FATF

6TH FOLLOW-UP REPORT

Mutual Evaluation of Luxembourg

February 2014

FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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ACRONYMS

AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
CAA	Commissariat aux Assurances
CDD	Customer Due Diligence
CSSF	Commission de Surveillance du Secteur Financier
DNFBP	Designated Non-Financial Business or Profession
EU/EEA	European Union / European Economic Area
FIU	Financial Intelligence Unit
GDR	Grand-Ducal Regulation
LC	Largely compliant
MER	Mutual Evaluation Report
ML	Money laundering
MVTS	Money Value Transfer Services
NC	Non-compliant
PC	Partially compliant
PEP	Politically Exposed Person
R	Recommendation
RBA	Risk-based approach
SR	Special Recommendation
SRO	Self-Regulatory Organisation
STR	Suspicious Transaction Report
TF	Terrorist financing
UN	United Nations
UNSCR	United Nations Security Council Resolution

MUTUAL EVALUATION OF LUXEMBOURG: 6TH FOLLOW-UP REPORT

Application to move from regular follow-up to biennial updates

Note by the Secretariat

I. INTRODUCTION

The relevant dates for the mutual evaluation report and subsequent follow-up reports of Luxembourg are as follows:

- Date of the Mutual Evaluation Report: 19 February 2010.
- Since the adoption of its MER, Luxembourg reported five time to the Plenary as follows: in June and October 2010, in February 2011, in February 2012 and February 2013.

Luxembourg has submitted on 6 November 2013 its sixth follow-up report and application to move from regular to biennial follow-up along with a table summarising the action taken with regard to the Recommendations rated NC/PC and a series of annexes to the Secretariat (see annexes).

FINDINGS OF THE MER

Luxembourg was rated partially compliant (PC) or non-compliant (NC) on 39 Recommendations. Among the core Recommendations, one was rated NC (SR.IV) and four were rated PC (R.1, R.5, R.10 and SR.II). Seven key Recommendations were rated PC (R.3, R.4, R.23, R.35, SR.I, SR.III and SR.V). None of the key Recommendations was rated NC.

Core Recommendations1 rated NC or PC
R.1 (PC), SR.II (PC), R.5 (PC), R.13 (PC), SR.IV (NC)
Key Recommendations2 rated NC or PC
R.3 (PC), R.4 (PC), R.23 (PC), R.35 (PC), SR.I (PC), SR.III (PC), SR.V (PC)
Other Recommendations rated PC
R.2, R.6, R.8, R.9, R.11, R.14, R.15, R.19, R.20, R.22, R.25, R.27, R.30, R.31, R.32, R.33, SR.VI, SR.VII, SR.VIII.
Other Recommendations rated NC
R.7, R.12, R.16, R.17, R.21, R.24, R.34, SR.IX

As prescribed by the Mutual Evaluation procedures, Luxembourg provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for Core Recommendations 1, 5, 13, II and IV and Key Recommendations 3, 4, 23, 35, I, III and V (see rating above), as well as a description of all the other Recommendations rated PC or NC. A draft analysis was provided to Luxembourg for its review and comments. The final report was drafted

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

2 The key Recommendations are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III, and SR.V.

taking into account certain of the comments from Luxembourg. During the process Luxembourg provided the Secretariat with all information requested.

As a general note on all applications for removal from regular follow-up: the procedure is a *paper-based desk review* and by its nature is therefore less detailed and thorough than a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC/NC, which means that only a part of the AML/CFT system is reviewed. Such analysis essentially consists of looking at the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been made, effectiveness is taken into account to the extent possible in a paper-based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in every case, as comprehensive as would exist during a mutual evaluation.

II. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY

CORE RECOMMENDATIONS

Recommendation 1 – Luxembourg has amended the money laundering offence mainly to criminalise all material elements required by the Conventions and to address the deficiencies relating to terrorism and terrorist financing, predicate offences (see also SR.II, below) and brought Recommendation 1 to a level of compliance at least equivalent to LC.

Recommendation 5 – The scope of financial institutions subject to the AML/CFT law has been extended to insurance and reinsurance companies and intermediaries conducting lending and surety activities as well as to managers and advisers of collective investment and pension funds. The Grand Ducal Regulation of 1 February 2010 and the revised AML/CFT Law have also remedied a number of deficiencies. There remain shortcomings concerning enhanced and simplified due diligence; however, Luxembourg now overall reaches a level of compliance at least equivalent to LC.

Recommendation 13 and Special Recommendation IV – Luxembourg has made changes in relation to the reporting obligation, which seem to address the material deficiencies. The Mutual Evaluation Report identified a number of implementation or effectiveness issues, which cannot be assessed in the context a desk-based review. Therefore, technical compliance with Recommendation 13 and Special Recommendation IV has been brought to a level at least equivalent to LC.

Special Recommendation II – Luxembourg has now ratified all Conventions referred to in the UN TF Convention and criminalised the financing of the related offences The terrorist financing was revised in particular to cover the financing of terrorist organisations and individual terrorists outside of the commission of an act. All amendments made to the TF offence have brought Luxembourg to a level of compliance at least equivalent to LC.

KEY RECOMMENDATIONS

Recommendation 3 – The provisions relating to special confiscation applicable to money laundering have been amended to extend the scope of the confiscation and provisional measures for

blocking/freezing assets have been broadened. It is not possible in the context of this desk-review to assess the progress made with respect to implementation and effectiveness deficiencies; therefore, overall Luxembourg now appears to have reached a level of compliance at least equivalent to LC.

Recommendation 4 – The AML/CFT Law and implementing regulations and other measures have been amended in order to address the material deficiencies. Some of the deficiencies identified under Recommendation 4 relate to effectiveness. In the context of this desk-based review, it is not possible to ascertain that these deficiencies have been addressed. Nevertheless, based on the material changes made, Luxembourg appears to have reached a level of compliance at least equivalent to LC.

Recommendation 23 – Luxembourg has taken measures to improve the licensing of financial institutions and their supervision. The number of AML/CFT inspection has also significantly increased since the Mutual Evaluation. Luxembourg therefore now seems to have reached a level of compliance at least equivalent to LC.

Recommendation 35 – Through the amendments and progress made under other related Recommendations, in particular R.1, 3 and RS.II, Luxembourg has reached a level of compliance with Recommendation 35 at least equivalent to LC.

Special Recommendation I - Through the amendments and progress made under other related Recommendations, in particular RS.II and III, Luxembourg has reached a level of compliance with Special Recommendation I at least equivalent to LC.

Special Recommendation III – Luxembourg has significantly improved its terrorist assets freezing with the adoption of a new mechanism. There remain a few shortcomings with respect to the procedures and guidance for financial institutions and other persons liable to be holding terrorist assets. However, it seems that overall Luxembourg has now reached a level of compliance at least equivalent to LC for Special Recommendation III.

Special Recommendation V - Through the amendments and progress made under other related Recommendations, in particular R.36, 38, 39 and 40, Luxembourg has reached a level of compliance with Special Recommendation I at least equivalent to LC.

OTHER RECOMMENDATIONS

Luxembourg has also made progress in addressing deficiencies related to non-core and non-key Recommendations rated PC or NC. It should be noted, however, that since the decision of whether or not Luxembourg should be removed from the regular follow-up process will be based solely on the decisions regarding the core and key Recommendations, this paper does not provide more detailed analyses regarding these other Recommendations. A summary of the progress that was reported by Luxembourg has been included in the final section of this paper, for information only.

CONCLUSIONS

Luxembourg has addressed a significant number of material deficiencies under all core and key Recommendations rated PC/NC in its Mutual Evaluation Report, and brought the level of technical

compliance with these Recommendations to a level of compliance at least equivalent to LC. Luxembourg has therefore taken sufficient measures to be removed from the regular follow-up process.

III. OVERVIEW OF LUXEMBOURG'S PROGRESS

OVERVIEW OF THE MAIN CHANGES SINCE THE ADOPTION OF THE MER

Since its Mutual Evaluation, Luxembourg has introduced a series of amendments to its AML/CFT regime. Most importantly:

- Law of 3 March 2010 introducing criminal liability for legal persons;
- Law no. 193 of 27 October 2010 reinforcing the legal framework for AML/CFT, relating to the organisation of measures to monitor the physical transportation of cash entering, transiting via or leaving the Grand Duchy of Luxembourg, relating to the implementing the UNSCRs as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups in the context of the combat against TF and amending a number of existing laws;
- Law no. 194 of 27 October 2010 on mutual legal assistance;
- Law no. 195 of 27 October 2010 on maritime terrorism;
- Law of 26 December 2012 amending the Penal Code, in particular the provisions on TF;
- Grand-Ducal Regulation (hereinafter GDR) of 1 February 2010 specifying some existing obligations provided for in the AML/CFT law of 12 November 2012;
- Grand-Ducal Regulation of 1 December 2009 repealing the GDR on equivalent countries;
- Grand-Ducal Regulation of 29 October 2010 implementing the terrorist assets freezing mechanism established by Law no. 193 of 27 October 2010;
- CSSF Regulation no. 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing;
- CAA Regulation no. 13/01 of 23 December 2013 on the fight against money laundering and terrorist financing. Due to the very recent adoption of this regulation, the Secretariat was not in a position to fully analyse it[3]. Therefore, references to this regulation only reflect the views of the authorities of Luxembourg, not those of the FATF Secretariat.

[3] CAA Regulation no. 13/01 was submitted to the Secretariat along with the comments of Luxembourg on the draft of this report on 15 January 2014.

THE LEGAL AND REGULATORY FRAMEWORK

The AML/CFT framework of Luxembourg primarily consists of the AML/CFT law of 12 November 2004, as amended. The legal system also relies, in particular, on a number of provisions of the Penal Code that are not specific to AML/CFT. Financial institutions and DNFBPs are subject to the provisions of the AML/CFT law and subsequent regulations, as well as sectoral regulations and guidance.

IV. DETAILED ANALYSIS OF COMPLIANCE WITH THE CORE AND KEY RECOMMENDATIONS

CORE RECOMMENDATIONS

RECOMMENDATION 1 – RATING PC

R.1 (Deficiency 1) - Terrorism and terrorist financing, predicate offences for money laundering, are not criminalised satisfactorily.

Article 506-1 of the Penal Code criminalises money laundering. Paragraph 1 provides the list of the predicate offences for money laundering. The offence was amended in relation to terrorism and terrorist financing by the Law no. 193 of 27 October 2010 and most recently by the Law of 26 December 2012. With respect to terrorism and terrorist financing, Article 506-1 refers to the offences set forth in various articles of the Penal Code: Articles 112-1 on crimes against internationally protected persons; Articles 135-1 to 135-6 defining terrorism, defining and providing sanctions for individual terrorists and terrorist groups and criminalising terrorist financing (Article 135-5 of the Penal Code); Article 135-9 criminalising terrorist attacks suing explosive devices, and; Articles 135-11 to 135-13 setting forth ancillary offences to terrorism, such as public provocation to commit a terrorist act, recruitment and training.

Article 135-5 of the Penal Code was amended by Law no. 193 and Law no. 195 of 27 October 2010 respectively reinforcing the legal framework for AML/CFT and on maritime terrorism, and most recently by the law of 26 December 2012. The scope of the TF offence is dealt with in detail under Special Recommendation II, below.

The deficiency has been addressed.

R.1 (Deficiency 2) - Doubts as to whether the material elements of the offence of money laundering as defined in national legislation apply to disguise.

Law no. 193 of 27 October 2010 modified Articles 506-1 point 2 of the Penal Code and Article 8-1 point 2 of the Law of 19 February 1973 on the sale of medicinal substances. Both articles now explicitly provide for disguise. Therefore, the four elements (*i.e.*, concealment, disguise, transfer and conversion) required by the Vienna and Palermo Conventions are now covered.

The deficiency has been addressed.

EFFECTIVENESS:

R.1 (Deficiency 3) - The implementation of the laundering offence is not satisfactory, given the low number of convictions for laundering (8 convictions between 2003 and 2009), in light of the importance of Luxembourg financial sector and the laundering risk related to the activities of private banks and of non-resident clientele.

Luxembourg provided the updated figures below on the number of decisions and convictions made in ML cases; they demonstrate an increase in both figures. However, on the basis of this information it is not possible to assess the effectiveness of the offence and therefore to determine whether the deficiency has been addressed.

