does not, however, consider in this context: (i) how many legal persons have or do not have a bank account in Georgia, as this is not a legal requirement or; (ii) the possibility that beneficial and legal ownership may not match.

563. The NRA report does not systemically consider the extent to which legal persons registered in Georgia have been used in ML or TF in the past (for example there are a number of cases involving “fictitious “companies), but it merely mentions that this has been so.

564. Furthermore, it does not systemically consider the extent to which some of the features of the Georgian system, e.g. availability of virtual offices, use of service points, on-line registration, existence of tax-exempt companies (special trade companies, international trading companies and free zone companies), availability of corporate directors, use of shelf companies, use of nominees (front person) and absence of a requirement for minimum share capital, may create vulnerabilities. Whilst the NRA report does mention some of these features, it merely describes them without analysing their impact and consequences. According to the authorities, some of these features were considered during the preparation of the NRA report, but not referred to because of their supposed insignificance (e.g. virtual offices). Sufficient consideration has not been given to

⁷⁵ Every six months, the NBG collects information on the number of trusts featuring as customers of FIs or in customers’ ownership structure. The number is less than ten. Similar statistics are not prepared for leasing companies, insurance companies and DNFBPs.

the minimal use that is made of gate-keepers for establishment of legal persons and vulnerabilities that may arise. Also, the NRA report does not consider the extent to which TCSPs administer legal persons and, possibly, foreign trusts in Georgia; it merely states that this happens seldomly.

565. Despite this, the relevant authorities understand the fact that legal persons have been misused in the majority of ML cases handled in the country and that there is an increased risk with companies that have foreign ownership, in particular where there is no actual connection with Georgia (a real business link). Between the different types of legal persons, it appears that only LLCs are considered by the authorities as presenting a higher risk, whilst other types of legal persons are considered to present a low risk (based on a comparison with LLCs, which figure more frequently in STRs and ML cases and greater number registered). Whilst it appears justified that the risk of LLCs is higher than other types of legal person, a further analysis of the other types of legal persons could be beneficial (as in practice there has been a case where a JSC was involved in a ML scheme).

566. Trusts are considered as low risk given their insignificant occurrence in Georgia. The competent authorities and obliged entities, however, appear to understand the concept and structure of trusts and their conclusions are considered as well-founded.

7.2.3. Mitigating measures to prevent the misuse of legal persons and arrangements

567. Transparency of legal persons is promoted through the mechanisms listed below (section 7.2.4), where also the potential gaps and deficiencies are underlined. In summary, the key elements of transparency of legal persons in Georgia are the NAPR and CDD information held by banks. The role that may be played by the Revenue Service in promoting transparency has not been considered by the evaluation team because no information has been made available.

568. As concerns the involvement of “gate-keepers”, due to ease of founding a legal person, most register directly with the NAPR and notaries, lawyers and accountants are often not involved. In addition, except for the aforementioned, other TCSPs are not designated as obliged entities.

569. Shares can only be issued in a dematerialised form according to the Law on Entrepreneurs. The same applies for transferable securities recognised under the Law on Securities Market. It follows that bearer shares can, therefore, not be issued.

570. Only FIs registered with, and supervised by, the NBG are permitted to act as nominees for JSCs. Whilst the existence and operation of nominee shareholders of other types of legal persons is not regulated by Georgian legislation, it is also not prohibited. Nominee shareholders could therefore exist in practice, though the extent of use, if any, has not been determined by the authorities.

571. There is proven abuse of legal persons in Georgia, in particular through the use of “fictitious” companies. Accordingly, on a number of occasions, the NBG has demonstrated a proactive approach to preventing the abuse of FIs by schemes involving legal persons. Firstly, it has issued guidance on beneficial ownership (with detailed information concerning how to identify BOs). It has also designated complex structures (a defined term) as bearing, in principle, high risk (this rating can be later lowered, if lower risk is proven), which increases the mitigating measures and scrutiny applied by FIs to such legal persons. Finally, it has also warned FIs specifically about the risks connected with “fictitious companies” and advised that they pay increased attention to legal persons with no apparent ties to Georgia. Banks demonstrated a good understanding of the risks

highlighted by the NBG and confirmed that such customers were often refused. The NBG has also closed-down a bank – an exceptional case deal with proactively and on a timely basis - partly in relation to its high-risk appetite for customers that are fictitious companies (see above under IO.3). Whilst attention is paid by obliged entities to complex ownership and control structures, it has not been demonstrated to what extent fictitious companies continue to present a vulnerability, and this vulnerability cannot be addressed solely by improving the implementation of CDD measures by banks since not all legal persons hold a bank account in Georgia.

572. In this regard, it is to be noted that, despite the frequent involvement of legal persons in ML schemes in Georgia, only four legal persons have been convicted to date for ML and other proceeds generating crimes, and convictions of legal persons overall are very scarce. Accordingly, it appears that criminal measures are not applied against legal persons when they should be and an opportunity to mitigate abuse is being missed.

7.2.4. Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

573. Three mechanisms are available to obtain information on basic and beneficial ownership of legal persons: (i) through a public registry (NAPR); (ii) through obliged entities (banks and registrars) and (iii) directly from the legal person. To assess effectiveness, it is necessary to consider the cumulative effect of these mechanisms – described below. Mechanisms used cannot be relied upon in all cases to provide adequate, accurate and current beneficial ownership information.

The NAPR

574. As has been stated above, all legal persons established in Georgia and branches of foreign legal persons operating in Georgia have to be registered with the NAPR. It is set out, by legislation, which information is to be included in the NAPR register. In summary, direct ownership information (on the first level of legal owners of a legal person) can be obtained from the NAPR register with regard to: (i) partnerships; (ii) limited partnerships; (iii) LLCs; and (iv) original founders of NPOs. Information can also be obtained in the NAPR register regarding persons representing legal persons (directors). All the information from the NAPR register is publicly available (including online).

575. The NAPR has access to other databases held by state authorities (such as the database of nationals and residents of Georgia - LEPL Public Service Development Agency) and is, therefore, able to verify the accuracy of information provided to it. This also provides additional safeguards to the accuracy of the registered information. In 2019, just under 2,000 applications to register a legal person or change registered information were rejected.

576. Changes to basic information take effect only after their registration in the NAPR register (for example, an agreement to change ownership of a share in a LLC is not complete until it is registered in the NAPR register). Accordingly, where there is a change in basic information, no specific deadline is set in which the parties would have to update the information in the NAPR register; nor are there sanctions in place for not doing so. Legally, the basic information registered in the NAPR register will always be accurate and current, because any non-registered changes do not have a legal force. On this basis, there does not appear to be any need to impose an obligation to register changes to basic information, because they cannot be deemed as actual changes until registration, which is constitutive and not declaratory.

577. Notwithstanding the conclusion above, it has not been demonstrated whether a non-registered agreement to change ownership of a share or a change of ownership through death/inheritance would be enforceable between the parties involved, or to what extent it could give rise to any rights which would arise in the intervening period (again, between the parties involved). Also, if an agreement has been made to change ownership of shares, but not yet been registered, the owner of shares will be set out in the agreement to change ownership, and so different to the legal owner. However, the authorities are not aware of any litigation in this area, and it does not appear to be common practice to wilfully postpone the registration of changes. This lowers significantly the materiality of the issue.

578. Whilst beneficial owners of LLCs are not registered in the NAPR register, information may be available in this respect since around 90% of LLCs are owned by natural persons (or at times also other Georgian legal persons, so the chain could be followed in the NAPR register). However, it does not follow that registered and beneficial ownership will always match and there is no general requirement for legal persons to hold BO information, which presents a significant vulnerability.

579. Obligated entities (especially banks) provide a further incentive for legal persons to keep the NAPR register up-to-date. They would not pursue business with a legal person if discrepancies were identified between information provided as part of an application to establish a business relationship and registered information held in the NAPR register. Due to this, legal persons have an interest in registering relevant information in a timely manner. Obligated entities on-site confirmed to the evaluation team that there are almost never differences in information between the two sources.

Obligated entities

580. As noted above, an obligated entity is required to act as registrar to certain JSCs. Other JSCs can use such registrars on a voluntary basis. As obligated entities, securities registrars have to fulfil CDD requirements to their full extent in respect of customers (which are considered to be all direct shareholders). They also have a general power to access ultimate beneficial ownership data with regard to shares held in nominee accounts (the nominees would be only banks or brokerage companies supervised by the NBG). Securities registrars are supervised by the NBG.

581. Furthermore, based on data provided by the Revenue Service, around two-thirds of legal persons registered in Georgia hold accounts at banks in the country. As part of mandatory CDD obligations, which include a requirement to identify and verify the identity of the beneficial owner of the legal person, banks would use information held in the NAPR, but also go further and use other independent sources (as set out under IO.4). Generally, banks appear to be applying CDD in line with requirements (though sanctions have been applied for failure to do so; these deficiencies do not appear to be significant or systematic) and supervision in this area is strong.

Legal persons themselves

582. There is no general requirement for legal persons to hold their basic and beneficial ownership information, nor that this information should be held in Georgia.

583. Some cooperatives have to maintain their own register of partners based on specific legislation (for example agricultural cooperatives). This does not apply to all cooperatives. However, where a member of a cooperative is dismissed, this must be immediately listed, the effect of which, the authorities have explained, is to require cooperatives to maintain a

register. NPOs register only founding members in the NAPR, and a list of other members is not explicitly required to be maintained.

584. JSCs with more than 50 shareholders (or that have issued public securities) have to have a register of shareholders maintained by a licensed securities registrar. These are also designated as obliged entities and are subject to AML/CFT obligations, including applying CDD measures to the ultimate beneficial owner of registered shares (see above). Whilst other JSCs have an obligation to maintain the register themselves, there is no obligation for BO information to be recorded (only the direct legal shareholder would be included in the register) or for this register to be kept in Georgia (and no supervision of compliance with this obligation). Pursuant to the Law on the Securities Market, any changes are complete only from the moment of their registration in the securities register (or in the register held by a nominee, in case of nominee shareholders) - the same as shares registered by NAPR. Accordingly, the same analysis of the accuracy and up-dated status of basic information applies. Out of the 2 425 JSCs established in Georgia, less than 1 000 use the services of a securities registrar.

Access by competent authorities

585. In practice, in order to obtain information regarding legal persons, competent authorities would first approach the NAPR. In case beneficial ownership information is not available there (in particular, where a foreign legal person is a shareholder, or it relates to a JSC or NPO), the authorities would request this from a bank, where the legal person may be a customer. There is, however, no obligation to keep an account with a bank in Georgia, and around one third of legal persons do not hold one. The possibility to obtain information directly from a legal person (such as JSCs holding their own registers) or registrar does not appear to be used much in practice but remains a possible additional source.

586. As legal ownership information included in the NAPR register may not necessarily match beneficial ownership information, the possibility to verify this information with the banks strengthens access to beneficial ownership information. Nonetheless, this source is not available for around one third of legal persons which do not hold bank accounts in Georgia. It has not been demonstrated to what extent legal and beneficial ownership might differ with regard to these persons (even though, according to the banks, information included in the NAPR is accurate).

587. Overall, the authorities have not reported any problems in getting necessary BO information when required in a timely manner. As noted above, information held on the NAPR is publicly available. Information has not been provided on the number of requests made by LEAs to obliged persons and legal persons for BO information.

7.2.5. Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

588. No legal arrangements are recognised under Georgian legislation and the occurrence of trusts as customers of FIs in the country is very limited⁷⁶. It also appears that no lawyers, notaries or accountants offer trust services or act as trustees to trusts established under foreign law, and the authorities are not aware of any other TSP activity in Georgia.

⁷⁶ From the knowledge of the authorities (in particular from the off-site data gathering exercise of the NBG), it appears that there are only three trusts that are customers of financial institutions.

589. Banks were well aware of the concept of trusts and the obligations with regard to identifying the appropriate persons as BOs, e.g. settlor and beneficiaries. Information on BO of foreign trusts administered in Georgia would, therefore, be addressed through the CDD obligations of the banks (though it is possible that accounts would not be held in the country). Given the materiality, the measures in place appear to be sufficient. It would, however, be beneficial to strengthen the mechanisms used to identify the presence of trusts in the country beyond relationships with FIs.

7.2.6. Effectiveness, proportionality and dissuasiveness of sanctions

590. Given the characteristics of the functioning of the NAPR, there is no need for sanctions to be available for failing to up-date the information held by it: only the registered information is valid, recognised and enforceable. If changes are not registered, then, as a matter of law, they have not happened and so there is nothing to sanction. The same applies to disclosing a change to information held by securities registrars (here though, the registrar is also subject to an obligation under the AML/CFT Law to keep information held up to date). There are criminal sanctions available in case of provision of false information to the NAPR (e.g. fraud and forgery), but no evidence of such cases in the period under review. There are no other sanctions available in this respect.

591. Sanctions are foreseen for obliged entities for non-compliance with their CDD obligations. In particular, sanctions have been applied by the NBG against banks and registrars for failing to apply CDD measures in accordance with the law (and also other financial institutions, nonetheless, banks and securities registrars are of most significance for the purpose of IO.5). According to the information provided, these breaches have not been significant. Sanctions imposed by the NBG are considered proportionate and dissuasive (see IO.3).

592. Legal persons are not required to hold information concerning their BO and, as such, there are also no sanctions foreseen in this regard. This includes JSCs which hold their own register of shareholders (under 50 shareholders).

Overall conclusion on IO.5

593. The vast majority of basic information is readily available in the country. There are a number of mechanisms in place through which competent authorities can also access BO information; these are generally complementary to each other. Where (together): (i) registered and beneficial ownership do not match; and (ii) when a bank account is not held in Georgia, BO information would not be available for a LLC, and so mechanisms used cannot be relied upon in all cases to provide adequate, accurate and current beneficial ownership information. Nonetheless, it is important to note that around 90% of LLCs are solely owned by individuals and foreign ownership of such companies does not exceed 20% - which limits the impact of the aforementioned in practice. Overall, there seems to be proven abuse of legal persons for ML, in particular LLCs, and legal persons present a significant vulnerability to the system.

594. **Georgia has achieved a moderate level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

8.1. Key Findings and Recommended Actions

Key findings

Immediate Outcome 2

- 1) Georgia has a sound legal framework for international cooperation and has mechanisms in place to conduct it. Georgia demonstrated effective cooperation in providing and seeking information, both through the use of formal and informal channels, to facilitate action against criminals and their assets with a wide range of foreign jurisdictions.
- 2) Georgia provides and in recent years to a greater extent constructively seeks MLA, but more so with regard to predicate offences and less with regard to complex transnational ML or TF cases, and is in line with the fact that the number of these investigations is lower than the number of investigations into predicate offences.
- 3) Competent authorities are generally proactive and spontaneously disclose financial intelligence to foreign counterparts, however not always using the FIU-to-FIU channel when appropriate, relying on other competent authorities to do so.
- 4) The limited extent of domestic exchange of information between LEAs and the FMS has a potential negative effect on the ability of the FMS to add value, through international cooperation.
- 5) The NBG proactively cooperates with foreign counterparts, being mostly focused on matters related to licensing. Whilst less cooperation is evident at an operational level, this is in line with the profile of the country's financial system. Other supervisors can exchange information but hardly ever do so, which is reasonable given the profile of their sectors. However, this not a case with the MoF, the designated supervisory authority for the gambling sector, which has no MoU in place and has a significant foreign footprint (ownership and customers).
- 6) While shortcomings identified under IO.5 mean that beneficial ownership information may not always be available in Georgia, the LEAs, NBG and FMS demonstrated that, in general, when requested they are able to provide BO information.

Recommended Actions

Immediate Outcome 2

- 1) Georgia should continue to use and further strengthen all mechanisms to facilitate action against criminals and their assets, and more frequently, proactively seek MLA in ML/FT, including complex international cases.
- 2) Georgia should enhance cooperation between the LEAs and the FMS to intensify the international role of the FMS in supporting domestic ML and TF investigations.
- 3) The FMS should continue to proactively and spontaneously disclose financial intelligence to its foreign counterparts, and not rely on other competent authorities to do so, when appropriate.
- 4) The MoF should enhance international cooperation with foreign counterparts, especially with respect to market entry and ongoing monitoring of casinos.

595. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40 and elements of R.9, 15, 24, 25 and 32.

8.2. Immediate Outcome 2 (International cooperation)

8.2.1. Providing constructive and timely MLA and extradition

596. Georgia has provided constructive and timely mutual legal assistance (MLA) and extradition across the range of international co-operation requests. Based on the feedback from the global network membership, Georgian authorities to a large extent provide good quality cooperation.

597. International cooperation is particularly important for Georgia given that many criminal cases have international links (e.g. proceeds of fraud committed abroad and sent to Georgia, cybercrime⁷⁷, corruption⁷⁸, and drug trafficking⁷⁹). On the basis of various legal arrangements and international instruments (including UN, CoE conventions, treaties, ad hoc agreements, other bilateral arrangements on MLA, and also on the basis of reciprocity), Georgia provides and seeks information through the use of formal channels. Georgia also facilitates actions against criminals and their assets.

598. The GPO is the central authority for providing MLA and executing extradition. Incoming requests are received by the responsible unit - International Relations Division (IRD) of the GPO. MLA request concerning complex or serious crimes are executed by the respective Departments of GPO for Procedural Guidance of Investigation. Regular⁸⁰ MLA requests are routinely assigned to district prosecutor's offices per territorial jurisdiction. Based on types of crime MLAs concern, these are distributed to the investigative units per their investigative competence. Respectively, MLARs related to ML are executed by the GPO AML Division, requests concerning TF - by SSS, requests on cybercrime or drugs - by the MIA, while requests related to financial crimes - by the MoF Investigation Service. Once executed, requests are referred back to the IRD, which then communicates the information to the requesting authority. The authorities suggested that the IRD is adequately resourced for receiving, managing, coordinating, and responding to MLA requests. There are necessary legislative arrangements in place ensuring the safeguards of the exchanged information.

599. There are no aspects of the legal, operational or judicial process that impede or hinder international co-operation. Georgia does not require dual criminality regarding the MLA requests not involving coercive measures. Where applies, Georgia uses broad interpretation of dual criminality. The requirement of dual criminality is deemed to be satisfied, irrespective of whether the legislation of Georgia places the offence within the same category of offences or denominates the offence by the same terminology as the requesting state, provided that the conduct underlying the offence for which assistance (including for conducting search or seizure) sought or extradition requested, is a crime under the Criminal Code of Georgia.

600. Competent authorities of Georgia advised, that if the respective international agreement, ad hoc agreement or the conditions of the reciprocal cooperation provide that

⁷⁷ NRA, p.27

⁷⁸ NRA, p. 33

⁷⁹ NRA, p.29

⁸⁰ Regular MLA explained by the authorities as requests concerning no significant losses/assets, no indication of organized crime, appearance of a simple random crime, simple procedural requests like service of summons/documents.

dual criminality is not required for execution of a MLA on search and seizure, the latter would prevail, and Georgia would be able to comply with these despite of the national legislative provisions e.g. ICCMA.

601. The IRD uses a case management system for handling incoming MLA and extradition requests and applies prioritisation criteria. While IRD case management system is operating manually (excel based system), it contains features for monitoring the prioritisation of the cases and has an incorporated tool that allows controlling the deadlines for execution of the received requests.

MLA

602. Prioritisation of incoming MLA requests is conducted on a 3-tier basis: urgent, priority and regular. Criteria for determining urgency, and deadlines for execution the MLA are set in the Prosecution Service International Cooperation Policy Guidelines from 2017. The authorities advised that in practice urgent requests regarding threat of life or danger that evidence may be destroyed or property in cases above USD 3 000 (but this threshold is not applied in TF cases) are handled immediately (and even within hours) but no longer than within 10 days. Serious crime cases (including ML) are classified as priority and are executed by the central authority within 10 days and executed by the executing authority within one month. Where an MLA request is voluminous or otherwise requires significant resources, it must be executed within 6 months. However, the executed materials must be transmitted on a rolling basis where it is possible. Possibility of execution of MLA or a part of it may also be contingent on specific conditions. MLA must be executed within reasonable time at the first opportunity. Recommended time limit for regular requests is six months. While in practice it can be longer than that, the table below demonstrated that it concerns only a small fraction of cases (5-14% of cases per year).

603. No substantial delays seem to exist in responding to MLA. The IRD informed that in practice MLA requests are handled within 3-5 months. The authorities are committed to providing assistance to all MLA requests and can do so without the prerequisite of a treaty.

Table 8.1: Incoming MLA Requests (except for extradition): average execution time

	2015		2016		2017		2018		2019	
	Request	Average time								
Urgent	n/a	n/a	n/a	n/a	n/a	n/a	16	~6 days	13	~5 days
Priority	n/a	n/a	n/a	n/a	n/a	n/a	367	~64 days	339	~51 days
Regular	n/a	n/a	n/a	n/a	n/a	n/a	1,074	~4.5 months	924	~4.5 months
Exceeding 6 months	n/a	n/a	323	~11 months	287	~9 months	211	~9 months	74	~7 months

604. Georgian authorities provided a number of examples demonstrating execution of MLA. These concerned collecting information concerning the legal and natural persons, detecting illicit assets related to various criminal activities, including organised crime, drug trafficking, cybercrime, securities' fraud, non-licensed transactions and ML, freezing of assets amounting millions USD/EUR and confiscation of property. An example of the MLA related to criminal investigation on creation of criminal organisation, extortion and terrorism financing was also presented and discussed in detail during the onsite. This request asked for undertaking number of investigative activities in Georgia, including interrogation of individuals and collection of information regarding the suspects. The MLA was successfully executed. These cases being sensitive cannot be reflected in the report.

605. Statistics illustrate Georgia’s active international co-operation. From 2015 up until 1 November 2019, Georgia received a total of 6,618 MLA requests (excluding extradition) from foreign jurisdictions, of which only 2 related to TF while 11 related to terrorism. Throughout 2018 requests for assistance came most frequently from Turkey (~75% of all requests), Germany (~4.5%), Russia (~4.5%), Armenia (~2.5%), Ukraine (~1%), and Belarus (~1%). Requests concerning theft, fraud, drug crimes, cybercrime, violent crimes (murder, bodily injuries) and financial crimes were top six crimes incoming MLA requests concerned most commonly. As provided in the table below, Georgia demonstrated a high rate of execution of the MLA requests. Statistics for 2019 is mostly impacted by the recent nature of the requests received by Georgia.

Table 8.2: Incoming MLA-requests (excluding extradition) (breakdown by nature of offence) 2016 -2019

Crimes	2016		2017		2018		2019 (1 Nov.)	
	Received	Executed	Received	Executed	Received	Executed	Received	Executed
ML	5	5	11	11	9	8	6	4
FT	0	0	0	0	1	1	1	1
Terrorism	2	2	2	2	5	5	2	1
Trafficking in human beings and migrant smuggling	8	8	8	8	9	9	20	16
Drug crimes	89	82	43	36	45	44	50	33
Corruption and Bribery	11	10	19	16	17	16	10	5
Cybercrime	n/a	n/a	n/a	n/a	n/a	n/a	3	2
Total⁸¹ (all crimes)	1258	1119	998	825	1457	1238	1276	816

606. As illustrated by case studies and statistics, Georgia has demonstrated capabilities in dealing with a variety of MLA requests for various forms of assistance. The majority of incoming MLARs regarding all crimes are related to service of documents, taking witness interviews, collecting information about individuals (citizenship, criminal records, border crossings information, etc.). The majority of incoming ML-related requests, in particular, were related to the provision of bank records, identification of persons owning or controlling corporate entities, and owning real estate. Authorities advised that some requests also involved coercive measures such as restraint of proceeds of crime and enforcement of foreign confiscation orders. Such requests were received in 2014, 2016 and 2018. These concerned confiscation of property for ML which amounted to USD 69 000 000 and EUR 1 700 000, and crimes, other than ML/FT which have amounted to EUR 2.200 and EUR 2.020 respectively. In 2018 assets equivalent to EUR 964 430 were seized. In the meantime, Georgian authorities demonstrated ability⁸² to apply coercive measures through ongoing cases where assistance was provided to detect, freeze, and seize assets that are now pending confiscation (see also IO.7).

Box 8.1 Incoming MLA request on Fraud and ML

In 2014 MLA request was received from country X to collect information concerning the legal and natural persons related to G.S. and to seize and confiscate all traced assets.

⁸¹ Total numbers in Table 8.2 refer to MLA requests regarding all crimes, including the crimes that are separately listed in the table.

⁸² One country has mentioned in its feedback on international cooperation that Georgia would benefit from further developing their asset recovery system.

Country X was investigating criminal activities of Georgian citizen G.S. and the related persons. From 2007 G.S. was the founder and leader of the cybercrime organisation, which committed a number of fraudulent acts by using non-licensed gambling operations, securities' fraud and other electronic schemes. G.S.'s criminal organisation had established the chain of criminal infrastructure in more than twelve countries. The competent authorities found that, G.S. had taken part in different fraudulent schemes and laundered more than USD 100 000 000. The competent authorities of the county X accused him of cybercrime, securities' fraud, non-licensed transactions and ML.

The MLA request was executed by the GPO AML Division. It has collected a range of information on G.S. and related natural and legal persons from various public authorities and a private sector. In particular, information on real estate owned and legal entities associated with G.S. and related persons was obtained from NAPR, data on ownership of vehicle was obtained from MIA, cross-border declarations submitted by the G.S. and related persons were obtained from the Revenue Service of MoF, and bank account data was requested from all banks operating in Georgia.

The GPO AML Division also secured freezing of more than USD 69 000 000 and EUR 1 700 000 in 2014-2015. As a result, the property subject to confiscation, which is around EUR 54 000 000 has been seized. The confiscation of this property, and asset sharing is in progress.

Box 8.2 Incoming MLA request on Drug trafficking and ML

In 2018, the MLA request was received from country B to collect information concerning the D.M.R.C and to seize and confiscate all traced assets.

Country B was investigating import and distribution of drugs by organised criminal group and the ML. According to the MLA request, the competent authorities of state B have found a container with extremely large amount of cocaine in it. The container had been transported by vessel from the port of country I. to country B. on the name of company S.G.T. After investigative actions D.M.R.C, S.J and others had been arrested in the country B. It was detected that D.M.R.C was laundering criminal proceeds acquired through drug trafficking by purchasing immovable property in various countries conducting transactions via bank accounts in different countries, including in Georgia.

In order to execute the MLA the competent authority of Georgia established all property owned by the D.M.R.C and related natural and legal persons respective information was requested from NAPR (on legal entities directly or indirectly owned and associated entities; owned real estate), MIA (owned vehicle), Revenue Service of MoF (border crossing declarations); all banks operating in Georgia (bank account information).

In accordance with the request, Georgian competent authorities had successfully traced and frozen EUR 964 430 on the bank account of D.M.R.C. in Georgia.

607. With regards to refusal of requests provided statistics indicates that Georgia rejected a total of 585 MLA (except for extradition) requests between 2016 and 2019 years. Out of these, 571 requests were not executable for the reasons provided in the table below. Most often requests were not executable because of the absence of a subject (in some cases repetitive request was received on the same subject year by year, affecting the statistics). The Georgian authorities advised that when necessary (including when request is incomplete), the IRD is contacting back foreign counterpart in order to obtain additional

information to execute the MLA request, and providing feedback if the request is not executable due to the circumstances mentioned in the table below.

Table 8.3: Incoming MLA requests (excluding extradition) not executable/refused: 2016 - November 2019

Reason		2016	2017	2018	2019 (1 Nov.)
Request not executable	Unable to provide documents (e.g. requests transmitted after retention period has been expired ⁸³)	3	4	2	0
	Request is incomplete (e.g. lack of provided information)	5	0	3	3
	Subject is not located in Georgia (i.e. absence of witness), who left the country long ago/died/etc.	126	153	164	108
Request refused	Non bis in idem ⁸⁴	4	3	1	0
	No probable cause for searches and seizures/production of content data (e.g. request lacking data on modus operandi, time range of suspected crime, link between the subject and a crime, etc.).	1	0	3	2

608. As illustrated by statistics, there are total 406 MLA (except for extradition) requests pending execution as of 2019 (1 Nov.). Compared to total number of requests for the provided time frame it can be observed, that only negligible fraction of cases is still ending: 1.3% - 2017 and 3.1% - 2018, and 27% - 2019. The evaluation team concluded that while in absolute numbers majority data presented indicate a gradual upward trend of pending MLA requests received over the last years, including with the pending requests for ML⁸⁵, this is minor, and mostly relates to the recent nature of the upcoming requests.

Table 8.4: Incoming MLA requests (excluding extradition) pending: 2016 - November 2019

Crimes	2016	2017	2018	2019 (1 Nov.)
ML	0	0	1	2
FT	0	0	0	0
Terrorism	0	0	0	1
Trafficking in human beings and migrant smuggling	0	0	0	4
Drug crimes	0	0	1	11
Corruption and Bribery	0	0	1	4
Cybercrime	n/a	n/a	n/a	1
Total (all crimes)	0	13	46	347

609. On the basis of the analysis of MLA cooperation provided by Georgia the evaluation team concluded that Georgian authorities could successfully demonstrate their commitment to provide high quality of international cooperation based on the MLA

⁸³ This mostly relates to the telecom data.

⁸⁴ Prohibition of international double jeopardy is not recognized by a certain non-EU country with which Georgia has intensive cooperation. In a number of cases Georgian authorities successfully obtained convictions against the nationals of that country and notified about it to the authorities (such notification was and is mandatory under various treaties). Based on those notifications the non-EU country launched investigations/prosecutions against the convicts for the same offence. No distinct element was shown when clarifications were requested. This non-EU country filed MLA on evidence that Georgia used to convict those persons.

⁸⁵ There was only one country indicating in the international cooperation feedback, there are delays in execution of some 18 MLA requests on procedural actions that remain unexecuted since 2017-2018.

requests. This was also confirmed on the basis of positive feedback provided by the foreign jurisdictions.

Extradition

610. Prioritisation of incoming MLA requests for extradition is conducted on a 2-tier basis: simplified and regular. The simplified extradition was introduced in Georgia recently, in 2018. Criteria for determining urgency, and deadlines for execution are also provided by the International Cooperation Policy Guidelines Accordingly, simplified extradition procedures are triggered only on the grounds of a “no contest plea” by a person arrested for extradition. All the other requests are litigated through regular procedures. The regular requests are processed per the following priority: cases involving detention are of priority vis-a-vis bail cases by default. Detention cases are roughly 65% of all the incoming extradition requests.

611. Among the detention cases those which show the prospect of intensive litigation are prioritised. This is because the intensive litigation unless started earlier would not fit within the tight detention time limits. Prospect of intensive litigation is determined in view of the evidence disclosed by the defence. Requests involving priority crimes (the same for MLA) are taken into account when scheduling litigations.

612. According to clarification provided by the authorities with respect to implementation of deadlines for the procedures that are set in the ICCMA, simplified extradition procedures would be completed within less than a month and can never last more than two months, and a regular extradition (the entire extradition) proceeding must be completed within 9 months if the person sought is detained.

613. As demonstrated in the table below, simplified extradition is conducted within the concise timeframe. While no information is provided on average time taken for execution of regular extradition requests, the evaluation team relied on the feedback of foreign jurisdictions, which had never raised concerns with this respect. Hence concluded that while it would be beneficial for the authorities to maintain statistics, there seem to be no issues requiring special attention for the purposes of this report.

Table 8.5: Incoming MLA Requests for extradition: average execution time (2018-2019)

Simplified extradition procedure (No contest plea)			
2018		2019	
Request	Average time	Request	Average time
9	41 days ⁸⁶	21	26 days
Regular extradition procedure (all other instances)			
2018		2019	
Request	Average time	Request	Average time
66	n/a	69	n/a

614. Georgia demonstrated also a high rate of execution of the extradition requests - more than 60% of incoming requests per year are executed. Statistics for 2019 is impacted by the recent nature of the incoming requests. From 2015 up until 1 November 2019, Georgia received 321 extradition requests from foreign jurisdictions, of which only one related to TF and 6 related to terrorism. Requests for extradition come most frequently from Turkey, Russia, Germany, Azerbaijan, United States and Kazakhstan. Most commonly,

⁸⁶ Time spent for full completion of process – it does not include time required by the requesting state to collect the prisoner)

extradition requests concern violent crimes (murder, bodily harm, assault) followed by fraud, theft, drug crimes, and tax crimes. Steadily growing trend for incoming requests among others is explained by the authorities to be an impact of a tighter cooperation with foreign counterparts and strengthening capacities of the national authorities.

Table 8.6: Incoming extradition requests (breakdown by nature of offence) 2016-2019

Crimes	2016		2017		2018		2019 (1 Nov.)	
	Received	Executed	Received	Executed	Received	Executed	Received	Executed
ML	1	1	1	1	3	2	2	1
FT	0	0	0	0	1	1	0	0
Terrorism	2	2	3	2	1	0	0	0
Trafficking in human beings and migrant smuggling	0	0	5	5	5	4	1	1
Drug crimes	5	5	9	7	5	4	6	2
Corruption and Bribery	2	1	4	2	5	5	4	1
Cybercrime	n/a	n/a	n/a	n/a	n/a	n/a	4	4
Total (all crimes)	52	45	61	41	75	45	90	41

Box. 8.3: Extradition requests on ML

Extradition procedures

In August 2015 Georgian police arrested Z.B., wanted by the Country A, upon her arrival to Georgia. In January 2016 Tbilisi City court granted prosecution application for extradition. Defence appealed against the district court order before the Supreme Court which dismissed the appeal in February 2016.

In March 2016, the Minister of Justice ordered Z.B.'s extradition. Z.B. was surrendered to the Country A authorities in April 2016.

Z.B. and her husband were the principal members of a criminal organization with strong ties with persons in Country B. In 2012-2013 the criminal organization acquired or developed a malware that through DNS poisoning diverted computer users to a spoofed web site. Then they tricked the users mainly in C as if they were issued fine by government for traffic or other violations. The message on the screen also demanded the users to wire money to a specific bank account in order to avoid further surcharges for overdue payments. The bank accounts belonged to businesses owned by Z.B. and her husband.

By means of the said fraud scheme the criminal organization gained several thousands of euros. Criminal proceeds were split in small transfers and wired to various persons in Country B.

615. With regards to refusal of extradition requests in total Georgia refused extradition in negligible number of times - 10 requests between 2015 and 2019 years, for the reasons provided in the table below. There was only 1 refusal for the ML offence, which was made on the basis of providing a refugee status to a person. Due to the confidentiality matters further details are not provided in the report.

Table 8.7: Incoming extradition requests refused: 2015 - November 2019

Reason for refusal	2015	2016	2017	2018	2019 (1 Nov.)
Absence of dual criminality	0	0	0	3 ⁸⁷	1 ⁸⁸
Non bis in idem	0	0	0	1 ⁸⁹	0
Non-refoulement	0	0	0		0
Asylum	0	3 ⁹⁰	1 ⁹¹	0	0
Nationality	1 ⁹²	0	0	0	0

616. There are total of 97 extradition requests pending as of 2019 (1 Nov.). Only 1 is related to ML that was received in 2019, hence being recent, not having a negative impact on the assessment of the effectiveness of the system. Authorities advised that the reason for the extradition cases being pending from previous years had mostly been parallel asylum litigations in court which lasted longer than extradition proceedings, due to the mechanism and timelines applied. In particular, there was no time-limit for the person subject of extraditions to lodge an asylum application, and asylum issues could have been litigated in 3 levels of jurisdictions, and the district and appeals courts had long procedural timelines. Recognising this issue, in 2018 Georgia took considerable measures to improve the system conducting a reform and introducing concise timelines and shortened procedural steps. This however would have a tangible effect on cases coming after the reform, while the cases from the previous years would be resolved gradually.

Table 8.8: Incoming extradition requests - pending: 2016 - November 2019

Crimes	2016	2017	2018	2019 (1 Nov.)
ML	0	0	0	1
FT	0	0	0	0
Terrorism	0	1	1	0
Trafficking in human beings and migrant smuggling	0	0	1	0
Drug crimes	0	2	1	4
Corruption and Bribery	0	2	0	3
Cybercrime	n/a	n/a	n/a	0
Total (all crimes)	4	19	26	48

617. The conditions stipulated in the legislation of Georgia for the execution of extradition requests are in line with the relevant extradition treaties. No restrictive or unreasonable condition have been identified thus far.

8.2.2. Seeking timely legal assistance to pursue domestic ML, associated predicate and FT cases with transnational elements

618. Georgia regularly seeks legal assistance for international co-operation in an appropriate and timely manner to pursue domestic investigation into various criminal activities which have transnational elements. This is being done to a lesser extent for ML and TF offences and complex cases and is in line with the fact that the number of these investigations is lower than the number of investigations into predicate offences (see IO.7 and IO.9). All LEAs are actively initiating international requests when there is a link with foreign jurisdiction identified.

⁸⁷ Making transaction in foreign currency without authorisation form authorities.

⁸⁸ Making transaction in foreign currency without authorisation form authorities.

⁸⁹ ML

⁹⁰ Fraud, using official position, embezzlement and misspending in private company.

⁹¹ Fraud

⁹² Pandering

MLA

619. MLA is requested in all cases where a link with a foreign jurisdiction is detected. This, in particular concerns requesting various types of information, including with a purpose of tracing of assets and identifying suspected individuals. MLA is requested in all respective cases when ML or TF concerned has a link with a foreign jurisdiction. Comparison of number of ML and TF investigations conducted by Georgia domestically and number of outgoing requests filed to the foreign jurisdictions for the observed period confirm that authorities rather actively use MLA to secure successful investigation and prosecution.

620. In the context of ML investigations, outgoing MLA requests were mostly related to fraud, cybercrime, financial crimes, unidentified predicate crimes and drug crimes. Most of the requests were addressed to USA, Turkey, Russia, UK, Germany and Ukraine. According to the NRA fraud and cybercrime are identified as the top proceed generating offences in the contact of ML being considered posing medium-high and medium level of risk respectively. As concerned the drug crimes, this is included in the top three offences of the ML risk matrix and assessed as posing a medium-low ML risk. Respectively, Georgia, as such, demonstrated that it conducts the MLA largely in line with its risk profile.

Box 8.4 Outgoing and incoming MLA on ML (complex cross-border investigation)

In 2012, based on the information provided by FMS, originating from the STR the money laundering investigation was opened under Article 194 of the Criminal Code of Georgia. According to the case materials, non-resident company VHC LTD opened bank accounts in Georgian bank. The owner of the company was foreign citizen E.S. After opening bank accounts, in one-year period, the company received approximately 20 000 000 USD from the bank accounts opened in various countries. Received funds had been transferred abroad on the bank accounts of different natural and legal persons.

In March of 2012 few transactions had been made in favour of the company VHC LTD (99 965 EUR, 199 970 EUR, 144 892 EUR and 152 891 EUR). The senders were four resident companies of the state F. Soon after, the senders' banks requested to return funds, as the transactions had fraudulent character.

Using provisional measures, the investigation frozen 497 549 EUR in total on the bank accounts of VHC LTD and E.S. in Georgia. In the course of ML investigation, in 2012, MLA request had been sent to the country F. requesting certain actions to be carried out on the territory of F. including the interviews of the representatives of victim companies and seizing of some important documents. This information was received and provided the investigation with the additional evidence proving the elements of ML.

In 2013 counter MLA request (followed-up with additional ones in 2014 and 2015) had been received stating that the competent authorities of the country F had been investigating a case concerning the fraudulent transactions in favour of the company VHC LTD. Requests concerned detection and seizure of information (including BO information) and documents on bank accounts held by VHC LTD and related persons; b) information about on-going investigation in Georgia; and c) contact details of the owner of VHC LTD. All requests had been quarterly executed and materials sent in a timely manner.

Notably, in 2015 coordination meeting was held in EUROJUST regarding the case, where respective investigators and prosecutors from all concerned jurisdictions, including from Georgia took part and discussed the case.

In December 2019, one more MLA request had been received from the country F, according to which the owner of VHC LTD foreign citizen E.S. had been found guilty for

fraud and ML and the competent authorities requested to begin confiscation procedures over the funds frozen in Georgia.

As a result, the property subject to confiscation, which is around EUR 497 549 has been seized. The confiscation of this property, and asset sharing is in progress.

At the moment, the procedure of confiscation and sharing of those proceeds is underway.

621. In the context of TF investigations, the outgoing requests were related to one complex extensive investigation (Chataev case) conducted by the Georgian authorities in tight cooperation with their foreign counterparts. More details are provided in IO.9.

622. In more than 60% of cases the outgoing requests of Georgia are executed by the foreign counterpart. This is demonstrative of a good quality of requests filed by Georgian authorities. There were only 3 instances of refusal of ML-related MLAs over the period under consideration which were made on dual criminality grounds with respect to the autonomous ML cases.

623. Authorities advised, that after filing the request they follow the progress, and if no response is received from the foreign counterparts within 6 months, they contact them and resubmit the request, this being a common practice applied to every request.

Table 8.9: Outgoing MLA requests (except for extradition)

Crime	2015		2016		2017		2018		2019 (1 Nov.)	
	Sent	Executed	Sent	Executed	Sent	Executed	Sent	Executed	Sent	Executed
ML	30	29	31	29	26	19	50	32	23	7
FT	0	0	0	0	0	0	23	17	1	1
Terrorism	n/a	n/a	0	0	4	4	23	17	1	0
Trafficking in human beings and migrant smuggling	n/a	n/a	1	1	0	0	0	0	4	4
Drug crimes	n/a	n/a	4	4	18	15	2	1	3	0
Corruption and Bribery	n/a	n/a	8	7	17	15	8	7	2	1
Cybercrime	n/a	10	6							
Total (all crimes)	134	123	176	147	176	153	178	109	192	54

624. Of the total number of requests, over 2018-2019 in 4 cases MLA requests were made to 8 countries covering Europe, Asia and American continents for seizure of assets. In one case request concerned EUR 1 098 808 and in other 3 cases - EUR 4 102 000 in total. All the requests are pending.

Extradition

625. Over the time period under consideration Georgia has made 3 requests for extradition with respect to ML of which only 1 was executed by a foreign jurisdiction. One outgoing 2015 extradition request was refused on asylum grounds, while another extradition request of 2016 is still pending as the requested country was unable to retrieve the person sought.

626. There were no occasions for requesting extradition for TF.

8.2.3. Seeking and providing other forms of international cooperation for AML/CTF purposes

627. Different competent authorities in Georgia regularly seek other forms of international cooperation to exchange financial intelligence, supervisory, law enforcement

or other information in an appropriate and timely manner with their foreign counterparts for AML/CFT purposes.

