COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM (MONEYVAL)

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Holy See (including Vatican City State)

Fifth Round Mutual Evaluation Report

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

The fifth round mutual evaluation report on Holy See including Vatican City State was adopted by the MONEYVAL Committee at its 61st Plenary Session (Strasbourg, 26 – 30 April 2021).

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EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering and combating financing of terrorism (AML/CFT) measures in place in the Holy See/Vatican City State (HS/VCS) as at the date of the on-site visit (30 September to 12 October 2020). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of HS/VCS's AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

1) The authorities have a generally good high-level understanding of money laundering (ML)/terrorist financing (TF) threats and vulnerabilities. In a range of areas, there is a detailed understanding of risk. The authorities originally concluded that the main risk of ML arose from tax evasion by non-residents. It later became clear that tax evasion is no longer considered by the authorities to be the main source of ML. Cases which have received wide coverage in the media have raised a red flag for potential abuse of the HS/VCS system by mid-level and senior figures (insiders). The activities leading to these cases were uncovered by the authorities and have led to positive actions since 2014. However, these domestic cases are not addressed within the General Risk Assessment (GRA), which raises some concerns as to the degree to which these matters are formally recognised and acknowledged by all authorities and can be fully addressed by, and calibrated with, jurisdictional AML/CFT policies. The authorities have advised that they consider the risk of abuse of office for personal or other benefits presented by insiders and related ML to be low. However, the assessment team (AT) disagrees with this conclusion and is of the view that risks presented by insiders are important.

2) The FIU plays a central role within the HS/VCS's AML/CFT framework. Its analytical reports are the main source used by the Office of the Promoter of Justice (OPJ) to initiate ML investigations. The OPJ considers these analytical reports to be of a good quality and helpful in ML and predicate offence investigations and in tracing the proceeds of crime. In developing ML/TF investigations, sources of information other than suspicious activity reports (SARs) have been used, whereas insufficient attention seems to be given to information provided in incoming mutual legal assistance (MLA) requests. The quality of SARs received by the FIU has varied during the period under review. The authorities met onsite commented positively on the FIU's responsiveness, proactiveness and overall engagement and assistance in ML and predicate offence investigations. The central role exercised by the FIU, however, place strains on its already limited resources and, at times, detracts from it carrying out its core functions. Whilst no ML/TF typology studies tailored for the HS/VCS had been produced, one strategic analysis had been carried out by the time of the on-site visit.

3) Most ML investigations conducted by the OPJ and the Corps of the Gendarmerie (CdG) arise from FIU reports or other alerts from the Auditor General or the sole authorised institution. Few, if any, ML cases have been generated by parallel financial investigations in domestic proceeds-generating offences. ML investigations have been protracted, partly because of late responses to HS/VCS MLA requests by foreign counterparts and partly because of under-resourcing on both prosecutorial and law enforcement sides, and insufficient specialisation of financial investigators until comparatively recently. Equally, a priority has been given to tracing and seizing the proceeds of crime vis-à-vis their laundering. The results in court are modest: two

convictions for self-laundering – one in 2018 and one in 2019[1]. ML activities investigated and prosecuted so far are, in general, consistent with risks identified by the jurisdiction. Actual sanctions imposed in ML cases where there have been convictions are below the statutory thresholds for the ML offence and appear rather minimal. Arguably, they are not proportionate and dissuasive.

4) Confiscation is mandatory upon conviction for ML and other proceeds-generating predicate offences. The importance given to confiscation as a policy objective is further illustrated by the legislative reform undertaken in 2018 - the adoption of a robust framework for non-conviction based confiscation which has since been used in a high-profile case - and results achieved in seizing/freezing of assets/funds, either domestically or abroad. Two confiscation orders, amounting to EUR 1.3 million were made during the period under review[2], both as a result of convictions for ML. Although the competent authorities (OPJ and GdG) are tracing and seizing proceeds effectively, there is a considerable gap between the amounts seized and those confiscated. The HS/VCS has effective controls in place to detect and confiscate cross-border currency/bearer negotiable instruments (BNIs) that are suspected to relate to ML/TF/predicate offences or that are falsely or not declared. Seizures and confiscations largely relate to the offences which constitute the main ML risks.