Table 1: **Number of decisions and convictions in ML cases**

	2003 – 2008	2009	2010	2011	2012	2013 (as of 15.09)
Total number of judicial decisions pronounced by a Court		7	32	54	87	74
Convictions	8	5	51	85	143	122

R.1 (Deficiency 4) - In practice, money laundering is not an independent offence and effectively requires prior proof of the predicate offence and a link between this offence and the laundered proceeds. Furthermore, priority is given at the national level to prosecuting the predicate offence rather than the laundering offence. Finally, when the predicate offence is committed abroad, Luxembourg authorities prefer to refer the laundering activity to the country where the predicate offence took place. In this regard, it has not been established that Luxembourg prosecutes [the laundering offence] when the foreign state receiving the referral does not initiate such action.

Law no. 193 of 27 October 2010 introduced a new Article 506-8 which explicitly states that no prior prosecution or conviction for the predicate offence is required to convict an offender for money laundering.

The Law of 26 December 2012 amended the Code of Criminal Procedure repealed the exclusive territorial jurisdiction of the Public Prosecutor of the District of Luxembourg. Since this change, the Public Prosecutor of Diekirch (note: there are only two PPOs in Luxembourg) has initiated eight cases on money laundering.

Luxembourg also advised that the money laundering is now systematically prosecuted and that no instruction has been given to prosecute the predicate offence rather than money laundering.

No specific information was provided as regards cases where the predicate offence is committed abroad.

Legislative changes introduced since the MER have intended to address the material deficiencies noted in the original report. Luxembourg authorities have provided information relating to the effectiveness of the new measures, and this information is noted here and throughout this follow-up report. It should be noted however that follow-up reports are intended to be a desk-based review;

therefore, it is not possible to determine, on the basis of the information provided, the degree to which effectiveness deficiencies have been addressed.

RECOMMENDATION 1 – CONCLUSION

The two material deficiencies have been addressed bringing Luxembourg to a level of compliance at least equivalent to LC.

RECOMMENDATION 5 – RATING PC

R.5 (Deficiency 1) - Insurance and reinsurance companies and their intermediaries conducting lending and surety activities are not subject to AML/CFT provisions. The same holds for the following financial sector professionals: managers and advisers of collective investment and pension funds, and foreign professionals operating in Luxembourg outside a branch.

Law no. 193 of 27 October 2010 and the Law of 12 July 2013 on alternative investment funds managers have amended Article 2.1 of the AML/CFT law, which lists natural and legal persons subject to the legislation. Pursuant to these amendments, the AML/CFT law now also applies to:

> *"6a. managers and advisors of undertakings for collective investment, investment companies in risk capital (SICAR) and pension funds;*
>
> *6b. securitisation undertakings, when they perform trust and company service provider activities;*
>
> *6c. insurance and reinsurance undertakings and their intermediaries whenever they perform credit and surety operations;*
>
> *6d. alternative investment fund managers governed by the Law of 12 July 2013 on alternative investment fund managers and which market units, securities or partnership interests of alternative investment funds or which carry out additional or non-core activities within the meaning of Article 5(4) of the Law of 12 July 2013 on alternative investment fund managers"*

Law no. 193 of 27 October 2010 also introduced a catch-all category in Article 2.1.7, which reads as follows: "persons other than those listed above who conduct as a business one or more of the activities or operations listed in the annex for or on behalf of a customer". The annex referred to in Article 2.1.7 includes all 13 activities listed in the FATF definition of 'financial institutions'.

The last paragraph of Article 1(2) of the AML/CFT law as revised by Law no. 193 of 27 October 2010 extends the application of the Law to branches of foreign financial institutions and to foreign professionals operating in Luxembourg outside a branch.

The deficiency has been addressed.

R.5 (Deficiency 2) - There is no legal or regulatory prohibition on holding accounts in fictitious names.

Article 5 of the GDR of 1 February 2010 is entitled 'Prohibition of accounts in fictitious names'. It provides that the CDD and record keeping requirements prohibit that accounts and passbooks be kept in fictitious names. Article 9 of the GDR provides that breaches of the obligations set forth in the GDR are liable for a fine or a sanction provided for in the AML/CFT law. Article 9 of the AML/CFT law provides for penal sanctions applicable to the violation of Articles 3 to 8 of the AML/CFT law: a fine from EUR 1 250 to EUR 1 250 million.

The deficiency has been addressed.

R.5 (Deficiency 3) - There is no legal or regulatory system for managing numbered accounts and passbooks.

Article 5 paragraph 2 of the GDR of 1 February 2010 continues with numbered accounts and passbooks. It provides that financial institutions are allowed to keep numbered accounts and passbooks, provided that they strictly comply with the provisions of the AML/CFT law, in particular those on CDD and record keeping, and that unrestricted access to these data is granted to AML/CFT compliance officers and competent authorities. Sanctions applicable in case of violation of this provision are similar to those applicable to breach of the prohibition to keep accounts and passbooks in fictitious names, see above.

The deficiency has been addressed.

R.5 (Deficiency 4) - There is no legal or regulatory requirement to verify that any person claiming to act in the name of a customer that is a legal person or arrangement is authorised to do so.

Article 1.1 of the GDR of 1 February 2010 specifies that the obligation to identify and verify the customers' identity set forth in Article 3.2.a of the AML/CFT law extends to the identification and verification of the identity of the proxy and of his/her power to act on behalf of the customer. Article 1.1 of the GDR uses the same language than that of criterion 5.4 of the Methodology. Sanctions provided for in Article 9 of the AML/CFT law are applicable in case of breach of this obligation.

Subsequent Regulation (no. 12-02 of 14 December 2012) issued by the Financial Sector Supervisory Commission (*Commission de Surveillance du Secteur Financier*, CSSF) further provides in Article 16 that financial institutions (subject to the supervision of the CSSF) should gather and keep record of the provisions governing the power to bind the legal person or arrangement and the authorisation to start a business relationship in the name of the customer.

Luxembourg advised that the CAA Regulation no. 13/01 (Article 14) also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

The deficiency has been addressed.

R.5 (Deficiencies 5 and 6) - The obligation to verify the identity of the beneficial owner is not consistent with that of the FATF; There is no obligation to verify whether the customer is acting on behalf of another person and to take all reasonable measures to obtain identification data sufficient to verify the identity of that other person.

Article 1.2 of the GDR of 1 February 2010 specifies the obligations vis-à-vis the beneficial owner: financial institutions are required "to take reasonable measures to verify the beneficial owner's identity using relevant information or data obtained from a reliable source such that the professional is satisfied that it knows who the beneficial owner is". The Article uses the wording of criterion 5.5 of the Methodology. The definition of 'beneficial owner' in Article 1.7 of the AML/CFT law did not raise any criticism in the Mutual Evaluation Report. Article 23 of the Regulation no. 12-02 issued by the CSSF repeats the definition of 'beneficial owner' and specifies that the threshold mentioned in Article 1.7 of the AML/CFT law to determine who the beneficial owner(s) is/are should be viewed as maximum threshold. Article 22(1) of the CSSF Regulation no. 12-02 provides that the verification of the information on to the beneficial owner is made using information obtained from customers, public registers or any other independent and reliable source available. The professional are required to take reasonable measures in order to ensure that the real identity of the beneficial owner is known; those measures can be defined depending on the level of ML/TF risk.

Concerning the obligation to verify whether the customer is acting on behalf of another person, Article 1.2 of the GDR also requires financial institutions to determine whether the customer is acting on behalf of another person and to take then reasonable steps to obtain sufficient identification data to verify that other person's identity. This obligation is repeated without any further detail in Article 17 of the CSSF Regulation and formalised through a declaration made by the customer.

Luxembourg advised that the CAA Regulation no. 13/01 (Article 22) also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

The deficiency has been addressed.

R.5 (Deficiency 7) - There has been no analysis of ML/FT risks in Luxembourg. Consequently, apart from the enhanced CDD measures required by law, the obligation to perform enhanced CDD is limited to the situations deemed by the financial institutions themselves to present a high ML/FT risk.

With respect to ML/TF risk, Luxembourg reported without further details that assessment is being conducted in accordance with the new Recommendation 1.

Article 3-2 of the AML/CFT law provides for the cases in which enhanced diligence are mandatory. These limited cases include non-face to face or correspondent banking relationships and politically exposed persons, which are specifically addressed under other Recommendations.

Article 3.1 of the GDR of 1 February 2010 on 'enhanced due diligence' defines relationships and transactions with natural and legal persons or financial institutions from or in countries that do not apply or insufficiently apply AML/CFT measures as presenting higher risks. The Article specifies

that 'higher risk' should be interpreted pursuant to the provisions of Article 3-2 of the AML/CFT law, which requires financial institutions to apply enhanced CDD. However, Article 3.1 of the GDR primarily requires that special attention be applied to these transactions and relationships (the obligation to review transactions that have not apparent economic or visible lawful purpose and to make the written findings of this examination available to auditors and competent authorities). The drafting of Article 3.1 of the GDR is confusing, as it mixes two different measures: enhanced due diligence and the situations envisaged under Recommendations 11 and 21. Articles 3.2 to 3.4 address the three high risk situations provided for in Article 3-2 of the AML/CFT law.

In addition to the provisions of Article 3-2 of the AML/CFT Law, Article 3(3) of the AML/CFT law on CDD was amended by Article 4.9 of Law no. 193 of 27 October 2010. A new paragraph was inserted; it requires 'professionals' (*i.e.*, all natural and legal persons subject to the AML/CFT Law) to carry out an analysis of the risks presented by their activities and to keep written records of the findings of that analysis. Both the CSSF and CAA have issued circulars in order to specify what is expected from the professionals subject to their respective supervision concerning the implementation of Article 3(3)2 of the AML/CFT law.

Paragraph 1 of Article 3(3) was not amended although it had been criticised in the MER because it leaves to the discretion of each financial institution the decision to apply or not either enhanced or simplified due diligence. Article 3(3) provides that financial institutions 'may determine the extent' of CDD measures, which means that in case of high ML/TF risk, financial institutions are not required to apply enhanced CDD provided that the provisions of Article 3-2 of the AML/CFT law. Article 5 of the Regulation no. 12-02 issued by the CSSF provides further information on the risk assessment referred to in Article 3(3)2 of the AML/CFT law. It requires that the risk assessment combines factors relating to the customer, the country and the product, service, transaction or delivery channel; however no further specification is provided and takes into account risk variables relating to those categories such as the purpose of a business relationship, the amount of the transactions, etc. Luxembourg advised that the CAA Regulation no. 13/01 (Article 4) also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

Therefore, as was the case at the time of the Mutual Evaluation, the obligation to apply enhanced CDD remains limited (outside of the three cases listed in Article 3-2 of the AML/CFT law and Article 3 of the GDR) to the situations considered by the financial institutions as presenting high ML/TF risk. In that case, pursuant to Article 3.1 of the GDR, enhanced CDD measures are triggered by the risk presented by the country (however limited to the non-application or insufficient application of AML/CFT).

The deficiency has not been addressed.

R.5 (Deficiencies 8, 9 and 10) - There are no simplified or reduced CDD measures, but rather an exemption from all CDD; The exemption covers all CDD measures: identification and verification of the customer and the beneficial owner, information on the nature and purpose of the business relationship, on-going monitoring; The exemption is allowed even when there are doubts about the veracity or adequacy of previously obtained customer identification data.

Law no. 193 of 27 October 2010 amended Article 3-1 of AML/CFT law, which now specifies that some CDD measures may be reduced. Reduced due diligence only apply to the identification and verification of the identity of the customer and beneficial owner. All references to exemptions from CDD have been deleted. The AML/CFT law provides for situations where simplified due diligence may be applied: (i) where the customer is a financial institution subject to the AML/CFT law or a financial institution from another country applying equivalent AML/CFT obligations and supervised for compliance with those obligations; (ii) where the customer is listed on a stock exchange, beneficial owner of pooled accounts, government administrations, etc.; and (iii) for certain transactions, such as life insurance policies not exceeding a certain amount, etc. For those limited cases, Article 3-1(3) provides that sufficient CDD should be gathered (*i.e.*, the identification and verification of the identity of the customer and beneficial owner and information on the nature and purpose of the business relationship) by the financial institutions so that it can ensure that the conditions for the application of reduced CDD are meet and monitor the business relationship.

This provision should be read together with Article 2 of the GDR of 1 February 2010 which provides that simplified customer due diligence regime set out in Article 3-1 of the Law is not mandatory; repeats the obligation to gather minimum information on the identity of the customer and the monitoring of the business relationship; and specifies that no simplified due diligence may apply when there is a suspicion of money laundering or terrorist financing, when there are doubts about the veracity or adequacy of previously obtained data or in specific circumstances which carry a higher risk. This provision specifies that "sufficient information […] at least include[s] customer identification and monitoring of the business relationship", which seems to indicate that no information on the beneficial owner is necessary in order to apply simplified due diligence. This is in contradiction with the provision of Article 3-1 of the AML/CFT Law and such information on the beneficial owner may be decisive for the application of enhanced CDD.