FIU to FIU co-operation

628. The FIU is proactive in spirit and spontaneously had contacted several jurisdictions where Georgian nationals were known to be involved in organised crime activities offering their assistance. Nevertheless, when it comes to information on wanted persons the FMS does not always spontaneously disclose any information reported to (e.g. an STR) regarding a foreign jurisdiction and would rely on police – to – police cooperation for this. The authorities advised to consider such a reliance to be reasonable, because it helps avoiding duplication of functions. This however results in potentially missed opportunities for taking operative measures for preventing the move of assets. The FIU-to-FIU cooperation should be aimed at ensuring that prompt measures are taken to secure deprivation of the criminals of their assets, while in the meantime LEAs would follow up on this within their cooperation platforms.

629. The limited domestic cooperation and information exchange between LEA and the FMS have a potential negative impact on the international cooperation and contribution of the FMS to domestic investigations, regarding complex ML and TF and related predicate offences which have an international aspect but the FMS might not even be aware of.

630. Although the number of outgoing requests is growing, it is still relatively low and concerns simple ML cases only (see IO.6).

631. FMS concluded information-sharing agreements with 42 counterparts, although such agreements are not required for exchanging information including confidential data. The main rationale for such agreements is that some other FIUs require them to be able to exchange confidential data. These agreements are also useful in detailing the procedure for sharing information and submission of feedback.

Table 8.10: FIU-to-FIU International Cooperation (via the ESW)

International co-operation	2015	2016	2017	2018	2019 (1 Nov.)	Total
Requests sent by the FIU	49	35	28	36	46	194
Spontaneous disseminations received by the FIU	0	2	9	10	34	55
Foreign requests received by the FIU	36	62	50	45	47	240
Foreign requests executed by the FIU	36	62	50	45	47	240
Foreign requests refused by the FIU	0	0	0	0	0	0
Average number of days to respond to requests from foreign FIUs	9	8	10	11	10	9.6
Refusal grounds applied	0	0	0	0	0	0
Spontaneous sharing of information sent by the FIU	3	6	12	13	19	53

632. Over 2015-2019 Georgia filed total of 194 requests to 56 countries. Out of this, 176 requests concerned ML, 14 concerned FT and 4 – predicate offences. Most of those requests were sent to UK (15), Turkey (12), US (11), Ukraine (11), Israel (11), and Latvia (11). Comparison of addressees of the outgoing MLA requests demonstrates the LEAs and the FMS to have a common sense in allocation of targets in most of the cases.

633. Authorities informed, that they would typically seek from foreign counterparts information concerning (i) the criminal background of parties involved in suspicious transactions or their possible involvement in criminal activities, (ii) the BO information in case of foreign legal persons, (iii) involvement in STRs, (iv) business or professional

activity and (v) the source of funds and wealth. Overall, this information contributed to forming the cases that were further on submitted to LEAs.

634. Authorities clarified that they closely monitor the progress with respect to sent requests and periodically contact the counterparts to secure the response. Throughout the all period of time the FMS mentioned that there were 23 requests left unanswered. This, however, did not have a major impact on advancing the case, as additional sources of information were consulted and in many instances the case was further passed through to the LEAs.

635. With respect to spontaneous disseminations, of the foreign counterparts, the authorities suggested that these were received mainly from Germany (25), Austria (15), Luxembourg (7) Ukraine (6), Czech Republic (6), Armenia (4). Spontaneous disclosures mainly concerned ML, fraud, tax evasion, non-declaration of cash and organised crime. Based on these disclosures the FMS opened 7 new cases (on fraud, cybercrime organised crime and ML) and used one of the disclosures in the FMS ongoing ML case. All these 8 cases were disseminated to the GPO and MIA. Hence, the FMS demonstrated that it analyses routinely disclosures using these both, to initiate a new case and to support analysis of the ongoing case.

636. The FMS had an experience of requesting the foreign counterpart for a suspension of transaction for EUR 50 000 which turned to be related to person convicted in Georgia in absentia.

637. FMS is regularly receiving information requests from foreign counterparts. In 2014-2019, FMS received 240 information requests from 68 countries. Most of those requests came from the USA (37), Israel (19), Lithuania (12), Ukraine (9), UK (9), and Turkey (8). The average time for responding to information requests was 10 days. Information requests concerned ML, TF, fraud, cybercrime, embezzlement, tax evasion, etc. Receiving the request, the FMS opens a case and conducts analysis using all its available operational tools, including requesting information from domestic counterparts when necessary.

638. The FMS proactively cooperates with its foreign counterparts by means of spontaneous disseminations. Where following the analysis of an STR, the FMS identified links with criminal activity outside of Georgia, spontaneous disclosure is made immediately. In 2014-2019, FMS provided 53 such disclosures to USA (10), Germany (7), Turkey (6), Latvia (4), Azerbaijan (3) and Poland (3), and others. Spontaneous disclosures concerned fraud, falsified documents (e.g. invoice, contract), wanted persons, PEPs, cybercrime, etc. All these spontaneous disclosures were based on intelligence gathered by the FMS - initiated by STRs.

639. Since 2015, FMS is authorized by the AML/CFT law to suspend suspicious transactions temporarily (72 hours) at the request of foreign counterparts. In 2015-2019, FMS suspended transactions at the request of foreign counterparts 5 times (1 in 2015, 1 in 2016, 1 in 2017 and 2 in 2019). Every suspension of transactions was followed by the seizing order of the court obtained by the LEAs. Hence, the assets were effectively stopped.

640. Overall, the FMS demonstrated a rather active involvement in the cooperation with its foreign counterparts. The feedback received from the jurisdictions on the support provided by the FMS was also positive in general terms. These indicated that the FMS would mostly provide the foreign cooperation in a timely manner, and respond to the requests accurately, though there is always room for improvement.

LEAs

641. The LEAs conduct international cooperation making a use of INTERPOL, EUROPOL and CARIN platforms and relying on liaison officers (both Georgians abroad and foreign in Georgia). The evaluators have been informed that these provided valuable information to counterparts regarding terrorism in the regional and international level.

GPO

642. The GPO, being the contact point of CARIN and the EU AROs, has all necessary capabilities for providing maximum level of cooperation through the said networks. Since 25 April 2019, Georgia is connected to the EUROPOL SIENA network, which is expected to facilitate cooperation with the EU AROs.

643. The authorities provided examples of use of these channels that supported the GPO investigation of ML. This cooperation allowed identifying criminal assets abroad and initiating freezing requests within the scope of the criminal investigation.

Table 8.11: requests sent through CARIN:

Date	Crime	Requested information	Status
2019	Fraud and ML	Information on company	Completed
2019	Fraud and ML	Information on company	Completed
2018	Fraud and ML	Information on company/individual	Completed
2018	Fraud and ML	Information on individual	Completed
2018	Fraud	Information on company	Declined (for considering to be the subject to FIU to FIU cooperation)
2017	Fraud and ML	Information on company	Completed

Box 8.5 Cooperation with EU AROs on investigation into Fraud and ML

In 2019, based on FMS dissemination, the GPO AML Division initiated investigation under CC Articles 180 (Fraud) and 194 (Money Laundering). The investigation established that USD 350 000, which was transferred from abroad to the bank account of non-resident individual, was fraudulent. Because SWIFT message from the corresponding bank on fraud was received shortly after this money had already been transferred to another country, requested funds could not be frozen.

In the framework of the said investigation, in 2019, the GPO sent request to the EU ARO of country A regarding the individual involved in the commission of a crime. The request aimed at verification of his identity, sphere of activities, possible criminal records and establishing assets in that country, including information on bank accounts.

Based on the reply, it was possible to identify real estate in the EU county owned by the said person. Freezing this property is ongoing.

Direct Cooperation with Internet Service Providers

644. Since March 2016, based on the Budapest convention on cybercrime, the GPO has established successful direct cooperation on cybercrime and electronic evidence with multinational service providers such as Facebook, Apple, Microsoft, and Google. This cooperation mainly involves requests for subscriber information and preservation of data

for using as evidence in criminal proceedings. The GPO has sent 30 requests to Facebook about 54 subscribers throughout 2018, 94% of which have been granted. This information was successfully used by Georgia to support investigations in proceeds generating crimes.

Box 8.6 Cooperation with Facebook on investigation of fraud and ML

In 2019 a Facebook page offered users easy loans with no credit history checks. An application interspersed in the page postings required users to enter their internet bank credentials in order to log on into the system. Minutes after the entry of the credentials sums of money were being wired from the accounts of would be loan applicants. Several tens of Georgian users were defrauded by the fraud scheme. The total amount of proceeds was EUR 44 326.

Facebook disclosed to the Georgian authorities user log-in history and subscriber data of the scam page. It enabled police to identify actual persons behind the page.

Eventually, 3 persons in Georgia (one national and 2 non-residents) were charged and convicted for cybercrime and theft. 2 were sentenced to 8 years imprisonment and fined for EUR 11 665 each. Plea agreement was concluded with the third person who played relatively minor role in the crime, cooperated with investigation and reimbursed damages to victims EUR 1 312. He was sentenced to imprisonment for 2 years and 6 months with 3 years suspended sentence.

The proceeds of crime, EUR 3 791 was frozen on accounts and EUR 583 was seized as a cash. Eventually all of it was confiscated. In addition, 3 computers, one central processing unit (CPU) and 5 phones were confiscated as instrumentalities of crime.

The ML and fraud investigations are ongoing. The asset tracing requests are sent to foreign competent authorities.

MIA

645. The Centre for International Law Enforcement Cooperation is established within the Central Criminal Police Department of MIA and conducts international operational law enforcement cooperation via Interpol, Europol and GUAM, as well as through bilateral channels, and coordinates the activities of Georgian police attachés deployed in other countries. The MIA deployed its police attachés to 16 other countries (one is simultaneously a liaison officer to EUROPOL). MIA employs this mechanism for an extensive cooperation on a daily basis. Due to this cooperation being informal and forming the integral part of the MIA activities, no statistics could be provided, but instead, the MIA demonstrated cases where this cooperation supported ML investigations held abroad and in Georgia.

646. In addition to extensive informal cooperation MIA reported to conduct active cooperation with the foreign counterparts on the basis of formal requests. In the framework of law enforcement cooperation MIA has received and processed in total 11 318 requests in 2017 and 11 917 requests in 2018. Average time for execution of request was 1-3 days. Over the same period of time MIA on its turn sent 3 084 requests in 2017 and 4 768 requests in 2018. In addition, the table below provides with the figures on cooperation with respect to ML/TF specifically. While the NRA did not explore the international exposure of Georgia on criminal matters, the authorities nevertheless demonstrated to deploy high focus and respective recourses to adequately combat ML/TF and associated criminal activities.

Table 8.12: Police-to-Police Cooperation

International co-operation	2013		2014		2015		2016		2017		2018	
INCOMING REQUESTS	ML	FT										
Foreign requests received by law enforcement authorities related to ML/TF	4	3	5	0	6	2	3	0	8	2	13	4
Foreign requests executed	4	3	5	0	6	2	3	0	8	2	13	4
Foreign requests refused	0	0	0	0	0	0	0	0	0	0	0	0
Average time of execution (days)	3	2	3	0	4	2	2	0	3	2	5	2
OUTGOING REQUESTS	ML	FT										
Number of requests sent abroad by LEAs related to ML/TF	3	2	7	0	2	1	2	1	2	4	2	0
Number of requests executed	3	2	7	0	2	1	2	1	2	0	2	0
Number of requests refused	0	0	0	0	0	0	0	0	0	0	0	0

SSS

647. The SSS actively cooperates and shares information with the relevant LEAs of foreign countries and international organizations based on international agreements and domestic legislation. Additionally, since its establishment in 2015, SSS concluded three inter-agency cooperation agreements with relevant agencies of Lithuania, Azerbaijan, Belarus and the fourth being initiated with France⁹³. Within its cooperation with the foreign counterparts, while investigating the “Chataev” case, both formal and informal cooperation was actively used. This contributed to successful prosecution and conviction of the involved individuals both for terrorism and FT.

MoF

648. The MoF being an umbrella institution for Investigation Service and Revenue Service conducts a wide spectrum cooperation with respective counterparts in regard to ML predicate offences, including smuggling and tax evasion and offences related to border crossing criminal activities.

649. In the period of 2016-2019, the MoF Investigation Service received 131 direct requests for information from the foreign counterparts. In the same period, it made 18 such requests to them. Those requests chiefly concerned verification of companies, their activities, related natural persons, and documents for the purpose of detection and/or investigation of potential financial crimes as per the competence of the MoF Investigation Service (including smuggling and tax evasion) and its counterparts.

650. Customs Department of Revenue Service of MoF conducted cooperation on the basis of a number of multilateral and bilateral agreements, concluded with more than 20 countries including neighbour states and the ones with which Georgia involved in trade. In the period of 2016-2019 Revenue Service of MoF received 1 240 direct requests for cooperation and sent 805 requests. These concerned information about company (ID, address, type of business); checks of the presented documentation in the process of customs clearance, including invoice or any kind of document confirming payment, as well as shipping documents; information about cargo: quantity, value, type of goods, etc. Authorities presented cases where cooperation with foreign counterparts made possible to seize in foreign states large scale smuggled cigarettes, drugs, illegal arms and weapon shipments passing through Georgia.

⁹³ Agreement with France finalised in January 2020.

651. MoF has demonstrated also effective cooperation between these three Services when dealing with incoming and outgoing international requests supporting various criminal investigations. See the example provided herewith:

Box 8.7 Outgoing request on violation of customs rules, tax evasion and ML

In 2019, the MoF Investigation Service acquired intelligence about possible violation of customs rules and tax evasion by company X. The investigation established that during the period of 2016-2018 company X was importing pharmaceutical drugs and food additives to Georgia. It was suspected that company X was presenting false invoices to customs of Georgia for avoiding taxes.

The MoF Investigation Service and the Customs Department of the Revenue Service requested from their foreign counterparts invoices presented by company X to the customs of that country regarding the goods imported to Georgia. Based on the provided information, it was established that the applied scheme targeted to increasing expenditures and avoiding VAT as according the Tax Code of Georgia, import of pharmaceutical drugs is exempted from taxes. As a result, company X avoided paying around GEL 1000000 (EUR 287786) taxes to the State Budget.

Currently damage to the State Budget is fully reimbursed. Investigation into ML is ongoing.

Supervisors

652. The NBG cooperates with other supervisors based on signed MoUs which ensure, amongst others, confidentiality of the information shared. It makes sure that it has MoUs in place with all the relevant counterparts in countries where financial groups active in Georgia are based or operating (currently 15 bilateral MoUs⁹⁴). Whilst MoUs are initiated by the prudential department of the NBG, their wording is sufficiently broad to cover also exchange of information for AML/CFT purposes. The NBG demonstrated that, whilst there is currently a bank which foresees establishing a subsidiary in a foreign jurisdiction with which the NBG does not currently have a MoU, it is aware of these plans and is already in the process of discussing an agreement with the respective supervisor.

653. The NBG actively requests information from foreign counterparts at the stage of establishment of a FIs with foreign ownership, or further change in a corporate governance, with the purpose of ensuring that criminals or their associates are prevented from holding or controlling or managing the FIs. This includes requesting from foreign counterparts data during its licensing procedures about applicants, and owners and controllers thereof, where such persons have operated or lived outside Georgia or are residents of a different jurisdiction. There have been some issues encountered when requesting information from counterparts where a MoU has not been signed. Specifically, there was a problem with regard to capital market participants (the NBG sought information in three cases and only in one was it provided). This problem will be addressed once the NBG is a signatory to the IOSCO multilateral MoU, which is it the due course. With regard to banking sector licences, the NBG has always exchanged information without difficulty and there are also demonstrated cases of cooperation with regard to PSPs. At least 25 examples of information exchange (in-coming and out-going) with regard to licensing procedures were presented by the authorities (e.g. Belarus, Bosnia Herzegovina, Cyprus, Moldova, Ukraine and the United Kingdom).

⁹⁴, Armenia, Azerbaijan (2), Belgium, Belarus, China, Germany, Kazakhstan, Lithuania, Moldova, Qatar, Turkey (2) and Zambia

654. The NBG provides information under the same conditions that can request it (based on an MoU). There have been no concerns raised about the timeliness or quality of information provided by the NBG pursuant to requests of foreign counterparts. The NBG has provided examples of spontaneous provision of information (for example to the BaFIN in Germany).

655. Examples have been given where the NBG received requests from a foreign supervisor to provide information about unauthorised business. The NBG collected data from all banks and then sent it – demonstrating that it is able to request information on behalf of a counterpart. In addition, it can share any data that it already holds.

656. As concerns exchange of information on the operational matters, e.g. findings of the inspections, the NBG informed that there were no such occasions, which was related to the fact that the findings of inspections did not entail serious breaches of legislation, including the AML/CFT requirements that would merit highlighting to foreign counterparts. The evaluation team is of an opinion that this is also in line with the profile of country's financial system.

657. Other FI and DNFBP supervisors have not cooperated with their foreign counterparts with regard to sectors under their supervision and for some of them (including the MoF), there are serious doubts about whether cooperation would be possible where they do not have MoUs in place. This being said, except for the insurance and casino sectors, the relevance of international cooperation (especially with regard to DNFBP sectors) is limited.

8.2.4. International exchange of basic and beneficial ownership information of legal persons and arrangements

658. In general, the FMS and LEAs demonstrated to respond well to foreign requests for co-operation in respect of basic and BO information held on legal persons. The authorities have not requested, or been requested to provide, information on trusts. The NAPR reported not to receive requests from the foreign authorities directly. This would be usually made through the domestic LEAs.

659. Three mechanisms are used to obtain information on beneficial ownership of legal persons established in Georgia: (i) through a public registry; (ii) through obliged entities (banks and registrars); and (iii) directly from the legal person. Thus, in most of the cases the BO information would be possible to obtain to support the foreign counterparts. However, as also mentioned in IO 5 BO information would not be available from these sources where (together): (i) beneficial ownership and legal ownership of legal persons do not match; and (ii) a bank account is not held in the country.

660. The NBG occasionally receives requests for BO information and has provided this information on every occasion (there have been reported cases when it would also go to the specific FI holding the information to request it).

661. The LEAs reported requests of BO information being frequently received in the scope of MLAs related to ML investigations. In 2018-2019 there were 10 such requests received. When executing such requests, in order to ensure information provided is accurate, as a matter of practice, various sources are consulted, including the banks, NAPR and securities registrars. As a result, MLAs on BO information are executed in timely, constructive and effective manner.

662. The FMS reported regular exchange of BO information with its counterparts. They advised also, that when request from the counterpart is received on a legal person, they

would proactively provide full information on it, including information on the BO, even if the requesting party was not seeking this information. The table below provides details on the number of these requests.

Table 8.13: FMS exchange of BO information

	2015	2016	2017	2018	2019
Requests of BO information	6	10	6	7	12
Requests related to resident legal person	5	3	5	6	10
Requests related to non-resident legal person	1	7	1	1	2
Requests where non-resident BOs were identified	2	8	5	5	2

Overall conclusion on IO.2

663. Overall, Georgia has demonstrated active cooperation with its foreign counterparts through various means, and channels, via formal and direct cooperation. The feedback received from the jurisdictions on the support provided by Georgia through responding the requests and making spontaneous disseminations was also positive in general terms, considering the moderate size of its economy and not being especially vulnerable to large scale cross border ML. In certain cases, the FIU would need to be more proactive and less rely on the police-to-police cooperation. While the NAPR does not maintain BO information, the authorities could demonstrate the ability to collect this information from other sources, thus ensuring accuracy of provided assistance.

664. **Georgia has achieved a substantial level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous Mutual Evaluation in 2012. This report is available from <https://www.coe.int/en/web/moneyval/jurisdictions/georgia>.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

These requirements were added to the FATF Recommendations when they were revised in 2012 and therefore were not assessed under the 4th Round mutual evaluation of Georgia, which occurred in 2012.

Criterion 1.1 – In accordance with the 2014-2017 AML/CFT Strategy and the Action Plan adopted by the Government (Decree N236 from 18 March 2014), Georgia launched its first national risk assessment (NRA) to identify and assess the ML/TF risks for the country. The NRA was finalised and published on 30 October 2019. The FATF “National Money Laundering and Terrorist Financing Risk assessment” and the WB NRA public guidance informed the methodological basis for conducting the NRA. The NRA incorporates sectorial ML/TF risk assessment conducted by the National Bank of Georgia (NBG). This covers assessment of the risks specific to each sector of financial institutions supervised by the NBG, for the period from 2015 to 2018. The assessment of the ML/TF risks is based on analysis of a range of quantitative and qualitative information gathered from the public sector and the private sector (through supervisory inspections and surveys conducted by means of thematic questionnaires filled in by the financial sector representatives). As noted under Immediate Outcome (IO) 1, Georgia made a considerable effort to ensure that the NRA includes in-depth analysis of threats and vulnerabilities faced by the country. Nevertheless, gaps exist in considering the impact of some inherent contextual factors that may influence the risk profile of a country, such as integrity levels in the public and private sectors, informal economy/ prevalence of cash, presence of foreign and domestic PEPs and their associates, geographical, economic, demographic and other factors. There was no proper assessment of specific ML risks in e.g. use of cash in the economy, real estate sector, trade-based ML (including in free industrial zones of Georgia), legal persons, use of NPOs for ML. Authorities did not fully assess all forms of potential TF risk, especially trade-based TF, the origin and destination of financial flows and potential for abuse of NPOs. There is a lack of analysis of ML/TF risks related to VASPs, collective investment funds⁹⁵ and fund managers or TCSPs.

Whilst the overall risk assessment in the NRA may seem reasonable, this cannot be said for all the sectorial risks. In the NRA, only gambling and legal persons were assessed as presenting the highest ML risk (medium-high), whereas analysis of the country’s ML/TF typologies indicate also the frequent use of bank accounts, remittance services provided by non-bank financial institutions, the use of real estate and cash.

Criterion 1.2 – The Inter-Agency Council for the Development and Coordination of Implementation of the AML/CFT Strategy and Action Plan for 2014-2017 (AML/CFT Interagency Council) established by the Government (Decree N352 from 23 December

⁹⁵ None were registered under sectorial laws at the date of the conclusion of the on-site visit.

2013), was the designated body responsible for coordinating the ML/TF risk assessment. It consisted of all national authorities involved in combating ML/TF and was chaired by the Minister of Finance. It functioned until the adoption of the NRA in October 2019.

With the adoption of the Law on Facilitating the Suppression of Money Laundering and Terrorism Financing (AML/CFT Law) in October 2019, the Standing Interagency Commission shall be the body responsible for coordinating the ML/TF risk assessment (Art. 6 (1)). It is yet to be established pursuant to the Government decision.

Criterion 1.3 – The NRA shall be updated as required, but at least once in every 2 years (AML/CFT Law, Art. 5(3)).

In addition, the NBG is required to conduct sectoral risk assessments and assess the risk of individual institutions annually or more frequently (NBG Supervisory Framework on AML/CFT⁹⁶, Art. 5(10) and Art. 8(2)).

Criterion 1.4 – The NRA report is a public document and shall be published, except for parts including sensitive information (AML/CFT Law, Art. 5(4)). In addition, the task force to be created within the Standing Interagency Commission shall promptly inform obliged entities about ML/TF risks (AML/CFT Law, Art. 6(3(f))).

The NBG provides the outcomes of its annual sectoral analysis of ML/TF risks (apart from confidential parts) to supervised financial institutions (FIs) through the AML/CFT off-site Supervision Portal and, shares these with the FMS, and where appropriate, other competent authorities (NBG Supervisory Framework on AML/CFT, Art. 8(7), Art. 21(2)).

Criterion 1.5 – Objectives of the NRA include among others: (i) implementing legislative, institutional, and other required measures to manage risks identified at the national and sectorial levels; and (ii) prioritising the allocation of resources for the purposes of facilitating the prevention of ML/TF crime (AML/CFT Law, Art. 5(2)). However, deficiencies in the comprehensive identification and reasonable assessment of ML/TF risks by the Georgian authorities (cf. c. 1.1 and IO 1) may limit the ability to allocate resources adequately to risks and implement appropriate prevention and mitigation measures at a national level. On the basis of NRA findings, six priority tasks have been identified by the authorities to promote effective management of ML/TF risks. However, the link between these six priority tasks and national and sectorial risks identified in the report (e.g. fraud (medium-high threat), cybercrime (medium threat), gambling sector (medium-high risk), legal persons (medium-high risk), banking sector (medium risk) and PSPs (medium risk), are not always apparent.

In parallel, Georgia adopted a National Strategy of Georgia of 2019-2021 on the Fight against Terrorism and its three-year Action Plan, that envisage implementation of measures to combat TF.

At an individual level, the General Prosecutor's Office (GPO) adopted a Strategy for 2017-2021 highlighting among other tasks, a periodic assessment of the risks of ML/TF and allocation of resources to ensure that these are mitigated. The NBG is required to distribute the supervisory resources and apply supervisory measures in accordance with identified risks (NBG Supervisory Framework on AML/CFT, Art. 1(4)).

Criterion 1.6 – The AML/CFT framework of Georgia provides for the possibility to exempt fully or partially a number of activities designated under the FATF Recommendations. As

⁹⁶ Order N 297/04 of the Governor of the National Bank of Georgia on Approving the Supervisory Framework of the National Bank of Georgia on Combating Money Laundering and Financing of Terrorism.

such, among the sectors that are not designated as obliged entities under the AML/CFT Law: (i) VASPs; (ii) collective investment funds⁹⁷ and fund managers; (iii) real estate agents; (iv) TCSs; (v) accountants that are not certified, and (vi) accountants when providing legal advice. Exemptions are however either not supported by a risk assessment or are not in line with the NRA results, and they do not occur in strictly limited and justified circumstances.

With respect to AML/CFT requirements applied to obliged entities recognised as such by the legislation (AML/CFT Law, Art.3), exceptions from certain provisions can be granted through the regulation of FMS when the ML/TF risks are low. Such an exception shall be appropriately grounded, and be applicable in strictly defined circumstances, and to particular types of obliged entities or activities (AML/CFT Law, Art. 9(1-2)). This wording does not however suggest that the exceptions would occur in “strictly limited” circumstances.

Criterion 1.7 – (a) Georgia requires obliged entities to take enhanced measures to manage and mitigate “high”, rather than “higher” ML/TF risks, which include high-risk customers, politically exposed persons (PEPs), unusual transactions, high-risk jurisdictions, reinsurance, and correspondent relationships (AML/CFT Law, Art 18-23).

(b) Obliged entities shall have regard to the NRA report, guidance and recommendations issued by the FMS and supervisory authorities when assessing their ML/TF risks (AML/CFT Law, Art. 8(6)). This, however, does not follow in full the requirement for obliged entities to ensure that higher risks identified by a country are incorporated into their risk assessments.

Criterion 1.8 – Obliged entities are allowed to apply simplified measures in relation to “low – risk” (rather than lower-risk) customers, and for that, they shall obtain sufficient information to determine the reasonableness of considering a customer as low-risk (AML/CFT Law, Art. 24). This, however, does not exclude application of simplified measures in circumstances when specific higher risk scenarios apply, except for FIs supervised by the NBG, which are required to prove that the risk is actually low (NBG Guidelines on due diligence measures, Art. 3(1)). With respect to the consistency with the country’s assessment of its ML/TF risks, deficiencies, as described in c. 1.7, apply also here (AML/CFT Law, Art. 8(6)).

Criterion 1.9 – The AML/CFT Law sets forth requirements for obliged entities to assess and manage their ML/TF risks, with some minor deficiencies (see c.1.10 and c.1.11). It determines the supervisory authority for each category of obliged entity (AML/CFT Law, Art. 4), and sets out a requirement for the supervisory authorities to ensure that provisions of the AML/CFT Law and relevant regulations are implemented by obliged entities (AML/CFT Law, Art. 38(1)). See analysis of R.26 and R.28 for more information. Deficiencies under R.26 and 28 have an impact on Georgia’s compliance with this criterion.

Criterion 1.10 – Obliged entities are required to assess their ML/TF risks (taking into account their customers, beneficial owners, their location and nature of business, products, services, transactions, delivery channels, and other risk factors) (AML/CFT Law, Art. 8(2)).

(a) The AML/CFT Law does not explicitly require that risk assessments shall be documented. FIs supervised by the NBG are required to document the outcomes of their

⁹⁷ None were registered under sectorial laws at the date of the conclusion of the on-site visit.

ML/TF risk assessment (NBG Guideline on organisational and group ML/TF Risks⁹⁸, Art.5; NBG Guideline on ML/TF risk assessment⁹⁹, Art. 4(6) and 5(5)). No such requirements are set for the insurance sector and covered DNFBPs.

(b) Obligated entities are required to implement effective systems for the assessment and managing of ML and TF risks having regard to the nature and size of their business (AML/CFT Law, Art 8.1). The NBG further clarifies that supervised FIs shall apply a methodology that would ensure complete analysis of ML/TF risks (NBG Guideline on organisational and group ML/TF Risks, Art. 5(3(b))). These FIs are required to assess the risks related to their business structure and model of organisation, and risk related to clients, products and services, transactions, delivery channels, geographical area, etc. (NBG Guideline on ML/TF risk assessment, Art 4(3)). Risk assessment shall be followed by a decision about the measure to address the identified risks, which can include both risk-control, and risk-prevention measures (NBG Guideline on organisational and group ML/TF Risks, Art.6; NBG Guideline on ML/TF risk assessment, Art. 4(4)).

(c) Obligated entities are required to periodically update their ML/TF risk assessment (AML/CFT Law, Art. 8(2)). The NBG further clarifies that for its supervised FIs, ML/TF risk analysis is an uninterrupted cycle (NBG Guideline on organisational and group ML/TF Risks, Art 3(1)), which should be conducted at least once a year, but not less than once every two years (if justified that there was no considerable change). In exceptional circumstances, the NBG can determine another timeframe and regularity (NBG Guideline on ML/TF risk assessment, Art. 4(5)).

(d) Obligated entities are required, upon request, to demonstrate to the supervisory authority that ML/TF risks were appropriately assessed, and effective measures taken to manage those risks (AML/CFT Law, Art. 8(7)). The NBG further clarifies that supervised FIs shall present a documented risk analysis to the NBG upon request (NBG Guideline on organisational and group ML/TF Risks, Art. 5(5)).

Criterion 1.11 – (a) Obligated entities are required to implement policies, procedures and internal controls, which are consistent with the nature and size of their business and associated ML/TF risks (AML/CFT Law, Art. 29(1)). These shall be approved by the governing body or a person with managing authority (AML/CFT Law, Art. 29(2)). The person with managing authority is implicitly: (i) the partner(s) in a partnership; and (ii) director(s), in a limited liability company, a joint-stock company and cooperative (Law on Entrepreneurs, Art. 9(1)).

(b) Obligated entities are required to have independent audits to test the effectiveness of the control systems, and designate a member of their governing body or a person with management authority who shall be responsible for the effectiveness of the controls (AML/CFT Law, Art. 29 (2(d) and 5)), and enhance them if necessary.

(c) Obligated entities are required to implement effective measures (AML/CFT Law, Art 8(5)), which would include application of enhanced measures for managing ML/TF risks. In order to mitigate ML/TF risks, they shall apply EDD, and other effective measures where high (rather than higher) ML/TF risks, are identified (AML/CFT Law, Art 18-23).

Criterion 1.12 – Obligated entities are allowed to apply simplified measures in relation to “low-risk” (rather than lower-risk) customers, and for that, they shall obtain sufficient

⁹⁸ Order N 202/04 of the Governor of the National Bank of Georgia on appointing Guidelines of Analysing Illicit Income Legalisation and Terrorism Financing Risks on Organisational and Group Scales, 25 October 2019

⁹⁹ Order N 82/04 of the Governor of the National Bank of Georgia On the Approval of the Guideline on Illicit Income Legalization and Terrorism Financing Risk Assessment, 7 May 2019

information to determine the reasonableness of considering a customer as low-risk. Application of simplified measures is prohibited when there is a suspicion of ML/TF. However, the incomplete definitions for ML (AML/CFT Law, Art.2 (Z8)) – which do not refer to all relevant parts of the Criminal Code (CC) – may have an impact.

Weighting and Conclusion

Deficiencies identified in the identification and assessment of ML/TF risks by Georgia, lack of obligation to ensure that the outcomes of the NRA are incorporated into their risk assessment, and application of exemptions have a strong impact on the rating. **R.1 is rated PC.**

Recommendation 2 - National Cooperation and Coordination

In the 4th round mutual evaluation report (MER) of 2012, Georgia was rated PC on R.31. The main deficiencies were lack of a central coordinating body/committee to steer and coordinate the development and implementation of policies and activities to combat ML and TF, and lack of a mechanism allowing the cooperation between supervisory agencies of FIs and DNFBPs notably, NBS, MOJ, and MoF. As described below, these issues have been addressed to a certain extent over the past years.

Criterion 2.1 – The NRA and the Action Plan respectively are subject to a regular review (AML/CFT Law, Art. 5(3)). While Georgia has not yet adopted the policy document - the AML/CFT Strategy, following the completion of the NRA Georgia developed an Action Plan for 2020-2021 adopted by the Government on 30 October 2019. The Action Plan is mostly linked to the six priority tasks identified by the NRA and so does not address areas identified as presenting higher risks in the NRA (cf. IO 1).

While not initially informed by the final NRA document and not being revised after adoption of the NRA on 30 October 2019, rather based on an overall knowledge and experience of the authorities, the National Strategy of Georgia of 2019-2021 on the Fight against Terrorism (Counter-Terrorism Strategy) and its three-year Action Plan adopted by the Government (Decree №53 on 23 January 2019), broadly echoes the findings of the NRA. The Counter-Terrorism Strategy adequately identifies the potential TF threats posed by non-commercial legal persons (NPOs) and calls for activities and oversight to mitigate this threat and prevent their abuse for TF (cf. IO 1).

At an agency level, the General Prosecutor's Office has adopted a Strategy of the Prosecutor's Office of Georgia for 2017 to 2021 (Prosecutor's Strategy), which while not initially informed by the final NRA document and not being revised after adoption of the NRA on 30 October 2019, is broadly in line with the major proceeds-generating offences highlighted in the NRA. The missing elements are fraud (medium-high ML threat), and tax evasion and organised crime (medium-low ML threat).

In addition, the NBS adopted its Supervisory Framework which sets out a fully risk-based approach to AML/CFT supervision and address as a matter of priority several means of ML identified in the NRA report.

Criterion 2.2 – Since 2013, the AML/CFT Inter-Agency Council served as the main coordination mechanism on AML/CFT issues to facilitate and encourage co-ordination and co-operation at a national level. Despite the mandate being terminated formally at the end of 2017, in practice it has remained functional. The AML/CFT Inter-Agency Council is chaired by the Minister of Finance and comprises senior officials from all relevant AML/CFT agencies, including LEAs, GPO, FMS, supervisory bodies and SRBs. AML/CFT Standing Interagency Commission shall be the body to facilitate the coordinated action by

competent authorities for the purpose of managing the ML/TF risks. (Art. 6 (1, 3(e)). It is yet to be established pursuant to the Government decision.

A Permanent Interagency Commission established by the Government (Decree N469, 14 September 2018) is the body responsible for determining Georgia's unified policy in the field of counter-terrorism (this also includes TF), to develop and monitor the implementation of the National Strategy for Combating Terrorism and the related 3-year Action Plan. The Interagency Commission is chaired by the Head of the State Security Service and includes as members all relevant competent authorities¹⁰⁰ engaged in the prevention of and fight against terrorism.

Criterion 2.3 – Competent authorities shall, within their competence, cooperate by exchanging information and experience for the purpose of facilitating the suppression of ML/TF (AML/CFT Law, Art. 39(1)).

At a policy level, the Standing Interagency Commission shall provide a mechanism for policy makers, including the FMS, law enforcement agencies (LEAs), supervisors and other key ministries and agencies involved in combating ML/TF to co-operate and co-ordinate domestically. However, the management, structure, powers, composition, and rules of procedure are yet to be established pursuant to the Government decision (AML/CFT Law, Art. 6(2)).

Permanent Interagency Commission for developing and monitoring implementation of the National Strategy for Combating Terrorism provides a mechanism for domestic co-operation and co-ordination among the relevant competent authorities engaged in the prevention of and fight against terrorism (this also includes TF).

At an operational level, the Government Decree №254 on the Rule of Organising the Counter-Terrorist Activity and Coordinating the Actions of Counter-Terrorist Agencies provides for the detailed procedure of exchanging information on the Counter-Terrorism Centre platform between agencies involved in the fight against terrorism.

The Working Group set up to implement the Prosecutor's Office Strategy of 2017-2021 provides a platform for policy and operational level of co-operation and co-ordination amongst the GPO, Ministry of Internal Affairs (MIA), State Security Service (SSS), and the FMS.

The MoU on Raising the Effectiveness of Inter-Agency Cooperation in the Law Enforcement Field signed in 2015 among the MoF, the MIA, the GPO, SSS and FMS serves as a primary mechanism for exchanging information at the operational level. It also provides for the creation of joint investigative teams. Limitations however exist with respect to information dissemination by the FMS upon request (AML/CFT Law, Art. 35(2), and 39(6)).

¹⁰⁰ Head of the State Security Service of Georgia; Representative of the Administration of the Government; First Deputy Minister of Defense; First Deputy or Deputy Minister of Justice; First Deputy or Deputy of the Prosecutor General; First Deputy or Deputy of the Ministry of Foreign Affairs; First Deputy or Deputy of the Minister of Internally Displaced Persons from the Occupied Territories, Labour, Health and Social Affairs; First Deputy or Deputy Minister of Education, Science, Culture and Sport; First Deputy of the State Minister of Georgia for Reconciliation and Civic Equality; Deputy Minister of Internal Affairs; Deputy Minister of Economy and Sustainable Development; Deputy Minister of Finance; Deputy Minister of Environment Protection and Agriculture; Deputy Minister of Regional Development and Infrastructure; Deputy Head of FMS; Chief Counselor the Head of Georgian Intelligence Service; Deputy Head of Special State Protection Service; Head or Deputy Head of State Agency for Religious Issues; Head of Counter-terrorism Center of the SSS; Head of Administration of the SSS; Head of Information-Analytical Department of the SSS. Decree also envisages the involvement of Vice President of National Bank of Georgia with the voting right.

The supervisory authorities shall promptly inform the FMS concerning violations of the AML/CFT Law and relevant regulations, and potential facts of ML/TF (AML/CFT Law, Art. 39(2)). This is further supported by the concluded MOUs.

Criterion 2.4 – Georgia has mechanisms in place to coordinate national efforts in combatting the proliferation of weapons of mass destruction and PF. The newly adopted AML/CFT Law envisages establishment of a Governmental Commission on Matters of Enforcement of UNSCRs. While the management, structure, powers, composition and rules of procedure of the Governmental Commission are yet to be determined by the Government, the AML/CFT Law determines that the Commission shall be in charge of enforcement of UN targeted financial sanctions (TFSS) on TF and PF.

Yet on the basis of the former AML/CFT Law (Art 13.1) there was an Interagency commission on Implementation of the UN Security Council Resolutions established by the Government (Decree №487 on 21 December 2011) - with objectives of (a) implementing commitments under Chapter VII of the Charter of the United Nations (UN), and (b) preventing and/or suppressing of terrorism-related persons and other persons designated by UN resolutions for the purpose of importing and/or exporting products subject to export and import control in Georgia, their free movement, their use of property or other actions in support of terrorism. Its membership comprises a range of government representatives, including the LEAs and supervisory authorities. This Governmental Commission is currently in force.

In parallel, Georgia has established a commission on implementation of matters related to coordination of the control of export, import, re-export and transit of weapons, military equipment and related materials and their means of delivery and dual-use items as prescribed in the national control lists and elaboration of recommendations and conclusions in this field. It is chaired by the Ministry of Defence (MoD) (Presidential Decree No. 847, 24 October 2005). However, there is no coordination of efforts with the Governmental Commission on Matters of Enforcement of UNSCRs.

Criterion 2.5 – There is cooperation and coordination between relevant authorities and the State Inspector's Office - an independent state body competent for data protection and privacy matters. It conducts monitoring of lawfulness of personal data processing, on the basis of the Personal Data Protection Law from 28 December 2011. In order to ensure compatibility of the draft AML/CFT Law with the data protection legislation, the Office of the Personal Data Protection Inspector was consulted with and its opinion was considered.

Weighting and Conclusion

Georgia has in place certain mechanisms for national cooperation and coordination. The Action Plan for 2020-2021 developed on the basis of the NRA does not address areas identified as presenting higher risks. Management, structure, powers, composition, and rules of procedure of the AML/CFT Standing Interagency Commission and Governmental Commission on Matters of Enforcement of UNSCRs set pursuant the AML/CFT Law are not yet established by the Government decision. **R.2 is rated LC.**

Recommendation 3 - Money laundering offence

In the 4th round MER of 2012, Georgia was rated LC on both R.1 and R.2. No technical deficiencies in the legal framework were identified.

Criterion 3.1 – There are ML offences at Art. 186, 194 and 194.1 of the CC. The combined effect of these provisions is that ML is criminalised in line with the ML offences in the

Vienna Convention and the Palermo Convention and in some respects the ML offences go beyond the Conventions (for example by applying not only to the proceeds of crime but also to undocumented property, i.e. property of unverified origin belonging to a person, the person's family member, close relative, or related person.

Criterion 3.2 – The ML offences in the CC apply on an “all crimes” basis. Therefore, all offences within the CC are predicate offences for ML and this extends to all of the offences in the FATF designated categories. Tax offences are provided in Art. 191, 204.1, 218, and 359 of the CC. References to other listed offences are provided in the table under para. 174 of the 2012 MER.

Criterion 3.3 – This criterion is not applicable as Georgia does not apply a threshold approach.

Criterion 3.4 – The property covered by the ML offences in the CC is not subject to a value-based threshold. The Art. 194 offence expressly applies to both direct and indirect proceeds, and to shares. There is no such express wording in relation to the other ML offences (CC Art. 186 and Art. 194.1), and, apart from in the context of confiscation at Art.52, the CC is silent on whether property includes incorporeal property, legal documents or instruments evidencing title, interest in assets etc. (other than shares under Art. 194). The Georgian authorities indicated that the definition of property in the Civil Code would be applied to the language of the ML offences. This is in line with Art. 1519 of the Civil Code, which provides that the concepts and terms used in the Civil Code apply to other legal acts. The definition of property in the Civil Code (Art. 7, Art. 147, Art. 148, and Art.152) includes all things and intangible property which may be possessed, used and administered by natural and legal persons. A thing may be moveable or immovable, and intangible property includes claims and rights that may be transferred to another person or that are intended either for bringing a material benefit to their possessor or for entitling the latter to claim something from another person. Therefore, the language of the Civil Code, while not explicitly referring to corporeal and incorporeal property, and instruments evidencing title to, or interest in such assets, is wide enough to cover all of these forms of property.