5) No incidents of TF have been identified so far. Thus, there have been no prosecutions or convictions for TF. The TF risk is considered to be low. These risks have been considered proactively and the absence of TF prosecution is in line with the risk profile of the jurisdiction. The Economic and Financial Crime Unit of the CdG (ECO-FIN Unit) is responsible for TF identification and investigation. Whilst there have been no recent terrorist incidents in the HS/VCS, ECO-FIN Unit officers understand that there should be a parallel financial investigation alongside an investigation into any future terrorist attack. This notwithstanding, the HS/VCS strategy documents, security plans and force instructions for terrorism do not set out a clear requirement for the conduct of parallel financial investigations. In the absence of prosecutions/convictions for TF, no conclusion could be made on proportionality and dissuasiveness of sanctions. On the other hand, sanctions for natural persons as foreseen by the Criminal Code (CC) are proportionate and dissuasive.

6) The HS/VCS has a domestic mechanism that allows it to give effect to United Nations (UN) sanctions for TF and financing the proliferation of weapons of mass destruction (PF) without undue delay. However, the AT found that one designation and an update related to UN Security Council Resolution (UNSCR) 1267 had not been transposed to the national list by the time of the on-site visit and there had been a delay in transposing an update related to UNSCR 1718. This raises some concerns over the effective implementation of TF and PF-related targeted financial sanctions (TFS). No funds or other assets have been frozen in relation to designated persons or entities as there have been no matches. A detailed ML/TF risk assessment for non-profit organisations (NPOs) was conducted in 2020 but did not identify the subset vulnerable to TF abuse.

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[1] Another conviction was achieved in the L, C and S case on 21 January 2021 (discussed under IO.7).

[2] In addition to these confiscations, on 21 January 2021, the court pronounced conviction (at first instance) and confiscation in the L, C and S case.

7) Overall, the Supervisory and Financial Information Authority (ASIF) authorised institution has a sound understanding of its ML/TF risks which it assesses as medium-low. In general, customer due diligence (CDD) and record-keeping obligations have been applied diligently and there is a rigorous risk-based transaction monitoring programme that requires the collection of CDD information and documentation as necessary throughout the course of a business relationship. Customer risk assessments are automatically reviewed on a monthly basis. Effective measures are applied to address higher risk customers. The AT considers the number of SARs to be reasonable and the quality in recent years is good. Internal control measures and procedures have significantly improved in recent years and the measures put in place are generally effective.

8) The AML/CFT supervisory team at the ASIF has relevant experience. Controls implemented by the authorities prevent criminals and their associates from sitting on the board of the ASIF authorised institution or in the Commission of Cardinals, which represent the Holy Father - as shareholder. Adequate controls are in place over senior management. The ASIF has a good to very good understanding of the risk profile of the ASIF authorised institution and its most recent inspection took place in 2019 (and before that 2014). Coverage and quality look to be very good, including consideration of risks presented by insiders. Overall, supervision has some very good elements of a risk-based approach (RBA) but the AT is not persuaded that full scope AML/CFT on-site inspections every five years, supplemented by targeted inspections between assessments, is enough. Four sanctions have been imposed by the ASIF during the period under review (in 2015) which is in line with the risk profile and application of preventive measures.

9) There are only a small number of legal persons that serve the mission of the HS/VCS and the Catholic Church. None have shareholders or complex control or ownership structures. Registration is conditional upon prior authorisation, which includes the application of fit and proper checks to controllers. In addition, there is significant ongoing oversight of activities, including changes to controllers. The authorities have a good understanding of the ML/TF risk presented by legal persons that are NPOs and risk assessments are underway for other legal persons. Basic information is held centrally. Given the nature of legal persons established in the HS/VCS, the beneficial owner (BO) will be the person or persons controlling the legal person through the role held (i.e. members of the administrative body) and so this information is also held centrally and is up to date.

10) The HS/VCS exchanges information and cooperates with its foreign counterparts (principally with Italy and Switzerland) in relation to ML, associated predicate offences and TF. Incoming MLA requests are executed on a timely basis and the AT noted no particular obstacles in this area. In the context of providing constructive international cooperation, the authorities will not only include the information requested by a foreign counterpart, but also other relevant information gathered during the process of executing the request. An overall increase in the number of incoming and outgoing MLA requests has been observed since 2018.

Risks and General Situation

2. A limited financial sector is present in the HS/VCS which supports the mission of the HS/VCS and provides basic services to entities of the Catholic Church. There is only one authorised financial institution (FI) and no designated non-financial businesses and professions (DNFBPs) or virtual asset service providers (VASPs). Given the global reach of the Catholic Church, most customers of the ASIF authorised institution are non-resident. Legal persons are not established to pursue private

industrial or commercial purposes and they do not have shareholders or complex ownership structures.