Besides the provisions of Article 3-1, for other cases that are not provided for by the AML/CFT law, Article 3(3) provides that financial institutions may determine the extent of CDD measures on a risk-sensitive basis. Luxembourg advised that this provision applies in the context of regular CDD (*i.e.*, not simplified nor enhanced). This Article allows financial institutions to adjust the CDD measures to the risk presented by the customer, business relationship, product or transaction. This provision goes further than what is allowed under the simplified due diligence regime, as Article 3(3) applies to all CDD measures, not only to the identification and verification of the identity of the customer and of the beneficial owner.

The deficiencies have not been fully addressed and new issues arise from the new regime for simplified due diligence.

R.5 (Deficiency 11) - Luxembourg treats banks and financial institutions located in countries of the EU/EEA and those listed by the Grand-Ducal Regulation as equivalent to its own, as well as according to the circulars branches and subsidiaries regardless of their location, and completely exempts its financial institutions from any due diligence regarding these entities.

The GDR of 1 December 2009 repealed the GDR of 29 July 2008 that provided the list of countries considered as having an equivalent AML/CFT regime, and the circulars issued by the two supervisory bodies of the financial sector have also been repealed.

Article 7 of Regulation no. 12-02 issued by the CSSF specifies that financial institutions, when determining whether a country, including EU/EEA member states under certain conditions, has an AML/CFT regime equivalent to that of the AML/CFT law, take account of the risks present in the country considered. Luxembourg advised that the CAA Regulation no. 13/01 (Article 6) also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

The deficiency has been addressed

R.5 (Deficiency 12) - An exemption from due diligence may be applied to non-residents without there being a condition for such an exemption in all cases that the customer's country of residence respects the FATF Recommendations and applies them effectively.

As mentioned above Law no. 193 of 27 October 2010 amended Article 3-1 of AML/CFT law, which now specifies that CDD may be reduced (instead of the former exemption from CDD).

The deficiency has been addressed.

R.5 (Deficiency 13) - The effectiveness of the prevention system has not been demonstrated: CDD exemptions apply to a significant portion of financial institutions' activities, producing a small number of STRs in light of the size of the financial sector.

Luxembourg has provided the following figures on the number of STRs submitted as well as an extremely detailed list of guidance papers issued and action taken by the supervisory authorities and the FIU to demonstrate the effectiveness of the prevention system established under the AML/CFT law.

Table 2: **Number of STRs submitted**

	2005	2006	2007	2008	2009	2010	2011	2012	2013 as of 15.09
Total:	**448**	**461**	**528**	**708**	**1266**	**4770**	**8136**	**10969**	**3158**
Banks and other financial sector professionals	420	420	390	428	691	934	1133	1291	1007
Electronic bank			112	253	529	3758	6903	9553	2051
Insurance sector professionals	28	41	26	27	46	78	100	125	100

It is not possible, based solely on STR data, to determine whether the deficiency has fully been addressed.

RECOMMENDATION 5 – CONCLUSION

Through the revision of the AML/CFT law and the adoption of the GDR of 1 February 2010, Luxembourg has addressed a number of deficiencies identified in the MER under Recommendation 5. New concerns have arisen with respect to risk. However, it seems that overall Luxembourg now has reached a level of compliance equivalent to LC on Recommendation 5.

SPECIAL RECOMMENDATION II – RATING PC

SR.II (Deficiency 1) - The terrorist financing offence does not cover all the types of conduct targeted by the international conventions and protocols cited by the Convention on terrorist financing.

Since its Mutual Evaluation, Luxembourg has ratified the 1998 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf by Law no. 195 of 27 October 2010. The financing of the offences criminalised by these texts is provided for in Article 65-2 of the Disciplinary and Penal Marine Code.

With respect to the financing of the other offences targeted by the international conventions and protocols, Article 135-5 of the Penal Code was amended and expanded to the financing of crimes against internationally protected persons (through a reference to Article 112 of the Penal Code) and terrorist attacks using explosive devices (through a reference to Article 135-9 of the Penal Code)[4].

The 1988 Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation was approved by a law of 22 August 2003 and implemented by Law no. 193 of 27 October 2010. The financing of the related offences is provided for in Article 31-2 of the Law on the regulation of air navigation as amended by Law no. 193 of 27 October 2010.

The deficiency has been addressed.

SR.II (Deficiency 2) - The terrorist financing offence does not cover the financing of terrorist organisations and individuals beyond the commission of an act of terrorism.

Law no. 193 of 27 October 2010 broadened the scope of the TF offence set forth in Article 135-5 of the Penal Code which specifies that it is not necessary to be a link between the financing and one or

[4] The financing for the offences of the Conventions for the Suppression of Unlawful Seizure of Aircraft (1970) and against the Safety of Civil Aviation (1971) is provided for in Article 31-1 of the Law of 31 January 1948.

The financing of the offences of the Convention on the Taking of Hostages (1979) is provided for Article 135-5 of the Penal Code through a reference to Article 442-1 of the Penal Code.

The financing for the offences of the Convention on the Physical Protection of Nuclear Material (1980) is provided for in Article 3 of the Law of 11 April 1985.

more specific terrorist acts. The Law of 26 December 2012 further clarified that "*the expression 'terrorist financing offence' also refers to the unlawful and wilful providing or collecting of funds, securities or assets of any type by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, by a terrorist or a terrorist group, including in the absence of a link to one or more specific terrorist acts, even if they were not effectively used by the terrorist or the terrorist group*".

The deficiency has been addressed.

SR.II (Deficiency 3) - The notion of terrorist group does not cover a group formed by two persons, and therefore the financing of such a group is not a crime as such.

Law of 26 December 2012 also specified that a terrorist group is composed of at least two persons.

The deficiency has been addressed.

SR.II (Deficiency 4) - In the absence of a complete offence consistent with SR II, the financing of terrorism constitutes an incomplete predicate offence for money laundering.

See Recommendation 1 – deficiency 1, above.

The deficiency has been addressed.

SR.II (Deficiency 5) - There is no criminal liability for legal persons, although no fundamental principle of domestic law prevents this.

The Law of 3 March 2010 has modified the Penal Code and introduced criminal liability for legal persons (Articles 34 to 40). Legal persons for criminal offences committed in the name of or in the interest of the legal persons by statutory bodies and senior management [*organes légaux et dirigeants*]. Sanctions applicable include fines (up to EUR 750 000) and the dissolution of the legal person. In case of money laundering and terrorist financing the maximum fine applicable is multiplied by 5 (or EUR 3 750 million). The criminal liability of legal persons does not exclude that of the natural person also perpetrator or accomplice of the same offence.

The deficiency has been addressed.

SR.II (Deficiency 6) - The effectiveness of the system cannot be tested in the absence of prosecution of terrorist financing.

Luxembourg has provided the following figures on the number of files opened by the FIU on suspicion of TF based on STRs and other sources. Luxembourg also advised that there has been no prosecution, and thus no conviction, for TF since 2008.

Table 3: **Number of files opened by the FIU**

2010	2011	2012	2013 (as of 15.09)
35	40	28	47

SPECIAL RECOMMENDATION II – CONCLUSION

Luxembourg has made numerous changes to its CFT framework and related offence. It now appears to have reached a level of compliance at least equivalent to LC.

RECOMMENDATION 13 – RATING PC

R.13 (Deficiency 1) - Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

The deficiency has been addressed.

R.13 (Deficiency 2) - The obligation to co-operate [with authorities] may fail to function properly due to the fear on the part of the financial sector professional, who has not fulfilled his obligations, that he might incriminate himself.

Law no. 193 of 27 October 2010 modified the provisions of Article 4 of the AML/CFT law. A new paragraph was inserted at the beginning of Article 4 and a new Article 4 *bis* was introduced. Articles 4 and 4 *bis* now explicitly provide that no professional secrecy applies vis-à-vis the FIU in respect of the STR obligation and that the disclosure to national AML/CFT authorities does not violate the professional secrecy or any secrecy agreed by contract. It also provides that the STRs, as well as supporting document and information cannot be used for prosecution of the reporting entity on the basis of Article 9 of the AML/CFT law (sanctions applicable for violation of the preventative obligations set forth in the law). The circulars of the CSSF and CAA stating that the reporting entity is not liable for the violation of any professional secrecy or any kind of responsibility when the STR was in good faith and that were criticised in the Mutual Evaluation Report have been repealed.

The Mutual Evaluation Report highlighted under R.4 some concerns arising from the combination of STR obligation and the professional secrecy. In that respect, it should also be noted that Law no. 193 of 27 October 2010 also revised the drafting of the STR obligation (as well as the obligation to respond to FIU requests) which now explicitly requires reporting entities to provide the FIU with supporting information and documents. Another change in Article 5 is that the STR should now be filed without delay to the FIU (the term 'promptly' was used until 2010). Luxembourg was criticised because the CSSF Circular and the CAA Circular Letter stated that in case of inappropriate STR, financial institutions run the risk to be pursue by their clients for violation of the professional secrecy. The CSSF and CAA circulars have been repealed.

It seems that the deficiency has been addressed. However, it is not possible in the context of this desk review to ascertain of the degree to which reporting entities observe this requirement in practice.

R.13 (Deficiency 3) - The FT offence, as a predicate offence for laundering, is not criminalised in accordance with Special Recommendation II.

See Recommendation 1 and Special Recommendation II above.

The deficiency has been addressed.

R.13 (Deficiency 4) - It is unclear whether professionals are in practice authorised to report transactions that might involve tax offences that are not predicate offences to ML.

Article 5(1)a. of the AML/CFT law requires financial institutions to file an STR when they know, suspect or have reasonable grounds to suspect that money laundering or terrorist financing is being committed or has been committed or attempted. The obligation explicitly applies regardless of whether those filing the STR can determine the predicate offence. The CSSF Circular in place at the time of the Mutual Evaluation interpreted this provision as requiring the reporting entity to consider whether the funds in question are proceed of one of the predicate offences, which excludes tax offences as they are not predicate offence for money laundering.

Since the Mutual Evaluation, Article 8(5) of the GDR of 1 February 2010 extends the protection for disclosures made in good faith even when the reporting entity is not fully aware what the actual illegal activity was and regardless of whether an illegal activity occurred, and the circulars of the CSSF and the CAA have been repealed.

This deficiency was originally raised through meetings of the assessment team with representatives of the private sector. It is clear that the present STR obligation does not exclude tax matters; however, it is impossible to determine through a desk-based review the degree to which practitioners actually forward matters that may relate to tax matters in practice.

EFFECTIVENESS:

R.13 (Deficiencies 5 and 7) – The number of STRs is very low, distributed among a small number of reporters, and the statistics show that many STRs are motivated not by suspicion but by the fact that the customer has been investigated or convicted; Moreover, it appears that financial institutions go further than normally necessary in examining the underlying offence.

With respect to effectiveness, Luxembourg provided updated data on the number of STRs filed with the FIU (see R.5 – deficiency 13, above) and advised without any further detail that the CSSF imposed sanctions on professionals for not having reported suspicious transactions.

R.13 (Deficiency 6) – With respect to terrorist financing, the obligation is in practice limited to reporting transactions involving listed persons.

Article 8(2) of the GDR of 1 February 2010 explicitly provides that TF-related STRs are not limited to transactions involved listed persons. The material deficiency appears to have been addressed. However, in the absence of further information on TF-related STRs filed by financial institutions, it is not possible to determine whether in practice financial institutions actually filed TF-related STRs for any other reason.

RECOMMENDATION 13 – CONCLUSION

Luxembourg has amended its AML/CFT law and implementing regulations and other measures addressing the material deficiencies identified in the reporting obligation. Some of the deficiencies identified in the Mutual Evaluation were not material but rather of questions of effectiveness and

arose during interviews with the private sector. In the framework of a desk-review, it is not possible to determine fully the degree to which these effectiveness deficiencies have been addressed. Nevertheless, based on the clarifications on material issues, Luxembourg should therefore be considered to have reached a level of compliance at least equivalent to LC.

SPECIAL RECOMMENDATION IV – RATING PC

SR.IV (Deficiency 1) - Terrorist financing is not criminalised in accordance with SR II.

See Special Recommendation II above.

The deficiency has been addressed.

SR.IV (Deficiency 2) - The obligation to co-operate [with authorities] may fail to function properly due to the fear on the part of the financial sector professional, who has not fulfilled his obligations, that he might incriminate himself.