Criterion 3.5 – There is no specific requirement under any of the ML offences to prove that a person has been convicted of underlying criminal activity. Therefore, the legal framework appears wide enough to capture predicate offences that are not the subject of a criminal conviction.

Criterion 3.6 – The ML offences do not distinguish between domestic and foreign predicate offences. Therefore, it appears that the legal framework is wide enough to cover predicate offences that have been committed in another country.

Criterion 3.7 – The ML offences do not differentiate between laundering the proceeds of a person's own offences or the offences of a third party. Therefore, the legal framework appears wide enough to cover a person who commits a predicate offence.

Criterion 3.8 – According to the Georgian authorities, it is a fundamental principle of the legal system of Georgia that the mental elements of an offence may be inferred from objective factual circumstances. This was further demonstrated through the example of a criminal case.

Criterion 3.9 – There is a range of sanctions applicable to natural persons who carry out ML offences. It is possible for a term of imprisonment and a fine to be imposed at the same time. The offences at Art. 194 are punishable by a fine or term of imprisonment of 3 to 6

years for the core offence, a term of imprisonment of 6 to 9 years in aggravating circumstances and a term of imprisonment of 9 to 12 years in aggravating circumstances where an organised group or the misuse of an official position are involved. The core ML offence at Art. 194.1 is punishable by a fine, community service of 180 to 200 hours, corrective labour for up to 1 year or imprisonment of up to 2 years. Where there are aggravating circumstances, the offence is subject to a fine and a term of imprisonment of 2 to 5 years, and where there are aggravating circumstances involving an organised group or the misuse of an official position, this is subject to a term of imprisonment of 4 to 7 years. Similar sanctions apply for the ML offence at Art. 186, except for the core offence, for which in addition, house arrest of 6 months to 2 years applies. The core offences under Art. 186 and 194.1 only apply to very low value cases, and the range of sanctions for these offences is comparable to those applicable to some other economic crimes under the Georgian legal system, such as fraud. Therefore, the applicable sanctions are sufficiently proportionate and dissuasive.

According to Art. 42 of the CC the minimum amount of a fine shall be GEL 2 000 (app. EUR 610). If the relevant article of the special part of the CC prescribes imprisonment for up to 3 years, the minimum amount of the fine shall be at least GEL 500 (app. EUR 150). While this amount does not suggest the punishment to be dissuasive itself, in line with the provisions of the CC the court shall determine the amount of a fine according to the gravity of the crime committed and the material status of the convicted person. The material status shall be determined based on the person's property, income and other circumstances. Hence, the fine can be applied in a proportionate manner. A fine shall be imposed as a supplementary punishment also when it is not prescribed as a supplementary punishment under the relevant article of the CC.

Hence, sanctions applied for ML under Art. 194, 194.1 and 186 of the CC are considered to be proportionate and dissuasive.

Criterion 3.10 – The criminal liability of legal persons is expressly provided for in respect of all of the ML offences. According to Art. 107.3 of the CC in each case the applicable sanctions are liquidation, prohibition on carrying out particular activity, a fine, or confiscation of property. Confiscation of property can be imposed only as a supplementary punishment, and the authorities provided an example of this. These sanctions are sufficiently proportionate and dissuasive. Art. 107.1(6) of the CC provides that the criminal liability of legal persons does not preclude the liability of natural persons. The Georgian authorities confirmed that the law of Georgia does not preclude parallel civil or administrative proceedings against a legal person., Other types of sanctions, including civil and administrative for legal entities are warnings, fines, tortious or contractual claims, prohibitions and restitution. The Georgian authorities provided an example where the victim of a fraud had brought civil proceedings against a legal person that were in parallel to a criminal case.

Criterion 3.11 – There are comprehensive ancillary offences at Art. 18, 19, 23, 24 and 25 of the CC that are applicable to the ML offences. All forms of ancillary offending are covered, including preparation, attempts, and other forms of complicity such as organising, instigating and aiding a criminal offence.

Weighting and Conclusion

All criteria are met. **R3 is rated C.**

Recommendation 4 - Confiscation and provisional measures

In the 4th round MER of 2012, Georgia was rated LC on R.3. The only identified technical deficiency was the lack of a clear legal basis to compel the production of financial records from lawyers.

Criterion 4.1 – Georgia applies a conviction-based confiscation regime (CC, Art. 52). In addition, there is a regime for forfeiture via civil proceedings in certain circumstances (CivPC, Chapter XLIV). Georgia has broad powers to deprive criminals of their proceeds or instrumentalities. Confiscation of property held by third parties is achieved through the freezing powers as set in the CPC Art. 157.

(a) Property laundered - The CC (Art. 52(3)) permits the confiscation of criminally obtained property from a convicted person that is acquired through the commission of an intentional crime. This will include property laundered under any of the ML offences in the CC.

(b) Proceeds of (including income or other benefits derived from such proceeds), or instrumentalities used or intended for use in, ML or predicate offences - The measures at Art. 52(3) of the CC expressly apply to all forms of property acquired through criminal means, including intangible assets and title deeds for property, as well as any income derived from such property. While there is no explicit reference to benefits other than income derived from such property, the authorities confirmed that the term income was wide enough to include all such benefits. In addition, under Art. 356.5 of the CivPC, property may be confiscated via civil proceedings if it is found to be derived from racketeering or from certain other specified offences (including ML under Art. 194 of the CC, but not to the other ML offences under Art. 186 and 194.1 of the CC). The same regime applies to the property, which is simply unjustified, owned by a person convicted in designated crimes, his/her family members, close relatives and associates if those parties cannot demonstrate the lawful origin of property, or, in the case of immovable property, that they have paid the necessary utility or land charges etc. for it. This effectively reverses the burden of proof for these cases.

Instrumentalities of intentional crimes, including property intended for use in the commission of such crimes, are dealt with under Art. 52(2) of the CC. However, the confiscation of instrumentalities under Art. 52(2) is limited by the requirement that it is necessary in the interests of the state or the public, to protect the rights and freedoms of certain groups or necessary to avoid the commission of a new crime.

(c) Property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations - Confiscation, as outlined above, applies to all intentional offences so extends to property that is the proceeds of, or used in, or intended for use in the financing of terrorism, terrorist acts or terrorist organisations (CC, Art. 52(2-3)). Confiscation of such property is also possible via civil proceedings as outlined above (CivPC, Art. 356.5), as this includes the offence of terrorist financing at Art. 331.1 of the CC within its scope.

(d) Property of corresponding value - The confiscation of property of corresponding value is specifically permitted under Art. 52(3) of the CC. However, this does not apply to property of corresponding value to the instrumentalities of crime.

Criterion 4.2 – (a) Identification, tracing and evaluating property - There are measures in place that may be used to identify, trace, and evaluate property at Art. 113, 119, 120, 124¹, 125 and 136 of the CPC. These include the power to check and monitor bank records,

to interview or obtain information (including electronic information) from legal and natural persons and to obtain expert valuation evidence.

(b) Provisional measures - There are provisions enabling the preservation of property that may be subject to confiscation at Art. 151 of the CPC. Respectively, the court may order freezing of the property of an accused person, including bank accounts, if there is information to suggest that property will be concealed or spent, or that it is the proceeds of crime. In urgent cases, in line with Art. 155 of the CPC the prosecutor may issue a reasoned decree to freeze the property. This shall be further confirmed by the court decision (within max. 24 hours).

The freezing power at Art. 151 of the CPC extends to property of equivalent value to the suspected proceeds of crime. It also extends to property belonging to persons who are materially responsible for the actions of the accused person or who are associates of that person. Freezing orders may be obtained *ex parte* and in exceptional circumstances may be ordered by the prosecutor without a court order – see above. The provisions at Art. 151 of the CPC are supplemented by freezing powers at Art. 119 and 120 of the CPC, although these powers are primarily directed at the preservation of evidence.

Attachment can be applied to preserve property that may be subject to confiscation via civil proceedings at Article 356.4 of the CivPC.

(c) Voiding or preventing actions - Under Art. 56 of the CivPC, a sham transaction, i.e. a transaction made only for the sake of appearances without the intention to create legal implications or a fraudulent transaction i.e. a transaction to conceal another transaction, shall be void. In addition, Art. 152 of the CPC prohibits the owner or holder to dispose of or use property which is subject to seizure and it is an offence under Art. 381 of the CC to fail to execute or to interfere with the execution of a court decision. In addition, the risk of contractual or other prejudicial actions is mitigated by the fact that both value-based confiscation and the confiscation of property in third party hands is possible under the CPC – see above.

(d) Appropriate investigative measures - The articles of the CPC referred to above provide the authorities with the necessary investigative measures.

Criterion 4.3 - The ownership rights of *bona fide* third party - acquirer of property are protected under Art. 187 of the Civil Code. In addition, there are measures in place under Art. 11 and 356.5 of the CivPC to protect lawful third-party interests in respect of property confiscated via civil proceedings. In criminal proceedings, the rights of a *bona fide* third party are protected at CPC, Art. 57, 81, 156.

Criterion 4.4 - There are mechanisms under the CPC for managing and disposing of property. Mechanisms with respect to frozen property include taking away the property except for immovable and large things. The owner and holder are prohibited from disposal and use of the frozen property (CPC, Art. 157(7) and Art. 152 (1)). While not explicitly provided by the legislation, the authorities confirmed that mechanisms set for the management of material evidence would apply to the frozen property. Accordingly, property that shall not be destroyed is transferred to the state or returned to the owner or holder (CPC, Art. 79(2)): i.e. (a) precious metals, stones (gems), banknotes, bonds and other securities, unless their individual signs serve as evidences, shall be kept at bank (CPC, Art. 79(3)); (b) perishable items, as well as the items which are commonly used in a daily life, as well as domestic animals, poultry and the vehicle, unless they have been sequestered shall be returned to the owner or holder (CPC, Art. 80). Property shall be kept under the conditions which prevent its loss and change of its properties (CPC, Art. 79(1)).

However, there do not appear to be any mechanisms in place for dealing with situations where active management of property is necessary.

Mechanisms with respect to attached property under the civil confiscation measures include safekeeping of the property at the court's storage facility, or locally. Property shall be kept in unaltered condition (CivPC, Art. 160). The deficiency with respect to the lack of mechanisms for active management of property applies also here.

Mechanisms with respect to confiscated property that is transferred to the ownership of the state (CPC, Art. 52), are regulated by the Law of Georgia on the State Property and by-laws. LEPL Service Agency of the MoF and the LEPL National Agency of the Ministry of Economy and Sustainable Development are responsible for management and disposal of movable, immovable, and intangible property, respectively.

Weighting and Conclusion

Georgia has broad powers to deprive criminals of their proceeds or instrumentalities. However, there are no mechanisms for the active management of property frozen under criminal or civil proceedings, and the confiscation of instrumentalities is subject to some restrictive conditions. **R4 is rated LC.**

Recommendation 5 - Terrorist financing offence

In the 4th round MER of 2012, Georgia was rated PC on SRII. Three technical deficiencies were identified. These were the unduly narrow scope of the offence of terrorism, the absence of some aspects of the Convention offences from definition of terrorist acts, and the fact that the definitions of terrorist and terrorist organisation did not extend to all terrorist acts within the FATF definition. Since then, Georgia has made several amendments to its legal framework to address these deficiencies.

Criterion 5.1 – The TF offence is criminalised under Art. 331.1 of the CC in two parts, in line with the two-limb approach in the Terrorist Financing Convention ("TF Convention"). The first part applies to the collection or supply of funds or other property knowing that they will or may be used in full or in part by terrorists, terrorist organisations and/or for carrying out terrorist activities. The second part covers all elements required by the second limb of the TF Convention. This includes the collection or supply of financial resources or other assets knowing that they will or may be used in full or in part for the commission of various listed offences under the CC. These listed offences implement all of the convention offences required by the TF Convention except for offences under the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, as these are already included in the terrorist offences at Chapter XXXVIII of the CC, so, comprise terrorist activities for the purposes of the first part of the TF offence.

Criterion 5.2 – As outlined above, the TF offence covers the provision and collection of funds or other property knowing that they will or may be used in full or in part for terrorist activities, or by terrorist organisations and individual terrorists without any need for a link to a specific terrorist act.

Criterion 5.2bis – The offence of participation in international terrorism at Art. 323.2 of the CC extends to crossing or attempting to cross the Georgian border for the purposes of carrying out, preparing for or participating in terrorist activities or training. As the Art. 323.2 offence is a Chapter XXXVIII offence, any person who carries out these activities comes within the definition of terrorist under Art. 331.1, which means in turn that the financing of any person to carry out these activities constitutes a TF offence. However, the Art. 323.2 offence is confined to persons crossing or attempting to cross the Georgian

border, so funding the travel of foreign terrorist fighters who do not travel from or through Georgia is not criminalised specifically. In the view of the authorities, this would be addressed by relying on the offence of providing material support to a terrorist organisation, but this has not occurred to date so could not be confirmed by any court decision.

Criterion 5.3 – The TF offence applies to “funds or other property” and does not distinguish between those from a legitimate or an illegitimate source. The Georgian legislation does not provide a definition of “funds”, so the scope of this term is not clear. However, as analysed in c.3.4, there is a wide definition of property in the Civil Code which applies to offences under the CC. Being generic definition, this does not specifically encompass the particular types of funds, assets or economic resources and other respective elements mentioned in the FATF Glossary but it appears wide enough to cover them.

Criterion 5.4 – The TF offence specifically applies irrespective of whether or not a terrorist act has been committed or support has in fact been provided to a terrorist or a terrorist organisation.

Criterion 5.5 – As explained above under Recommendation 3, the Georgian legal system allows for the mental elements of the TF offence to be inferred from objective factual circumstances.

Criterion 5.6 – The TF offence is subject to proportionate and dissuasive sanctions. The basic offence is punishable by a term of imprisonment of 10 to 15 years, rising to a term of imprisonment of 14 to 17 years in aggravating circumstances and to a term of imprisonment of 17 years to life imprisonment where a terrorist organisation or grave consequences are involved. This range of sanctions is comparable to those applicable to the most serious crimes under the Georgian legal system.

Criterion 5.7 – Art 331.1 of the CC expressly provides for the criminal liability of legal persons. The applicable sanctions are liquidation, prohibition on carrying out particular activity, a fine or confiscation of property. Confiscation of property can be imposed only as a supplementary punishment. These sanctions are sufficiently proportionate and dissuasive. Art. 107 of the CC provides that the criminal liability of legal persons does not preclude the liability of natural persons, or the liability of legal persons to indemnify a party in respect of any damage caused by a criminal act or for any other penalty under the law. Other types of penalties applicable to legal persons, including civil and administrative penalties, are set out above under Recommendation 3.

Criterion 5.8 – The ancillary offences at Art. 18, 19, 23, 24 and 25 of the CC are applicable to the TF offence. All forms of ancillary offending are covered, including preparation, attempts, and other forms of complicity such as organising, instigating and aiding a criminal offence.

Criterion 5.9 – As explained under Recommendation 3, Georgia applies an “all crimes” approach to the criminalisation of ML. Therefore, the TF offence is a predicate offence for ML.

Criterion 5.10 – Art. 331.1 of the CC does not differentiate between cases where the person committing the TF offence is located in the same country as the relevant terrorist acts, organisations or individual terrorists and those where that person is located in a different country. Therefore, the TF offence appears to be applicable in both cases. In addition, the definitions of terrorist and terrorist organisation at Art. 331.1 of the CC are not confined

to domestic individuals or organisations. The same is true of the generic terrorist offence at Art. 323 of the CC, which expressly incorporates as one of its elements the exertion of pressure on foreign authorities and international organisations. The effect of these provisions is that the CC clearly envisages the possibility of parties subject to the criminal jurisdiction of Georgia collecting or providing funds for terrorist individuals, organisations or acts elsewhere.

Weighting and Conclusion

Georgia has a comprehensive legal framework in place to criminalise TF. It is not however fully compliant with R5, as the TF offence does not specifically cover the travel costs of foreign terrorist fighters that do not travel from or through Georgia and it is not clear whether this would be captured by the generic TF offence of providing material support to a terrorist organisation. **R.5 is rated LC.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

In the 4th round MER of 2012, Georgia was rated PC on SR. III. Several deficiencies were identified, including that the courts were able to review the merits of each case in the context of designations under UNSCR 1267 and had the power to lift a freezing order made pursuant to the same resolution. There were doubts regarding the ability to implement targeted financial sanctions “without delay” for designations under both UNSCR 1267 and 1373, and on the processes in place to grant access to frozen funds for necessary or extraordinary expenses in line with the requirements under UNSCR 1452.

Since then, Georgia has revised its legislation. Currently the legal framework for implementation of the TFS consists of the AML/CFT Law (Chapter X) adopted on 30 October 2019, and the Government Decree N 487 on “Establishment of the Interagency Commission on Implementation of the United Nations Security Council Resolutions” from 21 December 2011, with the latest amendments introduced on 19 February 2018. Where provisions of these legal acts differ from one of the other, the evaluation team, governed by the hierarchy of legal acts, takes into account the provisions of the AML/CFT Law (Law on Normative Acts, Art.7).

Criterion 6.1 – In relation to designations pursuant to UNSCR 1267/1989 and 1988 sanctions regimes:

(a) Georgia has identified the Governmental Commission on Enforcement of UNSCRs (Commission) as the competent authority responsible for proposing designation of persons or entities to the UNSC Committees 1267/1989 and 1988 (AML/CFT Law, Art. 40 and 43).

(b) Georgia does not have a mechanism for identifying targets for designation pursuant to UNSCR 1267/1989 and 1988. Nevertheless, when proposing designations to the UNSC Committees, the Commission shall consider if criteria set by the respective UNSCRs are met (AML/CFT Law, Art. 43(1)).

(c) The Commission shall apply an evidentiary standard of proof of “reasonable suspicion” when deciding whether or not to make a proposal for designation (AML/CFT Law, Art. 43(1)). The term “reasonable suspicion” is not defined, and so it is not possible to conclude upon the evidentiary standard of proof to be applied in Georgia. There are no provisions suggesting whether proposals for designations should be conditional upon the existence of a criminal proceeding or not.

(d) The Commission shall follow the procedures and use standard forms for listing, as adopted by the respective UNSCR (AML/CFT Law, Art. 43(2)).

(e) When submitting a designation proposal, the Commission shall include sufficient information to identify the person (AML/CFT Law, Art. 43(2)). Georgia advised that it would provide a statement of case that should include as detailed and specific reasons as possible describing the proposed basis for the listing. There is nothing that prohibits Georgia to specify whether its status as a designating state may be made known should a proposal be made to the 1267/1989 Committee. Georgia had not put forward a listing proposal under UNSCR 1267/1989 and 1988, and successor resolutions.

Criterion 6.2 – In relation to designations pursuant to UNSCR 1373:

(a) Georgia has identified the Commission as the competent authority responsible for designating persons or entities pursuant to the UNSCR 1373, as put forward either by Georgia or by foreign states (Decree N 487, Art. 4(b), and Art. 7(2-3)).

(b) Georgia does not have a comprehensive mechanism for identifying targets for designation pursuant to UNSCR 1373. Measures in place are limited to a general obligation of the Commission to promptly examine a request of a competent authority on application of measures under UNSCR 1373 (AML/CFT Law, Art. 41(2)), and to decide based on UNSCR 1373 designation criteria to list, request additional information or reject the application (Decree N 487, Art. 7(3)). No further elements are provided in the legislation on the basis for the competent authority to file application to the Commission. The authorities advised that they would be led by the definition of “persons related to terrorism” as set forth in Art. 331.1 of the CC (“Financing of terrorism, provision of other material support and resources to terrorists activities”).

(c) The Commission promptly examines a request of a competent authority of a foreign state on the application of measures referred to in the UNSCR 1373 (2001), and provided that there is a reasonable suspicion that a person meets the appropriate criteria referred to in the UNSCR 1373 (2001), the Commission applies to the court and requests freezing of assets of that person or entity (AML/CFT Law, Art. 2(p)(r) and Art. 41 (2-3)).

(d) The Commission shall apply an evidentiary standard of proof of “reasonable suspicion” when deciding whether or not to designation a person (AML/CFT Law, Art. 41(3)). The term “reasonable suspicion” is not defined, and so it is not possible to conclude upon the evidentiary standard of proof to be applied in Georgia. There are no provisions suggesting whether designations should be conditional upon the existence of a criminal proceeding or not.

(e) To date, Georgia has not requested another country to give effect to the actions initiated under its own freezing mechanisms, and there is no formal requirement in place on the scope and nature of information to be provided in such cases.

Criterion 6.3 – (a) The Commission shall, within its competence, cooperate and exchange information with competent authorities and international organisations. The Task Force operating under the Commission shall collect, process and disseminate information required for performing the Committee’s functions (AML/CFT Law, Art. 40(3-4)).

(b) The Commission shall operate ex-prate when proposing designation to the respective UNSC Committee, when dealing with the requests of the domestic and foreign state authorities, and filing a request to the court for freezing of assets under the UNSCR 1373 (AML/CFT Law, Art. 41 (2),(4), and Art. 43(1)). According to the Administrative Procedures Code (APC) (Art. 21.32, Para. 1 and 2), a judge shall review the Commission's

motion for the freezing of property at his/her own discretion, without oral hearing, and shall render a decision without notifying the affected person(s). There is no legal or judicial requirement for the involved competent authorities to hear or inform the person or entity against whom a designation is being considered.

Criterion 6.4 – In Georgia, the implementation of TFS is conducted through a multistep mechanism that requires the participants to accomplish their activities immediately. Example of a court order issued on the basis on the new legislation adopted in October 2019 demonstrated the action to be accomplished within 3 days, this not amounting to action being taken “without delay”.

The TFS implementation requires an order from the court (under both the UNSCR 1267/1988 and the UNSCR 1373 regimes) issued on the basis of a motion filed by the Commission (AML/CFT Law, Art. 41(1)).

The Committee shall take necessary measures to immediately apply to the court (AML/CFT Law, Art. 41(4)). A court shall consider the motion of the Commission immediately (APC, Art. 21.32(1)). The court order enters into force upon issuance (APC, Art. 21.33(1)). Property is frozen permanently, until the court order is revoked (APC, Art. 21.32(6)). Court order is submitted to the National Bureau of Enforcement (NBE) for execution. It includes the designated person or entity in the Debtors’ Registry.

Further, Art. 21.32(4) of the APC clarifies, that a judge shall issue the order if concludes that the person designated in the Commission’s motion complies with the relevant conditions set forth in a relevant UNSCR.

This procedure is applied also to implementation of measures with respect to UNSCR 1373.

Criterion 6.5 – Georgia identified the Committee, the court, the NBE and the FMS as competent authorities responsible for implementing and enforcing the TFS.

(a) There is no explicit requirement under the Georgian legislation for all natural and legal persons within the country to “freeze” (as defined in the FATF Glossary), without delay and without prior notice, the funds or other assets of designated persons and entities.

The authorities advise that, once the freezing order of the court is submitted to the NBE for execution, the latter includes the designated person or entity in the Debtors’ Registry, and from there all natural and legal persons are required to comply immediately with the freezing order. However, except for the “banking institutions” (see following paragraph), there is no legislation provided that would confirm this statement.

Respectively, once the person is included in the Debtors’ Registry, there is an explicit requirement for the “banking institutions”, no later than the following banking day to notify about the accounts and its’ balance and freeze it (Law on Enforcement Proceedings, Art. 19.2(3)). It is however, unclear which type of entities are covered under the term “banking institution”. “No later than the following banking day” does not amount to action taken “without delay”. There is no similar obligation set in the legislation for any other natural or legal person with respect to information displayed in the Debtors’ Registry.

If so requested by the NBE, all administrative authorities, bank institutions, natural and legal persons, being in a contractual relationship with the debtor shall furnish it with information on the debtor’s property condition, revenues, bank accounts, balance, and cash flow of such accounts (Law on Enforcement Proceedings, Art.17(2)). This however does not amount to freezing without delay, and without prior notice.

Moreover, within the scope of the Law on Enforcement Proceedings, enforcement measures cannot be applied with respect to a number of objects (e.g. financial collateral, settlement account of a systemically important payment system, assets on nominal holder accounts of securities market intermediaries, pension assets etc.) (Art. 2.1).

(b) In accordance with the AML/CFT Law (Art. 41(5)), a reference to the assets under Chapter X regulating actions of the Committee and the court for enforcement of UNSCRs, including UNSCR 1373, fully extends to all types of funds and other assets covered under (i) to (iv) of this sub-criterion, that are owned or controlled, directly or indirectly, wholly or jointly. There is an express application to funds or assets belonging to people who are acting on behalf of, or at the direction of, designated persons. When it comes to obligation to freeze, however, there are limitations indicated above, in c. 6.5(a) with respect to property upon which enforcement measures cannot be applied.

(c) The obliged entities are prohibited from establishing or continuing a business relationship or concluding/carrying out an occasional transaction if there are grounds to suspect that a customer or any other party to a transaction is one of the persons referred to in c. 6.5(b) (AML/CFT Law, Art. 10(7)). This requirement while largely in line with the FATF standards put additional threshold of a “grounds to suspect”. Limitation under the Law on Enforcement Proceedings (Art. 2.1) as explained under c. 6.5(a) apply. Except for this, there is no explicit prohibition extending to the nationals of Georgia, including any persons and entities within its jurisdiction, to take the preventive measures set out under this criterion. The CC, Art. 331.1 criminalises TF. The TF offence, however, requires the proof of intention by the defendant, whereas the prohibition on making funds or other assets available does not have a *mens rea* requirement.

(d) The NBE should include immediately persons subject to the freezing order in the Debtors’ Registry (Law on Enforcement Proceedings (Art. 19.1), which is publicly available and accessible from NBE website (<https://debt.reestri.gov.ge/main.php?s=1>). Summary information displayed on the Debtors’ Registry does not make it possible to identify, which of the persons entered in the database would be the ones designated on the basis of the UNSCRs. Information is communicated via the NBE with a considerable delay (see Table in IO 10).

The FMS maintains on the website the consolidated list of the persons on its web-site (<https://www.fms.gov.ge/geo/page/list-of-persons-supporting-terrorism>). In addition, the FMS publishes the news about the update of the lists, based on the order of the Head of FMS. This however does not always amount to immediate action (see Table in IO 10).

There is no guidance provided to obliged entities on their obligations in taking action under freezing mechanisms.

(e) The obliged entities are prohibited from establishing or continuing a business relationship or concluding/carrying out an occasional transaction if there are reasonable grounds to suspect that a customer or any other party to a transaction is one of the persons referred to in c. 6.5(b), and required to submit to FMS a report on suspicious transaction or an attempt to prepare, conclude or carry out a suspicious transaction (AML/CFT Law, Art. 10(7), Art. 25(1)). This however does not amount to reporting to the FMS any assets frozen.

Respectively, “banking institutions” shall notify the Debtors’ Registry about the accounts and its’ balance and shall freeze these (Law on Enforcement Proceedings, Art. 19.2(3)) (see. c.6.5(a)). Limitation under the Law on Enforcement Proceedings (Art. 2.1) as explained under c. 6.5(a) apply.

(f) The APC specified that, upon reviewing the motion of the Commission, the judge shall take into account the rights of *bona fide* third parties to the property subject to freezing (Art. 21.32, Para. 3).

Criterion 6.6 – Georgia has publicly known procedures to submit de-listing requests to UNSC Committees 1267/1989 and 1988 and UNSCR 1373.

(a) The Commission is the competent authority of Georgia for submitting requests for removal of persons designated pursuant to UN Sanctions Regimes (AML/CFT Law, Art. 43(4); Decree No. 487, Art. 4(d)). The Commission shall, at appropriate times, but at least once a year or upon a grounded request of an interested party, examine if sufficient grounds for listing of persons still exist. If not, the Commission shall take necessary measures to immediately submit the proposal to the respective UNSC Committee (AML/CFT Law, Art. 43(3, 5)).

(b) The Commission is the competent authority of Georgia for de-listing of persons and applying to the court for unfreezing of assets under the UNSCR 1373. The Commission shall, at appropriate times, but at least once a year or upon a grounded request of an interested party, examine if the grounds for listing still exist. If not, Commission shall take necessary measures to immediately apply to the court for lifting the freezing order (AML/CFT Law, Art. 42 (1-3)).

In addition, the APC (Art. 21.34, Para. 1(c)) provides for a mechanism through which the Commission shall file a motion to the court to unfreeze the funds or other assets of a person that has been de-listed by the Commission.

(c) An interested party listed under the 1373 UNSCR regime can submit a request for de-listing to the Commission (AML/CFT Law, Art. 42 (1)). An interested party also have the right to appeal the decision of the Commission either to Commission or to the court (Decree No. 487, Art. 9). The APC (Art. 21.33) provides also for a mechanism, through which an appeal may be filed with the court having issued the freezing order.

(d)&(e) The Commission shall ensure that interested parties are informed about a UN mechanisms for examining petitions on removing a relevant person from the list of sanctioned persons in line with the procedures adopted by the UNSCR 1267/1989 and 1988 Committees, including those of the Focal Point mechanism established under UNSCR 1730, and Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 (AML/CFT Law, Art, 43(6)).

(f) The APC (Art. 21.34, Para. 1(b)) provides for a procedure, through which the Commission may file a motion to the court to unfreeze the funds or other assets of a person that, as verified by the Commission, is not a person designated under the UN Security Council Resolutions.

(g) The deficiencies described in the analysis of c.6.5 (d) with regard to the mechanisms for communicating designations to obliged entities apply in respect of compliance with this criterion. There is no guidance provided to covered FIs and other persons or entities, including DNFBPs that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

Criterion 6.7 – The AML-CFT Law (Article 42 (4)) provides for mechanisms through which the Commission, upon due notification of, and no-objection from the respective UN Committee, may file a motion to the court for partially lifting the freezing order on assets frozen under UNSCRs, if that is necessary to cover a person's basic expenses, including

payments for foodstuffs, rent, mortgage, medicines and other medical treatment, taxes and public utility charges, legal aid and maintenance of frozen assets.

The AML Law (Article 42 (5)) provides for mechanisms through which the Commission, upon due notification of, and approval from the respective UN Committee, may file a motion to the court for partially lifting the freezing order on assets frozen under UNSCRs, for the extraordinary expenses.

Access to funds or other assets frozen pursuant to UNSCR 1373 is provided on the basis of a court decision issued upon the motion filed by the Commission, on a grounded request of an interested party APC (Art. 21.34; AML Law (Article 42 (4-5))).

Weighting and Conclusion

Georgia has made a serious effort to improve compliance with the relevant UN instruments on freezing of terrorist assets. There are, however, still some moderate shortcomings in the system, the ones weighted more heavily related to a mechanism for identifying targets for designation pursuant to UNSCRs 1267/1989, 1988, defining the evidentiary standard of proof to be applied when designating targets and, implementation of TFS and communication without delay, and requirements for natural and legal persons to freeze the assets of persons designated by the UN. **R. 6 is rated PC.**

Recommendation 7 – Targeted financial sanctions related to proliferation

These requirements were added to the FATF Recommendations when they were revised in 2012 and, therefore, were not assessed under the 4th round mutual evaluation of Georgia in 2012. Until October 2019 there was no explicit legislative basis secured for implementation of the PF-related UNSCRs. The amended AML/CFT Law clarified the mandate of the Commission and requirements for the obliged entities with respect to implementation of the PF-related UNSCRs.

Criterion 7.1 – In Georgia, the implementation of TFS is conducted through a multistep mechanism that requires the participants to accomplish their activities immediately. The legal and institutional framework for implementation of TF and PF TFS are identical. While the system was not tested for the PF regime, example of TF TFS implementation suggests process to take 3 days, which does not amount to action being taken “without delay” (see c.6.4).

The TFS implementation requires an order from the court issued on the basis of a motion filed by the Commission (AML/CFT Law, Art. 41(1)).

The Commission shall take necessary measures to immediately apply to the court (AML/CFT Law, Art. 41(4)). A court shall consider the motion of the Commission immediately (APC, Art. 21.32(1)). The court order enters into force upon issuance (APC, Art. 21.33(1)). Property is frozen permanently, until the court order is revoked (APC, Art. 21.32(6)). Court order is submitted to the National Bureau of Enforcement (NBE) for execution. It includes the designated person or entity in the Debtors’ Registry.

Further, Art. 21.32(4) of the APC clarifies, that a judge shall issue the order if concludes that the person designated in the Commission’s motion complies with the relevant conditions set forth in a relevant UNSCR.

Criterion 7.2 – Georgia identified the Committee, the court, the NBE and the FMS as competent authorities responsible for implementing and enforcing the TFS.

(a) There is no explicit requirement under the Georgian legislation for all natural and legal persons within the country to “freeze” (as defined in the FATF Glossary), without delay and without prior notice, the funds or other assets of designated persons and entities.

The authorities advise that, once the freezing order of the court is submitted to the NBE for execution, the latter includes the designated person or entity in the Debtors’ Registry, and from there all natural and legal persons are required to comply immediately with the freezing order. However, except for the “banking institutions” (see following paragraph), there is no legislation provided that would confirm this statement.

Respectively, once the person is included in the Debtors’ Registry, there is an explicit requirement for the “banking institutions”, no later than the following banking day to notify about the accounts and its’ balance and freeze it (Law on Enforcement Proceedings, Art. 19.2(3)). It is however, unclear which type of entities are covered under the term “banking institution”. “No later than the following banking day” does not amount to action taken “without delay”. There is no similar obligation set in the legislation for any other natural or legal person with respect to information displayed in the Debtors’ Registry.

Further on, as authorities suggested, it is stipulated that if so requested by the NBE, all administrative authorities, bank institutions, natural and legal persons, being in a contractual relationship with the debtor shall furnish it with information on the debtor’s property condition, revenues, bank accounts, balance, and cash flow of such accounts (Law on Enforcement Proceedings, Art.17(2)). This however does not amount to freezing without delay, and without prior notice.

Moreover, within the scope of the Law on Enforcement Proceedings, enforcement measures cannot be applied with respect to a number of objects (e.g. financial collateral, settlement account of a systemically important payment system, assets on nominal holder accounts of securities market intermediaries, pension assets etc.) (Art. 2.1).

(b) In accordance with the AML/CFT Law (Art. 41(5)), a reference to the assets under Chapter X regulating actions of the Committee and the court for enforcement of UNSCRs, fully extends to all types of funds and other assets covered under (i) to (iv) of this sub-criterion, that are that are owned or controlled, directly or indirectly, wholly or jointly. There is an express application to funds or assets belonging to people who are acting on behalf of, or at the direction of, designated persons. When it comes to obligation to freeze, however, there are limitations indicated above, in c. 7.2(a) with respect to property upon which enforcement measures cannot be applied.

(c) The obliged entities are prohibited from establishing or continuing a business relationship or concluding/carrying out an occasional transaction if there are grounds to suspect that a customer or any other party to a transaction is one of the persons referred to in c. 7.2(b) (AML/CFT Law, Art. 10(7)). This requirement while largely in line with the FATF standards put additional threshold of a “grounds to suspect”. Limitation under the Law on Enforcement Proceedings (Art. 2.1) as explained under c. 7.2(a) apply. Except for this, there is no explicit prohibition extending to the nationals of Georgia, including any persons and entities within its jurisdiction, to take the preventive measures set out under this criterion.

(d) The NBE should include immediately persons subject to the freezing order in the Debtors’ Registry (Law on Enforcement Proceedings (Art. 19.1), which is publicly available and accessible from NBE website (<https://debt.reestri.gov.ge/main.php?s=1>)). Summary information displayed on the Debtors’ Registry does not make it possible to

identify, which of the persons entered in the database would be the ones designated on the basis of the UNSCRs.

The FMS maintains on the website the consolidated list of the persons on its web-site (<https://www.fms.gov.ge/geo/page/list-of-persons-supporting-terrorism>). Unlike TF-related TFS, there is no Head of FMS order or publication in the FMS newsfeed with respect to PF-related designations.

There is no guidance provided to obliged entities on their obligations in taking action under freezing mechanisms.

(e) The obliged entities are prohibited from establishing or continuing a business relationship or concluding/carrying out an occasional transaction if there are reasonable grounds to suspect that a customer or any other party to a transaction is one of the persons referred to in c. 7.2(b), and required to submit to FMS a report on suspicious transaction or an attempt to prepare, conclude or carry out a suspicious transaction (AML/CFT Law, Art. 10(7), Art. 25(1)). This however does not amount to reporting to the FMS any assets frozen.

Respectively, “banking institutions” shall notify the Debtors’ Registry about the accounts and its’ balance and shall freeze these (Law on Enforcement Proceedings, Art. 19.2(3)) (see. c.7.2(a)). Limitation under the Law on Enforcement Proceedings (Art. 2.1) as explained under c. 6.5(a) apply.

(f) The APC specified that, upon reviewing the motion of the Commission, the judge shall take into account the rights of *bona fide* third parties to the property subject to freezing (Art. 21.32, Para. 3).

Criterion 7.3 – As proliferation of mass destruction falls under the scope of the AML/CFT Law adopted in 2019, the regime of monitoring/sanctions applied to the compliance of AML/CFT obligations (Chapter IX) is also applied to obligations related to proliferation. Specific sanctions for breaching the obligations on implementation of screening, freezing and reporting measures are set in the respective sectorial legal acts as follows: for banks - Order 242/01 of the President of NBG Art 2.1; for MFOs – The Order 25/04 of the President of NBG, Art. 2.2; for PSPs - The Order 87/04 of the President of NBG, Art. 2; for Currency Exchange bureaus - The Order 25/04 of the President of NBG, Art. 5; Securities Market Participants - (brokers and securities registrars) - The Order N35/04 of February 14, 2012 of the Governor of NBG, Art. 5; for Non-Bank Depository Credit Unions (Credit Unions) - The Order N257 of the President of NBG, Art. 6. No information is provided on specific sanctions applied to covered DNFBPs, and sanctions envisaged for failure to comply with the Law on Enforcement Proceedings.

In addition, the CC. Art. 377 criminalises “Unlawful acts related to inventoried or seized property or property subject to forfeiture”.

Criterion 7.4 – Georgia has publicly known procedures to submit de-listing requests to respective UNSC Committees dealing with the PF-related designations.

(a) The Commission shall ensure that interested parties are informed about a UN mechanisms for examining petitions on removing a relevant person from the list of sanctioned persons in line with the procedures adopted by the UNSCR 1267/1989 and 1988 Committees, including those of the Focal Point mechanism established under UNSCR 1730 (AML/CFT Law, Art, 43(6)).

(b) The APC (Art. 21.34, Para. 1(b)) provides for a procedure, through which the Commission may file a motion to the court to unfreeze the funds or other assets of a person that, as verified by the Commission, is not a person designated under the UN Security Council Resolutions.

(c) Pursuant to AML Law (Article 42 (4-5)) the Commission ensures access to funds or other assets in line with exceptions provided under the UNSCRs 1718 and 2231.

(d) The deficiencies described in the analysis of c.7.2 (d) with regard to the mechanisms for communicating designations to obliged entities apply in respect of compliance with this criterion. There is no guidance provided to covered FIs and other persons or entities, including DNFBPs that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

Criterion 7.5 – (a) An overall prohibition set for the obliged entities from continuing a business relationship or concluding/carrying out an occasional transaction if a customer or any other party to a transaction is one of the persons referred to in c.7.2(b) suggests that any type of additions to such accounts are prohibited too (AML/CFT Law, Art. 10(7)). Hence, Georgia does not permit any form of additions to the frozen accounts.

(b) According to article 42 (6) of the AML/CFT Law, based on grounded motion of an interested party and in compliance with the requirements and conditions of the relevant UNSCRs on non-proliferation, the Commission is authorised to submit the motion before the court and request to lift the sanctions on funds and assets of designated person or entity, which are necessary to make payments due under a contract entered into prior to the listing of such person or entity.

Weighting and Conclusion

Georgia has made a serious effort to improve compliance with the relevant UN instruments on freezing of terrorist assets. There are, however, still some moderate shortcomings in the system, the ones weighted more heavily related to timely implementations of TFS and communication without delay, requirements for natural and legal persons to freeze the assets of persons designated by the UN, lack of information on sanctions to be applied to DNFBPs for failing to comply with the requirements and sanctions envisaged for failure to comply with the Law on Enforcement Proceedings, and no permission for additions to the accounts. **R. 7 is rated PC.**

Recommendation 8 – Non-profit organisations

In the 4th round MER of 2012, Georgia was rated PC on SR. VIII. Numerous deficiencies were identified, including the lack of review of the adequacy of laws and regulations related to NPOs; the failure to periodically reassess NPO risks, to conduct outreach other than the publication of the FATF best practices paper; the lack of supervision or monitoring of NPOs etc.

Criterion 8.1 – (a) Georgia has not identified the subset of organisations that fall within the FATF definition of NPO and has not identified the features and types of NPOs which, by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse.

Nevertheless, Georgia conducted general assessment of the NPO sector. Analysis reflected in the NRA does not conclude on the level of the TF risk in the NPO sector. It contains a factual overview of relevant legislation, type of legal arrangement that is recognised as an NPO in Georgia, number of NPOs established, checks conducted when registered, sources

of funding, transparency mechanisms established and NPOs' activities. Some information is provided on inherent vulnerability of the sector: (i) it is mostly funded by foreign sources (mostly EC/USAID); (ii) there is little funding from Asia and the Middle East; (iii) activities are generally related to education, social and health matters; and (iv) no NPOs operate in conflict zones. However, there is no overall conclusion on inherent vulnerability. A number of controls are referred to, but these appear limited. Internal controls have been introduced at the request of donors (not by law), whilst standards on transparency and accountability are being "gradually" introduced. Financial and activity reports are required for charities, but these account for only a very small number of NPOs. Despite clear vulnerabilities in this respect, there is no overall conclusion on the extent to which controls can mitigate threats.

(b) Georgia has not clearly identified the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors could abuse those NPOs. Reference is made to NPOs working in several vulnerable local communities, whose members have travelled to Syria and Iraq to fight. On the other hand, it is said that no organisations have been identified that support terrorist ideologies.

(c) Georgia has not reviewed the adequacy of measures, including laws and regulations, which relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take proportionate and effective actions to address the risks identified.

(d) While the AML/CFT Law requires conducting the national ML/TF risk assessment every two years, no periodic assessment of the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures was conducted by Georgia.

Criterion 8.2 – (a) Certain NPOs, such as charitable organisations, are subject to an obligation to file with the Tax Service annual activity reports, financial reports on revenues and audited financial statements, as well as to publish such activity reports and financial statements (Art. 32, Para. 9 and 10 of the Tax Code). This, however, does not amount to having clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs.