3. Significant donations pass through the HS/VCS each year – through public authorities, NPOs and customers of the ASIF authorised institution. Donations typically come from the most developed regions of the world and are directed to developing regions, some of which are in, or close to, conflict zones and which do not have a fully developed financial system or do not permit (or make it very difficult) for institutions of the Catholic Church to open a bank account.

4. ML threats are mainly linked to foreign predicates and the authorities have concluded that the main risk of ML in the HS/VCS arises from laundering the proceeds of crimes committed abroad by non-residents. Cases which have received wide coverage in the media have also raised a red flag for potential abuse of the HS/VCS system by mid-level and senior figures within the jurisdiction (insiders) for personal or other benefits. A number of changes to the jurisdiction's governance framework have been made to promote greater transparency and others are planned. These are explained in Chapter 1.

5. According to the GRA, the risk of ML is medium-low, and risk of TF is low.

Overall Level of Compliance and Effectiveness

6. Since the last evaluation, the HS/VCS has taken steps to improve its AML/CFT framework. New legislation has been introduced to strengthen the overall AML/CFT framework, which includes amendments to the AML/CFT law (most recently in October 2020), the *Motu proprio* of the Supreme Pontiff and the laws on Criminal Matters (11 July 2013) and the *Motu Proprio* of the Supreme Pontiff (8 August 2013) subjecting NPOs to the AML/CFT law. Other actions were taken, which include the admission of the ASIF to the Egmont Group of Financial Intelligence Units, closure of accounts at the ASIF authorised institution not having a direct relationship with the HS/VCS or Catholic Church, and the establishment of two Pontifical Commissions to study the economic and administrative structures of the VCS and the various offices which serve the universal mission of the Catholic Church. However, some deficiencies remain in the HS/VCS's technical compliance framework.

7. A substantial level of effectiveness has been achieved in international cooperation, supervision of the financial sector, applying AML/CFT preventive measures by FIs, transparency of legal persons and investigating and prosecuting TF. A moderate level of effectiveness has been achieved in understanding and assessing ML/TF risks, using financial intelligence, investigating and prosecuting ML, confiscating proceeds and instrumentalities, and implementation of TF and PF-related TFS.

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

8. The authorities have a generally good high-level understanding of ML/TF threats and vulnerabilities, aided by the limited financial activity that takes place in the jurisdiction and action taken in recent years to improve transparency of HS/VCS institutions. In a range of areas, there is a detailed understanding of risk. However, the GRA does not generally describe who is presenting a ML threat, where they are, or how they are doing it, and there has been some uncertainty as to the main ML risk.

9. The authorities originally concluded that the main risk of ML arose from tax evasion by non-residents. It later became clear that tax evasion is no longer considered to be the main source of ML. The dominant typologies suggested by cases and SARs include predicate offences of fraud, misappropriation, giving and receiving bribes, and abuse of office. Overall, ML risk is assessed as medium-low.

10. Cases which have received wide coverage in the media have raised a red flag for potential abuse of the HS/VCS system by mid-level and senior figures for fraud (insiders) for personal and other benefits (embezzlement, fraud and abuse of office as per the CC). The activities leading to these cases were uncovered by the authorities and have led to positive actions since 2014. However, these domestic threats are not addressed within the GRA, which raises some concerns as to the degree to which resulting risks are formally recognised and acknowledged by all authorities and can be fully addressed by, and calibrated with, jurisdictional AML/CFT policies.

11. The authorities have advised the AT that they consider the risk of abuse of office for personal or other benefits presented by insiders and related ML to be low. However, the AT disagrees with this conclusion and is of the view that risks presented by insiders are important. The AT has concluded that the GRA process cannot be fully complete without a comprehensive assessment and articulation of the risks presented by insiders and the risks in relation to public authorities.

12. The limited resources available to prosecute cases during the period under review had not been identified as a vulnerability, except to the extent that conflicts may arise from parts of the prosecution team practicing law in a foreign jurisdiction.

13. TF risks have been considered proactively and rated as low risk, which is consistent with the AT's view. The AT commends the authorities for proactively finding ways to substantially address their understanding of the risk profile of NPOs.

14. Jurisdictional policies and activities have addressed ML/TF risks in the GRA and those presented by insiders.

15. It is not clear that all high-risk scenarios are subject to enhanced due diligence measures. Simplified measures that are permitted for lower risk scenarios may not be in line with the risk profile of the HS/VCS.

16. Activities are consistent with action plans and with AML/CFT risks identified in the GRA. AML/CFT policies set for competent authorities are not sufficiently comprehensive or rounded.