See Recommendation 13 – deficiency 2, above.

The deficiency seems to have been addressed.

SR.IV (Deficiency 3) - The effectiveness of the system has not been established: in practice only transactions involving listed persons are reported to the FIU, and the number of STRs relating to terrorist financing is low.

See Recommendation 13 – deficiency 6, above.

Luxembourg has provided figures on the number of TF related files opened by the FIU and stated that the number of TF-related STRs is identical to the files opened. Luxembourg also advised that there has been no prosecution, and thus no conviction, for TF since 2008.

Table 4: **Number of TF-related files opened by the FIU**

2008	2009	2010	2011	2012	2013 (as of 15.09)
16	24	28	36	27	45

SPECIAL RECOMMENDATION IV – CONCLUSION

As is the case for Recommendation 13, Luxembourg has taken measures to address the material deficiencies identified in the obligation to report TF-related suspicious transactions. It is not possible on the basis of the information provided and in the context of this desk-based reviewed to determine the degree to which effectiveness shortcomings identified in the practice have been fully addressed. Nevertheless, Luxembourg appears to have reached a level of compliance at least equivalent to LC.

KEY RECOMMENDATIONS

RECOMMENDATION 3 – RATING PC

R.3 (Deficiencies 1 and 2) - Among the property used or intended for use in an offence, only those belonging to the perpetrator of the offence may be confiscated; The same holds for confiscation of corresponding value, which is generally too restricted in its scope of application.

Law no. 193 of 27 October 2010 amended Article 32-1 of the Penal Code relating to special confiscation applicable to money laundering, terrorism and terrorist financing. The revised Article 32-1 of the Penal Code now stipulates that any property used or intended to be used in the commission of an offence can be confiscated. The scope of the confiscation of property of corresponding value has also been extended to any property used or intended to be used to commit the money laundering offence. With respect to the other predicate offences, general provisions on special confiscation are set forth in Article 31 and remain unchanged.

The deficiency has therefore been only partially addressed.

R.3 (Deficiency 3) - Available provisional measures for blocking/freezing assets are not sufficiently broad and effective.

Law no. 193 of 27 October 2010 modified Article 24-1 of the Code of Criminal Procedure. Pursuant to the revised provisions, the public prosecutor can ask the investigating judge to order a search, a seizure, an audition or an expert assessment without a formal preliminary investigation being opened. These powers are now also applicable for money laundering. These amendments broadly expand the scope of provisional measures.

With respect to the power of the FIU to block a transaction (Article 5(3)3 of the revised AML/CFT law), it is now available for a maximum period of 6 months (it was limited to three months at the time of the Mutual Evaluation Report).

The following figures on the number and amounts of assets blocked by the FIU were provided.

Table 5: **Assets blocked by the FIU**

	2010	2011	2012
Number of cases	28	24	31
Amounts in EUR	29 871 576	67 367 516	75 840 067

The material deficiency appears to have been addressed.

R.3 (Deficiency 4) - The procedure for tracing assets is rendered cumbersome by professional secrecy.

See Recommendation 4, below.

The deficiency appears to have been addressed.

R.3 (Deficiency 5) - The system's effectiveness cannot be tested in the absence of statistics (except those from the FIU).

Luxembourg provided the figures below on the amounts seized in cases of money laundering.

Table 6: **Amounts seized in cases of money laundering**

	2010	2011	2012	2013
Amounts	EUR 22,370,932 USD 900 000	EUR 2 624 913 USD 2 279 117	EUR 25 828 158	EUR 3 222 028 USD 8 500 000 DK 1 217 807 SK 1 099 000

R.3 (Deficiency 6) - Confiscation is not used in money laundering cases, despite the risks of laundering in Luxembourg. The links that must be established between the assets and a specific offence are problematic.

Luxembourg provided the figures below on the amount confiscated in cases of money laundering.

Table 7: **Amounts confiscated in cases of money laundering**

	2010	2011	2012
Amounts	EUR 3 682 153 USD 2 243 000	EUR 948 910	EUR 696 215

RECOMMENDATION 3 – CONCLUSION

Material deficiencies of the confiscation have almost all be addressed; there remain shortcomings for the other predicate offences. Overall, Luxembourg now appears to have reached a level of compliance at least equivalent to LC.

RECOMMENDATION 4 – RATING PC

R.4 (Deficiency 1) - There is strict professional secrecy which can be invoked against the FIU.

See Recommendation 13 – deficiency 2, above.

The deficiency appears to have been addressed.

R.4 (Deficiency 2) - Private sector representatives said they feared prosecution for violating professional secrecy in observance of their reporting and information obligations, and for this reason they carefully consider whether the transaction constitutes a predicate offence before reporting it.

See Recommendation 13 – deficiency 2, above.

The deficiency appears to have been addressed.

R.4 (Deficiency 3) - The penalties (fines) incurred by financial institutions for violating their obligations to co-operate are less severe than those incurred for violating banking secrecy. For this reason, it appears that banking secrecy hinders implementation of the FATF Recommendations.

Law no. 193 of 27 October 2010 also increased by ten the amount of the maximum of the criminal fines applicable to financial institutions for the violation of their AML/CFT obligations, including the STR obligation and obligation to respond to FIU requests provided for in Article 5, to EUR 1.250 million. The minimum level of the fine remains at EUR 1,250. Violation of the professional secrecy is sanctioned by 8 days to 6 months imprisonment and a fine from EUR 500 to 5,000.

The deficiency appears to have been addressed.

R.4 (Deficiency 4) - The effectiveness of the system is not demonstrated, given the low number of STRs.

Luxembourg provided updated figures on the number of STRs filed with the FIU, see Recommendation 5 – deficiency 13.

RECOMMENDATION 4 – CONCLUSION

Luxembourg has amended its AML/CFT law and implementing regulations and other measures addressing the material deficiencies. Some of the deficiencies are however not material but relate rather to effectiveness and arose through interviews with the private sector. On the basis of the information provided by Luxembourg and in the frame of this desk-review, it is not possible to ascertain that these deficiencies have been addressed. Nevertheless, based on the material changes made, Luxembourg appears to have reached a level of compliance a least equivalent to LC.

RECOMMENDATION 23 – RATING PC

R.23 (Deficiency 1) - Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

The deficiency has been addressed.

R.23 (Deficiency 2) - There are no obligations to prevent criminals' associates from holding or being the beneficial owner of a significant or controlling interest in a financial institution.

Law no. 193 of 27 October 2010 amended the laws establishing the CSSF and on the insurance sector and introduced a provision requiring the CSSF and CAA to ensure that "*natural or legal persons known to have ties other than strictly professional, either directly or indirectly, with organised crime do not take either direct or indirect control of natural or legal persons under its supervision, whether as beneficial owners, by acquiring a significant or controlling interest, by holding a management function or otherwise*".

In the implementation of this provision, the CSSF and CAA assess the expertise and integrity of directors and senior managers, including through the verification of criminal records, requests to

the public prosecutor, police. The CSSF requires applicants to fill in a declaration of honour and advised that applications have been rejected on the basis of false declaration. The CSSF also screens the applicants through public and specialised data bases. The CAA seems to limit its verification to the opinion of the judicial authorities, including the FIU.

The deficiency has been addressed.

R.23 (Deficiency 3) - There is no oversight strategy allowing the competent authorities to assess or review the procedures adopted by financial institutions to determine and manage the level of risk or to examine the decisions taken by these institutions.

The CSSF established in 2010 a Risk-Based Approach Committee. On the basis of a Circular of July 2011, the CSSF received information from the entities subject to its supervision on how they implement the RBA in AML/CFT and on how they assess their AML/CFT risks. This information is taken into account by CSSF in its own risk-based approach (RBA) in AML/CFT supervision. For that purpose, the CSSF also issued in September 2010 a guidance paper on assessing financial institutions' risk. The results of these assessments will be used to determine the procedures and level of supervisory measures that the CSSF will put in place.

The CSSF Regulation 12-02 issued on 14 December 2012 also contains RBA-related obligations that financial institutions should implement and whose respect is supervised by the CSSF. Pursuant to the CSSF Regulation, the mandate of external auditors has also been expanded to cover risk assessments and the implementation of the RBA by financial institutions. Luxembourg advised that the CAA Regulation no. 13/01 (Article 47) also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

The CAA also established a Committee on RBA on 4 January 2011 and issued Circular Letters on (i) the risk assessment at company-level; (ii) the collection of the results of these assessments by the CAA; and (iii) AML/CFT questionnaires. The CAA conducted first inspections on the basis of the information gathered.

Luxembourg advised that the AML/CFT procedures may be reviewed by the CSSF as part of its supervision mission. In 2013, measures, including a fine and a warning, have been taken against 8 financial institutions for failures in their risk-based approach. No specific figures have been communicated concerning the insurance sector.

The deficiency appears to have been addressed.

R.23 (Deficiencies 4 and 7) - With the exception of credit institutions and collective investment funds, the CSSF has no inspection plan; CSSF inspections do not cover institutions' AML/CFT internal procedures and policies.

The CSSF issued on 29 September 2010 an internal procedure for AML/CFT inspections applicable to all entities under its supervision except for credit institutions. Luxembourg advised that this procedure is updated with the regulatory changes as necessary. The inspection plans include guidelines on the management interview, sample-based AML/CFT controls and CCD documentation,

review of the internal control systems, AML/CFT policies and procedures and of the transactions monitoring system.

The deficiency has been addressed.

R.23 (Deficiency 5) - The CSSF carries out no inspections of any financial institutions other than credit institutions and collective investment funds.

Luxembourg reported that for the period 2010-2013 (as of 1 September) 182 specific AML/CFT on-site inspections took place, including 70 credit institutions, 75 other financial institutions, 8 management companies and 24 companies investing in risk capital.

The deficiency has been addressed.

R.23 (Deficiency 6) - The number and quality of AML/CFT inspections by the authorities is insufficient.

As mentioned above, for the period 2010-2013, the CSSF conducted 182 specific AML/CFT on-site inspections, which now include management interviews, the review of AML/CFT procedures and of the measures to address AML/CFT risks. On-site inspections last from 3 to 5 days and inspection teams consist of 2 to 5 officers.

Over the same period, the CAA conducted less than 10 specific AML/CFT inspections in life insurance and reinsurance companies. However, it should be noted that around 100 general inspections took place; all include an AML/CFT component.

The number of AML/CFT inspections has increased and on the basis of the Regulation and Circulars issued by the two supervisory bodies, it seems that the in-depth and quality of the inspection has also improved. See Recommendation 17 below for the sanctions pronounced against financial institutions.

It seems that the deficiency has been addressed concerning the number of inspections. It is however not possible in the context of this desk-based review and on the basis of the information provided to assess the effectiveness of the supervision regime in place.

R.23 (Deficiency 8) - The AML/CFT provisions on licensing procedures applicable to financial institutions and insurance companies came into force only recently and their effectiveness has not been tested.

Luxembourg advised that the CSSF has rejected 'a few' applications since 2010. The CSSF also filed about 50 reports with the Public Prosecutor on persons providing financial services without the necessary license and published on its website warnings relating to persons and entities operating without license.

It is difficult on the basis of the information provided to assess the effectiveness of the licensing procedures.

RECOMMENDATION 23 – CONCLUSION

Luxembourg has taken measures to improve the supervision of its financial institutions and extend the licensing procedures. The number of AML/CFT inspections has significantly improved since these measures were put into place. It is however not possible in the context of this paper to further assess the effectiveness of the new regime. Therefore, it seems that Luxembourg has now reached a level of compliance at least equivalent to LC.

RECOMMENDATION 35 – RATING PC

VIENNA CONVENTION:

R.35 (Deficiency 1) - The laundering offence does not appear to cover disguise.

See Recommendation 1 – deficiency 2, above.

The deficiency has been addressed.

R.35 (Deficiency 2) - Confiscation and freezing measures are limited to assets used or intended for use in committing an offence and belonging to the convicted offender; the same is true for confiscation of corresponding value which is too restrictive in its scope of application.

See Recommendation 3 – deficiencies 1 and 2, above.

The deficiency has been partially addressed.

R.35 (Deficiency 3) - Inadequate provisional measures and powers for effective confiscation, seizure and freezing of assets.

See Recommendation 3 – deficiency 3, above.

The material deficiency appears to have been addressed.

PALERMO CONVENTION:

R.35 (Deficiency 4) - The laundering offence of does not cover disguise.

See Recommendation 1 – deficiency 2, above.

The deficiency has been addressed.