(b) No measures are in place to encourage and undertake outreach and educational programs to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse.

(c) No practices are in place to work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse.

(d) No measures are in place to encourage NPOs to conduct transactions via regulated financial channels, wherever feasible, keeping in mind the varying capacities of financial sectors in different countries and in different areas of urgent charitable and humanitarian concerns.

Criterion 8.3 – No specific steps are taken to promote effective supervision or monitoring such that it could be demonstrated that risk-based measures apply to NPOs at risk of terrorist financing abuse.

Criterion 8.4 – (a) No practices are in place to monitor the compliance of NPOs with the requirements of Recommendation 8.

(b) Among NPOs, sanctions apply only to charitable organisations – in the form of deprivation from their status as such organisation – in case of failure to comply with the requirements of the Tax Code (Art.32, Para 13(a)). Other than that, no other sanctions are available for violations by NPOs or persons acting on behalf of these NPOs.

Criterion 8.5 – (a) Whereas the Revenue Service and the National Agency of Public Registry hold (and, to a certain extent, provide for public availability of) some information on NPOs, this does not amount to having mechanisms or practices in place to ensure effective cooperation, coordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs.

(b) The investigation of terrorism-related offences (including TF) is the responsibility of the SSS (GPO Order N3, Para. 4). The authorities advise that, in the course of counter terrorism and inter alia counter terrorism financing activities, various financial transactions and operations related to charity and humanitarian funds can be of interest to the SSS, and in order to identify and prevent at an early stage any possible fact of terrorism, or TF, relevant measures envisaged under legislation of Georgia are carried out. Authorities further mentioned that, so far, no links of NPOs to terrorist organisations, terrorism-related individuals and/or terrorism financing by exploiting their capabilities have been detected.

(c) There are various gateways available for the SSS to obtain information on the administration and management of NPOs. In particular, basic information on the NPO, tax and financial information is available through data publicly provided by the Revenue Service, the National Agency of Public Registry, and the information published by charitable organisations themselves. Other information, on financial transactions can be obtained using a wide range of investigative techniques available to the SSS and all other LEAs at any stage of an investigation under the CPC and the Law on Operative Investigative Activities (“LOIA”). (see also R. 31)

(d) There is no specific mechanism to ensure that, when there is a TF suspicion involving an NPO, information is shared promptly with competent authorities. The FMS, when received respective information on the TF-suspicion of the NPO through the STR or on false cross-border declaration would disseminate the results of its analysis to the SSS (AML/CFT Law, Art. 25(1), (5), Art. 34(1)).

Criterion 8.6 – International requests for information regarding particular NPOs suspected of TF abuse are dealt with in the same way as any other international request for information. Georgia has a legal basis (including laws, bilateral and multilateral agreements) that allows them to rapidly provide a wide range of MLA. In line with the Law on International Cooperation in Criminal Matters (ICCM) a wide range of MLA can be provided in relation to TF. The GPO functions as the central authority for the processing of MLA requests (ICCM, Art. 11(1)). There are also extensive mechanisms in place to conduct direct cooperation with the foreign state LEAs. In particular, the Law on International Cooperation in Law Enforcement (LILEC) provides with a legal basis for conducting international law enforcement cooperation in the areas of exchanging operative-investigative information and implementing relevant measures for the prevention, detection or suppression of TF-related crimes (Art. 2, Para. 1), including through setting out JITs with the foreign LEAs. The SSS, as a responsible LEA for investigation of the TF –

related criminal activities (GPO Order N3, Para. 4) would be the contact point in these circumstances. In addition, the FIU channels can be used for international requests of financial intelligence in relation to NPOs (AML/CFT law, Art. 37(1)). (see also Rec. 40)

Weighting and Conclusion

The strength of Georgia with respect to implementation of measures under this Recommendation lays with international cooperation. However, there is a serious gap with respect to core requirements on taking RBA, conducting sustained outreach, and applying risk-based monitoring of NPOs. **R. 8 is rated NC.**

Recommendation 9 – Financial institution secrecy laws

In the 4th round MER of 2012, Georgia was rated LC on R.4. The MER noted limitations on allowing FIs to exchange and share information for the purpose of R.9 and SR.VII.

Criterion 9.1 – Most sectorial laws make information held by covered FIs confidential (Law on Commercial Bank Activities, Art. 17; Law on MFOs, Art. 10; Law on Payment Systems and Services (PSPs), Art. 43; Law on Securities Market (brokerage firms and securities registrars), Art. 32; Law on Non-Depository Institutions, Art 16; and Law on Insurance, Art. 29 and Rule on disclosure of confidential information, Art. 3(4)). Where this is the case, there are exemptions for disclosing information to the supervisor, FMS and law enforcement. There are no similar provisions concerning professional secrecy for currency exchange offices, loan issuing entities, or leasing companies.

Commercial banking groups may exchange information within that group and with other commercial banks for the purposes of AML/CFT legislation (Law on Commercial Bank Activities, Art 17(4)). There are no similar provisions in other sectorial laws.

(a) Access to information by competent authorities – The FMS is authorised to request and obtain any information and documents from covered FIs to support its statutory activities (AML/CFT Law, Art. 35(1)(a)). Covered FIs are required, at the request of the FMS, to provide any information that is necessary for the FMS to perform its functions (AML/CFT Law, Art. 25(6)).

For the purposes of inspection or determining ML/TF risk, supervisory authorities are authorised to request and obtain required information (including confidential information) from covered FIs (AML/CFT Law, Art. 38(3)). This is in addition to powers in other laws, e.g. the NBG is authorised to collect confidential information to support its statutory activities (Organic Law on National Bank of Georgia, Art. 45).

The CPC establishes law enforcement powers during a criminal investigation for compelling the production of computerised records from any individual or entity, including where covered by confidentiality provisions.

(b) Sharing of information between competent authorities – Competent authorities (FMS, supervisory authority or other state agency responsible for prevention, detection, suppression, investigation and/or prosecution of ML/TF) shall, within their competence, cooperate by exchanging information and experience for AML/CFT purposes (AML/CFT Law, Art. 39(1)).

The FMS is authorised to request and obtain from public bodies confidential information and, as required, access directly, if technically possible, databases containing such information (AML/CFT Law, Art. 35(1)(b)).

Supervisory authorities are also required to promptly inform the FMS about violations of the AML/CFT Law and suspicion of ML/TF (AML/CFT Law, Art. 39(2)). The FMS shall also

promptly inform supervisory authorities about potential violations of the AML/CFT Law (AML/CFT Law, Art. 39(4)).

Supervisory authorities are required to cooperate with foreign supervisors for the purposes of group-wide supervision (AML/CFT Law, Art. 39(3)). The NBG is also able to exchange confidential data with foreign supervisors (Organic Law on the National Bank, Art. 5(2)).

The FMS is authorised to share confidential intelligence with law enforcement agencies in order to support ongoing investigations (AML/CFT Law, Art. 39(6)). There are grounds also for cooperation with foreign LEAs (Law on International Law Enforcement Cooperation). See also R.40.

(c) Sharing of information between FIs – The following are permitted to exchange information under sectorial laws: (i) FIs that are within commercial banking groups (i.e. groups headed by banks licensed by the NBG); and (ii) commercial banks (banks licenced by the NBG), for purposes of AML/CFT legislation (Law on Commercial Bank Activities, Art. 17(4)). Otherwise, confidentiality provisions in sectorial laws (MFOs, PSPs, currency exchange offices, brokerage firms, securities registrars, loan issuing entities, credit unions, insurance companies and leasing companies) do not permit sharing of information between FIs.

However, there are three relevant exceptions to such confidentiality provisions: (i) for the purposes of R.13, covered respondent FIs may provide their correspondent FIs with confidential data in order to allow them to comply with R.13 (AML/CFT Law, Art. 22(6)); (ii) for the purposes of R.16, ordering FIs are required to provide the necessary information when requested to do so (Funds Transfer Regulation, Article 4); and (iii) for the purposes of R.17, where covered FIs act as a third party/intermediary, they may, with the consent of a customer, provide information, including confidential data, to relying FIs where certain conditions are met (AML/CFT Law, Art. 16(6)). There are also provisions allowing information to be exchanged amongst group entities (AML/CFT Law, Art. 30) and in respect of STRs (AML/CFT Law, Art. 28).

Weighting and Conclusion

All criteria are met. **R.9 is rated C.**

Recommendation 10 – Customer due diligence

In the 4th round MER of 2012, Georgia was rated PC on R.5. There were a number of deficiencies identified, including applicability of Simplified due diligence (SDD), prohibition of numbered accounts, regulation of electronic money institutions and leasing companies, as well as applicability of CDD measures on the basis of materiality and risk. Since then, there have been a number of changes to the AML/CFT Law, including most recently on 30 October 2019.

The new AML/CFT Law applies to all customer relationships, including those established prior to 30 October 2019 which are subject to transitional provisions (AML/CFT Law, Art. 44). The effect of these transitional provisions is to give additional time to remediate information and evidence collected and held under the previous AML/CFT Law (in line with c.10.16). Covered FIs are required to implement these requirements in an appropriate timeframe (based on risk, materiality and other factors) and by no later than 1 November 2020.

Collective investment funds (established under the Law on Collective Investment Undertakings) and fund managers (referred to in the Law on Securities Markets) are not designated as obliged entities. However, none were registered under sectorial laws at the date of the conclusion of the on-site visit, so this is not treated as a shortcoming under R.10.

Criterion 10.1 – Covered FIs are prohibited from opening or maintaining anonymous accounts or accounts in fictitious names (AML/CFT Law, Art. 12(3)). Commercial banks are prohibited from opening and maintaining numbered accounts (NBG Instruction on Opening Accounts, Art. 3(1.1)).

Criterion 10.2 – (a) Covered FIs are required to undertake CDD measures when establishing a business relationship (AML/CFT Law, Art. 11(1)(a)).

(b) Covered FIs are required to undertake CDD measures when carrying out an occasional transaction above GEL 15 000 or its equivalent in foreign currency (EUR 5 000) whether carried out in a single transaction or several linked transactions (AML/CFT Law, Art. 11(1)(b)).

(c) Covered FIs are required to undertake CDD when carrying out an occasional transfer of funds above GEL 3 000 or its equivalent in foreign currency (EUR 1 000) whether carried out in a single transaction or several linked transactions (AML/CFT Law, Art. 11(1)(c)).

(d) Covered FIs are required to undertake CDD where there is suspicion of ML/TF, regardless of any exemptions or thresholds (AML/CFT Law, Art. 11(4)). An incomplete definition for ML (AML/CFT Law, Art. 2(Z⁸)) – which does not refer to all relevant parts of the Criminal Code - means that CDD will not be applied in all cases envisaged under the standard, though all core elements of the ML offence are covered (see R.3).

(e) Covered FIs are required to undertake CDD when there are doubts about the veracity or adequacy of previously obtained customer identification data (AML/CFT Law, Art. 11(1)(d)).

Criterion 10.3 – Covered FIs are required to identify the customer and verify that customer's identity based on a reliable and independent source (AML/CFT Law, Art. 10(1)(a)). This requirement applies to permanent or occasional customers, and customers that are natural persons, legal persons or acting on behalf of a legal arrangement.

Criterion 10.4 – Covered FIs are required to identify the person purporting to act on behalf of the customer and verify that person's identity based on a reliable and independent source and obtain a duly certified letter of authority (AML/CFT Law, Art. 10(2)).

In the case of a customer that is a legal entity (not an individual), covered FIs are required to obtain a document proving authority to represent the entity (FMS Regulation for Banks, Art. 6(14)(c) and (d)); FMS Regulation for PSPs, Art.6 (17)(c) and (d); FMS Regulation for MFOs, Art. 6(14)(c) and (d); FMS Regulation for Insurance Companies and Founders of Non-State Pension Schemes, Art. 6(13)(c) and (d); FMS Regulation for Brokerage Companies, Art. 5(13)(c) and (d); FMS Regulation for Currency Exchange Bureaus, Art. 5(13)(c) and (d); FMS Regulation for Credit Unions, Art. 6(10)(c) and (d); and FMS Regulation for Leasing Companies, Art. 5(11)(c) and (d). There is no such requirement for securities registrars, however, in case of non-stock exchange transactions (when a broker does not participate in a transaction related to securities), registrars are required to follow CDD requirements for brokerage companies (FMS Regulation for Securities Registrars, Art. 5(13)).

Criterion 10.5 – Covered FIs are required to identify the BO and take reasonable measures to verify that person’s identity based on a reliable source (AML/CFT Law, Art. 10(1)(b)). BO means a natural person who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is prepared, concluded or carried out (AML/CFT Law, Art. 13(1)).

Criterion 10.6 – Covered FIs are required to ascertain the purpose and intended nature of a business relationship. This shall include obtaining information about the nature, size and frequency of expected transactions (AML/CFT Law, Art. 10(1)(c) and (4)).

Criterion 10.7 – (a) Covered FIs are required to conduct ongoing monitoring of a business relationship. This shall include examination of transactions prepared, conducted or carried out in the course of a business relationship to ensure that they are consistent with knowledge of the customer, its activity and risk level, and, as required, the source of wealth and source of funds (AML/CFT Law, Art. 10(1) and (5)).

(b) Covered FIs are required to ensure that identification data and other information is updated at appropriate times (AML/CFT Law, Art. 10(1) and (5)). In addition, covered FIs (except insurance companies and leasing companies) are required also to collect new information in order to support relevant ongoing monitoring (NBG Guidelines on due diligence measures, Art. 5(2) and (3)).

Criterion 10.8 – Covered FIs must understand the ownership and control structure of a customer that is a legal person or legal arrangement (AML/CFT Law, Art 10(3)).

Criterion 10.9 – Inter alia, for customers that are legal persons, covered FIs are required to identify the customer and verify its address through the information set out below.

For legal entities: (i) full name; (ii) date and number of registration; (iii) resolution as determined by the Georgian legislation on establishing the entity; (iv) identification details of persons authorised for management and representation of the legal entity; and (v) legal address (in case of a branch or representation, the legal address of the entity as well as of the head office). There is no requirement to collect information on the powers that regulate and bind the person. For non-incorporated legal entities: (i) full name; (ii) legal act or other document, on the basis of which this organisational formation has been established (or has been operating); (iii) identification details of persons authorised for management and representation; and (iv) legal address (FMS Regulation for Banks, Art. 6(13)(b),(c) and (14)(c),(d); FMS Regulation for PSPs, Art. 6(18)(b),(c) and (17)(c),(d); FMS Regulation for MFOs, Art. 6(13)(b),(c) and (14)(c), (d); FMS Regulation for Insurance Companies and Founders of Non-State Pension Schemes, Art. 6(12)(b),(c) and (13)(c),(d); FMS Regulations for Brokerage Companies, Art. 5(12)(b),(c) and (13)(c),(d); FMS Regulation for Currency Exchange Bureaus, Art. 5(12)(b),(c) and (13)(c),(d); FMS Regulation for Credit Unions, Art. 6(9)(b),(c) and (10)(c),(d); and FMS Regulations for Leasing Companies, Art. 5(9)(b),(c) and (11)(c), (d)).

Where a relationship is established with a trustee in respect of a foreign legal arrangement, covered FIs (except insurance companies and leasing companies) are expected to obtain a copy of the trust deed (NBG Guideline on Determining, Identifying and Verifying BOs, Art. 7).

Criterion 10.10 – Covered FIs are required to identify and take reasonable measures to verify the identity of BOs of customers that are legal persons through the following information: (i) the natural person who ultimately owns, directly or indirectly, or ultimately controls, 25% or more of the ownership interest or voting shares; or (ii) a

natural person who exercises control through other means; or (iii) if, after having exhausted all possible means, person(s) with managing authority (AML/CFT Law, Article 13(1) to (4)).

Criterion 10.11 –For customers that are legal arrangements, covered FIs are required to identify and take reasonable measures to verify the identity of BOs through the following information: (i) the trustee; (ii) the settlor; (iii) the protector (if any); (iv) the beneficiary; and (v) other natural persons exercising ultimate effective control over the trust or similar legal arrangement (if any) (AML/CFT Law, Art. 13(5)).

Criterion 10.12 –Insurance organisations and brokers are required to undertake the following measures in relation to the beneficiary of a life insurance policy: (i) identify the specifically named beneficiary; (ii) where the beneficiary is not specifically named, obtain sufficient information concerning a potential group of beneficiaries to satisfy themselves that they will be able to identify the beneficiary before the pay-out of proceeds; and (iii) verify the identity of the beneficiary of the life insurance policy before the pay-out of insurance proceeds (AML/CFT Law, Art. 14(1) to (3)).

Criterion 10.13 - In respect of a new customer, insurance organisations and brokers are required to consider the beneficiary of a life insurance policy as a risk factor when determining whether EDD measures are applicable. Where high (rather than higher) ML/TF risks are identified, covered FIs must undertake EDD measures, including in relation to the BO of the beneficiary before pay-out of the insurance proceeds (AML/CFT Law, Art. 14(4)).

Criterion 10.14 – Covered FIs are required to verify the identity of the customer and BO before concluding an occasional transaction or establishing a business relationship. However, covered FIs may complete CDD measures for the purpose of verifying the identity of a new customer or BO after establishment of a business relationship provided that: (i) ML/TF risks are low; and (ii) it is essential so as not to interrupt normal conduct of business. In such situations, verification must be completed as soon as reasonably practicable (AML/CFT Law, Art. 12(1) and (2) and Art.15).

Criterion 10.15 – Operations on behalf, or at the direction, of, a customer shall be prohibited before completing verification of identity (AML/CFT Law, Article 12(3)).

Criterion 10.16 – Covered FIs have until 1 November 2020 to implement requirements provided by Chapters III (due diligence measures) and IV (enhanced and simplified measures) in relation to existing customers. When determining the appropriate timeframe, covered FIs shall have regard to customer risk and materiality and to the date when CDD measures were previously undertaken and adequacy of data and information held (AML/CFT Law, Art. 44).

Criterion 10.17 – Covered FIs are required to perform EDD where ML/TF risks are high (rather than higher) (AML/CFT Law, Art. 18).

Criterion 10.18 – Covered FIs are permitted to apply simplified CDD measures in relation to low (rather than lower) risk customers. These measures must be consistent with the risk identified (AML/CFT Law, Art. 24). Georgia has not identified any situations where simplified measures could be applied based on a country analysis of risk. In order to apply simplified measures, covered FIs must obtain enough information to support a low risk assessment. Simplified measures are not allowed when there is ML/TF suspicion. No restriction is set for application of simplified measures in circumstances when specific higher risk scenarios apply. In addition, covered FIs (except insurance companies and

leasing companies) are required to prove that the risk is actually low (NBG Guidelines on due diligence measures, Art. 3(1)). An incomplete definition for ML (AML/CFT Law, Art. 2(Z.8)) – which does not refer to all relevant parts of the Criminal Code - means that simplified CDD will not be excluded in all cases envisaged under the standard, though all core elements of the ML offence are covered (see R.3).

Criterion 10.19 – (a) Covered FIs are prohibited from establishing or continuing a business relationship or concluding/carrying out an occasional transaction if they are unable to undertake CDD measures (AML/CFT Law, Article 10(6)). In addition, covered FIs (except insurance companies and leasing companies) shall not enter into a business relationship if risk appropriate preventive measures are not implemented, and, if the business relationship already exists, the covered FIs shall terminate or suspend the relationship (NBG RBA Guideline, Art.15(6) and 15(7)).

(b) Where covered FIs are unable to comply with relevant CDD measures, it is required to consider submitting a STR to the FMS (AML/CFT Law, Article 10(6)).

Criterion 10.20 – In cases where covered FIs form suspicion of ML/TF and reasonably believe that performing CDD measures will “tip-off” the customer, there are no provisions allowing them not to pursue the CDD process.

Weighting and Conclusion

Whilst the key elements of CDD are in place in Georgia, there remain some minor deficiencies in the new AML/CFT Law and supporting guidance. There is: (i) an incomplete definition of ML (c.10.2(d) and c.10.18); (ii) no requirement to collect information on the powers that regulate and bind a legal person (c.10.9); (iii) a requirement to apply enhanced CDD measures only to high (and not higher) risk customers (c.10.17); no restriction for application of simplified measures in circumstances when specific higher risk scenarios apply; and (iv) no provision to address the risk of tipping-off (c.10.20). In addition, the application of some elements of CDD is missing in two less important sectors - insurance and leasing (c.10.7, c.10.9, and c.10.18).

R.10 is rated LC.

Recommendation 11 – Record-keeping

In the 4th round MER of 2012, Georgia was rated LC on R.10. There was no provision for competent authorities, apart from NBG, to request an extension of the record-keeping obligations.

Collective investment funds and fund managers are not designated as obliged entities. However, none were registered under sectorial laws at the date of the conclusion of the on-site visit, so this is not treated as a shortcoming under R.11.

Criterion 11.1 – Covered FIs are required to keep all necessary records on transactions for five years following the preparation, conclusion or carrying out of those transactions (AML/CFT Law, Art.27(2)).

Criterion 11.2 – All records obtained through CDD measures, account files and business correspondence, and results of analyses undertaken, must be kept by covered FIs for five years from the moment of terminating the business relationship or the conclusion of an occasional transaction (AML/CFT Law, Art. 27(1)).

Criterion 11.3 – Covered FIs are required to keep information on transactions in such a way as to permit the reconstruction of individual transactions (Art. 27(2)). They are also

required to maintain information in such a form that permits its use as evidence in a prosecution (AML/CFT Law, Art. 27(5)).

Criterion 11.4 – Covered FIs are required to maintain information in such form that permits its submission to a competent authority in “due course” (AML/CFT Law, Art.27(5)). This requirement differs to the standard which calls for records to be available “swiftly”. Information must be held electronically (AML/CFT Law, Art. 27(6)).

Weighting and Conclusion

Covered FIs are required to ensure that records are available in “due course” which does not ensure that they are available “swiftly”. **R.11 is rated LC.**

Recommendation 12 – Politically exposed persons

In the 4th round MER of 2012, Georgia was rated LC on R.6. The definition of close business relationship with PEPs did not cover legal arrangements. Since then, there have been a number of changes to the AML/CFT Law, including most recently on 30 October 2019.

Collective investment funds and fund managers are not designated as obliged entities. However, none were registered under sectorial laws at the date of the conclusion of the on-site visit, so this is not treated as a shortcoming under R.12.

Both foreign and domestic PEPs are defined as a natural person who has been entrusted with prominent public or political functions. They are: heads of State or of government, members of government (ministers) and deputies, and heads of government institutions; members of legislative bodies; heads and members of governing bodies of political parties; members of supreme courts, constitutional courts and other high-level judicial bodies, the decisions of which are not subject to further appeal save in exceptional circumstances; general auditors and deputies, and members of the courts of auditors; members of boards of central (national) banks; ambassadors and chargés d'affaires; high ranking officers in defence (armed) forces; heads and members of governing bodies of State-owned enterprises; and heads, deputies and members of governing bodies of international organisations (AML/CFT Law, Art. 21(1)).

Criterion 12.1 – (a) Covered FIs are required to identify, through an appropriate risk management system, whether the customer or the BO is a PEP (AML/CFT Law, Art. 21(4)).

(b) Covered FIs are required to obtain approval from senior management on establishing or continuing the business relationship with the customer (AML/CFT Law, Art. 21(3)(a)).

(c) Covered FIs are required to take reasonable measures to establish the source of wealth and the source of funds of the customer and the BO (AML/CFT Law, Art. 21(3)(b)).

(d) Covered FIs are required to conduct enhanced monitoring of the business relationship with a PEP (AML/CFT Law, Art. 21(3)(c)).

Where a person is no longer entrusted with a prominent public or political function, then “effective measures” should be taken to manage risk (AML/CFT Law, Art. 21(4)).

Criterion 12.2 – The same provisions that apply to foreign PEPs also apply to domestic PEPs and persons entrusted with a prominent function by an international organisation.

Criterion 12.3 – PEP requirements apply also to family members of PEPs and persons having “close business relations” with PEPs (AML/CFT Law, Art. 21(5)). Family member is defined as being the spouse, sibling, parent, children (including stepchildren) and their spouses (AML/CFT Law, Art. 21(5) and FMS Regulation for Banks, Art. 2) and this does not include persons that are family members through other forms of partnership than

marriage. A close business relationship includes a natural person who has joint beneficial ownership of a legal person or legal arrangement, or who is the BO of a legal person or legal arrangement set up for the benefit of the PEP (AML/CFT Law, Art. 21(5)). It does not include persons that are closely connected to a PEP socially or politically.

Criterion 12.4 – Covered FIs are required to take reasonable measures to determine whether the beneficiaries and/or, where required, the BO of the beneficiary, are PEPs. However, it is not specified that these measures must take place no later than the time of pay out. Where high (rather than higher) ML/TF risks are identified, then there is a requirement to inform senior management, conduct enhanced ongoing monitoring of the whole business relationship and to consider making a STR (AML/CFT Law, Art. 21(6)).

Weighting and Conclusion

Definitions for close associate and family member of PEPs are considered to be too narrow. In addition, the latest time for determining whether a beneficiary of a life insurance policy (and, where required, BO of a beneficiary) is a PEP is not specified. These shortcomings are moderate. **R.12 is rated PC.**

Recommendation 13 – Correspondent banking

In the 4th round MER of 2012, Georgia was rated PC on R.7. The AML/CFT legislation did not contain requirement for FIs to document the respective AML responsibilities of each institution.

Collective investment funds and fund managers are not designated as obliged entities. However, none were registered under sectorial laws at the date of the conclusion of the on-site visit, so this is not treated as a shortcoming under R.13.

Criterion 13.1 – Correspondent relationship is defined as: the rendering of banking services by one bank (correspondent) to another bank (respondent) by providing a correspondent account and carrying out related banking operations; and a similar business relationship between covered FIs, which involves transfers of funds or securities transactions (AML/CFT Law, Art. 22(1) and NBG Guideline on Management of Risks Related to Correspondent Relationships, Article 2(a)).

(a) Covered correspondent FIs are required to understand the nature of a customer's business and to determine from publicly available sources the respondent's reputation and quality of supervision, including whether it has been subject to a ML/TF investigation or regulatory action (AML/CFT Law, Art. 10(1) and (4) and Art. 22(2)(a); NBG Guideline, Art. 5(1-3) and (10)); and FMS Regulation for Banks, Art. 8(1)).

(b) Covered correspondent FIs are required to assess the effectiveness of the respondent's compliance systems and must also obtain information about the respondents' AML/CFT policy and controls, assess their quality, and be satisfied that they are effective and comply with international standards (AML/CFT Law, Art. 22(2)(b)); NBG Guideline, Art.5(5); and FMS Regulation for Banks, Art. 8(2)).

(c) Covered correspondent FIs are required to obtain the approval of senior management to establish a correspondent relationship (AML/CFT Law, Art. 22(2)(c); NBG Guideline, Art. 7(3); and FMS Regulation for Banks, Art. 8(3)).

(d) Covered correspondent FIs are required to clearly determine the obligations of both respondent and correspondent FIs (AML/CFT Law, Art. 22(2)(d)); NBG Guideline, Art. 7(1)); and FMS regulation for Banks, Art. 8(5)).

Criterion 13.2 – Covered FIs are prohibited from establishing or continuing a correspondent relationship with a respondent that permits its account to be used directly by customers for transacting on their own behalf (payable through account) (AML/CFT Law, Art 22(5)) and NBG Guideline, Art. 4(4) and Art.10(2)(b)).

Criterion 13.3 – Covered FIs are prohibited from establishing or continuing a correspondent relationship with a shell bank or respondent that permits its accounts to be used by a shell bank (AML/CFT Law, Art. 22(4) and FMS Regulation for Banks, Art. 8(4)).

Weighting and Conclusion

All criteria are met. **R. 13 is rated C.**

Recommendation 14 – Money or value transfer services

In the 4th round MER of 2012, Georgia was rated PC on SRVI. The main deficiencies were the following: there were some forms of MVTs (such as electronic money institutions, casino accounts) which were not yet subject to regulation and supervision; same preventive measures deficiencies as for MVTs operators, particularly on CDD; small fines for MVTs operators.

Criterion 14.1 – Only banks, MFOs and PSPs that are registered by the NBG are allowed to provide payment services, which includes MVTs (Law on Payment System and Payment Service, Art.15(1)).

Criterion 14.2 – Unauthorised provision of MVTs by a natural person that causes serious damage (to any person) (determined by a court on a case by case basis) or produces significant income (determined by a court on a case by case basis) is punishable by: (i) an unlimited fine; (ii) house arrest for a term of six months to two years; (iii) one to three years imprisonment; or (iv) in the case of repeated offences, imprisonment for a term of three to five years. Otherwise, unauthorised business cannot be punished. A legal person shall be punished by: (i) an unlimited fine, with deprivation of the right to carry out activities; or (ii) liquidation and an unlimited fine (CC, Art. 192). The authorities indicate that unauthorised MVTs providers are identified by the NBG via public sources, enquiries and complaints from consumers, notifications from other authorities and by observing the market, and have highlighted two cases where unauthorised activities were pursued. When such unauthorised provision of MVTs is identified, the NBG issues a warning, requests the termination of the service, and reports the information to LEAs. The NBG's mandate does not extend any further with respect to unauthorised business.

Criterion 14.3 – PSPs that are registered by the NBG are designated as obliged entities and are subject to monitoring by the NBG (AML/CFT Law, Art. 3(1)(a.h)). The NBG also supervises banks and MFOs that can provide payment services (AML/CFT Law, Art. 3(1)(a.e) and (a.f)).

Criterion 14.4 – Banks, MFOs and PSPs that are registered by the NBG may provide payment services through an agent (Law on Payment System and Payment Service, Art. 15(2)). The NBG has established procedures for these MVTs providers to submit information about agents.

The NBG publishes a list of agents on its website (Law on Payment System and Payment Service, Art. 15(5) and Rule of the Registration and Regulation of the Payment Service Provider, Art. 12(13)).

Criterion 14.5 – Covered FIs providing services via agents must examine at least the reputation of these agents and make sure that they are able to implement AML/CFT

requirements, and to also monitor their transactions (NBG Guideline on the Risk-Based Approach requires, Art. 12(7)).

Additionally, a *significant* PSP registered by the NBG must put in place appropriate systems and qualified personnel to monitor services provided by its agents and conduct regular onsite inspections (NBG rule on the Registration and Regulation of the Payment Service Provider, Art. 13(5)). The NBG can consider a PSP significant if the volume of electronic money issued by the provider or by an entity related to the provider, or the turnover of other payment services of the provider or of an entity related to the provider, exceeds the limits set by the NBG (Law on Payment System and Payment Service, Art. 17). Authorities stated that so far none of the PSPs have been designated as significant.

Weighting and Conclusion

Whilst regulatory and supervisory requirements are in place for MVTs, sanctions may be applied to unauthorised activities only where such activities cause serious damage or produce significant income. In the overall scheme of MVTs supervision, this is considered a minor shortcoming. **R.14 is rated LC.**

Recommendation 15 – New technologies

In the 4th round MER of 2012, Georgia was rated PC on R.8, as electronic payment system was not covered by the AML/CFT Law, including pay box and electronic money institutions.

Amended R.15 focusses on assessing risks related to the use of new technologies, in general, and imposes a comprehensive set of requirements in relation to VASPs. The FATF revised R.15 in October 2018 and its interpretative note in June 2019 to require countries to apply preventative and other measures to virtual assets (VAs) and VASPs. In October 2019 (just before the on-site visit), the FATF agreed on the corresponding revisions to its assessment Methodology and began assessing countries for compliance with these requirements immediately.

Collective investment funds and fund managers are not designated as obliged entities. However, none were registered under sectorial laws at the date of the conclusion of the on-site visit, so this is not treated as a shortcoming under R.15.

Criterion 15.1 – Covered FIs are required to assess ML/TF risks concerning the introduction of new technologies, products, services and delivery channels, or making other significant changes to business practices (AML/CFT Law, Art. 8(3); NBG Guideline on the Risk-Based Approach, Art.13; and ISSS ML/TF Risk Assessment Methodology). There is no explicit requirement to identify and assess ML/TF risks that may arise from developing technologies (though the authorities consider that this is covered by the reference to “new” technologies).

The NRA includes a chapter on risk presented by new products, services and delivery channels but the country has not fully identified and assessed the ML/TF risks of technology. However, the NBG is continuously identifying and analysing risks related to technology developed or used by covered FIs, including e-commerce, electronic wallets and provision of custodian services for VAs.

Criterion 15.2 – Covered FIs are required to undertake risk assessments prior to making changes and implement effective measures for managing (but not also mitigating) identified ML and TF risks (AML/CFT Law, Art. 8(5)). The process of approval of a new

product shall determine risk mitigation strategies (NBG Guideline on the Risk-Based Approach, Art.13 (excludes leasing and insurance companies)).

Criterion 15.3 - The NRA considers the risk associated until mid-2018 with the provision of services related to VAs by PSPs. Following a risk assessment by the NBG, PSPs are no longer permitted to offer these services and significant activities have been curtailed, and guidance has been provided to banks and PSPs on the treatment of customers that are VASPs. However, the NRA does not include a more general risk assessment of ML/TF risks emerging from VA activities and the activities or operations of VASPs in Georgia. As a result, direct measures are not in place to prevent or mitigate ML/TF in these latter areas, or requirements placed on VASPs.

Criteria 15.4 to 15.7 - VASPs are not subject to monitoring or supervision.

Criteria 15.8 to 15.10 - VASPs are not subject to AML/CFT requirements.

Criterion 15.11 – Competent authorities can exchange information with their foreign counterparts as set out under R.37 to R.40 (subject to limitations on the availability of information). As noted, VASPs are not subject to monitoring or supervision.

Weighting and Conclusion

Whilst the NBG has taken action to curtail the provision of significant VA services by PSPs, Georgia does not regulate or supervise VASPs. Also, there is no express requirement for the country to consider ML/TF risks arising from developing technologies, though there is an overarching statutory requirement to identify, analyse and assess ML/TF risks. Only the NBG has taken action to assess the risks of technology. **R.15 is rated PC.**

Recommendation 16 – Wire transfers

In the 4th round MER of 2012, Georgia was rated PC on SRVII. The main deficiencies were: ambiguous obligation for the intermediary to transmit the originator information; no requirement that beneficiary institutions be required to adopt effective risk-based procedures for identifying and handling missing or incomplete originator information in wire transfers or to consider whether such transfers are suspicious; no reporting obligations fulfilled for missing originator information; and no sanctions imposed for non-compliance with the reporting obligation established by the AML/CFT Law in the case of missing/incomplete information.

The NBG Regulation on Information Accompanying Transfer of Funds (Funds Transfer Regulation) applies to banks, PSPs and MFOs (Art. 1(1)).

Criterion 16.1 – Ordering FIs shall ensure that the transfer of funds is accompanied by the information on the payer/payee (Art. 3(1)). FIs are also required to ensure that all cross-border funds transfers over EUR 1 000¹⁰¹ are accompanied by the following information (but not transfers of exactly EUR 1 000 as provided for in the standard):

(a) information on the payer: (1) the name; (2) account number (or transaction unique identifier (which permits traceability) in the absence of such an account); (3) address, national identity/passport number, customer identification number or date and place of birth;

¹⁰¹ Reference to EUR 1 000 under the Funds Transfer Regulation should be read as “EUR/USD 1 000 or GEL 3 000 or equivalent of the latter in other foreign currency”.

(b) information on the recipient: (1) the name; (2) account number (transaction unique identifier in the absence of such an account) (Funds Transfer Regulation, Art. 3(2)). This data must be verified for accuracy (Funds Transfer Regulation, Art.3(5)(a)).

Criterion 16.2 – When a batch file is sent from a single originator to a beneficiary’s provider that is not licensed or registered by the NBG (thus when it is sent cross-border), individual transactions in the batch file must include the account number of the payer (or transaction unique identifier (which permits traceability) in the absence of such an account) along with all information on the beneficiary. The batch file shall include required and accurate originator information and full beneficiary information in line with the information defined in Art. 3(2)(a) and (b) of the Funds Transfer Regulation (Funds Transfer Regulation (as amended on 26 June 2019, Art. 3(7)).

Criterion 16.3 – The cross-border funds transfer that does not exceed EUR 1 000 shall always be accompanied by the following information: the names of the payer and the payee and account numbers (transaction unique identifier (which permits traceability) in the absence of such an account) (Funds Transfer Regulation, Art. 3(4)).

Criterion 16.4 – Information mentioned in c.16.3 need not be verified for accuracy, except where: (i) there is ML/TF suspicion; or (ii) funds have been received in cash or with anonymous electronic instrument. Where this requirement is not fulfilled, FIs shall not execute the wire transfer (Funds Transfer Regulation, Art. 3(5) and Art. 5(2)).

Criterion 16.5 and 16.6 – In the case of domestic funds transfers, the ordering FI is permitted to make originator information as indicated for cross-border wire transfers available to the beneficiary FI and appropriate authorities by other means - in this case except at the request of the beneficiary or competent authority. The ordering FI is required to provide the following information: (i) if the funds transfer exceeds EUR 1 000: the originator’s and the beneficiary’s names, account numbers (or transaction unique identifier (which permits traceability) in the absence of such an account); and one of the following: the originator’s national identity/passport number, or the customer identification number, or the date and place of birth; or (ii) if the funds transfer does not exceed EUR 1 000 - the originator’s and the beneficiary’s names, account numbers, or in the absence of accounts, the unique transaction numbers that permit the traceability of the transaction (Funds Transfer Regulation, Art. 4).

When making domestic transfers, the ordering FI shall ensure that the funds transfer is accompanied with at least the payer and the payee account numbers (or transaction unique identifier (which permits traceability) in the absence of such an account) (Funds Transfer Regulation, Art. 3(3)). The ordering FI must provide the required originator information (listed under c.16.1(a)) within three business days upon request by the beneficiary (or intermediary FI) (Funds Transfer Regulation, Art. 4).

As described under c.27.3 and c.29.3, the competent authorities can have access to information held at an obliged entity. The authorities have explained that the NBG determines the timeframe for providing such information and that access can be immediate (Law on Payment Systems and Payment Services, Art. 16(1)). As described in R.31, law enforcement authorities can compel immediate production of computerised information. Though the CPC is silent on production of non-computerised information, in practice, the information that must be produced will be computerised.

Criterion 16.7 – FIs are required to keep data and documents about transactions, both domestic and international, for at least 5 years from the moment of concluding or implementing a transaction (AML/CFT Law, Art. 27(2)). FI is also required to keep

information (documents) about a client (AML/CFT Law, Art. 27(1)). In addition, ordering FI is required to keep in electronic form the relevant records and documents concerning transfers sent and received for at least 15 years (Law on Payment Systems and Payment Services, Art. 43(7)).

Criterion 16.8 – The ordering FI shall not execute a funds' transfer if it is not accompanied by the required information or it has not verified the accuracy of the originator information in case of funds transfers that: (i) exceed EUR 1 000; (ii) are funded by cash or with an anonymous electronic instrument; or (iii) give rise to ML/TF suspicion (Funds Transfer Regulation, Art. 3(1) and (5)).

Criterion 16.9 – The intermediary FI shall ensure that all the originator and beneficiary information accompanying the funds transfer is retained with it and transmitted to the beneficiary FI or other intermediary FI involved (Funds Transfer Regulation, Art.6(1)).

Criterion 16.10 – Intermediary FI is required to ensure that all information about the payer and payee that accompanies a payment transaction is transferred to the payee or other intermediary FI (Funds Transfer Regulations, Art. 6(1)). In practice, technical limitations do not prevent information accompanying cross-border wire transfers remaining with related domestic transfer.

Criterion 16.11 – The intermediary FI is required to implement effective risk-based procedures to identify transfers that lack information about the payer and the payee, in real-time or in the framework of post-event monitoring (Funds Transfer Regulation, Art. 6(2)).

Criterion 16.12 – In situations where the originator or the beneficiary information is missing, the intermediary FI shall apply a risk-based approach in determining when to request the missing information from the ordering FI or other intermediary FI - before processing or transmitting the transfer, or afterwards. The intermediary FI is entitled to suspend or reject the transfer in such situations (Funds Transfer Regulation, Art.7(3)).

If the requested information is not provided, the intermediary FI shall consider the risks involved and the frequency of failures to provide information in deciding whether to issue a warning or set a deadline before either rejecting future transfers or restricting or terminating the business relationship with the other FI (Funds Transfer Regulation, Art.7(4)).

Criterion 16.13 – The beneficiary FI is required to implement effective procedures to identify the received transfers that lack information about the payer and the payee as provided by this regulation, in real-time or in the framework of post-event monitoring (Funds Transfer Regulation, Art.5(1)).

Criterion 16.14 – The beneficiary FI shall not credit the beneficiary's account or make funds available to the beneficiary in any other way if it has not verified the identity of the beneficiary where: (i) the funds transfer exceeds EUR 1 000 (but not transfers of exactly EUR 1 000 as provided for in the standard); or (ii) funds are paid out in cash or via anonymous electronic instrument; or (iii) there is a suspicion of ML/TF (Funds Transfer Regulation, Art. 5(2)). FIs are required to keep information (documents) about a client (AML/CFT Law, Art. 27(2)).

Criterion 16.15 – The beneficiary FI shall implement effective risk-based procedures, including the risk-based approach referred to in the AML/CFT Law, for determining whether to execute, reject or suspend a transfer of funds lacking the originator or the

beneficiary information, and for taking the appropriate follow-up action (including requesting the missing information) (Funds Transfer Regulation, Art. 7(1)).

In situations where the originator or the beneficiary information is missing, the beneficiary FI shall apply a risk-based approach in determining when to request the missing information from the ordering FI or intermediary FI - before crediting the beneficiary's account/making funds available to the beneficiary, or afterwards. The beneficiary FI is entitled to suspend or reject the transfer in such situations (Funds Transfer Regulation, Art. 7.2)).

If the requested information is not provided, the beneficiary FI shall consider the risks involved and the frequency of failures to provide information in deciding whether to issue a warning or set a deadline before either rejecting future transfers or restricting or terminating the business relations (Funds Transfer Regulation, Art.7(4)).

Criterion 16.16 – The relevant requirements of R.16 apply to banks, MFOs and PSPs (Funds Transfer Regulation, Art. 1(1)). Furthermore, PSPs are responsible for their agents to observe AML/CFT legislation (NBG rule on the Registration and Regulation of the PSP, Art.13(2)).

Criterion 16.17 – There is no specific requirement for a FI that controls both the ordering and the beneficiary side of a wire transfer to take into account all the information from both the ordering and beneficiary sides in order to determine whether an STR has to be filed, and whether to file an STR in different countries. However, FIs are required to monitor the whole transaction and business relationship. There is a general requirement for all FIs to identify suspicious transactions and submit those to the FMS (AML/CFT Law, Art. 25(1)).

Criterion 16.18 – A FI is prevented from carrying out an occasional transaction if there are reasonable grounds to suspect that a customer or any other party to a transaction is covered by sanctions made under UNSCRs 1267 and 1373 (AML/CFT Law, Art. 10(7)). Moreover, FIs are required to suspend implementation of a transaction if any person involved in the transaction is on the list of terrorists or persons supporting terrorism (FMS Regulation for Bank, Art 6(11), FMS Regulation for MFOs, Art. 6(11) and FMS Regulation for PSPs, Art. 6(15)). However, c.6.5(a) highlights that there is no explicit requirement for FIs (except for “banking institutions”) to freeze funds, and for “banking institutions” this freeze is not required without delay.

Weighting and Conclusion

There is no requirement for FIs (including “banking institutions”) to freeze funds under TFS of designated persons without delay. In the overall regulation of wire transfers, this is considered a minor shortcoming. **R. 16 is rated LC.**

Recommendation 17 – Reliance on third parties

In the 4th round MER of 2012, Georgia was rated PC on R.9. The main deficiencies were: no requirement to immediately obtain from the third party necessary information related to all elements of the CDD process; no requirement to grant access to other relevant documents relating to all elements of CDD; no requirement to grant access to information related to BO; no requirement that FIs are satisfied that the third party has measures in place to comply with the CDD requirements; no requirement that competent authorities take into account information available on whether the countries in which the third party can be based adequately apply the FATF Recommendations.

Criterion 17.1 – In the course of identifying and verifying a customer and the BO, covered FIs may rely on a third party/intermediary to undertake required due diligence measures provided that the third party/intermediary carries out the due diligence measures, keeps information (documents) and is regulated/supervised as provided by the FATF Recommendations (AML/CFT Law, Art. 16(1)). The ultimate responsibility for identifying and verifying the identity of the customer remains with the covered FIs relying on the third party (AML/CFT Law, Art. 16(1)).

(a) The covered FIs are required to immediately obtain from a third party/intermediary the information concerning the identification and verification of the customer and the BO, as well as the purpose and intended nature of the business relationship (AML/CFT Law, Art. 16(4)).

(b) The covered FIs are also required to undertake the relevant measures to ensure that the identification data of the customer and the BO and other relevant documents will be provided by a third party/intermediary immediately upon request (AML/CFT Law, Art. 16(4)).

(c) The covered FIs can only rely on a third party/intermediary that is subject to supervision and regulation as provided by the FATF Recommendations (AML/CFT Law, Art. 16(1)).

Covered FIs supervised by the NBG are also required to consider the risks related to placing reliance on a third party/intermediary (NBS Guideline on Risk-Based Approach, Art. 12(4)). In this context, covered FIs (apart from insurance companies and leasing companies) must assess ML/TF risks related to third party/intermediary reliance before establishing business relationships. The obligations of each institution must be clearly defined and, inter alia, there is a requirement that the third party/intermediary uses satisfactory preventive measures and verification documents (NBS Guideline on Risk-Based Approach, Art. 12(5)(b)). These additional provisions (which allow covered FIs to satisfy itself that a third party/intermediary has measures in place to comply with R.10 and R.11) do not apply to insurance companies or leasing companies.

Criterion 17.2 – When selecting a third party/intermediary, the covered FIs must take into account information on ML/TF risks in the country where a third party/intermediary is located (AML/CFT Law, Art. 16(2)). Covered FIs are prohibited from relying on a third party/intermediary located in a high-risk jurisdiction (AML/CFT Law, Art. 16(1)). Covered FIs (apart from insurance companies and leasing companies) is prohibited from relying on a third party/intermediary registered or operating in a high-risk jurisdiction (NBS Guideline on Risk-Based Approach, Art. 12(6)). A high-risk jurisdiction is a country or territory which has deficiencies in its AML/CFT system, and which is included in a list that is approved by the NBG (see c.19.1).

Criterion 17.3 – Where reliance is placed on a third party/intermediary that is part of the same financial group, then the same provisions apply as for non-group reliance (including the requirement for the third party/intermediary to be subject to supervision and regulation as provided by the FATF Recommendations) except that the prohibition on relying on a third party/intermediary located in a high-risk jurisdiction does not apply to a branch or subsidiary if group-wide controls ensure effective management of ML/TF risks (AML/CFT Law, Art. 16(3)).

In addition, covered FIs (apart from insurance companies and leasing companies) must ensure that the group-wide AML/CFT controls are sufficiently adequate (NBS Guideline on Risk-Based Approach, Art. 12(5)).

Weighting and Conclusion

Insurance companies and leasing companies (two less important sectors) are not required to satisfy themselves that third parties/intermediaries have measures in place for compliance with R.10 and R.11 and not prohibited from placing reliance on a third party registered or operating in a high-risk jurisdiction identified by the NBG. These are considered minor shortcomings. **R.17 is rated LC.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In the 4th round MER of 2012, Georgia was rated PC on R.15 and C on R.22. There was a lack of requirement for FIs to have an adequately resourced and independent audit function to test the compliance with AML/CFT policies, procedures and controls.

Collective investment funds and fund managers are not designated as obliged entities. However, none were registered under sectorial laws at the date of the conclusion of the on-site visit, so this is not treated as a shortcoming under R.18.

Criterion 18.1 – Covered FIs are required to implement a compliance system (policies, procedures, systems and mechanisms) which is consistent with the nature and size of the business and associated ML/TF risks (AML/CFT Law, Art. 29(1) and (2)). With the agreement of the relevant supervisory authority, an individual entrepreneur or natural person independently performing professional activities may be exempted from certain requirements, having regard for the nature and size of the business and associated ML/TF risks (AML/CFT Law, Art. 29(6)). This is not in line with the standard, though not all elements will be relevant to an obliged entity with just one employee. NBG regulations do not provide for such exemption for FIs registered in the legal form of an individual entrepreneur.

(a) Covered FIs are required to adopt an internal regulation that provides for the rights and responsibilities of a person, or a head and employees of a designated structural unit, responsible for managing the compliance system (AML/CFT Law, Art. 29(2)). This compliance officer shall: (i) have prompt access to all necessary information and decide independently on filing reports with the FMS (AML/CFT Law, Art. 29(2)); and (ii) be accountable to a designated member of the governing body (or person with managing authority) who has responsibility for effectiveness of the compliance system (AML/CFT Law, Art. 29(2)). The compliance officer shall be at a position equal to the senior hierarchy (management) level in the organisational chart (FMS Regulation for Banks, Art. 5(1); FMS Regulation for MFOs, Art. 5(5); FMS Regulation for Brokers, Art. 4(6); FMS Regulation for Securities Registrars, Art. 4(5); FMS Regulation for Credit Unions, Art. 5(1); and FMS Regulation for Insurance, Art. 5(1)). Other covered FIs are not subject to such a requirement.

(b) Covered FIs are required to adopt an internal regulation that provides for employee screening procedures to ensure that individuals with high standards of competence and reputation are hired (AML/CFT Law, Art. 29(2)).

(c) Covered FIs are required to adopt an internal regulation that provides for an ongoing training programme (AML/CFT Law, Art. 29(2)).

(d) Covered FIs are required to adopt an internal regulation that provides for an independent audit function to test the effectiveness of the compliance system (AML/CFT Law, Art. 29(2)).

Criterion 18.2 – All covered FIs that are parent enterprises are required also to implement a group-wide compliance system (AML/CFT Law, Art. 30(1)). “Group” is defined as a parent and its subsidiaries and/or branches that are subject to the FATF Recommendations (AML/CFT Law, Art. 2(1)(z.11)). This group-wide compliance system must cover all the measures set out in c.18.1.

In addition, covered FIs (except for insurance companies and leasing companies) are required to put risk management programmes in place (NBG – Analysing Illicit Income Legalisation and Terrorism Financing Risks on Organisational and Group-wide Scales).

(a) The group-wide compliance system shall provide for procedures for sharing information between group members for CDD purposes and managing of ML/TF risks (AML/CFT Law, Art. 30(1)(a)).

(b) The group-wide compliance system shall provide for procedures for providing customer, BO and transaction information (and results of analyses) to: (i) a person or structural unit responsible for managing the group-level compliance system; and (ii) members of the group - for the purpose of explaining an unusual transaction, detecting a suspicion transaction and/or assessing and managing ML/TF risks (AML/CFT Law, Art. 30(1)(b)). On this basis, there does not appear to be a basis for sharing information with the audit function that tests the system.

(c) The group-wide compliance system shall provide for mechanisms for ensuring the confidentiality of information provided and use only for intended purposes (AML/CFT Law, Art. 30(1)(c)).

Criterion 18.3 – Foreign subsidiaries and branches of covered FIs are required to apply the AML/CFT Law and relevant regulations if requirements in host jurisdictions are less strict than the AML/CFT Law. In practice, it is not clear how such a requirement would be enforced, and so, in practice, parent FI would be required to ensure that foreign branches and subsidiaries meet these requirements (AML/CFT Law, Art. 30(2)).

If a host jurisdiction restricts the implementation of provisions of the AML/CFT Law and relevant regulations in such circumstances, the covered parent FI is required to ensure that the relevant supervisory authority is promptly informed and additional measures are applied for the purpose of managing ML/TF risks (AML/CFT Law, Art. 30(3)).

In relation to their foreign-based subsidiaries, banks must submit to the NBG information about the AML/CFT programmes of subsidiaries, which must be in line with the FATF Recommendations. In cases where the host country does not properly implement the FATF Recommendations, the parent bank must commit in writing to the NBG that it will ensure the implementation of Georgia’s AML/CFT legislation and the FATF Recommendations by the subsidiary. The parent bank also shall inform the NBG if the host country does not permit the subsidiary to implement the requirements of Georgia’s AML/CFT legislation (Law on Commercial Bank Activities, Art. 10(1)(1)). Similar requirements apply to branches of banks (Order N20/04 of the NBG on establishing branches of commercial banks), securities registrars and brokerage companies (Securities Market Law, Art. 20(1)).

Weighting and Conclusion

There are some minor shortcomings. Whilst there is no general requirement to appoint an AML/CFT compliance officer at management level, the effect of current requirements is to ensure that responsibility for compliance management is at the highest level. Whilst it is

possible to exempt individuals from requirements to implement a compliance system, not all elements of the standard are relevant to them. **R.18 is rated LC.**

Recommendation 19 – Higher-risk countries

In the 4th round MER of 2012, Georgia was rated PC on R.21. The main deficiency was the absence of possibility to require domestic FIs to apply countermeasures in cases where a country continues not to apply or insufficiently applies the FATF Recommendations. Since then, there have been a number of changes to the AML/CFT Law.

Collective investment funds and fund managers are not designated as obliged entities. However, none were registered under sectorial laws at the date of the conclusion of the on-site visit, so this is not treated as a shortcoming under R.19.

Criterion 19.1 – Covered FIs are required to apply enhanced CDD measures to high-risk jurisdictions (and not just those for which there is a call by the FATF) when: (i) establishing a business relationship; (ii) conducting an occasional transaction; (iii) making a wire transfer over GEL 3 000 (EUR 1 000), or equivalent; (iv) there are doubts about the veracity or adequacy of identification data; or (v) ML/TF is suspected (AML/CFT Law, Art. 19(2)). This is not entirely consistent with the standard where application of EDD to a business relationship is not dependent upon such triggers. Requirements apply to: (i) customers that are legal persons registered in high-risk jurisdictions; (ii) natural persons with an address in a high-risk jurisdiction; and (iii) transactions concluded or carried through a FI located in a high-risk jurisdiction. The requirement does not apply in a case where a legal person operates, or is administered, in a high-risk jurisdiction. EDD must be consistent with the identified risks (AML/CFT Law, Art. 18).

For the purposes of the AML/CFT Law, high-risk jurisdiction shall mean a country or territory which has deficiencies in its AML/CFT system. The NBG, at the request of the FMS, shall approve and, as required, update the list of high-risk jurisdictions (referred to, under earlier legislation and by the NBG, as “watch zones”). Countries are listed based on information from competent international organisations or grounded supposition that a country has weak AML/CFT mechanisms. The NBG Decree on Establishing the List of Watch Zone Countries for the Purposes of the AML/CFT Law was adopted in 2017 and has been periodically updated since then. This list incorporates the high-risk and monitored jurisdictions in the FATF’s public statements. The last update made on 18 September 2019, (Decree 167/04) includes the FATF amendments of June 2019.

Criterion 19.2 – (a) As described in c.19.1, covered FIs must apply EDD to business relationships and transactions with persons from high-risk jurisdictions.

(b) In addition, the FMS is authorised to require covered FIs to file reports if a customer is from a high-risk jurisdiction (AML/CFT Law, Article 25(3)). Covered FIs are required to report: (i) transfers of funds to, and from, banks operating, or registered, in watch zones; and (ii) provision or receipt of loans or any other operation by a person registered in watch zones (FMS Regulation for Banks, Art. 3(1)(bc) and (bd); FMS Regulation for PSPs, Art. 3(4); FMS Regulation for MFOs, Art. 3(4); FMS Regulation for Insurance Companies and Founders of Non-State Pension Schemes, Art. 3(4); FMS Regulation for Brokerage Companies, Art. 3(5); FMS Regulation for Registrars, Art. 3(5); FMS Regulation for Currency Exchange Bureaus, Art. 3(4); FMS Regulation for Credit Unions, Art. 3(4); and FMS Regulation for Leasing Companies, Art. 3(3)). Covered FIs (except insurance companies and leasing companies) are also prohibited from relying on the CDD of a third party/intermediary registered or operating in a watch zone jurisdiction (Art. 12(6) of the NBG Guideline on the Risk-Based Approach).

All applications to the NBG can be refused if this may cause a violation and/or non-fulfilment of requirements provided under compulsory decisions and/or recommendations of international organisations (Law on the NBG, Art. 48)). There are no other countermeasures foreseen with respect to refusing the establishment of subsidiaries, branches or representative offices, or NBG limiting business relations or financial transactions.

Criterion 19.3 – Every update to the list of watch zone countries is communicated to all covered FIs through the NBG website, and where applicable, AML Portal.

Weighting and Conclusion

Whereas, the application of EDD to is based on trigger events, these triggers include making wire transfers and so this is assessed as a minor shortcoming. There are also limitations in the countermeasures that the authorities can apply to subsidiaries, branches etc., but this is also considered minor given the limited number of foreign operations. **R.19 is rated LC.**

Recommendation 20 – Reporting of suspicious transactions

In the 4th round MER of 2012, Georgia was rated LC on both R.13 and SR.IV. The deficiencies identified were minor and involved the need for the STR reporting requirement to extend to electronic money institutions, and the cascading effect of the deficient TF offence definition.

The AML/CFT Law does not recognise collective investment funds and fund managers as a category of obliged entity. However, none were registered under sectorial laws at the date of the conclusion of the on-site visit, so this is not treated as a shortcoming under R.20.

Criterion 20.1 – Covered FIs are required to report a suspicious transaction to the FMS (AML/CFT Law, Art. 25(1)). In order to report, covered FIs shall have a “reasonable suspicion” that a “transaction” has been prepared, concluded or carried out based on the proceeds of illegal activity, or the purpose of ML, or is related to TF (AML/CFT, Art. 2(1)(u)). The concept of “reasonable suspicion” – a key term - is not defined.

The term “transaction” is defined as a unilateral, bilateral or multilateral declaration of intent aimed at creating, changing or terminating a legal relationship (Civil Code, Art. 50). It refers to legal relationships of any sort (established based on a declaration of intent), including occasional and business relationships.

Georgia’s policy is to apply an “all-crimes approach” to ML such that “criminal activity” refers to any type of criminal offence under the CC and there are no predefined ML predicate offences. However, the TF offence does not fully meet the requirement under c.5.2bis, as financing of travel and training is confined to the crossing of the Georgian border only (CC, Art. 331.1).

Georgia ensures promptness of reporting through a requirement for the report to be filed with the FMS on the day when a reasonable suspicion is formed (AML/CFT Law, Art. 26(2)).

Criterion 20.2 – Covered FIs shall report to the FMS all suspicious transactions, including attempted transaction (AML/CFT Law, Art. 25(1)). No restrictions exist as to the amount of the transaction.

Weighting and Conclusion

Georgia has a requirement to report suspicions. However, the concept of “reasonable suspicion” is not defined and there are limitations related to the scope of a suspicious transaction for TF. **R. 20 is rated LC.**

Recommendation 21 – Tipping-off and confidentiality

In the 4th round MER of 2012, Georgia was rated LC on R.14. The deficiencies identified where the need to amend Art.12 of the AML/CFT Law to ensure that protection and tipping-off requirements extend to temporary and permanent staff, apply to both criminal and civil liability for breach of any restriction on disclosure of information, and are available even if the staff did not know precisely what the underlying criminal activity was, and regardless of whether illegal activity actually occurred.

Criterion 21.1 – The covered FIs, their management and employees shall not incur any liability for breaching the duty of confidentiality provided by legislation or contract when submitting a report or other information (documents) as provided by Article 25 “Reporting obligation” of the AML/CFT Law, in good faith (AML/CFT Law, Art. 28(5)). Reporting obligation extends to reporting of the STR and other types of transaction as determined by the FMS, which goes beyond the FATF Standards.

Criterion 21.2– The covered FIs, their management and employees shall be prohibited from disclosing to a customer or any other person that measures are being or will be undertaken to examine an unusual transaction and/or detect a suspicious transaction, or that a report or other information (documents) is being or will be submitted to FMS (AML/CFT Law 28(1)). This prohibition does not prevent disclosure of information: (i) between members of the group where a group-wide compliance system exists (AML/CFT Law 28(2)(b)); (ii) to competent authorities (AML/CFT Law 28(2)(a)); or (iii) between unrelated FIs and DNFBPs where they share the same customer and are involved in the same transaction (AML/CFT Law 28(2)(d)). Gateways (ii) and (iii) go beyond what is permitted under the FATF Standard.

Weighting and Conclusion

All criteria are met. **R. 21 is rated C.**

Recommendation 22 – DNFBPs: Customer due diligence

In the 4th round MER of 2012, Georgia was rated NC on R.12. The assessors identified a wide range of deficiencies regarding CDD measures in place for different types of DNFBPs.

The following are designated as obliged entities: (i) organisers of lotteries, gambling or other commercial games (AML/CFT Law, Art. 3(1)(b.b)); (ii) dealers in precious metals and stones (DPMS) (AML/CFT Law, Art. 3(1)(b.f)); (iii) lawyers that are natural persons rendering professional services independently, law firms and notaries – all when carrying out activities listed under c.22.1(d) (AML/CFT Law, Art. 3(1)(b.a and b.c)); and (iv) certified accountants that are natural persons rendering services independently, certified accounting firms, auditors that are natural persons rendering professional services independently and audit firms, except when providing legal advice or representing a client in proceedings (AML/CFT Law, Art. 3(1)(b.d and b.e) and (3)). Hereafter (and in R.23) they are referred to as covered DNFBPs.

Criterion 22.1 – (a) Organisers of lotteries, gambling or other commercial games are required to undertake CDD when: (i) accepting funds or paying winnings above GEL 5 000 or equivalent in foreign currency (EUR 1 700) whether carried out in a single transaction

of several linked transactions; or (ii) establishing a business relationship for games organised by electronic means (AML/CFT Law, Art. 11(3)). Casinos are required to set up an electronic data-processing system to detect linked, unusual and suspicious transactions (AML/CFT Law, Art. 27(6)). In order to do so, they must be able to link CDD information for a customer to transactions carried out in a casino. However, this requirement is not clearly set out in legislation.

(b) Real estate agents are not designated as obliged entities. Consequently, there are no CDD requirements.

(c) DPMS are required to undertake CDD measures if they carry out a cash transaction above GEL 30 000 or its equivalent in foreign currency (EUR 10 000) whether carried out in a single transaction or in several linked transactions (AML/CFT Law, Art. 11(2)).

(d) Lawyers, law firms, notaries, certified accountants, auditors and audit firms that are obliged entities are required to undertake CDD measures in line with c.10.2. Accountants that are not certified accountants and certified accountants when providing legal advice that relates to an activity listed under c.22.1(d) are not designated as obliged entities.

(e) TCSPs are not designated as obliged entities. Consequently, there are no CDD requirements.

Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.10 (except reference to collective investment schemes and fund managers) are equally applicable to covered DNFBPs. Where R.10 highlights shortcomings applicable to insurance companies and leasing companies, these apply also to covered DNFBPs.

Criterion 22.2 – Requirements described in the AML/CFT Law for covered FIs under R.11 are equally applicable to covered DNFBPs.

Criterion 22.3 – Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.12 are equally applicable to covered DNFBPs.

Criterion 22.4 – Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.15 are equally applicable to covered DNFBPs.

Criterion 22.5 – Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.17 are equally applicable to covered DNFBPs. Where R.17 highlights shortcomings applicable to insurance companies and leasing companies, these apply also to DNFBPs. However, the effect of the gap in the application of CDD requirements to some DNFBPs is not considered to be relevant to the rating of this sub-criterion since its effect is to prevent the application of a concession (reliance on someone else to do something) rather than to stop something from being done.

Weighting and Conclusion

There are no AML/CFT requirements for real estate agents, accountants that are not certified accountants, accountants when providing legal advice, and TCSPs, which is considered to be a moderate shortcoming. This cascades through R.22. In addition, there is not an explicit requirement for casinos to ensure that they are able to link CDD information for a particular customer to the transactions that the customer conducts in the casino. There are also shortcomings in the AML/CFT Law under R.10, R.12, R.15 and R.17 (described above). **R.22 is rated PC.**

Recommendation 23 – DNFBPs: Other measures

In the 4th round MER of 2012, Georgia was rated PC on R.16. The main deficiency was that ML and TF suspicious transaction reporting and the implementation of internal controls did not apply to lawyers, real estate agents, and TCSPs.

R.22 lists DNFBPs that are covered DNFBPs.

Criterion 23.1 – Except for lawyers (see below), requirements and shortcomings described in the AML/CFT Law for covered FIs under R.20 are equally applicable to covered DNFBPs.

A lawyer shall submit a report to the extent that this does not contradict the principle of professional secrecy as defined by the Law of Georgia on Lawyers (AML/CFT Law, Art. 25(7)). The effect of this is that lawyers must not disclose information obtained in the course of carrying out legal activities without their client's consent (which would constitute tipping-off), and breach of professional secrecy by a lawyer shall entail liability (Law on Lawyers, Art. 7). Accordingly, lawyers do not have a basis for making STRs, unless agreed in advance through a contract with the client. A lawyer may disclose confidential information only: (i) with the client's consent; (ii) where the use of such information in the representation or defence process is necessary in the interests of the client and if its disclosure does not preclude the client from seeking counsel; and (iii) if necessary in order to defend himself or herself against an allegation or claim or in the event of a legal dispute (Law on Lawyers, Art. 7). This principle applies to any activity conducted by a lawyer, and not just to information obtained in the course of ascertaining the legal position of a client or in defending or representing a client in proceedings (which is normally covered by professional secrecy provisions) (AML/CFT Law, Art. 2).

Lawyers may report to the Georgian Bar Association (supervisor) rather than to the FMS. The supervisor must then submit a report (unaltered) to the FMS by the end of the following working day (AML/CFT Law, Art. 26(6)). It is not clear that such a timeframe would always be “prompt” in line with c.20.1

Criterion 23.2 – Requirements and shortcomings described in the AML/CFT Law for covered FIs under c.18.1 to c.18.3 are equally applicable to covered DNFBPs.

Criterion 23.3 – Requirements and shortcomings described in the AML/CFT Law for covered FIs under R.19 are equally applicable to covered DNFBPs. Where R.17 highlights shortcomings applicable to insurance companies and leasing companies, these apply also to DNFBPs.

There is a requirement for casinos to monitor any transaction (operation), regardless of its amount, implemented by a person operating or registered in a “watch” or suspicious zone (FMS Regulation for Casinos). Lawyers, notaries, accountants and auditors are required to take geographical/country risk into account, but not to apply enhanced CDD to countries in the “watch” zone (FMS Regulations for Lawyers, for Accountant/Auditors, and for Notaries).

Every update to the list of watch zone countries is communicated through the NBG website.

Criterion 23.4 – Requirements described in the AML/CFT Law for covered FIs under R.21 are equally applicable to those DNFBPs that are required to report. The effect of the gap in the application of tipping off and confidentiality provisions to some DNFBPs is not

considered to be relevant to the rating of this sub-criterion since its effect is to remove safeguards surrounding STRs that will not have been made.

Weighting and Conclusion

There are no AML/CFT requirements for real estate agents, accountants that are not certified accountants, accountants when providing legal advice, and TCSPs, which is considered to be a moderate shortcoming. This cascades through R.23. The principle of professional secrecy applies to any activity conducted by a lawyer, which is not in line with the standard, and the effect of these provisions is that a lawyer cannot make a STR unless agreed through contract in advance with their client. Also, it is not clear that the timeframe for reporting STRs by the Georgian Bar Association to the FMS will always be “prompt”. There are also shortcomings in the AML/CFT Law under R.20, R.18, and R.19.

R.23 is rated PC.

Recommendation 24 – Transparency and beneficial ownership of legal persons

In the 4th round MER of 2012, Georgia was rated PC on R.33. There was no specific requirement to obtain data on BO, and there was an absence of appropriate safeguards to ensure that bearer shares and other bearer instruments were not misused for money laundering.

Legal entities of public law, organisations established either by law or the government to pursue specific goals under the control of designated government institutions, e.g. FMS, NAPR and the Revenue Service (tax authority), are not assessed under R.24.

Criterion 24.1 – (a) The different types and basic features of all legal persons are regulated by the Law on Entrepreneurs and the Civil Code (for NPOs and religious associations). Information on the creation and types of legal persons found in the country is also available on the NAPR’s website (<https://napr.gov.ge/c/40>).

(b) The process for the creation and registration of legal persons is set out in the Law on Entrepreneurs, the Civil Code, Law on Public Registry and the Instruction on Registration of Entrepreneurs and Non-Commercial Legal Entities (Order no. 241 of the Minister of Justice). This relevant legislation is publicly available. Mechanisms for obtaining and recording basic and beneficial ownership result from: (i) the AML/CFT framework (AML/CFT Law, NBG Guidance on beneficial ownership); (ii) maintenance of share registers by the NAPR, which are also publicly available; and (iii) maintenance of share registers by some legal persons.

Criterion 24.2 – The NRA report includes an assessment of the risk of legal persons where it provides a description of the framework in place. It also highlights cases where legal persons, particularly LLCs, have been abused. However, the NRA does not systematically consider the extent to which legal persons registered in Georgia have been used in ML or TF in the past (for example there are a number of cases involving “fictitious “companies); (ii) activities that are carried on; or (iii) extent to which some of the features of the Georgian system may create vulnerabilities, e.g. availability of [virtual offices](#), prevalence of tax-exempt companies (special trade companies, international trading companies and free industrial zone companies) and availability of corporate directors. Whilst some of this information is included anecdotally throughout the report, it does not amount to an analysis of these features. It is, however, universally understood by competent authorities and obliged entities that the use of fictitious LLCs in criminal schemes constitutes a

significant ML risk and, in general, attention is paid by them to complex ownership and control structures.

Criterion 24.3 – All types of legal persons, as well as branches of foreign legal persons operating in Georgia, must be registered in the Registry of Entrepreneurs and Non-Entrepreneurial Legal Entities (Company Registry) operated by the NAPR, except for legal entities of public law, other than religious associations. This register is available through its website (<https://napr.gov.ge>).

With regard to commercial legal persons, all relevant information (company name, proof of incorporation, legal form and status, address of the registered office, basic regulating powers and a list of directors) must be submitted at the time of application for registration with the NAPR (Law on Entrepreneurs, Art. 4 and 5). After registration, this information is publicly available in the NAPR register (Law on Entrepreneurs, Art.5(1) and Art.7(1)). The same information is also publicly available for non-entrepreneurial (non-commercial) legal entities (Civil Code, Book 1 Art.29).

Criterion 24.4 – LLCs and limited partnerships are not required to maintain a register of their shareholders or members. Instead, the register is maintained by the NAPR which includes the names of the members/partners, as well as their participation in the legal person (linked to voting rights) and related powers (Law on Entrepreneurs, Art. 5(1)(e)(f)(g)) and Art. 9¹(10)). In contrast, JSCs are required to maintain a share register. A JSC whose number of shareholders exceeds 50, or which is an obliged entity, is required to maintain its share register through an independent registrar (Law on Entrepreneurs, Art. 51). For general partnerships (which strictly do not have shareholders), Art. 5(1)(d) Law on Entrepreneurs, requires registration with NAPR of details of the partners.

For NPOs, details of founders/members must be submitted to NAPR (Civil Code, Book 1 Art. 29(1)). The NAPR register, however, contains information only on founders and no other subsequent members and a list of other members is not explicitly required to be maintained by the entity itself. This is true also for religious associations. There is no general provision requiring a cooperative to maintain a register of its members, only some specific sectorial regulations that might require the cooperative itself to do so (such as the Law on Agricultural Cooperatives). However, where a member of a cooperative is dismissed, this must be immediately listed, the effect of which, the authorities have explained, is to require cooperatives to maintain a register (Law on Entrepreneurs, Art. 62).

Where a legal person was registered between 1995 and 2010, and there have been no changes to members/partners or directors since that time, then information held in the NAPR register may not be complete (it may not be possible to link information held by the NAPR to the unique personal number given to all Georgian residents). When NAPR receives a request to disclose information that is not recorded in its register, it is able to apply to the legal person for missing information on these individuals (Law on Entrepreneurs, Art. 7(4)). However, the legal person may not hold this information, and, in such cases, gaps will be resolved only when there is a later change in member/partner or director. Over the past 10 years, out of more than 580 000 requests for information on the NAPR register, no more than 200 have highlighted incomplete information.

Where a registrar is used, the JSC shall have full access to the information held by the securities registrar (NBG Order 206/04 on the Approval of the Securities Registry Rule, Art. 6(1)).

No direct obligation is placed on legal persons to maintain the information set out in c.24.3 separately to the NAPR register.

There is no obligation to maintain a list of shareholders or members in the territory of Georgia (though information held in the NAPR register (LLCs) and by registrars (JSCs) is maintained in Georgia).

Criterion 24.5 – Only information that is recorded about a shareholder in the NAPR register is valid and enforceable (and therefore accurate). Subsequent changes of information included in the NAPR register (including directors and shareholders/partners) are made only upon a request by an “interested person” (a person empowered to represent the respective legal person at NAPR, or the acquirer or vendor of shares) on the basis of: (i) a decision duly made and certified by an authorised person/body; or (ii) an agreement made by an authorised person, including the acquirer and vendor of shares (Law on Entrepreneurs, Art. 5.1(1) and (2)).

Whilst such a person is required to notify such changes, no timeframe is given (Law on Entrepreneurs, Art. 5.1(3)). However, the authorities point out that changes to the title of a share of a LLC or limited partnership (and the related obligations) shall be deemed established, changed or terminated only after changes to information on shareholders/partners have been registered in the NAPR register (Law on Entrepreneurs, Art. 5.1(5.1)). The effect of this mechanism is to ensure that information on registered shareholders is updated on a timely basis because a change does not have effect until it is registered. However, the authorities have not been able to explain whether a change of ownership through death/inheritance or an agreement to change ownership could be enforced before registration. This means that the criterion is not fully satisfied.

The same mechanism applies to changes in directors, ensuring that the NAPR register is up to date (Law on Public Registry, Article 20¹ (1)).

In the case of JSC's, a securities registrar is responsible for the completeness and accuracy of the shareholder information (NBG Order 206/04 on the Approval of the Securities Registry Rule, Art.3(2)). Changes in ownership of shares have legal effect only upon entry to the share register (Law on Securities Market, Art. 19(1)).

Criterion 24.6 – Three mechanisms are used to obtain information on beneficial ownership of legal persons established in Georgia: (i) through the NAPR register; (ii) directly from the legal person; and (iii) through obliged entities (e.g. banks and registrars).

Whilst there is no obligation for legal persons to obtain and hold up-to-date information on beneficial ownership or to register beneficial ownership in the NAPR register, information collected on registered shareholders (accessible through NAPR or from JSCs with 50 or less shareholders) could provide information on beneficial ownership if the legal and beneficial ownership are identical, which will not always be the case (considered under Chapter 7), for example where shareholders are foreign legal persons, where information would be available only on that legal person.

Whilst there is not a legal requirement for legal persons (except some JSCs) to maintain a relationship with FIs or DNFBPs in Georgia, many do so in practice with banks (about two-thirds – see analysis under IO.3). For JSCs with more than 50 shareholders, or which are obliged entities, a licensed securities registrar must maintain the company's register of shareholders and will be required to identify and verify the BO of registered shares in accordance with the AML/CFT Law (NBG Order 206/04 on the Approval of the Securities Registry Rule, Art. 5.3). These mechanisms will not ensure that information on beneficial

ownership can be determined in a timely manner where (together): (i) beneficial ownership and legal ownership of legal persons do not match; and (ii) the legal person does not have a relationship with a bank or registrar in Georgia.

Criterion 24.7 – The information on registered shareholders held by the NAPR is always accurate and up-to-date, as it is the only valid and enforceable information. The NAPR, however, might not always hold information concerning the BO (in particular where foreign companies are involved in the structure or when the registered shareholder is not identical to the BO). As explained under c.10.7, where applicable, obliged entities are required to ensure that identification data and other information is updated at appropriate times (AML/CFT Law, Art. 10(1) and (5) and FMS Regulation for Banks, Art. 6(21)). Together, these mechanisms will not ensure that beneficial ownership information is accurate and as up-to-date as possible.

Criterion 24.8 – There is no specific provision that requires one or more natural persons resident in Georgia, or accountable DNFBP in Georgia, to be responsible for maintaining beneficial ownership information and to be accountable to the authorities.

Criterion 24.9 – Upon dissolution, legal persons are required to assign certain documents to the National Archival Fund, including shareholders' registers. The term for preserving these documents is a minimum of 5 years (Order no. 72 of the Minister of Justice of 31 March 2010 on the Approval of the List of Typical Governing Documents (with Their Preservation Terms), Art. 1(2), 2 and Annex 1). Information held by NAPR is permanently kept even after the liquidation of a legal person (Order no. 72 of the Minister of Justice of 31 March 2010 on the Approval of the List of Typical Governing Documents (with Their Preservation Terms), Art. 14, 15 and 57 of Annex 1 and Art. 2(5) of Annex 2 (Rules for Using the List of Typical Governing Documents Created during the Activities of the Institutions)). Information held by obliged entities, including BO information, is kept in line with the requirements for keeping records (see. R.11).

Criterion 24.10 – The powers of competent authorities referred to under R.27, 29 and 31 apply. Basic information held in the NAPR register is publicly available and all relevant authorities (FMS, LEAs, NBS and other supervisors) have powers to obtain information from obliged entities. Deficiencies as described in R.27 and 31 apply.

Criterion 24.11 – A publicly held security must be issued in a dematerialised form (i.e. maintained in a securities register), and, if a publicly held security is issued in a materialised form, it is subject to dematerialisation (Law on Securities Markets, Art. 10(1)). Shares in JSCs can only be issued in a dematerialised form (Law on Entrepreneurs, Art. 51). In the case of LLCs, title to a share shall be deemed to be established, changed or terminated after being registered in the NAPR register. The effect of these provisions is to prohibit the use of bearer instruments.

Criterion 24.12 – Only JSCs are expressly permitted to have nominee shareholders. In such cases, the nominee shareholder can only be: (i) a securities market intermediary (brokerage firm); (ii) a bank; or (iii) central depository (an obliged entity), that is authorised under a written agreement by the registered owner (or other nominee holder) of securities to enter the securities in the register in the nominee's name (Law on Securities Market, Art. 2(43)). Only obliged entities that are licensed by the NBS can operate as nominee shareholders and so are required to hold information on the BO of shares (AML/CFT Law, Art. 10). The nominee shareholder is also required to open a separate account for each client (nominator) on whose behalf it holds securities (Decree 26 of the National Securities Commission on Approving the Rule for Nominee Holding).

Information on the nominator is hence kept and recorded by the nominee shareholder in its books.

Nominee shareholders are required to provide the securities registrar (whether such registrar is an independent licensed registrar or an employee of the JSC which maintains its own shareholder register) with all relevant information concerning the owners of the shares. The nominee shall be obliged to submit to the registrar, within five working days of a request, a list of registered holders (including the identity of the persons on whose behalf the nominee is holding the shares) registered in its sub-register, with the number and type of securities, contact information and number and class of shares (NBG Order 206/04 on the Approval of the Securities Registry Rule, Art. 7(3) and (4)).

Securities held by a nominee shareholder in a JSC must be credited by the registrar to a separate shareholder account ('nominee account') opened in the name of the intermediary (NBG Order 206/04 on the Approval of the Securities Registry Rule, Art. 5(10)).

Whilst LLCs are not expressly permitted to have nominee shareholders, nor are they prohibited. Under civil law principals, what is not prohibited is allowed and there is no mechanism in place to ensure that nominee shareholders are not misused. No mechanism is in place to ensure that nominee shareholders in LLCs are not misused.

The Law on Entrepreneurs imposes obligations and responsibilities on all persons who are directors and does not provide for nominal activity. However, there is no explicit prohibition against a person acting as a nominee director. Under civil law principles, what is not prohibited is allowed and there is no mechanism in place to ensure that nominee directors are not misused.

Criterion 24.13 – Given that basic information held in the NAPR register will always be accurate and current, there is no need for sanctions to be available. No administrative sanctions are available in respect to the provision of false information to the NAPR, however, criminal sanctions could be applied, e.g. in case of fraud or forgery. Chapter IX of the Law on Securities Market (which applies to publicly held securities) provides for sanctions for violations of that law. Obligated entities (banks and registrars) are subject to a sanctioning regime where they fail to comply with the AML/CFT Law (in combination with the sectorial legislation). See R.27 and R.35.

Criterion 24.14 – (a) Information in the NAPR register is publicly available via internet or can be requested from NAPR.

(b) and (c) Competent authorities can exchange information with their foreign counterparts, except information held by lawyers (professional secrecy) which is requested other than under a court order (Law on Lawyers, Art. 7 – see R.40).

Criterion 24.15 – The FMS monitors the speed with which other FIUs respond to its information requests and the quality of information provided (including the BO data). The GPO also monitors the quality of assistance that it receives from other countries in response to requests for basic and beneficial ownership information.

Weighting and Conclusion

Several moderate shortcomings are identified. The risks connected with legal persons have not been comprehensively analysed. Also, the authorities have not been able to explain whether an agreement to a change in registered ownership could be enforced before its registration with NAPR. Mechanisms in place to capture beneficial ownership information do not ensure that accurate and up-to-date information can be determined in

a timely manner or that a designated person is responsible for maintaining beneficial ownership information or can be held accountable to the authorities. Finally, a mechanism is not in place to prevent the misuse of nominee shareholders in LLCs. **R.24 is rated PC.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In the 4th round MER of 2012, Georgia was rated N/A on R.34.

Criterion 25.1 – Georgia’s legal framework does not recognise express trusts and similar legal arrangements as defined by the Hague Convention on the Law Applicable to Trusts and their Recognition. As there are no trusts governed under the laws of Georgia, (a) and (b) do not apply.

Trusts and similar arrangements can operate in Georgia via domestic trustees. There is no obligation requiring these trustees to maintain the information referred to under c.25.1(a) and (b), unless these services are provided by lawyers or accountants in which case AML/CFT obligations would apply.

Lawyers and accountants acting as trustee are required to maintain information with regard to their customers for at least five years on the settlor, other trustees, (if any), protector (if any), beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust (AML/CFT Law, Art. 13(5) and (6)).

Criterion 25.2 – Lawyers and accountants acting as trustee are required to ensure that identification data is updated at appropriate times (AML/CFT Law, Art. 10(5), FMS Regulation for Lawyers, Art. 5(12) and FMS Regulation for Accountants). It is not clear that the effect of this would always be to ensure that data would be updated on a timely basis. In the case of trustees that are not lawyers or accountants, there is no such obligation.

Criterion 25.3 – There is no explicit requirement for trustees to disclose their status when forming a business relationship or carrying out an occasional transaction. Nonetheless, obliged entities are required to understand the ownership and control structure of a customer (AML/CFT Law, Art. 10(3) and to identify the trustee (AML/CFT Law, Art. 13(5) and NBG Guideline on Determining, Identifying and Verifying the Identity of BOs, Art. 7 (which does not apply to all covered FIs or DNFBPs)). This is, however, subject to the person disclosing their status as trustee.

Criterion 25.4 – Lawyers are subject to professional secrecy provisions (see c.23.1) in respect of all activities conducted. These would prevent trustees from providing information on the beneficial ownership or assets of the trust to competent authorities, except where required under a court order, or obliged entities. Other trustees are not similarly restricted.

Criterion 25.5 – The powers of competent authorities referred to under R.27, 29 and 31 apply, e.g. in relation to information held by obliged entities. Deficiencies as described in R.27 and 31 apply.

Criterion 25.6 – Competent authorities can exchange information with their foreign counterparts as set out under R.37 and R.40 (subject to the limitations of the availability of information as set out above) except information held by lawyers (professional secrecy) which is requested other than under a court order (Law on Lawyers, Art. 7 – see R.40).

Criterion 25.7 – As described under c.28.4 and 28.5, lawyers and accountants (acting as trustees) are not subject to sanctions available under sectorial legislation for non-

compliance with the AML/CFT Law. There are no provisions providing for sanctions or liability for other entities acting as trustee, as these are not subject to any legal obligations.

Criterion 25.8 – LEAs can obtain data on trusts from obliged entities via their general investigative powers e.g., court orders. Failure to provide access to the required data will incur criminal liability for non-execution of court orders punishable by imprisonment for up to two years (Criminal Code, Art. 381). The NBG has access to information held by obliged entities that it supervises (Law on the National Bank, Art. 45). Failure to provide requested information is subject to a sanction based on sectoral regulation (orders of the President of the NBG on “Rules on fines” issued for each sector).