R.35 (Deficiency 5) - Legal persons are not criminally liable.

See Special Recommendation II – deficiency 5 above.

The deficiency has been addressed.

R.35 (Deficiency 6) – Confiscation and freezing measures are limited to assets used or intended for use in committing an offence and belonging to the convicted offender; the same is true for confiscation of corresponding value which is too restrictive in its scope of application.

See Recommendation 3 – deficiency 2, above.

The deficiency has been partially addressed.

R.35 (Deficiency 7) - Inadequate provisional measures and powers for effective confiscation, seizure and freezing of assets.

See Recommendation 3 – deficiency 3, above.

The material deficiency appears to have been addressed.

TERRORIST FINANCING CONVENTION:

R.35 (Deficiency 8) - Not all of the terrorist acts intended by the Convention are criminalised.

See Special Recommendation II – deficiency 1 above.

The deficiency has been addressed.

R.35 (Deficiency 9) - The crime of terrorist financing does not cover the financing of individual terrorists or groups apart from commission of a terrorist act.

See Special Recommendation II – deficiency 2 above.

The deficiency has been addressed.

R.35 (Deficiency 10) - Inadequate provisional measures and powers for effective confiscation, seizure and freezing of assets.

See Recommendation 3 – deficiency 3, above.

The material deficiency appears to have been addressed.

RECOMMENDATION 35 – CONCLUSION

Consistent with the conclusion under Recommendations 1, 3 and Special Recommendation II, Luxembourg should now be seen as having reached a rating for Recommendation 35 that is at least equivalent to LC.

SPECIAL RECOMMENDATION I - RATING PC

TERRORIST FINANCING CONVENTION:

SR.I (Deficiency 1) - Not all the terrorist acts of the Convention are criminalised.

See Special Recommendation II – deficiency 1 above.

The deficiency has been addressed.

SR.I (Deficiency 2) - The crime of terrorist financing does not cover the financing of individual terrorists or groups apart from commission of a terrorist act.

See Special Recommendation II – deficiency 2 above.

The deficiency has been addressed.

SR.I (Deficiency 3) - Legal persons are not criminally liable.

See Special Recommendation II – deficiency 5 above.

The deficiency has been addressed.

UN RESOLUTIONS:

SR.I (Deficiencies 4 to 8) – Not all the funds and other assets targeted by the Resolutions are covered by the Community regulations; Freezing pursuant to S/RES/1373/2001 is limited to the non-Community persons and entities designated by Regulation 2580/2001; Regulation 881/2002 has been annulled with respect to several persons and entities on the UN list. Its effects have been maintained temporarily, but it appears that other persons are likely to obtain annulment with respect to themselves; There are no domestic procedures for (i) supplementing the Community mechanism and (ii) ensuring effective implementation of the mechanism; Doubts about the effectiveness of the system and whether the freezing of funds and other assets is immediate.

See Special Recommendation III below.

The deficiencies have been largely addressed.

SPECIAL RECOMMENDATION I – CONCLUSION

Consistent with the conclusion under Special Recommendations II and III, Luxembourg should now be seen as having reached a rating for Special Recommendation I equivalent to LC.

SPECIAL RECOMMENDATION III – RATING PC

SR.III (Deficiency 1) - There is uncertainty as to the continued effect of Regulation 881/2002 in light of the annulments ordered for certain persons listed in it.

Regulation 881/2002 has continued to be challenged since the Mutual Evaluation Report of Luxembourg was adopted. Luxembourg has taken measures in order to compensate for any shortcomings or disruption of the EU mechanism. Part III of Law no. 193 of 27 October 2010 relates to the implementation of United Nations Security Council resolutions as well as acts adopted by the European Union concerning prohibitions and restrictive measures in financial matters in respect of certain persons, entities and groups in the context of the combat against terrorist financing. Pursuant to Article 3 of the law, a Grand-Ducal Decree could be issued against the persons and

entities whose assets would cease to be subject to a freezing decision following a successful challenge of the EU Regulation.

The deficiency has been addressed.

SR.III (Deficiency 2) - The regulations do not cover all the funds and other assets referred to in resolutions S/RES/1267/1999 and 1373/2001.

Article 2 of the Law defines 'funds' in a very broad way. 'Funds' includes "financial assets and economic benefits of every kind, including but not limited to cash, cheques, claims on money, drafts, money orders and other payment instruments, deposits with financial institutions or other entities, balances on accounts, debts and debt obligations, publicly and privately traded securities and debt instruments, including stocks and shares, certificates presenting securities, bonds, notes, warrants, debentures, derivatives contracts, interest, dividends or other income on or value accruing from or generated by assets, credit, right of set-off, guarantees, performance bonds or other financial commitments, letters of credit, bills of lading, bills of sale as well as any documents evidencing an interest in funds or financial resources, and any other instrument of export-financing". This definition is supplemented by the definition of 'economic resources', which are assets of every kind, tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, goods or services. Pursuant to Article 2-1 of the law, funds and economic resources are among others subject to freezing measures.

The deficiency has been addressed.

SR.III (Deficiency 3) – The freezing possibilities pursuant to S/RES/1373/2001 are limited to persons and entities designated by Regulation 2580/2001. With respect to persons who have no link to a country outside the European Union, the measures are limited to enhanced police and judicial co-operation.

Pursuant to the provisions of Articles 1.1.a and 1.3, prohibitions or restrictions, seizure and freezing of funds and other economic resources may target citizens of Luxembourg (both natural and legal persons) and any other natural or legal person operating in or from Luxembourg and be applied pursuant to the UN resolutions adopted by the Security Council in application of Chapter VII of the UN Charter, including UNSCR 1373. These measures are implemented through the issuance of Grand-Ducal Decrees, as provided for in Article 3.

The deficiency has been addressed.

SR.III (Deficiency 4) - Lack of any procedure for de-listing or for unfreezing funds and other assets, unblocking funds and other assets frozen inadvertently, or accessing frozen funds and other assets under certain conditions.

Article 4.1 of the Law stipulates that the list of persons subject to measures set forth in Article 1 by virtue of a Grand-Ducal Decree is published on a website operated by the Ministry of Finance. Article 2 of the implementing GRR of 29 October 2010 provides that the Minister of Finance is competent to deal with any questions or claims regarding the implementation of the measures made by the listed persons or by those who are required to apply them. The website provides procedures

for delisting and access to frozen funds as well as for unfreezing funds and other assets inadvertently affected by a freezing mechanism.

The deficiency has been addressed.

SR.III (Deficiency 5) - Inadequate procedures for financial institutions and other persons liable to be holding terrorist assets.

Article 33 of the CSSF Regulation no. 12/02 states that the CDD measures include the detection of natural and legal persons targeted by a prohibition or restrictive measure.

Luxembourg advised that the CAA Regulation no. 13/01 (Articles 31 and 37) also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

Apart from this obligation, no guidance or procedures have been issued on the freezing obligations of financial institutions and other persons holding funds or other assets subject to a prohibition or restriction measure.

The deficiency has not been addressed.

SR.III (Deficiency 6) - Lack of monitoring of the implementation of the European regulations and impossibility to sanction.

The CSSF and the CAA are responsible for the implementation of the law in their respective sector. Article 7 of the Law provides for the sanctions: eight days to five years imprisonment and/or a fine between EUR 251 and 250 000. Luxembourg advised that no breach of the sanction regime has been identified yet and therefore no sanction has ever been applied.

The deficiency seems to have been addressed.

SR.III (Deficiency 7) - The deficiencies identified under R.3 also apply to the freezing, seizure and confiscation of terrorist assets other than through the application of Resolutions 1267 and 1373.

See Recommendation 3, above.

The deficiency has been largely addressed.

SR.III (Deficiency 8) - Lack of effectiveness, and there are serious doubts that terrorist funds and other assets will be frozen without delay and on a continuing basis.

Luxembourg reported that under the new freezing mechanism, terrorist funds and other assets are frozen within hours. A webpage dedicated to international sanctions was set up and a monitoring committee was established in October 2010. The CSSF and CAA have organised numerous meetings with the private sector on the freezing of terrorist assets.

SPECIAL RECOMMENDATION III – CONCLUSION

Luxembourg has significantly improved its terrorist assets freezing with the adoption of a new mechanism. There remain shortcomings with respect to the procedures and guidance for financial institutions and other persons liable to be holding terrorist assets. However, it seems that overall Luxembourg has now reached a level of compliance at least equivalent to LC for Special Recommendation III.

SPECIAL RECOMMENDATION V – RATING PC

MUTUAL LEGAL ASSISTANCE:

SR.V (Deficiency 1) - The shortcomings identified under Recommendations 36 and 38 also apply in the framework of Special Recommendation V.

R.36:

With respect to the ML and TF offences and professional secrecy, see Recommendations 1 and 4 and Special Recommendation II, above.

Concerning the notification and appeal procedures provided for in the Law of 8 August 2000 on Mutual Legal Assistance on Criminal Matters, the legal remedy [*recours en nullité*] was repealed by Law no. 194 of 27 October 2010.

This Law also specifies that mutual legal assistance is refused if it exclusively involved offences related to taxes, customs duties or currency exchange under Luxembourg Law. *A contrario*, it may not be refused in case of accessory tax offence.

Luxembourg advised that the repeal of the legal remedy has reduced the execution of MLA requests, which are now executed within a few weeks, unless they involve complicated or numerous investigations.

R.38:

Law no. 193 of 27 October 2010 amended Article 5 of the Law of 17 March 1992 approving the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances of 20 December 1988 and extends the scope of application of the asset forfeiture fund in order to cover drug trafficking, money laundering and terrorist financing.

See also Recommendation 3 and Special Recommendation III, above.

The deficiency has been largely addressed.

SR.V (Deficiency 2) - The dual criminality requirement limits Luxembourg's possibilities to grant mutual assistance because of the shortcomings identified in criminalisation of TF and implementation of Special Recommendations II and III.

See Special Recommendations II and III, above.

The deficiency has been largely addressed.

SR.V (Deficiency 3) - There is no specific co-ordination mechanism or any fund or procedures for sharing seized assets.

As mentioned above, the asset forfeiture fund established by the Law of 17 March 1992 now also covers money laundering and terrorist financing related assets. On 26 July 2013, the creation of a specialised office for the management of seized and confiscated assets was decided by the Government Council.

The deficiency has been addressed.

EXTRADITION:

SR.V (Deficiencies 4 and 5) - The shortcomings identified under Recommendation 39 are also applicable in the framework of Special Recommendation V; The dual criminality required by the Law of 20 June 2001 limits Luxembourg's ability to grant extradition because of the shortcomings identified in implementation of Special Recommendation II.

With respect to the ML and TF offences, see Recommendation 1 and Special Recommendation II, above.

Concerning the prosecution of Luxembourg nationals, Law no. 193 of 27 October 2010 modified the two laws applicable for extradition. Both now provide that when Luxembourg refuses extradition, the case must be submitted to its competent authorities for the purpose of prosecution.

The deficiency has been addressed.

SR.V (Deficiency 6) – In the absence of actual cases of terrorist financing, the overall effectiveness of the extradition system cannot be verified.

Luxembourg advised that no extradition request has been made or received by Luxembourg, so that it remains impossible to assess the effectiveness of the extradition regime.

OTHER FORMS OF INTERNATIONAL COOPERATION:

SR.V (Deficiency 7) – With the exception of the FIU, it is not demonstrated that Luxembourg is sharing information on TF.

Luxembourg advised that the CSSF and the CAA both cooperation at national and international levels on TF, but no specific information was provided.

SPECIAL RECOMMENDATION V – CONCLUSION

Through amendments to various legislative texts on mutual legal assistance and extradition, Luxembourg has improved the framework of SR.V, which now appears to have reached a level of compliance at least equivalent to LC.

V. OVERVIEW OF MEASURES TAKEN ON IN RELATION TO OTHER RECOMMENDATIONS RATED NC OR PC

The Secretariat analysis of the information provided by Luxembourg concludes that the compliance for the core and key Recommendations has now reached a level at least equivalent to LC. Information provided by Luxembourg has been included for the remaining Recommendations with shortcomings as identified in the Mutual Evaluation. However, a full analysis of these shortcomings has not been undertaken.

RECOMMENDATION 2 – RATING PC

R.2 (Deficiency 1) - There is no criminal liability for legal persons, although no fundamental principle of domestic law prevents this.

See Special Recommendation II – deficiency 5 above.

The deficiency has been addressed.

R.2 (Deficiency 2) - There are serious doubts about the effectiveness of the sanctions regime in place, given Luxembourg's practice described under R.1, the country's specific situation, and the risks of laundering, as well as the low number of sanctions and level of penalties (prison sentences and fines) imposed.