Weighting and Conclusion

Several moderate shortcomings are identified. Professional trustees are not subject to an obligation to hold or update information, except where they are a lawyer or accountant. However, even in such cases, lawyers and accountants cannot be sanctioned for failing to hold or update information, and professional secrecy provisions will prevent lawyers from providing competent authorities with information relating to trusts, except where required under a court order. **R.25 is rated PC.**

Recommendation 26 – Regulation and supervision of financial institutions

In the 4th round MER of 2012, Georgia was rated PC on R.23. The deficiencies related to a long supervisory cycle for some institutions such as currency exchange bureaus and money remittance operators. Electronic money institutions were not subject to AML/CFT supervision. The reform in the fit and proper tests did not apply retrospectively to the existing 1,485 currency exchange bureaus and money remitters.

Collective investment funds (established under the Law on Collective Investment Undertakings) and fund managers (referred to in the Law on Securities Markets) are not designated as obliged entities. This is treated as a minor shortcoming under R.26.

Criterion 26.1 – The NBG is designated as the supervisory authority of banks, MFOs, PSPs, currency exchange bureaus, brokerage companies, securities registrars, credit unions and loan issuing entities (AML/CFT Law, Art. 4). The Insurance State Supervision Service (ISSS) is the supervisory authority of insurance companies and non-state pension schemes (AML/CFT Law, Art. 4). The Ministry of Finance is the supervisor of leasing companies (AML/CFT Law, Art. 4). The supervisory authorities are responsible for monitoring compliance of the supervised entities with the requirements of the AML/CFT Law (AML/CFT Law, Art. 38). As noted above, collective investment schemes and fund managers are not designated as obliged entities and, hence, do not have a designated AML/CFT supervisor.

Criterion 26.2 – Core principle FIs: The NBG licences banks (Law on Commercial Bank Activities, Art. 2(2)) and securities registrars and brokerage companies (Law on Securities Market, Art. 20). Insurance companies are licensed by the ISSS (Law on Insurance, Art.22).

Other covered FIs: Credit unions are licensed by the NBG (Law on credit unions, Art. 23). The NBG registers PSPs (Law on Payment Systems and Payment Services, Art.15(1) and Organic Law on the NBG, Art. 48.2), MFOs (Law on MFOs, Art.3(1)), currency exchange bureaus (NBG Order 37/04 on the Approval of the Rule for Registration and Regulation of Currency Exchange Bureaus, Art.1(2) and Organic Law on the NBG, Art. 50) and loan issuing entities (NBG Order on the Approval of the Rule for Registration, Cancellation of Registration and Regulation of the Loan Issuing Entity, Art. 1(2) and Organic Law of the

NBG, Art. 52.2). Non-state pension schemes (that are not insurers) are registered by the ISSS (Art. 21 Law on Non-State Pensions).

Leasing companies are not licensed or registered in Georgia.

The establishment or existence of shell banks is prohibited in Georgia (Art.111 AML/CFT Law). In addition, broad licensing requirements for banks (in relation to their managers, capital, address, etc.) also impede the establishment of shell banks and allow the NBG to withdraw a license should a bank fail to perform activities within 6 months following the licence issuance (Art.7 Law on Commercial Bank Activities).

Criterion 26.3 – Covered FIs supervised by the NBG and ISSS are required to prove that their managers and significant shareholders do not have a criminal record for a serious or economic crime, FT, ML or other economic crime (with regard to securities sector also that they have not been subject to an administrative sanction related to the specific type of business).

The requirements are applicable to persons with a significant share which is generally defined as direct or indirect ownership of 10% or more of the authorised or issued capital; and to administrators which generally means members of the supervisory board, board of directors, supervisory council, or management body. In the case of banks, significant share is defined also to pick up any person with a direct or indirect ownership of 10% or more of voting rights and who has a right to take part in the decision-making process with respect to financial and operational policy (Law on Commercial Bank Activities, Art. 1(z5) and (z5.1)).

The requirements are set out in the relevant sectorial legislation:

(a) For administrators at the time of initial licensing: Law on Commercial Bank Activities, Art. 5(2); Law on Securities Market, Art. 24(b) and 29(1)(b) (brokerage companies and securities registrars); Law on MFOs, Art. 7(4) and (4.1); NBG Order on Approval of the Rules for Registration and Regulation of Currency Exchange Bureaus, Art. 3(4); Law on Credit Unions, Art. 23(2)(e); NBG Order on the Approval of the Rule of Registration and Regulation of the Payment Service Provider, Art. 4(4); Decree 217/04 (loan using entities) and NBG Order on the Approval of the Rule for Registration, Cancellation of Registration and Regulation of the Loan Issuing Entity, Art. 9(15); Law on Insurance, Art.22; and Law on the Provision of Non-State Pensions and Non-State Pensions Insurance, Art. 31.2.

(b) For holders of significant shares at the time of initial licensing: Law on Commercial Bank Activities, Art. 5(1); Law on Securities Market, Art. 24(b) and 29(1)(b) (brokerage companies and securities registrars); Law on MFOs, Art. 7(4) and (4.1); NBG Order on the Approval of the Rule of Registration and Regulation of the Payment Service Provider, Art. 4(4); NBG Order on Approval of the Rules for Registration and Regulation of Currency Exchange Bureaus, Art. 3(4); Decree 217/04 (loan using entities) and NBG Order on the Approval of the Rule for Registration, Cancellation of Registration and Regulation of the Loan Issuing Entity, Art. 9(15); Law on Insurance, Art. 22; and Law on the Provision of Non-State Pensions and Non-State Pensions Insurance, Art. 31.2. Because of their nature, there is no such requirement for owners of significant shares of credit unions.

Most sectorial legislation also requires covered FIs to inform the supervisor when there is a change of an administrator or a significant shareholder throughout the existence of the institution: Law on Commercial Bank Activities, Art. 8.1(1); Law on MFOs, Art. 7(5); NBG Order on the Approval of the Rule of Registration and Regulation of the Payment Service Provider, Art. 5(5); Approval of the Rules of Registration and Regulation of Currency

Exchange Bureaux, Art. 4(5.1); Rule on the Licensing and Regulation of Broker Companies, Art.3(6); Rule on Filing, Determination of Minimum Capital and Termination of Securities Registrar's Activity, Article 3(2); Law on Credit Unions, Art. 4(2) (change of administrator only); NBG Order On the Approval of the Rule for Registration, Cancellation of Registration and Regulation of the Loan Issuing Entity, Art. 4(7); and Law on Insurance, Art. 28(5) and (5.1). There are no such provisions for non-state pension schemes.

In many cases, the supervisor must be informed before there is a change of administrator or significant shareholder. However, this is not the case for brokers, where changes to significant shareholders are notified ex-post, or registrars, where notification of all changes is ex-post. Also, in the case of currency exchange offices, these must inform the NBG 15 days prior to a change and NBG failure to respond is considered implicit consent. In practice, the authorities have advised that the NAPR will require confirmation of change from the NBG before updating its register of legal persons.

Three sectorial laws also require FIs to report any changes in the fit and proper status of holders of significant shares and administrators: Law on Commercial Bank Activities, Art. 8.1(6)); Rules on the Licensing and Regulation of Broker Companies, Art. 3(6); and Law on Insurance, Art. 22(15). There is no explicit obligation to report changes in fit and proper status in other sectorial laws, though a number do not permit convicted persons to be an administrator and/or owner of a significant share throughout the existence of the business: NBG Order on the Approval of the Rule of Registration and Regulation of the Payment Service Provider, Art. 4(4)) – administrator and significant shareholder; (ii) Law on MFOs, Art. 4 – significant shareholder; and (iii) Decree 217/04 (loan issuing entities), Art. 3(2)(o) – administrators and significant shareholders.

As licences of covered FIs also fall under the general regime of the Law on Licenses and Permits, all covered FIs are also subject to a general obligation to report any changes to the documentation submitted for the purposes of applying for a licence (Art. 25(15)). It is considered that this addresses gaps identified above in sectorial laws, given that the licence issuer is required to monitor compliance with the pre-requisites of the granting of the licence (therefore, also whether any changes have occurred since the licence was issued) (Law on Licenses and Permits, Art. 33).

Some, but not all, sectorial laws include a requirement to identify or verify that the BOs of those holding a significant interest do not have a criminal record: Law on Commercial Bank Activities, Art 3(9); NBG Decree 29/04 (PSPs), Art 4((2)(i); Law on Securities Market, Art. 24(b) and (c) (brokers and securities registrars) and NBG Decree 145/04, Art. 3(3)); NBG Order 37/04 on Approval of the Rules for Registration and Regulation of Currency Exchange Bureaux, Art. 3(2)(c); and Decree 217/04 (loan issuing entities), Art. 3(2)(o). Nonetheless, the majority of cases will be covered by the definition of significant shares (10% or more of direct or indirect ownership or control).

In addition, there is an overarching provision that allows the NBG to refuse to grant a licence if the applicant or a person purporting to acquire a significant share in the covered FI: (i) would pose a threat to the stability of the Georgian financial sector; (ii) has violated entrepreneurial or financial legislation or a relevant subject in the FI (manager, owner of a significant share, BO); or (iii) implements a practice which endangers or might endanger the proper functioning of the specific person and/or financial sector. This applies to all sectors under the supervision of the NBG (Organic Law on NBG, Art.48(4)). These provisions may be used to: (i) prevent associates of criminals from holding a significant interest in, or becoming an administrator of, a covered FI; and (ii) allow the NBG to consider criminal action being taken against an administrator or significant shareholder

(where, as yet, there has been no criminal conviction). Similar provisions do not apply to the ISSS.

The NBG is also able to request and receive information from covered FIs on sources of capital and property and financial resources of shareholders (Organic Law on NBG, Art. 48(4.1(a))).

Details have not been provided for leasing companies. There are no fit and proper requirements for leasing companies.

Criterion 26.4 – (a) Georgia has been subject to an Assessment of Observance of the Basel Core Principles for Effective Banking Supervision - prepared by the IMF and World Bank in October 2014 (www.imf.org/external/pubs/ft/scr/2015/cr1510.pdf). All core principles relevant for c.26.4 were assessed as compliant or materially compliant, except for three (principles 2, 6 and 15). It was observed that: (i) in addition to approving significant shareholders, the NBG should have regard to others who may exert significant influence on the bank; (ii) more time should be dedicated to onsite inspections and group supervision; and (iii) there were significant deficiencies in risk management requirements. All significant deficiencies have been addressed, though some further improvements are required for principle 2.

In November 2018, the NBG became an Associate Member of the International Organisation of Securities Commissions (IOSCO). In order to do so, it was required to complete a self-assessment against the international standards. Two areas have been identified where IOSCO standards are not met: (i) the Collective Investment Funds Law which, inter alia, does not including fit and proper criteria; and (ii) whilst brokerage companies must manage compliance and risk, there is no requirement to have a separate function in this respect.

The International Association of Insurance Supervisors has conducted self-assessments and peer reviews of observance of the core principles on a thematic basis for Georgia. Most of the relevant ICPs were assessed as observed or largely observed, shortcomings were pointed out mainly about the regulation of intermediaries.

(b) The NBG applies a similar supervisory approach to all institutions under its AML/CFT remit. Supervision is undertaken on a risk sensitive basis and considers risks posed by sectors, groups, as well as individual institutions. For more information see c.26.5.

No information has been provided about supervision by the Ministry of Finance of leasing companies.

Criterion 26.5 – (a) The NBG has a dedicated Money Laundering Inspection and Supervision Department which consists of three divisions: Methodology and offsite supervision division; Inspection of commercial banks and PSPs; and Inspection of non-bank FIs.

The Supervisory Framework of the NBG on Combating Money Laundering and Financing of Terrorism was adopted on 1 January 2019 and sets out the basic risk-based principles for the planning and undertaking of AML/CFT supervision.

All supervised entities are divided into four risk categories (high, moderately high, moderately low and low). This assessment is based on: (i) data on customer base, products/transactions and geographical area (to assess inherent risk); and (ii) a review of AML/CFT policies and procedures for internal control in place (to calculate residual risk after application of controls). Both data and policies and procedures are collected through

sector specific off-site reports and are submitted periodically in intervals based on risk (see below). These reports were first introduced in 2015 (initially for banks). Information from the reports is prepared pursuant to sector specific Rules on Compiling Reports (adopted by a NBG decree) and used in line with sector specific Methodologies of Off-Site Supervision of ML/FT Risks (also adopted by a NBG decree).

Based on a combination of an assessment of entity risk, group level risk (if any), and an impact assessment (which considers the relative importance of the institution with regard to size, nature of activities, etc.), the institution is categorised into one of four levels of supervisory intensity or attention (high, moderately high, moderately low and low). These result in specific supervisory approaches to on-site and off-site supervision, which can also be combined with additional measures, such as audit reports, meetings with MLRO, etc.

Information in the off-site reports is also used to inform a sector risk assessment (Supervisory Framework, Art. 8). This sectorial assessment, together with the attributed level of supervisory attention (see table above) and NBG's on-site supervisory experience, provide the basis for an Annual Supervisory Plan which is adopted at the beginning of each year. This plan outlines the human resources and time to be dedicated to supervising each institution and the foreseen scope of each inspection.

The Supervisory Framework provides for five different types of onsite inspection: complex, thematic, special, control and quick check. On-site inspections are conducted in line with sector specific On-Site Inspection Manuals (adopted by NBG Decrees).

Should new relevant information be identified in the course of a year which would justify an amendment to the Annual Supervisory Plan, it would be changed as necessary (including adding an institution to the Plan, prolonging an inspection, etc.). The NBG is, therefore, able to react effectively to unexpected circumstances or new developments.

The ISSS also has a dedicated division which undertakes (on-site and off-site) AML/CFT supervision. Since July 2016, the ISSS has collected information from insurance companies on a semi-annual basis through reporting forms (form the basis for off-site supervision) which has informed risk assessments and assisted with planning on-site inspections. The off-site risk assessment is based on a customer database structure, insurance products/operations, internal control systems, and transactions (operations) carried out according to the geographic area. It also takes account of policies and procedures for internal control.

Based on the analysis of the relevant information, the ISSS assigns each institution a ranking: low, low-medium, medium, medium-high or high risk. Institutions ranked as high or medium-high risk are subject to on-site inspections every 1 to 2 years with ongoing monitoring and follow-up controls. Medium risk entities are inspected on-site every 2 to 3 years and low and low-medium every 3 to 4 years.

In addition to this supervision plan, the ISSS may also undertake ad hoc inspections in case of an event which triggers such an action. Whilst ad hoc inspections are generally focused, planned inspections can be either full-scale or focused.

No information has been provided about supervision by the MoF of leasing companies.

(b) In determining the frequency of its AML/CFT supervision (set out in the Annual Supervisory Plan), the NBG uses all the information available to it, including public information, and sectorial risk assessments, which take account of risk at country level (including the findings of early drafts of the NRA). General country risks are also

considered when designing thematic inspections. With respect to insurers, the ISSS defines the frequency of AML/CFT inspections using its On-site Inspection Internal Manual, which does not appear to specifically take country risk into account.

No information has been provided about supervision by the Ministry of Finance of leasing companies.

(c) The NBG takes into consideration characteristics of institutions, groups and sectors when planning and undertaking supervision (see above). It has not explained the extent to which the frequency and intensity of supervision of a covered FI is affected by the extent to which it applies simplified and/or enhanced CDD measures or places reliance on CDD measures already conducted by other obliged entities. Information on this sub-criterion has not been provided by other supervisors.

Criterion 26.6 – As stated above, the risk profile and the supervisory plans for both the NBG and ISSS are reviewed semi-annually but can also be amended on an ad hoc should that be necessary. The Ministry of Finance does not undertake supervision of leasing companies based on risk.

Weighting and Conclusion

There is no licensing/registration regime for leasing companies nor AML/CFT supervision. There are also some gaps in the regulation of supervision of insurance companies. Both sectors are, however, less important sectors and shortcomings considered minor. Similar deficiencies appear with regard to the collective investment fund sector, which is, however, non-existent in practice. **R.26 is rated LC.**

Recommendation 27 – Powers of supervisors

In the 4th round MER of 2012, Georgia was rated LC on R.29 because electronic money institutions were not subject to the AML/CFT Law and supervision.

Collective investment funds and fund managers are not designated as obliged entities. However, none were registered under sectorial laws at the date of the conclusion of the on-site visit, so this is not treated as a shortcoming under R.27.

Criterion 27.1 – Assigned supervisors (see c.26.1) must ensure that provisions of the AML/CFT Law and relevant regulations are implemented through off-site and on-site inspections (AML/CFT Law, Art. 38(1)). In order to conduct these inspections, the NBG and ISSS will use powers under the Organic Law on NBG and Law on Insurance respectively.

Criterion 27.2 – Supervisors have the power to undertake off-site and on-site inspections with regard to the institutions under their supervision (AML/CFT Law, Art. 38(1)). Other laws give specific powers to the NBG and ISSS (Organic Law on NBG, Art. 48, 48.²-52.³, sectorial legislation, e.g. Law on Payment Systems and Payment Services, Art. 45, and Law on Insurance, Art. 21(b)).

No information has been provided about specific powers given to the MoF to conduct inspections of leasing companies.

Criterion 27.3 – For the purposes of inspection or determining ML/TF risk, supervisors are authorised to request and obtain required information (documents) (including confidential information) from obliged parties (AML/CFT Law, Art. 38(3), Organic Law on NBG, Art. 48(5) and Law on Insurance, Art. 21(b)). Failure to provide requested information is subject to a sanction based on sectoral regulation (orders of the President of the NBG on “Rules on fines” issued for each sector and ISSS Rule on Defining, Imposing

and Enforcing Monetary Penalty on the Insurer approved by the decree No. 02 of 17 March 2015).

Criterion 27.4 – The NBG and ISSS are empowered to issue a broad range of sanctions for failure to comply with AML/CFT requirements, including the power to withdraw an institution’s licence (Organic Law of NBG, Art. 48(3) and (41) and Law on Insurance, Art. 211(2)). The ISSS is unable to suspend or restrict an insurance licence. Instead, in emergency situations (not necessarily linked to AML/CFT), it can use measures such as suspending/restricting specific activities, taking on new liabilities and imposing a temporary administrative regime (Law on Insurance, Art. 211).

No information has been provided on the authority of the MoF to impose sanctions on leasing companies.

Weighting and Conclusion

The NBG and ISSS have adequate powers. Whilst no information has been provided on the powers of the MoF to conduct inspections of, and apply sanctions to, leasing companies, this sector is less important, and shortcomings considered minor. **R.27 is rated LC.**

Recommendation 28 – Regulation and supervision of DNFBPs

In the 4th round MER of 2012, Georgia was rated NC on R.24. There was: no supervision of casinos, accountants, and DPMS; no effective, proportionate and dissuasive sanctions for casinos, DPMS, and accountants; no effective, proportionate or dissuasive sanctioning regime for notaries; no mechanism to prevent criminals and their associates owning or controlling a casino; and absence of supervisory powers for the accounting sector supervisor.

The following are not designated as obliged persons: (i) real estate agents; (ii) accountants that are not certified accountants; (iii) certified accountants when providing legal advice that relates to an activity listed under c.22.1(d); and (iv) TCSPs. These are considered moderate shortcomings.

Criterion 28.1 – (a) Casinos are required to be licenced and it is prohibited to provide such services without a licence (Law on Organising Lotteries, Games of Chance and Other Prize Games, Art. 5(1)). Licenses are issued by the Revenue Service of the MoF (Law on Organising Lotteries, Games of Chance and Other Prize Games, Art. 7).

(b) A licence may not be issued where founders, partners, managers and representatives of a casino have been convicted for a serious, economic or financial crime (Art.19(1.1) Law on Games of Chance and Other Prize Games). There is also a general prohibition on founders, partners, managers and representatives of a casino having been convicted for a serious, economic or financial crime (Art.19(1.2) Law on Organising Lotteries, Games of Chance and Other Prize Games). Since there is no definition of founder or partner, it is not obvious that this covers the BO of a significant or controlling interest in a casino or the “operator” of a casino. Provisions do not extend to associates of criminals holding significant or controlling interests, holding a management function, or being an operator.

The procedure for obtaining a licence for a casino is also regulated by the Law on Licenses and Permits. This law requires, amongst other things, that the application should be accompanied by an extract from the NAPR register (which includes names of directors and, in the case of a LLC, registered shareholders – but see shortcomings identified at c.24.5). Should any information provided at the time of application subsequently change, details should be provided to the licensing authority within 7 days (Law on Licenses and

Permits, Art.25(15)). The licencing authority is also required to monitor whether licencing conditions are met on an ongoing basis (Law on Licenses and Permits, Art. 33), hence also the lack of conviction for a crime.

(c) The competent authority for supervising casinos is the MoF (AML/CFT Law, Art. 4) which is responsible for monitoring compliance of casinos with the requirements of the AML/CFT Law (AML/CFT Law, Art. 38)).

Criterion 28.2 – The supervisor for DPMS is the MoF (AML/CFT Law, Art. 4).

Lawyers are supervised by the Bar Association, notaries by the MoJ, and auditors, audit firms and certified accountants by the SARAS, a state agency subordinate to the MoF (AML/CFT Law, Art. 4). Not all accountants are designated as obliged entities – see R.22.

Real estate agents and TCSPs are not designated as obliged entities and, therefore, there is no supervisor.

Criterion 28.3 – Designated supervisory authorities are required to monitor compliance by DNFBPs with their AML/CFT obligations through off-site and on-site inspections (AML/CFT Law, Art. 38(1)). This excludes accountants not designated as obliged entities, real estate agents and TCSPs.

Criterion 28.4 – (a) For the purposes of inspection or determining ML/TF risk, supervisors are authorised to request and obtain required information (documents) (including confidential information) from obliged parties (AML/CFT Law, Art. 38(3)). In addition, SARAS has the power to monitor compliance with AML/CFT requirements by certified accountants, auditors and audit firms (Law on Accounting, Reporting and Auditing, Art. 24(1)) and the MoJ has the power to monitor compliance of notaries (Law on Notaries, Art. 10(1)).

(b) A person cannot be a notary (which operate as sole practitioners) where they have been convicted for an intentional crime or prosecuted for committing an intentional crime (Law on Notaries, Art. 14 and 18). An auditor cannot be registered by SARAS if they have a conviction for ML, TF, other economic crimes, and other “heavy or aggravated crimes” (Law on Accounting, Reporting and Auditing, Art.13(4)). In order to be registered by SARAS as an audit firm, more than 50% of the voting rights in the firm should be held by an auditor, audit firm listed in the registry, and/or an audit firm registered in the EU and/or OECD country, and/or individual member(s) of an IFAC member organisation in the EU and/or OECD member country. Also, most members in the management body should be auditors (Law on Accounting, Reporting and Auditing, Art.13(5)). An auditor must notify SARAS about any change in information recorded in the registry (Law on Accounting, Reporting and Auditing, Art.13(6)).

Under Article 21.3(1)(d) of the Law on Lawyers, a court judgement on criminal matters against a lawyer is a ground for suspension of membership of the Bar Association. No other information has been provided on fit and proper measures.

No information has been provided by the MoF and SARAS respectively on fit and proper measures applied to DPMS and certified accountants.

(c) SARAS can apply sanctions to certified accountants, auditors and audit firms for breaches of AML/CFT requirements (Law on Accounting, Reporting and Auditing, Art. 24(1)). See c.35.1. Notaries can also be sanctioned for failure to comply with AML/CFT requirements. See c.35.1.

No information has been provided by the MoF and the Bar Association on sanctions that may be applied to DPMS and lawyers (other than suspension).

Criterion 28.5 – Supervision of DNFNPs must be performed on a risk-sensitive basis. The supervisory authority shall determine the risk level at appropriate times and when significant changes occur in ownership or control (management) structure or activity of the obliged entity (AML/CFT Law, Art. 28(2)). The supervisory authority must also have regard to the NRA report and action plan when determining the risk level of the obliged entity (AML/CFT Law, Art. 28(4)).

(a) The nature and frequency of off-site and on-site inspections shall be determined based on the nature and size of business of the obliged entity and associated ML/TF risks (AML/CFT Law, Art. 38(2)). There is no explicit obligation to consider the diversity and numbers operating in the sector.

(b) Compliance was not demonstrated that supervision of DNFNPs takes into account internal controls, policies and procedures.

Weighting and Conclusion

There is no regulation and supervision of real estate agents, some accountants (see R.22) and TCSPs. There are no, or insufficient, provisions in place to prevent criminals from owning or controlling casinos and sanction are not always available in line with R.35 for failure to comply with AML/CFT requirements. **R.28 is rated PC.**

Recommendation 29 - Financial intelligence units

In the 4th round MER of 2012, Georgia was rated PC on R.26. Several deficiencies were identified, in relation to, *inter alia*, the FMS's functioning and inability to provide guidance to reporting entities, to properly analyse STRs and access law enforcement information, as well as additional information from reporting entities. These deficiencies have been mostly addressed with the adoption of the new AML/CFT Law.

Criterion 29.1 – The Financial Monitoring Service (FMS) is the Financial Intelligence Unit (FIU) of Georgia. The FMS is an administrative type of FIU with competency to receive and analyse reports (including but not limited to STRs) and other information (documents) from obliged entities and other sources and, if there are reasonable grounds to suspect ML, TF or other criminal activity, to disseminate the results of its analysis (AML/CFT Law, Art. 25, 31 and 34).

Criterion 29.2 – (a) The FMS receives reports on suspicious transactions filed by the obliged entities (AML/CFT Law, Art. 3 Art. 25(1)). Lawyers may report to the Georgian Bar Association (supervisor) rather than to the FMS. The Bar Association must then submit an unaltered report to the FMS (AML/CFT Law, Art. 26 (5)).

(b) The FMS also receives reports from the Revenue Service on cross-border transportations of currency or securities if their value exceeds GEL30 000 (EUR 10 000) or its equivalent in foreign currency, or transportation of currency and securities covertly or bypassing the customs control or by submitting a false declaration. In addition, the FMS is authorised to determine other types of transactions or specific circumstances in which transactions shall be reported, including e.g. reports related to high-risk jurisdictions filed by the obliged entities; reports related to registration of real estate ownership transfer filed by the NAPR (AML/CFT Law, Art. 25(2-5)).

Criterion 29.3 – (a) For the purpose of performing its functions, the FMS is authorised to request and obtain from obliged entities any information and documents concerning

transactions, person(s) involved therein or any other information that is necessary for FMS to perform its functions (AML/CFT Law, Art. 25(6) and Art. 34(1)). The law does not make this authority contingent on whether reporting entities have previously filed a STR on the transactions or parties involved in the request.

(b) For the purpose of performing its functions, the FMS is authorised to request and obtain from public bodies confidential information and, as required, to access directly, if technically possible, databases containing such information (AML/CFT Law, Art. 35 (1(b))). As concerns other non-confidential information, this obligation is provided under the general provision on cooperation and information exchange among the competent authorities (AML/CFT Law, Art. 39(1)). The FMS has direct access to a wide range of information and databases held with a number of authorities.

Criterion 29.4 – There is no explicit reference in the legislation to require the FMS to conduct either operational or strategic analysis of information related to ML/TF. However:

(a) The FMS is authorised to conduct analysis of reports and other information received from obliged entities and other sources, and if there are reasonable grounds to suspect ML/TF or other criminal activity, disseminate the results of its analysis to LEAs (AML/CFT Law, Art. 34(1)).

(b) The FMS shall analyse the methods of ML and TF employed in Georgia and internationally and shall develop suspicious transaction indicators for obliged entities (AML/CFT Law, Art.34 (3)), which could account for strategic analysis. Yet, incomplete definitions for ML (AML/CFT Law, Art. 2(Z.8)) – which do not refer to all relevant parts of the CC (i.e. Art. 186 and 194.1) – implies that the scope of analysis might be narrow.

Criterion 29.5 – The FMS is able to spontaneously disseminate the results of its analysis if there are reasonable grounds to suspect ML/TF or other criminal activity, to the GPO, SSS, MIA and the MoF Revenue Service (the latter does not have investigative powers) (AML/CFT Law, Art. 34(1)). The FMS is not able to conduct a spontaneous dissemination to MoF Investigation Unit, which is an authorised competent authority for criminal investigation of a number of categories of FATF-designated predicate offences, including offences related to fraud (CC Art. 182 and 219), counterfeiting and piracy of products (CC Art. 189, 189.1, 196 and 197), extortion, smuggling (CC Art. 214), and forgery (CC Art. 210), illicit trafficking in stolen and other goods (CC Art. 200) and commercial bribery (CC Art. 221) (GPO, Order N3) (see also 4th round MER of Georgia Table on page 50).

There is a general obligation for the competent authorities, including the FMS to cooperate within their competence, by exchanging information and experience for the purpose of facilitating the suppression of ML and TF (AML/CFT Law, Art. 39 (1)). The FMS is authorised to submit available confidential information (documents), with no court order required, only upon a grounded request of the GPO, SSS or MIA, which is necessary for achieving the purpose of an ongoing investigation of ML (CC, Art. 194, 194.1), TF (CC, Art. 331.1) or Drug related crimes (CC, Chapter XXXIII) (AML/CFT Law, Art. 39(6)). The MoF Investigation Service is not included in the scope of Art. 39(6). It can obtain information from the FMS only indirectly, by submitting requests via the GPO (Art. 39(1)).

These important limitations of the ability of the FMS to disseminate information and results of its analysis, upon request, without a court order (which requires a requesting LEA to meet the criminal evidential standard of probable cause under the CPC), to all LEAs, including MoF Investigation Service, when conducting investigation of the ML (CC,

Art. 186) and all other than provided above types of ML predicate offences, is a significant shortcoming.

The authorities advise that the results of FMS's analysis are not disseminated to relevant authorities electronically, but are delivered in hard copy, in a sealed envelope, by a dedicated FMS employee thus ensuring, that unauthorised access or tampering is prevented.

Criterion 29.6 – (a) FMS shall protect the confidentiality of information (documents) received as provided by the AML/CFT Law (AML/CFT Law, Art. 35(2)). The management and employees of FMS shall be prohibited from disclosing to any other person that FMS received a report or other information (documents), or conducted measures including analysis, dissemination, international cooperation, and suspension of transaction, to facilitate suppression of ML/TF, except for circumstances provided by this Law (AML/CFT Law, Art. 35. (3-4)). This refers to sharing of information with domestic and foreign authorities on the basis of the AML/CFT Law. The management and employees of FMS shall protect the confidentiality of information (documents) while performing their duties and afterwards, except for circumstances provided by the AML/CFT Law (AML/CFT Law, Art. 35(3)). These circumstances include dissemination to LEAs (AML/CFT Law, Art. 34(1) and 39(4,6)), and to foreign FIUs (AML/CFT Law, Art. 37(1-2)).

The FMS advised that the system of electronic submission and storage of STRs and TTRs by obliged entities is secure and can be accessed only by a limited number of authorised personnel. The FMS has an “Information Security Policy” adopted by the Ordinance of the Head of FMS N0517/01-2 from May 2017, which governs internal processes of protecting confidential information, including against unauthorised access and data leakage.

(b) The authorities advise that background checks on employees of the FMS by examining their criminal record and reputation are conducted before recruitment. Once recruited, the employees are familiarised with detailed job descriptions approved by the Head of the FMS, which set out responsibilities on handling confidential data, as well. The employees are then evaluated on the basis of these job descriptions by their superiors on a quarterly basis.

(c) The FMS does not share premises with any other agency. The premises are guarded and equipped with surveillance cameras and may only be entered by employees through a fingerprint entry system. There is also a security alarm system in place, which detects motion inside the premises and once activated, may alert the management of the FMS and the security company in charge. The server room of the FMS is always locked, and only authorised personnel are allowed inside. The server room is equipped with CCTV cameras and fire extinguishing system. All inbound and outbound network traffic at the FMS is protected by firewalls, but not isolated from each other. The FMS ascertained that the firewalls protection is capable to ensure security of the inbound network. The access to the specific local databases is restricted to employees authorised by the Head of FMS.

Criterion 29.7 – (a) The FMS is a legal entity of public law, operating independently, and guided by the legislation of Georgia. The attempt to influence FMS or interfere in its activity or requiring FMS to obtain any information or undertake other actions is prohibited (AML/CFT Law, Art. 31(1-2)). The Head of the FMS is appointed by the Prime Minister for a 4-years term (AML/CFT Law, Art. 32(2)). There are limited grounds provided in the Law for the Prime Minister to dismiss the Head of the FMS before the end of its term (AML/CFT Law, Art. 32(3)). The FMS exercises its authority to disseminate

information independently (FMS Regulation, Art 3(j)). Hence, the FMS is autonomous in its decisions to analyse, request and/or forward or disseminate specific information.

(b) With respect to international cooperation the FMS is explicitly authorised to independently conclude an agreement with a foreign FIU to regulate the exchange of information and other types of bilateral cooperation for the AML/CFT purposes (AML/CFT Law, Art. 37(7)).

The FMS is empowered to cooperate with other state authorities and exchange information, as provided by Art. 39(1) of the AML/CFT Law. There is nothing in the AML/CFT Law to restrict the FMS from concluding agreements with the domestic authorities. This has been confirmed by the concluded cooperation agreements with LEAs, supervisors and other public agencies.

(c) The FMS is not located within any existing structure. Although accountable to the Government, in the form of the submission of annual reports, the FMS is a stand-alone agency and has its own core functions stipulated in the AML/CFT Law and other legal acts on AML/CFT matters (Art 31(1, 3)).

(d) The FMS has its own resources, including financial and human to carry out its functions. The FMS is provided by the financial resources from the state budget and can receive funds also from other permitted sources (AML/CFT Law, Art. 33(1)). These can be reduced only with prior consent of the Head of the FMS (AML/CFT Law, Art. 33(2)). The staff list and the salaries of the FMS are approved by the Prime Minister (AML/CFT Law, Art. 33(4)). Salaries of the FMS staff shall be of a correspondent value with the ones established in the banking sector (AML/CFT Law, Art. 33(3)), and the staff list shall be approved on the basis of a proposal of the Head of the FMS (FMS Regulation, Art 4(7)). Hence, this mechanism safeguards the FMS operational independence.

Criterion 29.8 – The FMS was accepted as an Egmont Group member in June 2004.

Weighting and Conclusion

Overall, Georgia has successfully implemented the majority of the requirements under R. 29. There are however serious limitations in the ability of the FMS to disseminate information and results of its analysis spontaneously and upon request. The FMS is able to spontaneously disseminate the results of its analysis to the GPO, SSS, MIA and the MoF Revenue Service (the latter does not have investigative powers), but not to MoF Investigation Service, which is conducting criminal investigation of a number of categories of FATF-designated predicate offences. The FMS is authorised to submit available confidential information (documents), with no court order required, only upon a grounded request of the GPO, SSS or MIA, which is necessary for achieving the purpose of an ongoing investigation of ML (CC, Art. 194, 194.1), TF (CC, Art. 331.1) or Drug related crimes (CC, Chapter XXXIII). The MoF Investigation Service is not included in the scope of Art. 39(6). It can obtain information from FMS only indirectly, by submitting requests via the GPO. No information can be disseminated upon request, without a court order (which requires a requesting LEA to meet the criminal evidential standard of probable cause under the CPC) to any LEA, including to MoF Investigation Service, when conducting investigation of the ML (CC, Art. 186) and all other than provided above types of ML-related predicate offences. This is an important shortcoming affecting the Georgian system, that has a strong bearing on the rating. **R.29 is rated PC.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

In the 4th round MER of 2012, Georgia was rated LC on R.27. No technical deficiencies were identified. Since then the FATF standards have been revised and currently contain much more detailed requirements, including a requirement to designate competent authorities to identify, trace and initiate freezing and seizing of property for the purposes of confiscation or property that may be the proceeds of crime.

Criterion 30.1 – Georgia has designated the investigative divisions of the following authorities as responsible for investigating criminal offences: the Ministry of Justice (MoJ), the Ministry of Internal Affairs (MoIA), the Ministry of Defence (MoD), the Ministry of Finance (MoF), the State Security Service (SSS) and the State Inspector' Office (CPC Art. 34.1). The Prosecutor's Office shall also undertake full-scale investigation, in cases and in the manner prescribed by the CPC (CPC, Art. 32). As no criminal offences are excluded from Art. 34.1, it covers ML, TF and all other offences under the CC, including all predicate offences. Investigative jurisdiction shall be determined by the GPO unless otherwise determined by law (CPC, Art. 35). The same applies to territorial jurisdiction (CPC, Art.36).

Investigative competence is determined by the GPO Order N3. The investigation of the ML offences at Art.194 and 194.1 of the CC is the responsibility of the investigators of the General Prosecutor's Office (GPO Order N3, Para.3; MoJ Order N64 Art. 2 (a)-(b)). The GPO Criminal Prosecution of Legalization of Illegal Income Division (GPO AML Division) is also responsible for investigating ML-related predicate offences, i.e. cases where ML is conducted in conjunction of other offences (MoJ Order N64 Art. 2(b)). The investigation of the ML offences at Art. 186, and any other offences for which there is no other investigative body specified by the GPO Order N3 is the responsibility of the MIA (GPO Order N3, Para.1). The Investigative Unit of the MoF is responsible for investigation of certain economic, including tax evasion-related crimes (GPO Order N3, Para.5). The investigation of terrorism-related offences (including TF) and some corruption-related offences is the responsibility of the SSS (GPO Order N3, Para. 4).

Criterion 30.2 – There is no restriction under Georgian law on those investigating predicate offences that would prevent them from pursuing a related ML or TF investigation during a parallel financial investigation or from referring the case to another authority, as under Art. 34.2 of the CC. All investigative authorities covered by Art. 34.1 have equal rights and duties, and all investigative actions carried out by them have equal legal effect. However, there are specific measures in place to ensure referral of ML and TF investigations to the GPO or the SSS respectively. A 2015 recommendation from the GPO on "Certain Measures to Be Carried Out in Criminal Proceedings" requires all investigators (from any agency) and prosecutors to notify the Investigative Unit of the GPO whenever it is established that property under investigation is the proceeds of crime or is of unverified origin, in order for the latter to conduct an investigation of ML in relation to this property. In addition, Art.102 of the CPC provides for the mandatory referral of cases according to jurisdiction by a prosecutor in any case where after an investigation has been initiated it is discovered that the case is within the jurisdiction of another investigative authority. In addition, under Art. 33 of the CPC the GPO may transfer responsibility for a case from one investigative authority to another regardless of investigative jurisdiction. Accordingly, the offences related to TF are referred to the SSS.

Criterion 30.3 – Art. 34(2) of the CPC stipulates that all investigators from the different authorities indicated in Art. 34(1) have equal rights and duties, and all investigative actions carried out by them have equal legal effect. This extends to the exercise of rights

and duties related to identifying, tracing and initiating freezing and seizing of property that may be subject to confiscation or that may be the proceeds of crime. While there is no specific authority explicitly designated by law as responsible for this, it is addressed by the 2015 recommendation from the GPO. Under this recommendation, all investigators (from any agency) and prosecutors are required to pursue all necessary measures permitted under the CC to trace and identify property that might come within the scope of the criminal confiscation provisions at Art. 52 of the CC, and to ensure its seizure. This includes looking at the assets of the relatives and associates of an offender. In addition, the 2015 recommendation requires the property of certain specified persons (officials, those who are suspected of being racketeers, members of the criminal underworld, traffickers, or supporters of drug trafficking, or who have committed a ML offence involving laundered property or a TF offence) to be examined, and also the property of their relatives and associates. The GPO (Legal Division of the Legal Provision Department) must immediately be informed of any such property (or part of such property) that is identified as the proceeds of crime or is of unverified origin. This requirement enables the GPO to give consideration to initiating proceedings for confiscation via civil proceedings.

Criterion 30.4 – Since there are no other competent authorities which are not LEAs, but which have responsibility for conducting financial investigations into predicate offences, this criterion is not applicable.

Criterion 30.5 – Corruption-related offences come within the jurisdiction of the investigative unit of the GPO, (which has jurisdiction over corruption-related ML under GPO Order N3 and MoJ Order N64), and the SSS (which has jurisdiction over all forms of corruption when detected by the SSS, but save for cases involving high-level officials by virtue of GPO Order N3). Under Art. 34(2) of the CPC, both authorities have the equal powers to identify, trace and initiate the freezing and seizing of assets.

Weighting and Conclusion

All applicable criteria are met. **R.30 is rated C.**

Recommendation 31 - Powers of law enforcement and investigative authorities

In the 4th round MER of 2012, Georgia was rated LC on R.28. The only technical deficiency identified was a possible lack of powers of the law enforcement agencies to access information held by lawyers when conducting financial activities on behalf of their clients.

Criterion 31.1 – The CPC contains a range of measures to enable investigators of competent authorities and prosecutors to obtain access to documents and other information. Under Art. 112.1 of the CPC, a court order is required for any investigative action that restricts private property, ownership or the inviolability of private life (e.g. production of records, search of persons or premises and the seizure or obtaining of evidence). Under Art. 112.5, this requirement may be waived in cases of urgent necessity, in which case the investigation action must be notified to a judge by the prosecutor within 24 hours and then validated by the court no more than 24 hours after that.

With respect to access to information covered under the legal privilege of a lawyer Art. 50 of the CPC specifies that defence counsel do not have to act as witnesses or provide information about circumstances which they have become aware of either in the course of carrying out this role, or in the course of providing legal assistance before taking on the role of defence counsel. These restrictions appear to be in line with international safeguards to protect human rights. There are no other circumstances set under the CPC

that would prevent the LEAs from obtaining information from the lawyer, and the authorities provided a court judgement which confirmed this. This was supported by a representative from the Georgian Bar Association, who confirmed that compliance with a court order under the CPC is additional to, and not affected by, the provisions in the Law on Lawyers about the circumstances in which the lawyer can disclose confidential information. Therefore, the theoretical problem identified in the previous MER does not appear to be a problem in reality.

(a) Production of records - Under Art. 136 of the CPC, a court order may be obtained compelling the production of any information or documents stored in a computer system or a computer data carrier. This is supplemented in the case of bank records by account monitoring orders available at Art. 124.1 of the CPC, which allows access to data for real time monitoring of transactions on a specified account. There does not appear to be such explicit power under the law of Georgia to compel the production of non-computerised records. The production of non-computerised records is addressed as a preliminary stage in the exercise of search and seizure powers in the CPC. Under Art 120, any person who is subject to a search and seizure order must be allowed the opportunity to produce the information identified in the order voluntarily. While the authorities confirmed that this provision is regularly used to secure the production of records without the need to invoke search and seizure powers, there is no legal provision to compel the production of non-computerised records apart from search and seizure. While this is a technical deficiency, it is a minor one given the near-universal practice of keeping computerised records and the fact that non-computerised records can be obtained using the search and seizure powers referred to below.

(b) Search of persons and premises - Under Art.119 of the CPC, a coercive search of persons premises or vehicles may be conducted for the purposes of uncovering an item, document, substance or any other object containing information that is important to a case, if there is probable cause to believe that the item, document, substance or object in question is located at the site of the search. Under Art.120 of the CPC, the court order authorising the search (or the decree of the investigator in an urgent case) must be presented to any person who is subject to a search. There are further procedures governing the search of premises (Art.120 of the CPC) and persons (Art.121 of the CPC).

(c) Taking witness statements - There are provisions permitting the interview of any person who may have essential information at Art. 113 of the CPC. An interviewee may not be forced to provide evidence or to disclose information, but where an interview is conducted by a prosecutor or investigator the interviewee must be informed of the possibility of being summoned to give evidence. Interviewees must also be informed of the penalties applicable to false denunciation or the provision of false information at Art. 373 and Art. 370 of the CC. There are also provisions at Art. 114 and 115 of the CPC that set out detailed procedures for the pre-trial examination of witnesses in certain circumstances (e.g. where the witness may not be available to give evidence at trial).

(d) Seizing and obtaining evidence - In the course of a search under Art.119-121 of the CPC, any item, document, substance or any other object identified in a court order (or investigator's decree in urgent cases) may be seized. There is also a power at Art.120.5 of the CPC to seize any other objects containing information that may be of evidentiary value to the case, or which clearly indicate that another offence has been committed, or any item, document, substance or any other object containing information that has been withdrawn from civil circulation, i.e. is not freely accessible for civilians and needs special

permission or a licence (drugs, weapons, documents containing state secrets etc). There are procedures to be followed for securing etc. seized items at Art. 120.6 of the CPC.

Criterion 31.2 – A wide range of investigative techniques is available to the to all LEAs and the GPO at any stage of an investigation under the CPC and the Law on Operative Investigative Activities (“LOIA”). While the use of some of these techniques is limited to particular categories of offence, the ML offences, the TF offence and FATF designated predicate offences come within these categories. A court order (following a closed court session) is required on the basis of an application from a prosecutor, although in urgent cases authorisation from a prosecutor is sufficient. This must then be validated by the court within 24 hours.

(a) Undercover operations - Undercover operations, including eavesdropping, electronic and non-electronic surveillance and covert human intelligence sources, are permitted under Art.143.1 of the CPC and Art.7 of LOIA. The powers under the CPC are available in the case of certain categories of offence, including an intentionally serious or especially serious offence (i.e. any intentional offence under the CC that is subject to a maximum term of imprisonment of 5 to 10 years or more than 10 years respectively). The powers under the LOIA are available in the case of any offence under the CC.

(b) Intercepting communications - Art.143.1 of the CPC permits secret eavesdropping and recording telephone communications, the retrieval and recording of information from a communications channel by a range of means and monitoring non-diplomatic postal and telegraphic transfers. There are additional powers to obtain electronic communication data and to monitor internet interactions under Art.7 of LOIA.

(c) Accessing computer systems - This is covered under the provisions of Art.137, 138 and 143.1 of the CPC, and Art.7 of LOIA, as outlined above.

(d) Controlled delivery - This is permitted by Art.7 of LOIA.

Criterion 31.3 – (a) Timely identification of accounts - This is possible in criminal investigations under the provisions of Art.124.1, 136 and 143.1 of the CPC as outlined above.

(b) Identification of assets without prior notice to the owner - The law of Georgia does not require notification of an existing or contemplated investigation to the person concerned. Criminal investigations are subject to secrecy obligations under Art.104 of the CPC and there are other prohibitions on the disclosure of information at Art.374 and 374.1 of the CC which may be relied on to prevent persons from revealing the fact that assets have been identified in some cases (for example where assets have been identified by using account monitoring orders or investigative actions related to computer data).

Criterion 31.4 – As a general rule, all LEAs conducting investigation of ML/TF and predicate offences can request information from the FMS upon court order, which requires a requesting LEA to meet the criminal evidential standard of probable cause under the CPC. In addition, under Art. 39(6) of the AML Law the GPO, SSS and MIA, can submit a grounded request to obtain information from the FMS without a court order, exclusively for the purposes of the ongoing investigation of ML (CC, Art. 194 and 194.1), FT (CC, Art. 311.1) and drug crimes (CC, or Chapter XXXIII). However, this does not include the ML offence as set under the CC, Art. 186, or any predicate offences. In addition, the MoF Investigation Service is not included in the scope of Art. 39(6). This latter technical shortcoming is however mitigated by the fact that LEAs can obtain information from the FMS indirectly by submitting requests via the GPO (Art. 39(1)).

Weighting and Conclusion

Georgia has a range of measures in place to support criminal investigations, but there is a minor technical deficiency with regard to the production of non-computerised records and there are some restrictions hindering the ability of LEAs to request information from the FMS. **R. 31 is rated LC.**

Recommendation 32 – Cash Couriers

In the 4th round MER of 2012, Georgia was rated NC on SRIX. The technical deficiencies identified were as follows: a lack of clear powers to request and obtain further information from the carrier, stop or restrain the currency or the bearer negotiable instruments; lack of proportionate sanctions; limitations in requirement for the retention of records; the absence of clear definition of bearer negotiable instruments; weak implementation of the system across all border crossing points; Insufficient statistics; and lack of training. Since then, Georgia has amended its legal framework to address most of these deficiencies.

Criterion 32.1 – There is a declaration system in place for regulating the cross border transportation of currency and BNIs under the Customs Code of Georgia and Instruction on Declaring and Clearing of Goods in Customs procedures or Re-export approved by Ministerial Order N 257 (hereinafter referred to as the Instruction) and the new AML/CFT Law. Both the Instruction and the new AML/CFT Law came into force not long before the onsite visit. This replaced a broadly similar declaration regime that was formerly in place under the Tax Code and the previous AML/CFT Law.

The new AML/CFT Law designates the Revenue Service as the authority responsible for identifying persons who move, send or receive cash or BNIs and for carrying out preventive measures (Art. 10.9 and Art. 11.7). Art. 2, paragraph 15 d) of the Instruction requires natural persons to declare cash, cheques and other securities which exceed GEL 30 000 (EUR 10 000) when crossing the Georgian border. The wording of Art.2, paragraph 15d) is not confined to travellers so appears to cover mail and cargo also, and this is consistent with the interpretation of the authorities and the reference to sending or receiving cash or BNIs in the new AML/CFT Law.

Criterion 32.2 – As noted above, the Instruction obliges natural persons to declare cash/BNIs transported to Georgia when the amount exceeds GEL 30 000 (EUR 10 000). Methods of declaration are specified in Article 3(1) of the Instruction. This provides for a possibility of submitting declaration of goods through an electronic form (via automated data systems of Customs or of the Ministry of Interior) or in a physical form which need to be approved by the Customs. Passengers can declare their goods orally.

Criterion 32.3 – This criterion is not applicable as Georgia has a declaration system.

Criterion 32.4 – Art. 27 of the Instruction include forms for declaration of goods for natural persons. The form, *inter alia*, has a column titled ‘Type of Currency/Securities’. Another column requires details on origin and purpose of goods. A customs officer who has identified a customs offence by a natural person who crosses the border (which would include a failure to complete the form or the provision of wrong information in the form needs to make the necessary adjustments in the form. Data corrected/filled in by the Customs officer needs to be verified by the natural person who submitted the form. If the natural person refuses to verify the data filled in by the Customs officer, he/she is then prohibited from moving goods across the border.

Criterion 32.5 – Art.169 of the Customs Code imposes administrative financial penalties for violation of the declaration obligation. The level of applicable penalty depends on the value of the cash in question. Where the undeclared or inaccurately declared cash and securities is between GEL 30 000 and 50 000 the penalty is GEL 3.000, rising to GEL 5.000 where the cash and securities is between GEL 50 000 and 100 000 and to 10% of the value of the cash and securities where the cash and securities is in excess of GEL100 000. In all 3 cases, seizure of the cash and securities is available as an alternative sanction. In addition, under Art. 214 of the CC, it is a criminal offence to move a large amount of moveable goods (i.e. with a customs value exceeding GEL 15 000, or exceeding GEL 5 000 if concealment is involved) or a particularly large amount of moveable goods (i.e. with a customs value exceeding GEL 25 000, or exceeding GEL 15 000 if concealment is involved) across Georgia's borders in breach of the declaration requirements. This is punishable with a fine or a term of imprisonment (between 3 and 5 years for large amounts and between 5 and 7 years for particularly large amounts). The combined effect of these measures is that Georgia has sanctions in place which appear to be proportionate and dissuasive

Criterion 32.6 – Information on all declarations and violations of the declaration obligations has to be sent via electronic means to the FIU on a daily basis via an online portal. This is governed by Article 25 of the AML/CFT Law. In addition, definitions and other terms related to the communication between the Revenue Service and the FIU are regulated through the AML/CFT Regulation of the Revenue Service approved in 2011.

Criterion 32.7 – Coordination between the MoF and the MIA is addressed under joint Order No. 258. It regulates passport control and photo-recording of natural persons crossing the border through the border crossing point, rules of registration and control of motor vehicles transported by these persons, and cooperation and coordination between these ministries. While these matters may be relevant to R32 in some cases, the Order does not specifically address cash/BNIs transportation.

Criterion 32.8 – Under Art. 13 of the Instruction, at the conclusion of an inspection of a declaration or at any stage a customs officer is entitled to suspend the procedure of releasing the goods. This is a very broad discretion that is not subject to any conditions, so may be exercised in any case where there is suspicion of false declarations and any other form of criminality. Under Art.14 of the Instruction, a customs officer who suspects that a criminal offence has been committed must notify a superior, who in urgent cases may then request assistance of the MoF Investigation Service. Case files are then to be sent to the relevant investigating authority and the Customs Department of the Revenue Service shall then suspend the procedure of releasing the goods.

Criterion 32.9 – The Customs Department of the Revenue Service has close cooperation with neighbouring countries for the purposes of joint control of border and exchange of information, and there are agreements signed with other countries with regard to mutual administrative assistance in customs matters. Examples were provided to the assessment team. However, there is no requirement or policy in place for the retention of information for the purposes of international cooperation and assistance on declarations in excess of the threshold, false declarations and suspicions of ML/TF.

Criterion 32.10 – Under Art. 11 of the Customs Code, information held by the Customs Department of the Revenue Service about a person is confidential (except for certain details about a taxpayer's registration, name, status, address, etc. which are publicly available under the Tax Code). There are further safeguards in the Administrative Code of Georgia, which requires competent authorities to exercise discretionary powers

proportionately in a way that protects public and private interests as far as possible (Art. 2, 6 and 7).

Criterion 32.11 – The physical transportation of cash or securities that are linked to ML/TF or predicate offences comes within the ML offence at Art.194 of the CC where the transportation is carried out for the purposes of concealing the illegal origin, source etc. of the cash or securities or to assist another person in evading liability. In addition, the physical transportation of cash or securities that constitute the proceeds of crime or laundered property involves the act of possession and therefore constitutes an offence under Art.186 and 194.1 of the CC. Where physical transportation of cash or securities is for the purposes of funding acts of terrorism, an individual terrorist or a terrorist organisation, this comes within the TF offence at Art.331 of the CC. As indicated under R3 and R5, the penalties for ML and TF are proportionate and dissuasive. The cash/BNI involved may be confiscated following a conviction and may also be subject to forfeiture via civil proceedings in certain circumstances (see under R4). In addition, as explained under c.32.5, violation of the declaration requirement renders the cash/BNI in question liable to seizure as an alternative to the imposition of an administrative financial penalty.

Weighting and Conclusion

Georgia has a cross-border declaration system that meets R.32 in most respects. However, there are no formal domestic cooperation mechanisms in place specifically to address cash/BNIs transportation, and no requirement or policy in place to retain information for the purposes of international cooperation. **R.32 is rated LC.**

Recommendation 33 - Statistics

In the 4th round MER of 2012, Georgia was rated LC with former R.32. The assessors concluded that competent authorities have yet to develop comprehensive statistics on property frozen or seized for each type of predicate offense.

Criterion 33.1 – Competent authorities of Georgia, including the FMS, supervisory authorities, GPO and LEAs, within their competence are required to maintain statistics on the following information, as specified in the AML/CFT Law, Art. 7: (a) the number of reports submitted to FMS and selected for further analysis, and the number of results of analysis of FMS disseminated to competent authorities; (b) the number of requests for confidential information or suspension of transactions sent to and received from financial intelligence units of foreign jurisdictions, and the number of received requests executed by FMS; (c) the number of money laundering and terrorism financing investigations, prosecutions, final convictions and acquittals; (d) the amount and/or type of assets frozen, seized and confiscated in ML and TF cases; (e) the number of requests for MLA received, sent and executed on ML and TF cases; (f) the number and type of inspections carried out, violations identified and measures applied by supervisory authorities as provided by the AML/CFT Law or relevant regulations. The authority-specific legislation provides with additional requirements for maintaining statistics. Most of the authorities maintain electronic databases for collection and analysis of the statistical data.

As concerns the comprehensiveness of statistics that is maintained, the Georgian authorities have limited statistical information about: (a) the predicate offences in ML investigations and prosecutions; (b) some stages in the confiscation process; (c) assets confiscated under the cross-border declarations regime.

Weighting and Conclusion

The competent authorities are obliged to maintain various statistical information under the recently adopted AML/CFT Law. However, the statistics provided were not comprehensive, in respect of predicate offences, confiscation and the cross-border declarations regime. **R.33 is rated LC.**

Recommendation 34 – Guidance and feedback

In the 4th round MER of 2012, Georgia was rated PC on R.25. There was limited guidelines and feedback, only predominately orientated towards the banking and insurance sector; no account was taken of other reporting entities.

Criterion 34.1 – The FMS has issued Regulations on Receiving, Systemising and Processing Information and Forwarding to the FMS for all obliged entities (except for DPMS) (2012). These Regulations, which are based on the AML/CFT Law, focus on reporting, internal controls, CDD and record-keeping. In line with its statutory remit (AML/CFT Law, Art. 34(2) to (4)), it also publishes annual activity reports, that include descriptions of typologies identified throughout the preceding year, conducts annual typologies meetings with banks to discuss various ML/TF techniques, and holds bilateral meetings with obliged entities to discuss pending issues (2 or 3 each month according to the FMS). In 2017 to 2019, numerous meetings (number not provided) were held with all categories of obliged entities (including those where supervisors have not provided guidance and feedback) to discuss legislative reforms, including changes to the AML/CFT Law. These involved presentations on new requirements and solicited feedback. In addition, the FMS also provides obliged entities with direct feedback on STRs, including cases involving fictitious domestic companies.

The FMS has also issued a number of guidance notes and indicators, such as: (i) suspicious transactions and indicators for gambling business (2019); (ii) identification of TF-related suspicious transactions for FIs (2016); (iii) guide for lawyers with regard to their AML/CFT obligations (issued together with the GBA and developed in collaboration with the Association of Law Firms of Georgia (ALFG))(2016); and (iv) ML/TF suspicious transaction indicators for banks, brokerage companies, insurance companies, notaries (2015) and auditors. The FMS also publishes on its website some relevant typologies reports and guidance issued by international bodies; however, the majority is outdated.

“Dialogue with regulated institutions” is one of the key principles set out in the Supervisory Framework of the NBG (Art.2(2)(d)). With the aim of raising effective communication, the NBG launched in 27 June 2018, an offsite supervisory web-portal that facilitates collection of regulatory reports and other relevant information from obliged entities (Decree no. 124/04 of the Governor of the NBG). The portal is also used for communicating legal acts, guidance notes, best practices, risk assessments, responses to frequently asked questions, and newsletters. The NBG has published important guidance notes on areas covering: (i) CDD (November 2019); (ii) analysis of organisational and group-wide ML/TF risks (October 2019); (iii) the RBA (May 2019); (iv) identification and verification of beneficial ownership (March 2019); and (v) correspondent banking (May 2019). All are available through its website. It also offers training activities, the content of which focus on specific sectors/issues identified as needing enhancement of their compliance culture.

NBG communication with financial sector representatives also takes other different forms (formal and informal, individual or group (19 group meetings between 2017 and 2019)) at which feedback is provided to assist in the application of preventive measures. The

approach varies according to the identified risks. For high-risk FIs, annual meetings are held with senior management and regular meetings arranged with other responsible persons, where institution-specific issues are discussed. For moderate-risk FIs, individual meetings are held if necessary, otherwise group peer meetings are held in order to discuss best practices, common deficiencies identified, supervisory expectations, etc. The NBG has also shared sectorial assessments of ML/TF risk and preliminary findings in earlier drafts of the NRA report.

Similarly, the ISSS conducts regular meetings with the insurance sector to discuss and resolve issues of interest. The ISSS has issued thematic guidelines on the RBA (undated) and identification and verification of beneficial ownership (undated). ISSS also shared the preliminary findings of the draft NRA report with its sector, organises formal and informal, individual or group peer meetings, (three group meetings since 2015) and organises training (but not since 2016).

All the above measures (guidance, feedback, joint meetings, information sharing) are designed to assist covered FIs and DNFBPs in applying national AML/CFT measures, and in detecting and reporting suspicious transactions.

SARAS (accountants and auditors), the MoF (casinos, DPMS) and the MoJ (notaries and NAPR) have not provided any guidance and feedback. Guidance and feedback are not provided in sectors that are not covered by the AML/CFT Law – see c.1.6.

Apart from the FMS and supervisors, a permanent working group created based on the Strategy 2017-2021 of the Prosecutor's Office has, as one of its goals, organisation of training and meetings with obliged entities to discuss challenges in fighting ML/TF. It is, however, not clear whether such training/meetings took place or are planned.

Weighting and Conclusion

The FMS has provided guidance and feedback through various means, which covers a large part of the population of obliged entities, including casinos. The NBG and ISSS have also actively provided guidance and feedback, whilst most other supervisory authorities (including those for casinos and real estate) have not done so. **R.34 is rated LC.**

Recommendation 35 – Sanctions

In the 4th round MER of 2012, Georgia was rated LC on R.17. Fines were considered too low in nominal terms to be punitive and dissuasive for some categories of violations. Electronic money institutions were not subject to sanctions.

Collective investment funds and fund managers are not designated as obliged entities. However, none were registered under sectorial laws at the date of the conclusion of the on-site visit, so this is not treated as a shortcoming under R.35. The following are not designated as obliged persons: (i) real estate agents; (ii) accountants that are not certified accountants; (iii) certified accountants when providing legal advice that relates to an activity listed under c.22.1(d); and (iv) TCSPs. These are considered moderate shortcomings.

Criterion 35.1 – Sanctions for failing to comply with the AML/CFT Law are set out in the Organic Law on the NBG and other sectorial legislation.

The NBG may penalise covered FIs for violations of the AML/CFT Law as follows (Organic Law on the NBG, Art. 48(41)(b) and (c)): (i) termination or restriction on certain types of operations (the effect of which is similar to suspending business activity); (ii) prohibition on distribution of profit, accrual and payment of dividends, rise in salaries, payment of

bonuses and other similar compensation; (iii) imposition of monetary penalties; and (iv) de-registration and revocation of licence. It is possible to apply several measures towards an institution/group of institutions simultaneously (NBG Order on the Supervisory Framework of the NBG on Combating ML and TF, Art. 13(5)).

In respect of payment service providers, the NBG can apply similar or additional sanctions for breaches of the AML/CFT Law (Law on Payment Systems and Payment Services, Art.46): (i) provide a written warning and/or request to cease and to prevent further breaches and take necessary actions to eliminate the breach in the timeframe given; (ii) impose a pecuniary fine in the amount and according to the procedure established by the NBG; (iii) terminate or restrict active operations, prohibit distribution of profit, accrual, and payment of dividends, raises in salaries, payment of bonuses and other similar compensation; and (iv) revoke the registration.

Other sectorial legislation has similar provisions (e.g. Law on MFOs, Art.91, Law on Securities Market, Art.551 and Law on Commercial Bank Activities, Art. 30).

Specific details on the imposition of monetary penalties are set out in sector specific orders issued by the Governor of the NBG (Order 70/04 for banks, Order 87/04 for PSPs, Order 25/04 for MFOs and currency exchange bureaus, Order 35/04 for securities market participants and Order 257 for credit unions). Orders set out specific fines for each type of breach. In addition, should the covered FI have already been fined for the same breach in the previous reporting period, the breach is considered a systematic violation and higher thresholds would apply. The legislation does not limit the application of various types of sanctions for various violations identified during one inspection; they will depend on the severity of the violation.

The NBG order on penalties concerning banks differentiates between particularly severe, severe and less severe violations and applicable fines are set out for each of these. The fines range between GEL 1 000 (EUR 333) and GEL 20 000 (EUR 6 700). When a breach is considered systematic, fines of up to GEL 30 000 (EUR 10 000) are foreseen. Also, in case that a violation creates a systemic risk of misuse for ML/TF, a fine of not more than 1% of capital but not less than GEL 1 000 000 (EUR 333 333) can be applied. For other sectors (PSPs, microfinance, securities, currency exchange, credit unions) the fines range up to GEL 20 000 (EUR 6 700).

In addition, with regard to banks, in case of violation of any applicable legislation (including NBG instructions, decrees, rules, resolutions) and/or conducted operations prohibited by requirements and written instructions of the NBG and/or violation of established restrictions, limits, requirements and prohibitions, the bank is liable to be fined in the amount of 0.01%, 0.05% or 0.1% of supervisory capital applicable to the period when the breach took place, but not less than GEL 20 000 (EUR 6 700) (Order 242/01, Art. 2(3)).

The NBG is able also to publish on its website sanctions imposed on obliged entities that it supervises where they relate to a breach of AML/CFT legislation. Published information shall include the sector, type of violation, and sanction imposed. From 1 January 2021, it will also be able to publish the name of the obliged entity (NBG Order on publishing information on the official website of the NBG on the sanctions imposed on the financial sector representative for violation requirements of AML/CFT).

With regard to insurers, the ISSS may apply the following administrative sanctions for violations of the AML/CFT Law (Law on Insurance, Art.211(2)): (i) send a written warning; (ii) introduce special measures or issue instructions (directives) requiring the

insurer to stop and prevent any further violations, and to take measures to eliminate the violations in a given period; (iii) impose pecuniary penalties according to the procedures and in the amounts defined by ISSS; (iv) suspend or restrict the distribution of profits, issuance of dividends and material incentives, and assumption of new obligations; (v) in exceptional cases, when interests of a policyholder and those of an insured are at risk, suspend their right to carry out specific operations or impose a compulsory administration regime; and (vi) cancel the insurance licence.

Monetary penalties ranging from GEL 500 (EUR 170) to GEL 2 000 (EUR 670) can be applied (ISSS Rule on Defining, Imposing and Enforcing Monetary Penalty on the Insurer approved by the decree No. 02 of 17 March 2015).

For obliged entities supervised by the NBG and ISSS, it is considered that there is a sufficient range of sanctions that can be applied proportionately to greater or lesser breaches of the AML/CFT Law.

Compliance was not demonstrated that sanctions may be applied to leasing companies, casinos, lawyers (except suspension) and DPMS for breaching legislation. For instance, the Law on Organising Lotteries, Gambling and Profitable games does not provide for sanctions for breaches of the AML/CFT Law.

Notaries can be sanctioned for violations of the AML/CFT Law (Decree 69 of the MoJ on Disciplinary Responsibility of Notaries). These depend on the gravity of the violation and can be an oral warning, a written reprimand, termination of commission, or release from position. It is not clear that this range of sanctions can be applied in a proportionate way, given that there is nothing between a reprimand and exclusion from activity. Certified accountants, auditors and audit firms can also be sanctioned for violations of the AML/CFT Law (Law on Accounting, Reporting and Auditing, Art. 24(1)). SARAS has the power to impose a written warning or fine of an amount up to 5,000 GEL (1,667 EUR).

Also, the CC (Art. 202.1) provides for criminal liability for the disclosure of the fact that information was filed with the relevant authorities on a transaction subject to reporting. Disclosure shall be punished by a fine and/or with the deprivation of the right to hold an official position or to carry out an activity for up to three years. Where disclosure causes considerable damage, it shall be punished by imprisonment for up to two years, with deprivation of the right to hold an official position or to carry out an activity for up to three years.

Criterion 35.2 – In case of a violation of AML/CFT legislation, the NBG is empowered to suspend an administrator's executive powers, require their dismissal and impose monetary penalties thereon (Organic Law on NBG, Art. 48(41)(c)). An administrator is defined as a member of the supervisory board, a member of the board of directors and a person who is authorised independently or with one or several other persons to take up responsibilities on behalf of the covered FI (senior management).

The level of monetary sanctions applicable to administrators are also set out in the sectorial orders mentioned under c.35.1 issued by the NBG. For banks, administrators can be fined up to GEL 10 000 (EUR 3 333). For other sectors, this is GEL 5 000 (EUR 1 667).

The ISSS may suspend the executive authority of an insurer's administrator - member of the senior management of the insurer - and request the supervisory board/general meeting of the insurer to suspend or remove him/her from office (Law on Insurance, Art. 211(1)).

No information has been provided about leasing companies and DNFBPs, except notaries and lawyers (which operate as natural persons) and audit firms. In respect of audit firms, sanctions may be applied also to engagement partners. See c.35.1 above.

Weighting and Conclusion

Sanctions are not available for breaches of the AML/CFT Law by leasing companies, casinos, lawyers (except suspension) and DPMS. Sanctions are also not available for DNFBPs not designated as obliged persons (see R.22, R.23 and R.28). **R.35 is rated PC.**

Recommendation 36 – International instruments

In the 4th round MER of 2012, Georgia was rated LC on R.35. and PC on SRI, on account of the fact that Georgia had implemented most but not all provisions of the required international instruments, in particular the Terrorist Financing Convention.

Criterion 36.1 – Georgia has signed and ratified the following international treaties:

Vienna Convention - On 8 January 1998 Georgia acceded to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). The Convention is in force for Georgia since 8 April 1998.

Palermo Convention - On 13 December 2000 Georgia signed the 2000 United Nations Convention against Transnational Organised Crime (“Palermo Convention”). Georgia ratified the Convention on 7 June 2006.

United Nations Convention Against Corruption - Georgia acceded to the United Nations Convention against Corruption (the Merida Convention) on 4 November 2008. Georgia ratified the Convention on 10 October 2008.

Terrorist Financing Convention - Georgia ratified the 1999 United Nations International Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention) on 6 June 2002. The Convention entered into force for Georgia on 27 October 2002.

Other relevant international treaties - In addition to the above-mentioned treaties, Georgia has ratified the Council of Europe Convention on Cybercrime (2001) on 6 June 2012 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) on 1 January 2014. The conventions entered into force for Georgia on 1 October 2012 and 1 May 2015, respectively.

Criterion 36.2 – Georgia has implemented most relevant articles of the Vienna Convention, the Palermo Convention, the Merida Convention, and the Terrorist Financing Convention. On a general note, international treaties are self-executing and thus form part of the legislation of Georgia (and prevail over domestic laws other than the constitution or equivalent law), to the extent that the Convention provisions are specific enough to be applied without transposition into national law (see Art. 7 of the Law on Normative Acts).

The level of compliance with the Terrorist Financing Convention has improved since the last evaluation. The offence is fully covered through Art. 331.1 of the CC. The ML offence is covered through Art. 186, 194 and 194.1 of the CC. Minor deficiencies, as indicated in R.4 and R.5 apply.

Weighting and Conclusion

Georgia is a party to the relevant conventions and has largely implemented the relevant articles of those conventions. Minor deficiencies, as indicated in R.4 and R.5 apply. **R.36 is rated LC.**

Recommendation 37 - Mutual legal assistance

In the 4th round MER of 2012, Georgia was rated LC on R.36 and PC on SR.V. Amongst the identified deficiencies were the lack of a clear legal basis for the compelled production of records and documents from lawyers, and the deficiencies in the TF offence which could limit Georgia's ability to provide mutual legal assistance (MLA) in cases where dual criminality is required.

Criterion 37.1 – Georgia has a legal basis (including laws, bilateral and multilateral agreements) that allows them to rapidly provide a wide range of MLA. In line with the Law on International Cooperation in Criminal Matters (ICCM) a wide range of MLA can be provided in relation to ML, associated predicate offences and TF. This includes: interrogation/interview of a witness, an expert or a victim; providing with information or the materials obtained in the course of investigation; transmitting material evidence; search, seizure and/or freezing and confiscation of property, including the collection of information on bank accounts and transactions as well as its monitoring. Moreover, Georgia is a party to eight bilateral and multilateral agreements, including the European Convention on Mutual Assistance in Criminal Matters and its two additional protocols, and cooperation agreement with Eurojust. When MLA is requested by a state with which Georgia does not have a treaty as a basis for cooperation, Georgia is still able to assist either by concluding an ad hoc agreement or on the basis of reciprocity (ICCM, Art. 2(2)).

Criterion 37.2 – The GPO functions as the central authority for the processing of MLA requests (ICCM, Art. 11(1)) and the allocation to the appropriate authorities (public prosecutor or court). There is an established procedure for ensuring a timely execution of such requests by the International Cooperation Policy Guidelines 2017. The processing of the request is monitored through a general case management system of the GPO, which prioritises cases on a 3-tier basis: urgent (to be treated immediately, but no longer than within 10 days), priority (to be treated within one to six months) or regular (to be treated within 6 months, but the treatment may take longer).

Criterion 37.3 – The grounds for the rejection of the execution of a MLA request, as laid down in Art. 12 of ICCM, are justifiable and generally common or accepted in the international cooperation domain (prejudice to sovereignty, security and public order; dual criminality; political and military exceptions; inconsistency with human rights and fundamental legal principles). Therefore, they do not pose any unreasonable or unduly restrictive conditions on the provision of MLA.

Criterion 37.4 – (a) The ICCM does not provide for a refusal ground because of the fiscal nature or motivation of the MLA request, nor on secrecy or confidentiality grounds in relation to FIs or DNFBPs. Georgia is a party to the First Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1978, which explicitly removes fiscal matters as a ground for refusal.

(b) There is no limitation in the domestic legislation preventing the competent authorities of Georgia from complying with foreign MLA requests when the laws impose secrecy or confidentiality requirements on financial institutions or DNFBP. The only requirement is the existence of the relevant court order or any other decision of the competent authority

of the requesting state authorising the requested action. When the foreign state requests the above-mentioned assistance at the pre-trial stage, a prosecutor moves before a Georgian court with a motion on authorisation of the requested investigative action. In case the foreign court initiates MLA request at the trial stage, no further authorisation by the Georgian court is required. (ICCM, Art. 11(2) and (4), and CPC, Art. 112, 119, 120 and 136).

Criterion 37.5 – According to Art. 10(2) of ICCM, upon the request of the foreign authorities seeking MLA, the Prosecution Service ensures the protection of confidentiality during the execution of that request. In case of the impossibility to protect such confidentiality (requirement for notification about secret investigative actions within 12 months Art. 83(6) and Art. 149.3 of the CPC), the competent authority of the respective country is notified immediately. If no such special confidentiality request is made by the requesting country, the received MLA request is granted standard confidentiality, which is applicable to domestic criminal cases (i.e. only persons necessary for its execution may know about it and to the extent that is needed).

Criterion 37.6 – The legislation of Georgia does not require dual criminality when MLA requests do not involve coercive actions (reverse conclusion from Art. 12(2) and 18(2) of the ICCM which require double criminality for the search, seizure and freezing of property and for extradition). Moreover, the competent authorities are able not to comply with the dual criminality requirement regarding coercive measures, if an international agreement, an ad hoc agreement or the condition of cooperation on the basis of principle of reciprocity provide otherwise.

Criterion 37.7 – Where the ICCMA requires double criminality (Art. 12(2) and 18(2) of the ICCMA with regard to the search, seizure and freezing of property and for extradition), the relevant provisions are phrased in a manner which requires that the conduct in question is punishable under the criminal law of the requesting state, i.e. irrespective of whether the Georgian legislation places the offence within the same category of offence or denominates the offence by the same terminology as the requesting state.

Criterion 37.8 – According to Art. 11(2) of ICCM, foreign MLA requests are to be executed in accordance with the domestic legislation. Consequently, powers and investigative techniques that are available to domestic competent authorities are also available for use in response to requests for MLA. The ICCM does not explicitly define the specific types of procedural actions which are executable on the territory of Georgia, but the Georgian authorities confirmed that this includes all of the specific powers required under Recommendation 31 and a broad range of other powers and investigative techniques. The lack of a legal basis for the compelled production of non-computerised records (other than search and seizure) remains (see. c. 31.1).

Weighting and Conclusion

The only deficiency is with respect to exercise of the powers for the compelled production of non-computerised records. **R37 is rated LC.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

In the 4th round MER of 2012, Georgia was rated LC on R.38. Amongst the deficiencies were the lack of a clear legal basis for the compelled production of records and documents from lawyers. It was also recommended to consider the establishment of an asset forfeiture fund.

Criterion 38.1 – Since the enactment of the ICCM in 2018, Georgia has a legal basis to provide international cooperation with respect to confiscation of property (Chapter VI.1, Art. 56.1-56.9). The provisions allow taking of expeditious action in response to requests by foreign countries to identify, freeze, seize, or confiscate (ICCM, Art. 56.2): laundered property from, proceeds from, instrumentalities used in, or instrumentalities intended for use in, money laundering, predicate offences, or terrorist financing; or property of equivalent value (ICCM, Art. 56.1). According to Art. 12(2) of the ICCM, for MLA requests relating to search, seizure and freezing of property, the execution requires that the underlying crime is subject to extradition and fulfils the double criminality requirement. Unless otherwise provided for by an international treaty of Georgia or an individual agreement, crime is subject to extradition are that punishable by imprisonment for a term of at least 1-year punishment both by the legislation of Georgia and that of the foreign state concerned. In the case of a convict - at least 4 months of imprisonment. (Art. 18(1)). Hence, considering the sanctions set out in the CC for ML and TF offences, there would be no limitation for providing MLA. However, while minor, certain types of predicate offenses (CC Art. 189, 189.1, 219, 229.1, 268, 270, 291, 293, 294, 296, 297, 298), if not having aggravating factors might fall short, as have a less rigorous sanctions for a core offence.

Criterion 38.2 – The authorities stated that the Law on Private International Law (PIL) allows Georgian courts to execute civil requests of foreign courts based on mutual legal cooperation. In line with Art. 68, 70 and 71 of the PIL the Supreme Court of Georgia may recognise and enforce foreign non-criminal confiscation orders.

Criterion 38.3 – (a) There are arrangements in place for coordinating seizure and confiscation actions with other countries. Cooperation with foreign authorities for seizure and confiscation matters is possible on the basis of an international treaty, ad hoc agreement or the reciprocity principle (ICCM, Art. 2). Joint investigative team can be set up if investigation requires coordinated work with the foreign authorities (ICCM, Art. 12.1). Georgia is party to the CARIN network, and has also concluded cooperation agreements with EUROPOL and EUROJUST, which also provide coordination mechanisms for investigations and the actions of judicial authorities in relation to seizure and confiscation actions.

(b) A mechanism for the management and disposal of the seized and frozen assets in order to avoid their dissipation before their possible confiscation is provided by the CPC and the CivPC, which also apply in relation to international requests (ICCM, Art. 56.1(2)). However, these do not extend to the active management of property seized under criminal or civil proceedings. Mechanisms with respect to confiscated property that is transferred to the ownership of the state (CPC, Art. 52), are regulated by the Law of Georgia on the State Property and by-laws. (see. 4.4). When the confiscated property is not money, it is possible to sell it for arranging its sharing with foreign country (ICCM, Art. 56.9(5)).

Criterion 38.4 – There are detailed rules for asset sharing provided under the ICCM, Art. 56.9. After the property (including money) are confiscated the GPO negotiates assets sharing with the competent authority of the foreign state, based on the request of which the assets were confiscated. Assets sharing shall not be carried out if the requesting state waives its right to property and/or the overall value of property does not exceed GEL 40,000 (approx. EUR 13,000). If no circumstances preclude assets sharing, half of the confiscated property can be shared with the relevant foreign country, while the remaining part is to be transferred to the state ownership. The interests of owners and victims of crime are taken into account during the assets sharing. Before the decision on assets sharing, the expenditures for the tracing, confiscation and maintenance of the assets

subject to sharing should be deducted from the total amount of these assets. The GPO and the competent body of the respective foreign state may agree on different rules for asset sharing than stipulated in the ICCM.

Weighting and Conclusion

Georgia has an extensive system for MLA with respect to seizure, freezing and confiscation. Some gaps remain with respect to the types of the predicate offences upon which the MLA can be provided, and mechanisms for active management of property. **R. 38 is rated LC.**

Recommendation 39 – Extradition

In the 4th round MER of 2012, Georgia was rated C on R.37, LC on R.39 and PC on SR.V. The shortcomings identified were with respect to deficiencies in the scope of the then TF offence that could have limited Georgia's ability to extradite a person due to the requirement of dual criminality, and the absence of clear procedures to ensure timely handling of extradition requests (effecting both ML and TF-related requests).

Criterion 39.1 – Georgia has in place a proper mechanism for extradition ensuring the execution of extradition requests in relation to ML/TF without undue delay. Chapter III of the ICCM regulates the extradition procedures.

(a) Unless otherwise provided by an international agreement, extraditable offences in Georgia are any crimes which are punishable with a prison sentence of at least one-year imprisonment both in Georgia and in the requesting state. In the case of a convict, it shall be necessary that the person be sentenced to at least 4 months of imprisonment. (Art. 18(1) of the ICCM). Considering the sanctions set out in the CC for ML (Art.186, 194 and 194.1) and TF (331.1 and 323) offences, there would be no limitation for extradition.

(b) Georgia has in place a case management system and clear processes for the timely execution of extradition requests, as laid out in Art. 30 of the ICCM. The central authority - GPO employs prioritisation criteria as defined through an internal policy document - International Cooperation Policy Guidelines 2017.

(c) The reasons for refusing an extradition request are laid down in Art. 18-22 of the ICCM (no extraditable offence; extraditable offence is of political nature; person to be extradited has Georgian nationality; or extraditable offence is punishable by death penalty in requesting state). None of these constitute unreasonable or unduly restrictive conditions on the *executions* of requests.

Criterion 39.2 – Art. 13(4) of the Constitution of Georgia prohibits the extradition of Georgian nationals to a foreign state, unless extradition is provided for under an applicable international agreement. This principle is repeated in Art. 21 of the ICCM. If an extradition is not possible on grounds of Georgian nationality, Art. 42 of the ICCM requires that - at the request of the foreign state seeking extradition - the GPO submits the transferred case files or their certified copies to the competent local authorities for the purposes of conducting an investigation or prosecution with regard to the crimes indicated in the request. Evidence submitted by the requesting state has the same legal status as domestically - obtained evidence. The requesting state is duly notified of the outcome of the domestic investigation.

Criterion 39.3 – Art. 18(1) of the ICCM establishes a dual criminality-requirement for extradition. Extradition is granted, if the act referred to in the extradition request is an offence for which a minimum sentence for which is at least one-year imprisonment under

the criminal laws of both Georgia and the requesting state, this requirement is deemed satisfied irrespective of whether Georgian legislation places the offence within the same category of offence or denominates the offence by the same terminology as the requesting state.

Criterion 39.4 – Simplified extradition procedures are regulated under the provisions of Art. 34.1 and 34.2 of the ICCM.

Weighting and Conclusion

All criteria are met. **R.39 is rated C.**

Recommendation 40 – Other forms of international cooperation

In the 4th round MER of 2012, Georgia was rated LC on R.40. Several deficiencies were identified, including the lack of clear legal basis to allow LEAs compelling production of financial transactions held by lawyers based on international requests, the untimely FIU responses to requests of information from foreign counterparts, and the lack of requests to foreign supervisors to ensure that fit and proper criteria are met.

Criterion 40.1 – Competent authorities of Georgia can rapidly provide international cooperation, and exchange both spontaneously and upon request a wide range of information in relation to ML, TF and predicate offending: *FMS (AML/CFT Law, Art. 35-37); all supervisory authorities (AML/CFT Law, Art. 39 (3)); NBG (Organic Law on NBG, Art. 5(2) and Art. 48(5)-(6); Board Resolution №2); ISSS (Law of Georgia “On Insurance” (Art. 21(r)); LEAs, including GPO, SSS, MIA, and MoF (LILEC Art. 4 (1), 7-8), Customs Department of the Revenue Service of MoF (Customs Code Art. 11(2), Tax Code Art 39(2(d)), Statute of the Customs department of LEPL Georgia Revenue Service Art. 12(h, j)). International cooperation conducted by the MIA, and other LEAs using the MIA channels are regulated by the Decree N787 of the Minister of Internal Affairs form 15.10.2014.* In addition, competent authorities conduct international cooperation on the basis and in accordance with international treaties, and other multilateral and bilateral arrangements. However, the MoF, in its role of the supervisory authority for leasing companies, casino, and the DPMS did not demonstrate how it does meet the standard. Bar Association in its capacity of a supervisor for individual lawyers and law firms also did not demonstrate how it does meet the standard.

Criterion 40.2– Elements facilitating the ability of competent authorities to provide international cooperation are stipulated in the legislation as follows:

(a) Competent authorities have a legal basis for providing co-operation – see c.40.1 above

(b) Authorisation to use the most efficient means to cooperate - Competent authorities can cooperate directly with their counterparts. Nothing in the legislative authorisation for competent authorities to engage in international cooperation indicate that the authorities would be hindered or would have to diverge from the rational behaviour of using the most efficient means to cooperate with their foreign counterparts.

(c) Clear and secure gateways, mechanisms or channels - Competent authorities have clear and secure gateways, mechanisms or channels for cooperation and exchange of information.

The FMS uses protected means of communication when providing confidential information (AML/CFT Law, Art. 37(2)). The FMS is a member of the Egmont Group since 2004 and extensively uses the Egmont Secure Web for information exchanges with foreign FIUs. The authorities advise that the FMS is also authorised to exchange information with

non-Egmont member FIUs, and such cases would be dealt with on individual basis to ensure that information is exchanged securely.

The NBG advises to make individual decisions in relation to the exchange of information with international counterparts. The NBG provided an example where customer bank statements and identification documents were exchanged with a foreign counterpart-financial supervisor via a specially created protected temporary web site, which was immediately deleted upon uploading and transmitting the information.

In 2019 ISSS initiated a process for joining the Multilateral Memorandum of Understanding on Cooperation and Information Exchange within the scope of the International Association of Insurance Supervisors (IAIS), which will become robust mechanism for supervisory cooperation and information exchange with foreign supervisors. Currently the ISSS is communicating with its foreign counterparts arranging the communication channels on a case-by-case basis.

The MoJ and the SARAS uses various channels for communication with their foreign counterparts which, as a matter of practice, are agreed upon on the basis of concluded MoUs, postal or courier services, e-mail correspondence.