Luxembourg has provided updated figures on the number of ML convictions, see Recommendation 1 – deficiency 3, above. No information was provided as to the nature of sanctions imposed.

RECOMMENDATION 6 – RATING PC

R.6 (Deficiency 1) – Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

R.6 (Deficiency 2) – The definition of PEP is not consistent with that of the FATF: not all important public functions and certain direct family members are not covered with the result that the PEP definition in Luxembourg is more restrictive than that of the FATF.

Law no. 193 of 27 October 2010 amended Article 1.10 and 11 of the AML/CFT law to include officials of important political parties on the list of person who are or have entrusted with important public functions and to specify that the list of family members in 1.11 is not exclusive.

R.6 (Deficiency 3) – The enhanced due diligence obligation with respect to PEPs applies only to those PEPs who reside outside Luxembourg.

Law no. 193 of 27 October 2010 amended Article 3-2.4 of the AML/CFT law, which now provides that enhanced due diligence is required for PEPs residing abroad or holding a public function in a foreign country or on behalf of a foreign country.

R.6 (Deficiency 4) – Lack of a legal or regulatory obligation to have a risk management system for determining whether the beneficial owner is a PEP.

Law no. 193 of 27 October 2010 amended Article 3-2.4.a of the AML/CFT law, which now requires financial institutions to have procedures to determine whether the customer or its beneficial owner is a PEP.

R.6 (Deficiency 5) – Lack of a legal or regulatory obligation to obtain senior management approval before opening an account. Only "high-level" approval is required without this being specified in an enforceable provision.

Article 3.4.4 of the GDR of 1 February 2010 specifies that 'high level approval' means senior management [haute direction], which involves the AML/CFT compliance officer.

R.6 (Deficiency 6) – There is no obligation to obtain senior management approval to continue a business relationship with a customer who has become a PEP.

Article 3.4.3 of the GDR of 1 February 2010 provides that 'Where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes a politically exposed person, professionals shall obtain approval to continue the business relationship from the senior management".

R.6 (Deficiency 7) – The effectiveness of the system has not been demonstrated, given the lack of obligation to determine whether a PEP is the beneficial owner, and the scope of CDD exemptions.

Luxembourg reported that the respect of PEPs-related obligations is supervised by the two supervisory authorities and that the CSSF applied sanctions for violation of the obligations on PEPs. Luxembourg also advised that enhanced due diligence are mandatory for PEPs and that it is impossible to apply reduced due diligence to transactions and business relationships involving PEPs.

RECOMMENDATION 7 – RATING NC

R.7 (Deficiency 1) - Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

R.7 (Deficiency 2) -The law regulates correspondent banking relations only with respect to financial institutions located outside the EU/EEA.

Law no. 193 of 27 October 2010 amended Article 3-2.3 of the AML/CFT Law and extended the provisions relating to cross-border correspondent banking to financial institutions located inside the EU/EEA in case of a higher risk.

R.7 (Deficiency 3) - The CSSF Circular contradicts the law by extending the legal exemption to financial institutions located in equivalent third countries.

The CSSF Circular 10/476 has been repealed. The CSSF Regulation CSSF 12-02 of 14 December 2012 does not provide for such an extension of legal exemption to financial institutions located in equivalent foreign countries.

R.7 (Deficiency 4) - Financial institutions are not required to verify whether the institution concerned has been subjected to ML/FT investigation or regulatory action.

Article 3.3.1 of the GDR of 1 February 2010 specifies that financial institutions are required to verify whether the institution concerned has been subjected to ML/TF investigation or regulatory action.

R.7 (Deficiency 5) - There is no requirement to obtain senior management approval to establish a correspondent banking relationship.

Article 3.3.2 of the GRD of 1 February 2010 requires that senior management, including the AML/CFT compliance officer, approves the establishment of a correspondent banking relationship.

R.7 (Deficiency 6) - The CSSF Circular is silent as to the implementation of these obligations; their effectiveness of their application cannot be measured.

As mentioned above, the CSSF Circular has been repealed. With respect to effectiveness, Luxembourg reported that the respect of the requirements on correspondent banking relationships is subject to the CSSF supervision.

RECOMMENDATION 8 – RATING PC

R.8 (Deficiency 1) - Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

R.8 (Deficiency 2) – The law does not require financial institutions to adopt policies or have measures to prevent the misuse of new technologies.

Article 7.5 of the GDR of 1 February 2010 specifies that an appropriate internal management includes necessary measures to prevent the misuse of technological developments for money laundering or terrorist financing. Furthermore, Article 4.2 of the CSSF Regulation 12-02 of 14 December 2012 provides that "in the context of their risk assessment according to a risk based approach, professionals are required to take into account the money laundering or terrorist financing risks which may arise in relation to (i) the development of new products and new business practices, including new delivery mechanisms, and (ii) the use of new or developing technologies for both new and pre-existing products. This risk assessment shall take place prior to the launch of new products, business practices or the use of new or developing technologies" and Article 38.2 requires financial institutions to adopt AML/CFT procedures, including on the measures designed by the professional to prevent the misuse of the products or the execution of transactions that might favour anonymity, in particular, as regards new technologies. Luxembourg advised that the CAA

Regulation no. 13/01 also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

R.8 (Deficiency 3) - One of the supplementary CDD measures that must be taken when entering a non-face-to-face relationship does not allow for satisfactory management of the risks relating to the customer's absence.

The CSSF Circular 10/476 and item 70.1 of the CAA Circular Letter 09/6 containing the concerned supplementary CDD measures have been repealed.

Article 27 of the CSSF Regulation 12-02 of 14 December 2012 requires professionals to implement strict procedures to verify the identity and rights and powers of the customer or proxy to access professional services. Luxembourg advised that the CAA Regulation no. 13/01 (Article 27) also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

R.8 (Deficiency 4) - There is no provision for transactions that do not involve the physical presence of the customer.

Article 3.2 of the GDR of 1 February 2010 provides for transactions that do not involve the physical presence of the customer:

> *(2) For non-face-to-face transactions, the professionals shall have policies and procedures in place to address any specific risks associated with such business relationships or transactions. These policies and procedures shall apply when establishing customer relationships and when conducting ongoing due diligence.*
>
> *Non-face-to-face operations include business relationships concluded over the Internet or by other means such as through the post, services and transactions over the Internet including trading in securities by retail investors over the Internet or other interactive computer services, use of ATM machines, telephone banking, transmission of instructions or applications via facsimile or similar means and making payments and receiving cash withdrawals as part of electronic point of sale transaction using prepaid or reloadable or account-linked value cards.*
>
> *Measures for managing the risks shall include specific and effective customer due diligence procedures that apply to non-face-to-face customers. Such procedures include e.g. the certification of documents presented, the requisition of additional documents to complement those which are required for face-to-face customers, developing independent contact with the customer, the use of third party introduction or the requirement of the first payment to be carried out through an account in the customer's name with another credit institution subject to similar customer due diligence standards.*

RECOMMENDATION 9 – RATING PC

R.9 (Deficiency 1) - Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

R.9 (Deficiency 2) - The CSSF Circular and the CAA Circular Letter limit legislative requirements on conditions for granting third-party introducers status to banks and financial institutions of the EU or the EAA by automatically recognising them as third party introducers.

The CSSF Circular 10/476 and item 86 of the CAA Circular Letter 09/6 containing the concerned supplementary CDD measures have been repealed.

Article 7 of the CSSF Regulation 12-02 of 14 December 2012 requires financial institutions to assess whether or not the AML/CFT framework of a foreign country can be considered as equivalent or not also in the context of third party introduction. A risk based approach is applied pursuant to which such EU/EEA member states may be presumed equivalent for AML/CFT purposes unless there is different information. Financial institutions are required to review such assessments on a regular basis. Luxembourg advised that the CAA Regulation no. 13/01 (Article 6) also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

R.9 (Deficiencies 3, 4 and 5) – Financial institutions are under no legal or regulatory obligation to ensure that the third party introducer, when established outside Luxembourg, will immediately supply certain elements of the CDD process; Financial institutions are also under no legal or regulatory obligation to ensure that the third party is able to supply, upon request and without delay, copies of all the documents obtained during the CDD process; The copies of document that third parties must supply are limited to those relating to identification and verification of customer identity, to the exclusion of information on the nature and purpose of the business relationship.

Article 6.1 to 3 of the GDR of 1 February 2010 requires financial institutions to immediately obtain from the third party the necessary information on the customer (*i.e.*, identification of the customer and beneficial owner and purpose and intended nature of the business relationship). Financial institutions are also required to take measures to ensure copies of relevant documents will be made available upon request and without delay.

RECOMMENDATION 11 – RATING PC

R.11 (Deficiency 1) - - Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

R.11 (Deficiencies 2, 3 and 4) - There is no legal or regulatory obligation to examine the operations covered by Recommendation 11; There is no legal or regulatory obligation to document the findings of such an examination; There is no legal or regulatory obligation for making these findings available.

Article 1.3.3 of the GDR of 1 February 2010 requires financial institutions to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent economic or lawful purpose. The following Article 1.3.4 provides for a non-exhaustive list of transactions that require such an attention.

Article 1.3.5 of the GDR requires financial institutions to scrutinise as far as possible the background and purpose of such transactions, set forth their findings in writing and keep these documents in accordance with Article 3(6)(b) of the AML/CFT Law and to keep them available for the competent authorities and auditors for at least five years, without prejudice to longer record-keeping periods prescribed by other laws.

Further details are available on this requirement in the CSSF Regulation 12-02. Luxembourg advised that the CAA Regulation no. 13/01 (Articles 30 and 37) also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

RECOMMENDATION 12 – RATING NC

R.12 (Deficiency 1) - It is uncertain whether securitisation firms, excluded from the scope of the AML/CFT Law, are covered when performing TCSP activities.

Law no. 193 of 27 October 2010 expanded the scope of the AML/CFT Law to securitisation undertakings, when they perform TCSP activities (Article 2.1.6.b of the AML/CFT Law).

R.12 (Deficiency 2) - The definition of trust and company services is not fully consistent with that of the FATF.

Law no. 193 of 27 October 2010 amended the definition of TCSPs of Article 1.8 of the AML/CFT Law, which now covers all the activities designated by the FATF.

R.12 (Deficiency 3) - The shortcomings identified under Recommendations 5, 6 and 8 to 11 in Section 3 are also valid for DNFBPs.

See Recommendations 5, 6 and 8 to 11, above. The AML/CFT Law, as amended by Law no. 193 of 27 October 2010 also applies to DNFPBs, as well as the GDR of 1 February 2010.

R.12 (Deficiency 4) - In addition, DNFBPs have no obligation to make documents and information available to the authorities on a timely basis.

Articles 1.5 and 8.4 of the GDR of 1 February 2010 specify that CDD documents that should be recorded should promptly be made available to competent authorities and the AML/CFT policies and procedures adopted by financial institutions should enable them respond rapidly and fully to information requests made by Luxembourg AML/CFT authorities. These provisions are also applicable to DNFBPs.

R.12 (Deficiency 5) - In addition to the shortcomings identified above, casinos have no obligation to identify the beneficial owner and to take reasonable steps to verify the identity of the beneficial owner.

Law no. 193 of 27 October 2010 amended Article 8 of the AML/CFT Law providing the CDD obligation applicable to casinos, which now include customers' beneficial owner.

RECOMMENDATION 14 – RATING PC

R.14 (Deficiency 1) - The tipping off prohibition only covers STRs that have already been submitted.

Law no. 193 of 27 October 2010 amended Article 5.5 of the AML/CFT Law on the tipping off prohibition, which now explicitly provides for STRs that are being made, but does not cover any more STRs that have been made in the past.

R.14 (Deficiency 2) - There are numerous exceptions to the tipping off ban which are not authorised by the Recommendation, in the case of international legal assistance requests and when the customer asks why the transaction was not carried out.

Law no. 193 of 27 October 2010 amended Article 5.3 of the AML/CFT Law which provides that financial institutions are not authorised to disclose the FIU instruction to stop the execution of a transaction without the prior consent of the FIU. This is an indirect exemption to the tipping off prohibition, which also applies in case of mutual legal assistance requests (new Article 7 of the law on mutual legal assistance of 8 August 2000). The Circular of the FIU was also amended; it now only repeats the principle set and exceptions set forth in Article 5.5 of the AML/CFT Law.

R.14 (Deficiency 3) - No sanctions were imposed for violations of tipping off detected in 2007 and 2008.

Luxembourg did not report any violation of the tipping off prohibitions since the Mutual Evaluation.

RECOMMENDATION 15 – RATING PC

R.15 (Deficiency 1) - Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

R.15 (Deficiencies 2 and 3) - Compliance is not required by the law or any other binding instrument, but only by the circulars issued by the supervisory authorities; Legislative provisions governing internal control make no mention of ML/FT.

Article 7 of the GDR of 1 February 2010 provides for internal control, including the obligation to establish and maintain internal procedures, policies and controls to prevent money laundering and terrorist financing and communicate these to employees. These procedures, policies and controls should cover all aspects of the AML/CFT obligations applicable to financial institutions, in particular, CDD, record keeping and STRs. The compliance function, independent and at senior management level, is also provided for; its powers and functions are described in Article 7.2. Further specifications are available for financial institutions subject to the supervision of the CSSF in the CSSF Regulation 12/02 of 14 December 2012. Luxembourg advised that the CAA Regulation no. 13/01 also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

R.15 (Deficiency 4) - Only the non-binding circulars mention appropriate employee hiring procedures, and they provide no details as to what these procedures should include.

Article 7.4 of the GDR of 1 February 2010 provides that an appropriate internal management includes appropriate screening procedures to ensure high standards when hiring employees. The CSSF Regulation elaborates on the information and documents required in that regard. Luxembourg advised that the CAA Regulation no. 13/01 also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

RECOMMENDATION 16 – RATING NC

R.16 (Deficiency 1) - It is uncertain whether securitisation firms, excluded from the scope of the AML/CFT Law, are covered when performing TCSP activities.

See Recommendations 12 – deficiency 1, above.

R.16 (Deficiency 2) - The shortcomings identified under Recommendations 13, 14, 15 and 21 in Section 3 are also valid for DNFBPs.

See Recommendations 13, 14, 15 above and 21 below.

R.16 (Deficiency 3) - No effective implementation given the very low number of reports.

Luxembourg provided the updated number of STRs filed by DNFBPs and advised training courses for DNFBPs have regularly been organised since 2010 by the FIU, supervisory authorities and Self-regulatory organisations (SROs).

Table 8: **Number of STRs filed by DNFBP**

	2005	2006	2007	2008	2009	2010	2011	2012	2013 as of 15.09
Casino	-	1	3	7	15	21	16	8	23
Lawyers	3	1	-	2	6	13	16	18	19
Registered Auditors	13	6	4	8	12	10	30	23	20
Accountants	19	11	17	25	29	46	101	112	54
Notaries	4	4	-	1	2	4	1	4	-
Other DNFBPs (Economic Advisors, Real Estate Agents, Dealers in high value goods)	4	2	-	1	2	2	6	4	3
Total	**43**	**25**	**24**	**44**	**66**	**96**	**170**	**169**	**119**

RECOMMENDATION 17 – RATING NC

R.17 (Deficiency 1) - Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

R.17 (Deficiency 2) - The fine thresholds (criminal and administrative) are too low to be dissuasive or proportionate.

Law no. 193 of 27 October 2010 amended Article 9 of the AML/CFT Law which provides for the sanctions applicable to violation of the AML/CFT obligations: a criminal fine of EUR 1,250 to 1.250 million. The law also modified the sanctions set forth in Article 63 of the law of 5 April 1993 on the financial sector and Article 46, 101 and 111 of the law of 6 December 1991 on the insurance sector. The amount of the fines was EUR 125 to 12,500; it is now EUR 250 to 250,000.

Luxembourg also reported that the CSSF has continuously increased the amount of the administrative fines applied since the amendment of the Law on the financial sector. In 2011, the CSSF applied fines for a total amount of EUR 51,250, including EUR 42,500 against legal persons and EUR 8,750 against natural persons. In 2012, the total amount of the fines applied reached EUR 143.000, including EUR 65,000 against legal persons and EUR 78,000 against natural persons. As of 31 December 2013, fines for a total amount of EUR 147,000 (including EUR 145,000 against legal persons) have been pronounced.

R.17 (Deficiencies 3 and 4) - Apart from withdrawal of license, the administrative sanctions and other measures available to the CSSF are not applicable to legal persons; The range of sanctions available to the CSSF is not broad enough (fine or prohibition of activity).

Law no. 193 of 27 October 2010 made the administrative sanctions available to the CSSF also applicable to legal persons and expanded the range of sanctions set forth in the law on the financial sector to warnings, reprimands [*avertissement et blâme*], limited or full prohibition to carry out one or several transactions or activities and temporary or definitive prohibition for managers and directors.

R.17 (Deficiency 5) - There are doubts about the applicability of CAA sanctions to the violation of AML/CFT obligations.

Law no. 193 of 27 October 2010 amended the law on the insurance sector, which now explicitly provides that sanctions provided for in the law also applies to the violation of AML/CFT obligations. No information was reported as to the sanctions applied by the CAA for violation of the AML/CFT obligations, if any.

R.17 (Deficiency 6) - Having never been applied, the sanctions regime is not effective or dissuasive.

No sanctions other than the fines applied by the CSSF (see above) have been pronounced either by the CSSF or the CAA for violation of the AML/CFT law.

RECOMMENDATION 19 – RATING PC

R.19 (Deficiency 1) - With the exception of a short note dating from 2004 and not in and of itself constituting a study, there is no evidence to show that Luxembourg has considered introducing a system for reporting cash transactions.

Luxembourg advised that the AML/CFT Coordination Committee and the National Committee of Prevention of ML/TF are considering this issue.

RECOMMENDATION 20 – RATING PC

R.20 (Deficiency 1) - It is not clear that Luxembourg has given further thought, since the AML/CFT law came into force in 2004, to subjecting other non-financial businesses and enterprises to AML/CFT provisions.

Luxembourg considered this matter on the occasion of the amendments of the AML/CFT Law, including the scope of the law, by Law no. 193 of 27 October 2010.

R.20 (Deficiency 2) - It is also not clear that Luxembourg is encouraging the development of modern and secure techniques for conducting transactions that are less vulnerable to the risk of money laundering.

The law of 10 November 2009 regulates payment services providers and e-money. Both activities require a licence, are regulated and subject to the AML/CFT regime.

RECOMMENDATION 21 – RATING NC

R.21 (Deficiency 1) - Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

R.21 (Deficiency 2) - There is no obligation for financial institutions to pay special attention in their business dealings and in their transactions with residents of countries that do not apply the FATF Recommendations or do so insufficiently.

Article 3.1 of the GDR of 1 February 2010 introduced the obligation for financial institutions to pay special attention and apply enhanced CDD to transactions and business relationships involving natural or legal persons, including financial institutions, from or located in countries that do not or sufficiently apply AML/CFT measures. The CSSF Regulation explicitly refers to the application of the FATF Recommendations. Luxembourg advised that the CAA Regulation no. 13/01 (Articles 30 and 37) also deals with this requirement. As mentioned above, no analysis of this regulation has been made; it is therefore not possible to assess the adequacy of this measure.

R.21 (Deficiency 3) - There are no effective measures for advising financial institutions of weaknesses in the AML/CFT systems of certain countries.

Article 3.1.2 of the GDR provides that supervisors and SROs are required to inform the professionals subject to their respective jurisdiction of "concerns about country-specific loopholes in the relevant

provisions for the fight against money laundering and terrorist financing". Both the CSSF and CAA issue Circulars informing financial institutions of the FATF decisions made with respect to high-risk and non-cooperative jurisdictions.

R.21 (Deficiencies 4 and 5) - There is no obligation to examine the operations covered by Recommendation 21 and to document the findings; There is no legal or regulatory obligation to document the findings of such an examination.

Article 3.1 of the GDR requires financial institutions to review the background of transactions involving natural and legal from or in countries that do not or sufficiently apply AML/CFT measures when those transactions have no apparent economic or visible lawful purpose. Findings must be kept in writing and be made available to competent authorities.

R.21 (Deficiency 6) - The counter-measures foreseen by the law are insufficient.

Pursuant to the provisions of Article 3.1.3 of the GDR, supervisory authorities and SROs are required to inform entities of their respective sector about the AML/CFT risk presented by countries that continue not to apply or to insufficiently apply AML/CFT measures and may require the application of specific measures. The last paragraph of Article 3.1 provides two examples of these measures: enhanced CDD (already provided for in the first place in Article 3.1.1) and enhanced reporting obligation.

R.21 (Deficiency 7) - In the absence of counter-measures visible, the system is ineffective.

Luxembourg advised that the guidelines issued by the CSSF and the CAA also deal with counter-measures. Most recently, the CSSF and CAA issued guidelines 13/753 and 13/11 respectively. However, these guidelines seem to be for information purposes only, as they do not contain any reference to the measures that financial institutions are required to take when dealing with customers from or located in a country that does not apply or insufficiently apply AML/CFT measures.

RECOMMENDATION 22 – RATING PC

R.22 (Deficiency 1) – Not all financial institutions are covered.

See Recommendation 5 – deficiency 1.

R.22 (Deficiency 2) - EU/EEA countries and countries listed in the Grand-Ducal Regulation are considered as equivalent; institutions are not required to determine whether the obligations of these countries are consistent with those of Luxembourg and the FATF Recommendations.

The GDR listing equivalent countries has been repealed.

Article 2.2.3 to 6 was also amended; it requires financial institutions to apply AML/CFT measures at least equivalent to those of the third EU Directive of ML and TF in their foreign branches and subsidiaries. It now refers to 'foreign countries', which seems to include EU countries, while it previously mentioned 'third countries', which meant foreign to the EU/EEA. Financial institutions

are required to pay special to that principle with respect to their branches and subsidiaries located in countries that do not or insufficiently apply AML/CFT measures. In any case, Article 2.2.4 specifies that the minimum requirements on AML/CFT are those applicable in Luxembourg, unless there are legal or regulatory obstacles. In that case competent authorities should be informed.

R.22 (Deficiency 3) - AML/CFT measures are limited to CDD and record keeping obligations.

Article 2.2.1 of the revised AML/CFT law also includes internal control.

R.22 (Deficiency 4) - There is no mention of countries that do not apply the FATF Recommendations or that do so insufficiently.

As mentioned above, Article 2.2.4 of the AML/CFT Law requires financial institutions to pay special attention to the fact that branches and subsidiaries located in countries that do not or insufficiently apply standards at least equivalent to those of the EU 3rd Directive.

RECOMMENDATION 24 – RATING NC

R.24 (Deficiency 1) - It is uncertain whether securitisation firms, excluded from the scope of the AML/CFT Law, are covered when performing TCSP activities.

See Recommendation 12 – deficiency 1, above.

R.24 (Deficiency 2) - There is no supervision for real estate agents, dealers in high-value goods and providers of trust and company services, apart from those covered under other activities.

Law no. 193 of 27 October 2010 introduced a new Article 26 to the AML/CFT law which provides that supervision for real estate, dealers in high-value goods and TCSPs is ensured by *l'Administration de l'Enregistrement et des Domaines* (hereinafter AED - indirect tax administration). It conducted 9 specific AML/CFT inspections in 2011, 53 in 2011 and 12 as of 1 October 2013.

R.24 (Deficiencies 3 and 4) - There are serious doubts about enforcement powers and consequently no penalties for registered auditors, lawyers, notaries and accountants who breach their AML/CFT obligations; In the absence of sanctions and evidence of controls conducted and their results, effectiveness has not been demonstrated.

Law no. 193 of 27 October 2010 amended relevant Articles of the Law on the organisation of the profession of notaries, on legal profession, on the organisation of the accounting profession and on the audit profession. Supervisory powers such as carrying out on-site inspections and sanctions are now explicitly provided for.

With respect to effectiveness, Luxembourg also reported that a number of Circulars have been issued and a number of meetings and awareness raising seminars organised.

RECOMMENDATION 25 – RATING PC

FINANCIAL INSTITUTIONS:

R.25 (Deficiency 1) – The STR guidelines say little about professionals' obligations and include only general indications with respect to money laundering.

Luxembourg did not report any progress in that respect.

R.25 (Deficiency 2) - Feedback is limited to the FIU annual report and acknowledgment of receipt of STRs.

Law no. 193 of 27 October 2010 amended Article 13 of the Law on the organisation of the judiciary, which provides for the establishment and functions of the FIU. With respect to the feedback to reporting entities, the new provision is not different from the previous one. No change in the means used by the FIU to provide feedback to reporting entities was reported. However Luxembourg advised that since 2011, the FIU has strengthened its feedback to reporting entities.