LEAs carry out international cooperation through the channels and tools of communication determined under appropriate international agreements, direct channels, and tools within international regional organisations, as well as through the links of liaison officers and police/security attachés, or diplomatic channels¹⁰². LEAs use the following secure channels and means of communication: Interpol's special secure network I-24/7, Europol's secure communication line, GUAM secure communication channel, as well as police attaché/liaison officer channels, accredited bilateral electronic secure systems of communication, diplomatic channels etc.

In line with Article 11 of the Customs Code and Article 39 of the Tax code Customs Department of the Revenue Service use secure communication channels when exchanging such information with international partners ensuring protection of information considered as Tax and Customs secret.

(d) Clear processes for request prioritisation and execution - Competent authorities do not have formal prioritisation processes in place, but this does not hinder provision of a timely assistance, as requests are executed within a reasonable time, unless - urgency is highlighted by the counterpart.

Regarding prioritisation and execution of requests within the FMS, the authorities advise that there are no formal processes in place, and all requests received by the FMS are considered as priority.

The NBG does not have internal procedure for prioritisation of a foreign request. Authorities suggested however, that receive very few requests for information and, therefore, do not need to prioritise them. The NBG is governed by the Board Resolution №2 from 19 February 2018 "On Confidentiality of Information, Procedure for Release and Approval of List of Confidential Information".

There are no specific processes set for prioritisation of foreign requests for other supervisory authorities. These however reported to rarely have communication with foreign counterparts, which is adequate to international exposure of their respective

¹⁰² Information containing state secrets shall be exchanged through the means determined in international agreements, diplomatic channels, cryptographic systems and codes at the disposal of LEAs.

supervised sectors. Execution of the request is conducted on the basis of the standard internal procedures of workflow.

While there are no explicit processes for prioritisation of requests, according to the LILEC (Art. 7), the response to a request shall be sent in a reasonable time, unless a specific deadline is defined by the international treaty or by the request. In urgent cases, the cooperation can also be undertaken verbally, with further confirmation in a written form. In addition, the LEAs are governed by the procedures set under the respective international cooperation mechanisms (Interpol, Europol, GUAM, etc.).

No prioritisation procedures are formally set for Customs Department of the Revenue Service. Authorities suggested every foreign request is treated as urgent and cooperation is provided promptly. Considering the number of the yearly requests and the available resources this approach ensures sufficient cooperation.

(e) Clear processes for safeguarding information received - Competent authorities have processes for safeguarding information received from their foreign counterpart set in the legislation or otherwise regulated by the concluded MoUs.

FMS shall protect the confidentiality of information received from a foreign FIU and shall use that information only for undertaking its analytical function, or other purpose specified in a request. FMS shall be prohibited from disclosing confidential information to a third party without prior consent of a foreign FIU (AML/CFT Law, Art. 37(4)).

According to the NBS Board Resolution №2 of 19 February 2018, Annex №2, "Information and/or Written Request for Information Requested by the Overseas Financial Sector Oversight under Memorandum of Understanding" is prescribed to a confidential category №2 and third-party access is not available without a court decision. It is unclear however, what are the safeguards provided for information exchange without the MoU. Any information received from the counterpart where there is no MoU in place is given an equal level of confidentiality as the one originated domestically.

As concerns the other supervisory authorities, the processes for safeguarding information received from foreign counterparts would be similar to the one applied to equivalent domestic information, if special modalities are not arranged pursuant to bilateral MoUs.

As concerns the LEAs, there are safeguards provided explicitly for protection of received information that constitutes a state secrecy and a personal data (LILEC, Art. 19 and 20). Article 5 of the Law on Intelligence Activities (LIA) and the ethics codes/internal regulation of LEAs contain prohibition of disclosing confidential information. In addition, safeguards for other confidential information are provided in accordance with MoUs and other international instruments - international agreements on exchange and mutual protection of classified information with the EU, NATO and so far with 24 partner countries.

Safeguards for information received by the Customs Department of the Revenue Service are provided under the Article 11 of the Customs Code and Article 39 of the Tax code, Chapter 2 of the Instruction approved by Order No. 996, dated December 31, 2010 of the MoF on Tax Administration (provides for the procedure for accessing and treating/processing information classified as confidential/secret).

Criterion 40.3 - When bilateral or multilateral agreements are required, these are negotiated in a timely way. Competent authorities are provided with legal powers to enter into bilateral and multilateral agreements and concluded a number of agreements to ensure smooth cooperation with their respective foreign counterparts. For examples, the

FMS has concluded with its foreign counterparts more than 42 MoUs. A number of MoU was also signed by the NBG and MoJ. SARAS has concluded an agreement with its Greek counterpart, and the ISSS initiated accession into agreement with IAIS.

Regarding LEA cooperation, Georgia concluded bilateral agreements and MoUs on cooperation in the field of combating crime and law enforcement cooperation with 32 other countries and has the operational and strategic cooperation agreement with Europol. In addition, authorities suggested that in order to strengthen the safeguards for information exchange, and ensure a wide coverage, there are international agreements signed with 24 countries on the exchange and mutual protection of classified information. In addition, Georgia signed an Agreement with the EU on Security Procedures for Exchanging and Protecting Classified Information entered into force in 2017.

Customs Department of the Revenue Service suggested to have signed extensive number of international agreements on the basis of which the it cooperates with relevant competent/partner agencies and/or international organisations.

Criterion 40.4 – Competent authorities are able to provide timely feedback to foreign authorities upon request and most authorities have done so. This is further confirmed at a legislative level for the following key players of the system: (a) the FMS shall, upon request, provide feedback to a foreign FIU on the use of received information (AML/CFT Law, Art. 37(6)); (b) the LEAs, upon request, shall inform the sending LEA on the results of the use of personal data (LILEC Art. 20, Para. 1(c)). In line with the MOUs and other international obligations the FMS, supervisory authorities and LEAs, including the Customs Department of the Revenue Service provide a feedback to the foreign counterpart about the use and usefulness of other provided data upon their request. This practice is customary applied by the authorities.

Criterion 40.5 – The Georgian legislation does not set any unreasonable or unduly restrictive conditions for cooperation provided by the FMS. Grounds for refusal of international cooperation by the FMS are explicitly provided in the AML/CFT Law. The refusal shall be grounded and promptly explained to a requesting foreign FIU. (AML/CFT Law, Art. 37(3)). As such, these provisions do not make cooperation provided by the FMS contingent upon nexus to fiscal matters, confidentiality requirements, ongoing domestic investigations, or status of the foreign counterpart. Nevertheless, it is unclear what the authorities refer to under the grounds for refusal, such as likelihood to “infringe lawful interests of a person” (AML/CFT Law, Art. 37(3)). No such provision is set in any of the MoUs provided to the evaluation team, that were signed by the FMS with its foreign counterparts.

Concerning international cooperation conducted by the NBG, the Georgian legislation does not set any unreasonable or unduly restrictive conditions and does not impose any of the restrictions mentioned under sub criteria (a) to (d). The MoUs provided by the NBG suggest, that the grounds for rejecting cooperation would be “conflict with national legislation or endangering the national financial system”.

As concerns other supervisory authorities, the Georgian legislation does not set any unreasonable or unduly restrictive conditions and does not impose any of the restrictions mentioned under sub criteria (a) to (d). Other grounds for rejecting cooperation can be set by a mutual consent of the parties by a bilateral or multilateral international treaty of Georgia.

With respect to international cooperation conducted by the LEAs, legislation does not set any unreasonable or unduly restrictive conditions. Grounds for refusal of international

cooperation by the LEAs are explicitly provided in the LILEC (Art. 21). These do not impose any of the restrictions mentioned under sub criteria (a) to (d). Other grounds for rejecting cooperation can be set by a mutual consent of the parties by a bilateral or multilateral international treaty of Georgia (LILEC, Art. 21(1)).

The Georgian legislation does not set any unreasonable restrictive conditions for cooperation provided by the Customs Department of the Revenue Service. Grounds for refusal of international cooperation are explicitly provided in the MoUs. The refusal shall be grounded and promptly explained to a requesting Party. Mainly, the grounds for refusal of cooperation deal with such cases when "requested Contracting Party considers that execution of the request violates its sovereignty, security, public order or any other major national interest, or result in industrial, commercial or professional secret violation".

Criterion 40.6 – The FMS shall take reasonable measures to ensure that a foreign FIU protects the confidentiality of provided information and uses that information only for the purpose permitted by the FMS (AML/CFT Law, Art. 37(5)). Legislation is silent on controls and safeguards to ensure that exchanged information is used by the authority for which the information was sought or provided, and about providing a prior consent for that. Nevertheless, such safeguards are included in MoUs signed by the FMS.

The NBG is empowered to cooperate with financial supervisors, including through the exchange of information. Such exchange contingent on the condition that the foreign supervisor "*keeps the information, obtained in this way, confidential*" (Organic Law on NBG, Art. 5(2)). Legislation is silent on controls and safeguards to ensure that exchanged information is used for the purpose and by the authority for which the information was sought or provided, and about providing a prior consent for that. Nevertheless, such safeguards are included in MoUs signed by the NBG.

While not legislation was provided, it was demonstrated that similar safeguards are incorporated in the majority of MoUs signed by the MoJ, the one signed by the SARAS, and the one which the ISSS is currently signing with the IAIS.

With respect to LEAs, there is a regulation provided on transmitting a personal data. This shall not be used for purposes other than those for which they were provided without prior consent of the sending LEA; also, the receiving LEA shall not transmit personal data to a third party without prior consent of the sending LEA (LILEC Art. 20, Para. 1(a)). Such safeguards with respect to exchange of other information are provided in the framework of the respective international cooperation mechanisms.

Criterion 40.7 - Protection of confidentiality of information by the FMS is regulated on the basis of Art. 35(4) and 37 of the AML/CFT Law.

According to the NBG Board Resolution №2 of 19 February 2018, Annex №2, "Information and/or Written Request for Information Requested by the Overseas Financial Sector Oversight under Memorandum of Understanding" is prescribed to a confidential category №2 and third-party access is not available without a court decision.

There is not legislation provided on this matter concerning activities of the MoJ SARAS and ISSS. Nevertheless, similar provisions are included in the majority of MoUs signed by the MoJ, in the agreement concluded by the SARAS, and agreement which the ISSS is currently signing with the IAIS.

The LILEC (Art. 20, Para. 1(f) and 1(g)) stipulate that the receiving LEA shall destroy the received personal data immediately when there is no longer a legitimate basis for its use; and that it shall duly protect the received personal data from unauthorized access,

modification or dissemination. The same law (Art. 20, Para. 2) provides that a LEA may refuse transmission of personal data if the legislation of a foreign country does not provide the conditions of protection of personal data envisaged by the legislation of Georgia, and/or if a foreign country, which is not a party to the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of January 28, 1981 and its Additional Protocol of November 8, 2001, does not agree to ensure such level of protection of personal data, as is requested by a respective LEA of Georgia. Such safeguards with respect to exchange of other information are provided in the framework of the respective international cooperation mechanisms.

Article 11 of the Customs Code and Article 39(3) of the Tax code defines obligation to protect information considered as Tax and Customs secret, which includes information obtained from the foreign counterparts. Article 52.1 of the law of Georgia on Personal Data Protection sets out sanctions for breach of confidentiality of such information. Additional measures on protection of confidentiality of exchanged information are set in the MoUs.

Criterion 40.8 – The FMS is empowered to provide to its foreign counterpart all available and any other obtainable confidential information that can be enquired from the obliged entities and the national authorities (AML/CFT Law, Art. 35(1) and 37(2)).

The powers for information exchange internationally and domestically permit the financial supervisors to conduct inquiries on behalf of foreign counterparts and share information that would be obtainable by them if such inquiries were being carried out domestically (AML/CFT Law, Art. 38 (3) and 39 (1), (3); Organic Law on NBG, Art. 5(2) and Art. 48(6)).

LEAs cooperate with their foreign counterparts and international organisations through, *inter alia*, requesting, providing and exchanging a wide range of information. The LILEC sets out a non-exhaustive list of information that shall be obtained and provided to the foreign counterparts, upon request (Art. 10) (see also c.40.17).

International agreements concluded by the Customs Department of the Revenue Service provide basis for conducting investigative and control activities on behalf of the counterpart and sharing information on their results.

Criterion 40.9 – The FIU has an adequate legal basis for providing co-operation on ML, TF and predicate offences (AML/CFT Law, Art. 36(7-8) and 37).

Criterion 40.10 – The FMS shall, upon request, provide feedback to a foreign FIU on the use of received information (AML/CFT Law, Art. 37(6)). The authorities advise that the FMS provides feedback to foreign counterparts in accordance with the Egmont Group Principles for Information Exchange.

Criterion 40.11 – FMS shall promptly provide to a requesting foreign FIU the available information or any other confidential information which can be obtained upon request from obliged entities and competent authorities.

Criterion 40.12 – All Financial supervisors (NBG, MoF and ISSS) shall cooperate and exchange information with foreign counterparts where a parent or subsidiary enterprise (organisation) or branch of the obliged entity is located for the purpose of undertaking or facilitating an effective group-wide supervision (AML/CFT Law, Art. 39(3)). There are no legal provisions restricting the supervisory authorities to cooperate with their foreign counterparts based on its status and nature.

In addition, the NBG is empowered to cooperate with its foreign counterparts within the scope of its authority, on the AML/CFT matters (Organic Law on NBG, Art. 5(2); AML/CFT Law, Art. 4(1(c)), and Art. 38). The legal provisions refer to “respective financial sector supervisory body of another country”, hence are broad enough to empower the NBG to cooperate with foreign counterpart regardless of their respective nature or status (Organic Law on NBG, Art. 5(2)). In particular, the NBG shall also exchange appropriate information. To further strengthen the legal basis for cooperation the NBG concluded a number of MoUs, the last one being signed in 2018.

The ISSS is empowered to cooperate with its foreign counterparts within the scope of its authority, including on the AML/CFT matters (Law on Insurance, Art. 21(r)).

Criterion 40.13 – All Financial supervisors (NBS, MoF and ISSS) shall, within the scope of their authority cooperate and exchange “appropriate” information with foreign counterparts. In order to perform their supervisory functions, all supervisory authorities are empowered to request and receive, within their authority, any information (including confidential information) from the obliged entities. Where necessary, they can cooperate domestically and obtain information to facilitate a foreign request. (AML/CFT Law, Art. 38 (3) and 39 (1), (3); Organic Law on NBG, Art. 5(2) and Art. 48(5)).

Criterion 40.14 – All Financial supervisors (NBS, MoF and ISSS) can exchange any information they hold, to the extent outlined in c.40.12 and c. 40.13 above, sufficiently covering the types of information set out under (a)–(c) of this criterion. In addition, the regulatory information, and business activities of the banks are made available on the website of the NBS¹⁰³. The NBS has demonstrated that other specified types of prudential and the AML/CFT information are exchanged on the basis of the MoUs.

Criterion 40.15 – The powers for information exchange internationally and domestically permit the all financial supervisors (NBS, MoF and ISSS) to conduct inquiries on behalf of foreign counterparts and share information that would be obtainable by them if such inquiries were being carried out domestically (AML/CFT Law, Art. 38 (3) and 39 (1), (3); Organic Law on NBG, Art. 5(2) and Art. 48(6);).

Criterion 40.16 – Legislation is silent on controls and safeguards to ensure that exchanged information is used for the purpose and by the authority for which the information was sought or provided, and about providing a prior consent for that. Nevertheless, such safeguards are included in MoUs signed by the NBS. The MoUs signed by the NBS with foreign counterparts require prior authorisation of the requested supervisor before dissemination of information can take place. Respectively, in the event that the requesting counterpart, in line with the national legislation, is obliged to disclose information that has been provided under the MoU, it should in advance notify the other counterpart, indicating information disclosed and the circumstances related thereto.

Agreement that the ISSS is currently signing with the IAIS provides for the framework for cooperation extending to requesting prior authorisation for the use of information for any other purposes or by any other authority than the request was initially made for.

Compliance with this requirement is not demonstrated by the MoF (in its role of supervisor of the leasing companies).

Criterion 40.17 – According to the LILEC, international law enforcement cooperation in the areas of exchanging operative-investigative information and implementing relevant

¹⁰³ <https://www.nbg.gov.ge/index.php?m=109>

measures (Art. 2, Para. 1) is carried out for the prevention, detection or suppression of all those crimes, for which the CC determines the penalty of imprisonment for at least one year, unless it is otherwise provided by the international treaty of Georgia (Art. 2, Para. 2). In addition, an international cooperation in law enforcement is carried out within the framework of International Criminal Police Organisation (Interpol) (Art. 2, Para. 4(a)), Europol, CoE, and other similar fora.

According to the LILEC (Art. 10), LEAs cooperate with their foreign counterparts and international organizations through, *inter alia*, requesting, providing and exchanging a wide range of information, including that on the subjects of search and the suspects in criminal cases; on the structures of and links to organised criminal groups; on the time, place and *modus operandi* of committed crimes; on the purchase and registration of fire arms, movable and immovable property; operative intelligence data; information on the proceeds from and instrumentalities used in crime; information on legal persons, including that on inconsistencies between revenues and expenditures of natural or legal persons, etc.

Cooperation in the framework of CARIN since 2012 and EU AROs since 2016 allows the GPO to exchange domestically available information with foreign counterparts for intelligence or investigative purposes relating to ML, associated predicate offences or TF, including the identification and tracing of the proceeds and instrumentalities of crime. Since 2018, the GPO has established direct cooperation on cybercrime and electronic evidence with multinational service providers (such as Facebook, Apple and Microsoft).

Criterion 40.18 – The LIA (Art. 7, Para. 2) lists the criminal intelligence measures, which may be applied by LEAs, including interviewing persons, collecting information and conducting surveillance, carrying out test purchases and controlled deliveries, examining objects and documents, identifying persons, censoring correspondence, obtaining electronic communication identification data, infiltrating collaborators into criminal groups, setting up undercover organizations, and monitoring Internet communication.

The LILEC (Arts. 10-18) defines the types of cooperation that LEAs may, upon request and in the course of crime detection, engage with their foreign counterparts, including through requesting, providing and exchanging information (see the details in the analysis for c.40.17), searching for persons and items, carrying out controlled cross-border deliveries, forming joint groups for detecting crimes, allowing deployment of foreign undercover officers, conducting cross-border visual surveillance, protecting criminal case participants and other persons, secretly gathering operative-investigative information, and engaging in other types of cooperation (training etc.).

Georgia has arrangements in place with Interpol, Europol, and Eurojust and abides by the restrictions on use imposed under these mechanisms.

Criterion 40.19 – According to the LILEC (Art. 13), based on a request received from and individual agreement concluded with the foreign LEAs, joint investigative teams may be authorised by relevant Georgian LEAs if a crime is committed beyond the borders of a country and it is difficult for the LEAs of that country to detect it, or if the measures for detecting the same crime are implemented in more than one country and require coordinated work of LEAs of these countries. Joint investigation teams can also set in implementation of the provisions of the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters between the Member States and the provisions of other respective multilateral arrangements to which Georgia is a party.

Criterion 40.20 – There is nothing which inhibits competent authorities’ ability to exchange information indirectly with non-counterparts.

Weighting and Conclusion

The MoF, in its role as the supervisory authority for leasing companies, casinos, and DPMS did not demonstrate how it meets the standard, except for some particular instances. The Bar Association, in its capacity as a supervisor for individual lawyers and law firms also did not demonstrate how it meets the standard. Nevertheless, considering that the entities supervised by these authorities (except for the casino sector) have mainly domestic origin, and business, the lack of information on international cooperation does not heavily impact the overall rating for this recommendation. While there are minor gaps identified in other instances, these are compensated by the overall strong standing of the major players of the system – LEAs, FMS and the NBG. **R. 40 is rated LC.**

Summary of Technical Compliance – Key Deficiencies

Annex Table 1. Compliance with FATF Recommendations

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> • Gaps exist in considering the impact of some contextual factors (integrity levels in the public and private sectors, informal economy/ prevalence of cash, presence of foreign and domestic PEPs and their associates, geographical, economic, demographic and other factors); • No proper assessment is conducted of specific ML risks in e.g. use of cash in the economy, real estate sector, trade-based ML (including in free industrial zones of Georgia), legal persons, use of NPOs for ML; • Authorities did not fully assess all forms of potential TF risk, especially trade-based TF, the origin and destination of financial flows and potential for abuse of NPOs. • There is a lack of analysis of ML/TF risks related to VASPs, collective investment funds and fund managers or TCSPs. • The result of this risk analysis are reasonable not for all the sectorial risks. • The Standing Interagency Commission is not yet established. • Deficiencies in the comprehensive identification and reasonable assessment of ML/TF risks, and in setting priority tasks pursuant to the Action Plan may limit the ability to allocate resources based on risks and implement appropriate prevention and mitigation measures at a national level. • Exemptions for real estate agents, TCSPs, collective investment funds and fund managers, accountants that are not certified, accountants when providing legal advice, and VASPs are either not supported by a risk assessment or are not in line with the NRA results. • Requirement on application of exemptions does not suggest that such exceptions would occur in “strictly limited” circumstances. • Georgia requires obliged entities to take enhanced measures to manage and mitigate “high”, rather than “higher” ML/TF risks. • There is no clear requirement for obliged entities to ensure that the outcomes of the NRA are incorporated into their risk assessment. • Obligated entities are allowed to apply simplified measures in relation to “low – risk” (rather than lower-risk) customers. • Deficiencies under R.26 and 28 have an impact on Georgia’s compliance with criterion 1.9. • No requirement for the insurance sector and DNFBPs to document their risk assessments.
2. National cooperation and coordination	LC	<ul style="list-style-type: none"> • The main directions set in the Action Plan do not address areas identified as presenting higher risks in the NRA. • Standing Interagency Commission is not yet established. • Governmental Commission on Matters of Enforcement of UNSCRs is not yet established. • There is no coordination of efforts between the Governmental Commission on Matters of Enforcement of UNSCRs and the Commission on implementation of matters related to coordination of the control of export, import, re-export and transit of weapons, military equipment and related materials and their means of delivery and dual-use items.
3. Money laundering offences	C	
4. Confiscation and provisional measures	LC	<ul style="list-style-type: none"> • The confiscation of instrumentalities under Art. 52(2) is limited by the requirement that it is necessary in the interests of the state or the public, to protect the rights and freedoms of certain groups or necessary to avoid the commission of a new crime. • The confiscation of property of corresponding value does not apply to property of corresponding value to the instrumentalities of crime. • There are no mechanisms for the active management of property seized under criminal or civil proceedings.
5. Terrorist financing offence	LC	<ul style="list-style-type: none"> • The TF offence does not specifically cover the travel costs of foreign terrorist fighters that do not travel from or through Georgia.

Recommendations	Rating	Factor(s) underlying the rating
6. Targeted financial sanctions related to terrorism & TF	PC	<ul style="list-style-type: none"> • Georgia does not have a mechanism for identifying targets for designation pursuant to UNSCRs 1267/1989, 1988 and 1373. • The term “reasonable suspicion” is not defined to conclude upon the evidentiary standard of proof to be applied in Georgia, when dealing with UNSCRs 1267/1989, 1988 and 1373. • It has not been demonstrated that the proposals for designations are not conditional upon the existence of a criminal proceeding, when dealing with UNSCRs 1267/1989, 1988 and 1373. • Legislation is silent on providing a statement of case that should include as detailed and specific reasons as possible describing the proposed basis for the listing. • There is no formal requirement in place on the scope and nature of information to be provided in cases of requesting another country to give effect to the actions initiated under its own freezing mechanisms. • The mechanism does not appear to ensure implementation of sanctions “without delay”. • There is no explicit requirement under the Georgian legislation for all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. • The freezing obligation does not extend to a number of objects (e.g. financial collateral, settlement account of a systemically important payment system, assets on nominal holder accounts of securities market intermediaries, pension assets etc.). • The prohibition under c.6.5(c) is subject to an additional threshold - “grounds to suspect”. • There is no guidance provided to obliged entities on their obligations in taking action under freezing mechanisms. • It has not been demonstrated that there is an explicit requirement to report any assets frozen. • There is no guidance provided to FIs and other persons or entities, including DNFBPs, that may be holding frozen funds or other assets, on their obligations to respect a de-listing or unfreezing action.
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> • The mechanism does not appear to ensure implementation of sanctions “without delay”. • There is no explicit requirement under the Georgian legislation for all natural and legal persons within the country to freeze, without delay and without prior notice, the funds or other assets of designated persons and entities. • The freezing obligation does not extend to a number of objects (e.g. financial collateral, settlement account of a systemically important payment system, assets on nominal holder accounts of securities market intermediaries, pension assets etc.). • The prohibition under c.7.2(c) is subject to an additional threshold - “grounds to suspect”. • There is no guidance provided to obliged entities on their obligations in taking action under freezing mechanisms. • It has not been demonstrated that there is an explicit requirement to report any assets frozen. • It has not been demonstrated that there are specific sanctions to apply to DNFBPs, and sanctions envisaged for failure to comply with the Law on Enforcement Proceedings. • There is no guidance provided to FIs and other persons or entities, including DNFBPs, that may be holding frozen funds or other assets, on their obligations to respect a de-listing or unfreezing action. • Georgia does not permit any form of additions to the frozen accounts.
8. Non-profit organisations	NC	<ul style="list-style-type: none"> • Georgia has not identified the subset of organisations that fall within the FATF definition of NPO and has not identified the features and types of NPOs which, by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse. • Georgia has not clearly identified the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs. • Georgia has not reviewed the adequacy of measures, including laws

Recommendations	Rating	Factor(s) underlying the rating
		<p>and regulations that relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take proportionate and effective actions to address the risks identified.</p> <ul style="list-style-type: none"> • Georgia does not periodically reassess the sector by reviewing new information on the sector's potential vulnerabilities to terrorist activities to ensure effective implementation of measures. • There are no clear policies to promote accountability, integrity, and public confidence in the administration and management of NPOs. • No measures are in place to encourage and undertake outreach and educational programs to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse. • No practices are in place to work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse. • No measures are in place to encourage NPOs to conduct transactions via regulated financial channels. • No specific steps are taken to promote effective supervision or monitoring such that it could be demonstrated that risk-based measures apply to NPOs at risk of terrorist financing abuse. • No practices are in place to monitor the compliance of NPOs with the requirements of Recommendation 8. • No sanctions are available for violations by NPOs or persons acting on behalf of these NPOs. • There are no mechanisms or practices in place to ensure effective cooperation, coordination and information-sharing to the extent possible among all levels of appropriate authorities or organisations that hold relevant information on NPOs. • There is no specific mechanism to ensure that, when there is a TF suspicion involving an NPO, information is shared promptly with competent authorities.
9. Financial institution secrecy laws	C	<ul style="list-style-type: none"> •
10. Customer due diligence	LC	<ul style="list-style-type: none"> • An incomplete definition for ML (AML/CFT Law, Art. 2(Z8)) – which does not refer to all relevant parts of the Criminal Code - means that CDD need not be applied in all cases envisaged under the standard (c.10.2) and simplified CDD will not be excluded in all cases envisaged under the standard (c.10.18); • Insurance companies and leasing companies are not explicitly required to keep data and other information held relevant (c.10.7); • There is no requirement to collect information on the powers that regulate and bind a customer that is a legal person (c.10.9); • Insurance companies and leasing companies are not required to obtain a copy of a trust deed in respect of a customer that is a foreign legal arrangement (c.10.9); • FIs are required to perform EDD where risks are high (rather than higher) (c.10.17); • Insurance companies and leasing companies are not required to prove that risk is low before applying simplified CDD measures (c.10.18); • No restriction is set for application of simplified measures in circumstances when specific higher risk scenarios apply (c.10.18). • In cases where FIs form a suspicion of ML/TF and reasonably believe that performing CDD measures will “tip-off” the customer, there are no provisions allowing them not to pursue the CDD process (c.10.20).
11. Record keeping	LC	<ul style="list-style-type: none"> • The requirement to maintain information in such form that permits its submission to a competent authority in “due course” differs to the standard which calls for records to be available “swiftly”.
12. Politically exposed persons	PC	<ul style="list-style-type: none"> • The definition of a family member does not include persons that are family members through other forms of partnership than marriage; • The definition for close business relationship does not include persons that are closely connected to a PEP socially or politically; • It is not specified that measures to determine whether the beneficiary

Recommendations	Rating	Factor(s) underlying the rating
		and/or, where required, the BO of the beneficiary of a life insurance policy, is a PEP must take place no later than the time of pay out; <ul style="list-style-type: none"> The requirement to take additional measures in relation to life assurance policies applies where risks are high (rather than higher).
13. Correspondent banking	C	
14. Money or value transfer services	LC	The punishment for unauthorised business is limited to cases where it causes serious damage or produces significant income.
15. New technologies	PC	<ul style="list-style-type: none"> The country has not fully identified and assessed the ML/TF risks of technology; There is no explicit requirement for FIs to mitigate identified ML/TF risks; Measures are not in place to prevent or mitigate ML/TF risks emerging from VA activities and the activities of operations of VASPs, or requirements placed on VASPs; VASPs are not subject to monitoring or supervision; VASPs are not subject to AML/CFT requirements.
16. Wire transfers	LC	<ul style="list-style-type: none"> There is no requirement for FIs to freeze funds without delay of persons designated under TFS.
17. Reliance on third parties	LC	<ul style="list-style-type: none"> Insurance companies and leasing companies are not required to be satisfied that a third party/intermediary has measures in place to comply with R.10 and R.11; Insurance companies and leasing companies are not prohibited from relying on a third party registered or operating in a high-risk jurisdiction.
18. Internal controls and foreign branches and subsidiaries	LC	<ul style="list-style-type: none"> With the agreement of the relevant supervisory authority, FIs that are individuals may be exempted from certain requirements, having regard to the nature and size of the business and associated ML/TF risks; Not all FIs are required to ensure that the compliance officer shall be at a position equal to the senior hierarchy (management) level in the organisational chart; It is not possible to share information with the audit function that tests the system.
19. Higher-risk countries	LC	<ul style="list-style-type: none"> The application of EDD to higher risk countries is linked to triggers not foreseen in the standard and does not cover all relationships and transactions with legal persons connected to such countries; There are no countermeasures foreseen with respect to refusing the establishment of subsidiaries, branches or representative offices.
20. Reporting of suspicious transaction	LC	<ul style="list-style-type: none"> The concept of "reasonable suspicion" is not defined; Deficiency under R. 5 applies.
21. Tipping-off and confidentiality	C	<ul style="list-style-type: none">
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> Preventative measures do not apply to: (i) real estate agents; (ii) accountants that are not certified accountants; (iii) certified accountants when providing legal advice that relates to an activity listed under c.22.1(d); and TCSPs; There is no clear requirement placed on casinos to ensure that they can link CDD information for a customer to the transactions that the customer conducts in a casino; Requirements and shortcomings described under R.10, 11, 12, 15 and 17 are equally applicable (except as described).
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> Preventative measures do not apply to: (i) real estate agents; (ii) accountants that are not certified accountants; (iii) certified accountants when providing legal advice that relates to an activity listed under c.22.1(d); and TCSPs; Requirements and shortcomings described under R.20, R.18 and R.19 are equally applicable (except as described); Some DNFBPs are not required to apply enhanced CDD to countries in "watch zones". Lawyers do not have a basis for making STRs unless agreed in advance through a contract with the client; It is not clear that the timeframe set for the Georgian Bar Association to

Recommendations	Rating	Factor(s) underlying the rating
24. Transparency and beneficial ownership of legal persons	PC	<p>transmit STRs to the FMS will always be "prompt" in line with c.20.1.</p> <ul style="list-style-type: none"> • The NRA does not systematically consider the extent to which legal persons registered in Georgia have been used in ML or TF in the past; activities that are carried on; or extent to which some of the features of the Georgian system may create vulnerabilities; • NPOs and religious associations are not required to maintain a register of members subsequent to founders; • Where a legal person was registered between 1995 and 2005, and there have been no changes to members/partners or directors since that time, then information held in the NAPR register may not be complete • No direct obligation is placed on legal persons to maintain the information set out in c.24.3 separately to the NAPR register; • There is no obligation to maintain a list of shareholders or members in the territory of Georgia; • It has not been demonstrated that a change of legal ownership of shares through death/inheritance or an agreement could be enforced before registration by the NAPR; • Mechanisms in place will not ensure that accurate and up-to-date information on beneficial ownership can be determined in a timely manner where (together): (i) beneficial ownership and legal ownership of legal persons do not match; and (ii) the legal person does not have a relationship with a bank or registrar in Georgia; • There is no specific provision that requires one or more natural persons resident in Georgia, or accountable DNFBP in Georgia, to be responsible for maintaining beneficial ownership information and to be accountable to the authorities; • Whilst competent authorities have powers to access basic and beneficial ownership information, deficiencies as described in R.27 and 31 apply; • No mechanism is in place to ensure that nominee shareholders in LLCs are not misused; • There is no explicit prohibition against a person acting as a nominee director; • Whilst sanctions may be applied to obliged entities that fail to comply with the AML/CFT Law, deficiencies described in R.27 and R.35 apply. • Competent authorities cannot exchange information held by lawyers (subject to professional secrecy) which is requested other than under a court order.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> • There is no obligation requiring trustees to maintain the information referred to under c.25.1(a) and (b), unless services are provided by a lawyer or accountant that is an obliged entity in which case AML/CFT obligations would apply; • It has not been demonstrated that data held by trustees that are lawyers or accountants would be updated on a timely basis. In the case of trustees that are not lawyers or accountants, there is no such obligation; • There is no explicit requirement for trustees to disclose their status when forming a business relationship or carrying out an occasional transaction; • Lawyers are subject to professional secrecy provisions in respect of all activities conducted. These would prevent trustees from providing information on the beneficial ownership or assets of the trust to competent authorities or obliged entities, other than under a court order, and limit international cooperation; • Whilst competent authorities have powers to access information, deficiencies as described in R.27 and 31 apply; • Lawyers and accountants (acting as trustees) are not subject to sanctions available under sectorial legislation for non-compliance with the AML/CFT Law.
26. Regulation and supervision of financial institutions	LC	<ul style="list-style-type: none"> • Collective investment funds and fund managers are not designated as obliged entities and have no designated supervisor; • Leasing companies are not licensed or registered in Georgia. There are no fit and proper requirements and no information has been

Recommendations	Rating	Factor(s) underlying the rating
		<p>provided on supervision thereof;</p> <ul style="list-style-type: none"> • Not all sectorial laws include a requirement to identify or verify that the BOs of those holding a significant interest do not have a criminal record; • The ISSS has no power to: (i) prevent criminals' associates from holding (or being the BO of) a significant or controlling interest or holding a management function in an insurance company; or (ii) consider criminal action being taken against an administrator or significant shareholder (where, as yet, there has been no criminal conviction); • Two IOSCO standards are not met; • The insurance supervisor does not appear to specifically take country risk into account when defining the frequency of AML/CFT inspections of insurance companies; • It has not been demonstrated that the frequency and intensity of supervision is affected by the extent to which FIs apply simplified or enhanced CDD measures or place reliance on CDD measures already conducted by other obliged entities.
27. Powers of supervisors	LC	<ul style="list-style-type: none"> • It has not been demonstrated that specific powers have been given to the MoF to conduct inspections of leasing companies.
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> • It has not been demonstrated that the prohibition on criminal ownership and control of casinos covers the BO of a significant or controlling interest in a casino or the "operator" of a casino; • Prohibitions do not extend to associates of criminals holding significant or controlling interests, holding a management function, or being an operator of a casino; • Accountants not designated as obliged entities have no supervisor. • Real estate agents and TCSPs are not designated as obliged entities and, therefore, there is no supervisors; • It has not been demonstrated that (i) fit and proper measures may be applied to DPMS and certified accountants; or (ii) sanctions may be applied to DPMS and lawyers (except suspension). • There is no explicit obligation for supervisors to consider the diversity and numbers operating in a particular sector when determining the nature and frequency of inspections; • Compliance was not demonstrated that supervision of DNFBPs takes into account internal controls, policies and procedures.
29. Financial intelligence units	PC	<ul style="list-style-type: none"> • There is no explicit reference in the legislation to require the FMS to conduct either operational or strategic analysis of information related to ML/TF. • Incomplete definitions for ML (AML/CFT Law, Art. 2(Z.8)) – which do not refer to all relevant parts of the CC (i.e. Art. 186 and 194.1) – implies that the scope of FMS analysis might be narrow. • The FMS is not able to conduct a spontaneous dissemination to MoF Investigation Service. • The FMS has no power to disseminate information and results of its analysis, upon request, without a court order, to all relevant competent authorities, including MoF Investigation Service, when conducting criminal investigation of other than ML (CC, Art. 194, 194.1), TF (CC, Art. 331.1) or Drug related crimes (CC, Chapter XXXIII). This limitation includes investigation of ML pursuant to CC, Art. 186, and respective ML predicate offences.
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	LC	<ul style="list-style-type: none"> • There is no explicit power under the law of Georgia to compel the production of non-computerised records. • There are restrictions hindering the ability of the LEAs to request information from the FMS.
32. Cash couriers	LC	<ul style="list-style-type: none"> • Order No. 258 does not specifically address cooperation between the MoF and MIA with respect to cash/BNIs transportation. • There is no requirement or policy in place for the retention of information for the purposes of international cooperation and

Recommendations	Rating	Factor(s) underlying the rating
		assistance on declarations in excess of the threshold, false declarations and suspicions of ML/TF
33. Statistics	LC	<ul style="list-style-type: none"> Limited statistical information is held about: (a) the predicate offences in ML investigations and prosecutions; (b) some stages in the confiscation process; (c) assets confiscated under the cross-border declarations regime.
34. Guidance and feedback	LC	<ul style="list-style-type: none"> International typologies and international guidance published by the FMS are out of date; SARAS (accountants and auditors), the MoF (casinos, DPMS) and the MoJ (notaries and NAPR) have not provided any guidance and feedback.
35. Sanctions	PC	<ul style="list-style-type: none"> No information has been provided on civil or administrative sanctions that may be applied to leasing companies, casinos, lawyers (except suspension) and DPMS (or directors and senior management thereof) for breaching AML/CFT legislation; It has not been demonstrated that a proportionate range of sanctions can be applied to notaries; Sanctions are also not available for DNFBPs not designated as obliged persons (see R.22, R.23 and R.28).
36. International instruments	LC	<ul style="list-style-type: none"> Minor deficiencies, as indicated in R. 4 and R.5 apply.
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> There is a deficiency with respect to exercise of the powers for the compelled production of non-computerised records.
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> Certain types of predicate offenses if not having aggravating factors might fall short, as have a less rigorous sanctions for a core offence. There is no active management of property seized under criminal or civil proceedings.
39. Extradition	C	
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> The MoF, in its role of the supervisory authority for leasing companies, casino, and the DPMS did not demonstrate how it does meet the standard, except for some particular instances. Bar Association, in its capacity of a supervisor for individual lawyers and law firms also did not demonstrate how it does meet the standard. The competent authorities do not have formal prioritisation processes in place. Concerning FMS, NBG, MoJ, SARAS, and ISSS legislation is silent on controls and safeguards to ensure that exchanged information is used by the authority for which the information was sought or provided, and about providing a prior consent for that. There is not legislation provided on the matters of protection of confidentiality of information concerning activities of the MoJ SARAS and ISSS.

Glossary of Acronyms¹⁰⁴

	DEFINITION
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AML/CFT Interagency Council	Inter-Agency Council for the Development and Coordination of Implementation of the AML/CFT Strategy and Action Plan
AML/CFT Law	Law on Facilitating the Suppression of Money Laundering and Terrorism Financing
APC	Administrative Procedures Code
BO	Beneficial owner/beneficial ownership
GEL	Georgian Lari
CC	Criminal Code
CDD	Customer Due Diligence
CivPC	Civil Procedure Code
Counter-Terrorism Strategy	National Strategy on the Fight against Terrorism for 2019-2021
CPC	Criminal Procedures Code
Credit Unions	Non-Bank Depository Institutions - Credit Unions
CTR	Currency threshold report(s)
EDD	Enhanced due diligence
EUR	Euro
FIs	Financial Institutions
FMS	Financial Monitoring Service (Financial Intelligence Unit)
Government Commission	Government Commission on the Implementation of UN Security Council Resolutions
GPO	General Prosecutor's Office
GPO AML Division	GPO Criminal Prosecution of Legalization of Illegal Income Division
GPO Order N3	Order N 3 of the General Prosecutor of Georgia on the Determination of the Criminal Investigative and Territorial Investigative Subordination, 23 August 2019
ICCM	Law on International Cooperation in Criminal Matters
MFO	Microfinance Organisation
MIA	Ministry of Internal Affairs
MLA	Mutual legal assistance
MoD	Ministry of Defence
MoF	Ministry of Finance
MoJ	Ministry of Justice
MoJ Order N64	Order N 64 of the Minister of Justice of Georgia on Approval of the Regulations of the Investigation Unit (Department) of the Chief Prosecutor's Office of Georgia, 13 February, 2015
NAPR	National Agency of Public Registry
NBG	National Bank of Georgia
NRA	National risk assessment
NBG Guideline on ML/TF risk assessment	Order N 82/04 of the Governor of the National Bank of Georgia on the Approval of the Guideline on Illicit Income Legalization and Terrorism Financing Risk Assessment, 7 May 2019
NBG Guideline on organisational and group ML/TF Risks	Order N 202/04 of the Governor of the National Bank of Georgia on Appointing Guideline of Analysing Illicit Income Legalisation and Terrorism Financing Risks on Organisational and Group Scales, 25 October 2019
NBG Supervisory Framework on AML/CFT	Order N 297/04 of the Governor of the National Bank of Georgia on Approving the Supervisory Framework of the National Bank of Georgia on Combating Money Laundering and Financing of Terrorism
NPO(s)	Non-commercial legal persons
Prosecutors' Strategy	Strategy of the Prosecutor's Office of Georgia for 2017 to 2021
PSP(s)	Payment service provider(s)
SARAS	Service for Accounting, Reporting and Auditing Supervision
SSS	State Security Service
SDD	Simplified due diligence
TCSP(s)	Trust and company service provider(s)
UNSCR(s)	United Nations Security Council Resolution(s)
VASP(s)	Virtual asset service provider(s)

¹⁰⁴ Acronyms already defined in the FATF 40 Recommendations are not included into this Glossary.

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Anti-money laundering and counter-terrorism financing measures

Georgia

Fifth Round Mutual Evaluation Report

This report provides a summary of AML/CFT measures in place in Georgia as at the date of the on-site visit (4 to 15 November 2019). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Georgia's AML/CFT system, and provides recommendations on how the system could be strengthened.