R.25 (Deficiency 3) - Guidelines are not tailored to the various sectors of financial institutions' activities in Luxembourg and do not indicate the measures that institutions should take to meet their AML/CFT obligations effectively.

The CSSF and the CAA have issued a number of guidelines. Most of them are to inform the private sector of the FATF decision with respect to high-risk and con-cooperative jurisdictions. Circulars have also been issued on the ML/TF risks and the revised version of the AML/CFT law.

DNFBPS:

R.25 (Deficiencies 4 and 5) - No profession has updated guidelines reflecting the latest amendments to the AML/CFT Law; The existing guidelines are not binding, but merely recall obligations without indicating how they should be applied and without considering the specific risks to which non-financial businesses and professions are exposed.

Luxembourg reported that a number of CSSF Circulars were continued to notaries by the Chamber of Notaries. It is however not certain that guidelines elaborated for financial institutions are also relevant for notaries. Luxembourg Bar Association issued an updated Circular Letter on 28 June 2010, prior to the adoption of the amendments to the AML/CFT law. Specific guidelines have been prepared for auditors and accountants. A circular was issued on 29 April 2013 by the AED for real estate agents. No information was provided concerning the other categories of DNFBPs.

RECOMMENDATION 27 – RATING PC

R.27 (Deficiency 1) – The authorities designated for investigations focus their efforts on the predicate offences and not on ML/FT violations.

See Recommendation 1, above.

R.27 (Deficiency 2) – The effectiveness of the system, given the small number of money laundering investigations (no terrorist financing investigations).

Luxembourg provided the following updated figures on the number of preliminary inquiries and investigations in cases of ML. Luxembourg advised that since 2010, the analysis of the TF-related

STRs has never confirmed the TF suspicion. There has been no prosecution, and thus no conviction, for TF in Luxembourg since 2008.

Table 9: **Number of Preliminary money laundering inquiries and investigations**

	2003-2004	2005-2006	2007	2008	2009	2010	2011	2012	2013 as of 15.09
Total number of cases:	**19**	**15**	**13**	**16**	**56**	**107**	**163**	**169**	**100**
Cases referred to the Public Prosecutor	15	10	9	11	39	92	122	125	66
Cases referred to an examining judge	4	5	4	5	17	15	41	44	34

RECOMMENDATION 30 – RATING PC

R.30 (Deficiency 1) - The FIU and the supervisory authorities are short-staffed (supervisory authorities for on-site AML/CFT inspections).

At the time of Mutual Evaluation, the FIU was composed of 2 full-time and 2 part-time prosecutors, one financial analyst and one assistant. As of October 2013, the FIU is composed of 3 full-time and 2 part-time prosecutors, 4 full-time and one part-time analysts and 3 full-time and one part-time assistant.

The staff of the CSSF increased from 322 to 462 members as of 1 September 2013. The AML/CFT on-site inspection comprises 7 staffs.

Since the MER, the CAA hired one senior specialist of AML/CFT issues and one junior solicitor participating in the onsite inspections.

R.30 (Deficiency 2) - The CSSF has not adopted a procedure for addressing potential problems with the independence and objectivity of its staff.

Luxembourg reported that the CSSF adopted an internal procedure 10/220 on that matter. It provides guidelines on independence and objectivity of its staff; it also addresses the situation of staff leaving the CSSF for the private sector. Pursuant to the adoption of these guidelines, invitations and gifts have been refused by staff of the CSSF and declarations of potential conflict of interests have been made.

R.30 (Deficiency 3) - With the exception of Customs and the CSSF, AML/CFT training is inadequate and disorganised.

Luxembourg reported that staff, in particular new staff of the three authorities participated in AML/CFT trainings.

RECOMMENDATION 31 – RATING PC

R.31 (Deficiency 1) - The effectiveness of the recently-created AML/CFT committee could not be tested.

Luxembourg reported that since its creation in July 2009, the national AML/CFT Committee held several meetings to examine and improve existing mechanisms of cooperation and coordination between supervisory authorities, judicial authorities and SROs.

R.31 (Deficiency 2) - The mechanisms of operational cooperation and coordination are essentially informal and their effectiveness could not be assessed.

Article 9.1 of the amended AML/CFT Law provides that supervisory authorities and the FIU "work in close cooperation and are authorised to exchange all information necessary for the accomplishment of their respective duties". Luxembourg advised that cooperation between the FIU and the two supervisory bodies was formalised by the signature of Memoranda of Understanding, with the CSSF on 14 December 2011 and on 7 December 2012 with the CAA. No further information was provided as to the effectiveness of these mechanisms and the cooperation and coordination between other competent authorities.

RECOMMENDATION32 – RATING PC

R.32 (Deficiencies 1, 2, 3 and 5) - The available statistics on STRs drawn from the successive annual reports of the FIU are confusing and hard to understand and interpret; It is only since 2008 that Luxembourg has been keeping statistics on the prosecution of predicate offences; When it comes to mutual legal assistance and other international requests for cooperation, the statistics initially reported by Luxembourg were not understandable and had to be reformulated. The same holds for the shared information obtained or received spontaneously by the FIU; There is no data on confiscations or on frozen terrorist assets.

Luxembourg reported that Law mo. 193 of 27 October 2010 amended the law on the organisation of the judicial system, in particular Article 13 *bis* which provides guidelines as to the statistics to be prepared for the FIU annual report. However, as mentioned above, FIU most recent reports are not very different from those reviewed by the Evaluation Team and contain similar data.

Luxembourg also advised a statistical service of the judicial authorities will become operational over the second half of 2014.

R.32 (Deficiency 4) - No statistics were offered on information sharing between supervisory authorities. The CAA did not provide detailed data on its inspections.

Luxembourg reported that Law no. 193 of 27 October 2010 amended the law on the CSSF and on the insurance sector, which now allow the CSSF and CAA to keep statistics.

RECOMMENDATION 33 – RATING PC

R.33 (Deficiency 1) - The RCS does not make it possible to know the beneficial owner of legal persons in all cases.

Luxembourg did not report any progress.

R.33 (Deficiency 2) - There is no mechanism to guarantee that the information contained in the RCS is accurate and up-to-date.

Luxembourg advised that a campaign of verification of the information contained in the *Registre du Commerce et des Sociétés* (RCS) was launched in 2012 in order to ensure that it is accurate and up-to-date. Legal persons registered with RCS have been called to update their information kept with the RCS within 60 days. Targeted legal persons were commercial and civil companies, branches from foreign companies, national economic interest groupings as well as European economic interest grouping, foundations and associations of public interest.

R.33 (Deficiency 3) - There is no appropriate measure to ensure transparency with respect to the shareholders of public companies and partnerships limited by shares that have issued bearer shares.

Luxembourg reported that a bill on immobilisation of bearer shares has been submitted to the Parliament on 4 October 2013.

RECOMMENDATION 34 – RATING NC

R.34 (Deficiency 1) – For trust and company service providers subject to the AML/CFT law under another head, it is not clear that those services are supervised.

See Recommendation 12 – deficiency 1, above.

R.34 (Deficiency 2) – Trust and company service providers subject to the AML/CFT law under this head alone are apparently not supervised.

See Recommendation 24 – deficiency 2, above.

R.34 (Deficiencies 3 and 4) – The information is accessible only in the course of criminal proceedings; The mechanism is not effective, as identification of trusts and their beneficial owner is not systematic.

Luxembourg advised that the joint Minister of Justice and Minister of Finance working group held meetings on how to address these deficiencies. In that view, the new FATF Recommendation 25 and other related documents have also been considered.

SPECIAL RECOMMENDATION VI – RATING PC

SR.VI (Deficiency 1) - The shortcomings identified for the different recommendations and described throughout section 3 apply equally to money or value transfer (MVT) services.

See Recommendations 5 *et al.*, above.

SR.VI (Deficiency 2) - There is no mechanism for detecting MVT services operating without a license.

Luxembourg advised that the coordination between supervisory authorities, the FIU and the Police in the licensing procedure also aims at detecting unlicensed MVTS. No further information was provided.

SPECIAL RECOMMENDATION VII – RATING PC

SR.VII (Deficiency 1) - There is no provision, in the case of an intra-Community transfer, to make complete data on the payer available to the competent authorities within three days, and immediately to the law enforcement authorities.

Law no. 193 of 27 October 2010 amended the AML/CFT Law and the Law of the Financial Sector. With respect to wire transfers, the EU Regulation is completed by the provisions of Article 5 of the AML/CFT law, which requires financial institutions to cooperate without delay with the FIU, and Article 39 of the Law on the Financial Sector, which require financial institutions to "*respond, exhaustively and without delay, to requests submitted to them by the competent authorities responsible for the combat against money laundering and terrorist financing and that relate to information accompanying transfers of funds and corresponding recorded information, irrespective of any rule of professional secrecy*".

SR.VII (Deficiency 2) - Supervision is inadequate.

Pursuant to Articles 34 and 38 of the CSSF Regulation of 14 December 2012, financial institutions are required to have internal policies and controls, which cover their obligations with respect to wire transfers. External auditors are also required to control the respect of these obligations by the financial institutions they audit (Article 49 of the CSSF Regulation). Luxembourg also advised that the respect of obligations on wire transfers is also monitored by the CSSF, including during its on-site inspections, and that administrative have been taken for violation of these obligations.

SR.VII (Deficiency 3) - The penalty for failure to fulfil the obligations of the regulation is not proportionate, effective and dissuasive.

See Recommendation 17 above.

SPECIAL RECOMMENDATION VIII – RATING PC

SR.VIII (Deficiency 1) - There is no outreach program with associations and foundations.

Luxembourg reported without further detail that an outreach program has been undertaken since 2010 through a publication available on the website of the Ministry of Justice. The publication is however limited to the list of the texts applicable to non-profit associations and foundations.

SR.VIII (Deficiency 2) - There is no supervision, and oversight is limited to certain transactions exceeding EUR 30 000.

No change to the legal or regulatory framework was reported. Luxembourg advised that it was decided in 2013 to create a sub-department of non-profit associations of public utility and foundations within the Ministry of Justice and that since 2012, annual accounts of all non-profit associations of public utility and foundations are systematically reviewed and controlled by an internal auditor of the Ministry of Justice.

SR.VIII (Deficiency 3) - There is no comprehensive system of sanctions.

Luxembourg advised that a bill amending the existing sanctions has been prepared. It should be noted that this bill was submitted to the Parliament in June 2009 and still not been voted.

SR.VIII (Deficiency 4) - There is no provision for domestic cooperation and coordination.

Luxembourg advised that the Ministry of Justice has strengthened its cooperation with the Ministry of Finance regarding the prior approval to create non-profit associations of public utility or foundations and strengthen its cooperation with the RCS to ensure that registered foundations comply with their legal obligations related to their registration.

SPECIAL RECOMMENDATION IX – RATING NC

SR.VIII (Deficiency 1) - The system is limited to movements beyond the EU and does not cover shipments by freight, mail or legal persons.

Law no. 193 of 27 October 2010 introduced a national cross-border declaration and disclosure system. It completes the EU regime and applies to any other transportation of cash of EUR 10 000 or more, under any form or by any means, entering, transiting via or leaving Luxembourg.

SR.VIII (Deficiency 2) - Customs does not have powers to stop or restrain.

Under the national mechanism, Customs can restrain the cash for 24 hours, while awaiting for the FIU instructions. The FIU can block the movement for three months.

SR.VIII (Deficiency 3) - Domestic co-ordination and international co-operation are inadequate.

Besides the information between Customs and the FIU, no information was provided with respect to broader national coordination and international cooperation.

SR.VIII (Deficiency 4) - Lack of dissuasive, effective and proportionate sanctions.

Under the national mechanism, the amount of the fine applicable has increased (between EUR 251 to 25 000). Luxembourg reported that no case of violation of the declaration has been identified. Therefore, no sanction has ever been applied.

SR.VIII (Deficiency 5) - There are doubts as to the effectiveness of the system, in light of the low number of declarations.

Luxembourg has provided the figures below on the number of cash declarations received.

Table 9: **Number of Preliminary money laundering inquiries and investigations**

	2011	2012		2013 (as of September) as of 15.09	
	Number	**Number**	**Amount in EUR**	**Number**	**Amount in EUR**
Cash declarations in accordance with Regulation EC n° 1889/2005	21	21	667.056	11	276.274
Cash declarations in accordance with the Law of 27 October 2010	7	65	2.383.492	80	12.395.472

In 2012, the Customs have asked 18 829 persons to declare whether they carry EUR 10 000 or more and subsequently controlled 10 877 persons. As of September 2013, 14 815 persons have been asked to declare and 6 353 persons were controlled.