17. There are effective coordination and cooperation mechanisms in place for the development and implementation of AML/CFT policies and activities at national level. There are also mechanisms in place in relation to PF. Cooperation is strong with respect to operational activities.

Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)

18. The FIU plays a central role within the HS/VCS's AML/CFT framework. Its analytical reports are the main source used by the OPJ to initiate ML investigations. The OPJ considers these reports to be of a good quality and helpful in ML and predicate offence investigations, and in tracing the proceeds of crime. In developing ML/TF investigations, sources of information other than SARs have been used, whereas insufficient attention seems to be given to information provided in incoming MLA requests.

19. SARs are the main source used by the FIU in preparing its analytical reports. Their quality varied during the period under review. A number of cases have been opened on the FIU's own motion, some of which were based on media articles and other types of open-source information. Intelligence from other sources, particularly incoming MLA requests and cross-border cash declarations, has not triggered any ML investigations in the HS/VCS, as these sources of information are not sufficiently considered.

20. The authorities met onsite commented positively on the FIU's responsiveness, proactiveness and overall engagement and assistance in ML and predicate offence investigations. The central role exercised by the FIU in the AML/CFT framework, however, places strains on its already limited resources and, at times, detracts from it carrying out its core functions. Whilst no ML/TF typology studies tailored for the HS/VCS had been produced, one strategic analysis had been carried out by the time of the on-site visit.

21. The OPJ and the CdG are responsible for investigation and prosecution of all crimes committed in the HS/VCS, including economic crime and ML. The CdG works under the direction of the OPJ, and its ECO-FIN Unit is responsible for conducting parallel financial investigations in the cases assigned to it by the OPJ or on its own initiative.

22. Most ML investigations arise from FIU reports to the OPJ, whereas other public authorities may and did submit crime-related alerts to the OPJ. It is noted that some of the most complex cases were triggered by alerts from authorities other than the FIU, in particular a high-profile investigation which received significant media coverage in 2020. At the time of the on-site visit, five cases had been brought to judicial or administrative proceedings, some of which have been completed or are still in the trial stages.

23. No domestic investigation into any report submitted to the OPJ generated a ML case before the Tribunal until 2018. The most complex ML case investigated and brought before the Tribunal so far was initiated in 2013. It was not concluded in the Tribunal at the time of the onsite visit[3]. The AT remains concerned that the OPJ is still insufficiently resourced to handle simultaneously several complex economic and financial cases in a timely way[4].

24. Overall, the results in the court are modest: two convictions for self-laundering – one in 2018 and one in 2019[5] - had been achieved by the time of the on-site visit. This notwithstanding, ML investigations/prosecutions/convictions are generally in line with the jurisdiction's risk profile.

25. Actual sanctions imposed in ML cases where there have been convictions are below the statutory thresholds for the ML offence. Extenuating and aggravating features can be considered in sentencing to reduce or increase statutory penalties. Sanctions imposed so far appear rather minimal. Arguably, they are not proportionate and dissuasive.

26. The lack of a formal statement on the policy objective to pursue confiscation has been compensated, at least to a certain extent, by an important legislative development. The introduction of robust non conviction-based confiscation in 2018, providing a preventive confiscation tool in relation to goods in the possession of a person who cannot justify their legal origin, considered along with the results achieved so far in seizing/freezing of assets (in the jurisdiction and abroad) indicate that confiscation is pursued as a policy objective.

27. During the period under review, two confiscation orders were executed. The first ever confiscation order in the HS/VCS was imposed in December 2018. The overall amount of assets

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[3] Guilty verdicts were returned on 21 January 2021.

[4] A fourth prosecutor joined the OPJ shortly after the on-site visit and a fifth prosecutor was also recruited soon after.

[5] Another conviction was achieved in the L, C and S case on 21 January 2021.

confiscated so far is approximately EUR 1.3 million. Considerable amounts have been frozen (either domestically or abroad at the request of the HS/VCS) pending completion of the criminal proceedings. Whilst this confirms a pro-active approach and effectiveness in identifying and tracing the proceeds, the fact remains that the value of confiscation orders executed during the period under review is far below the amounts frozen. This appears to be a consequence of lengthy investigations and the fact that final convictions have yet to be achieved in numerous cases with significant confiscation requests.

28. While no false declaration on cross border movements of currency/BNI has been detected, one investigation was triggered by a SAR submitted by the ASIF authorised institution. This involved a non-declaration of cross border transportation of cash withdrawn from a safety deposit box. This case was not investigated by the ECO-FIN Unit at the time and was passed to the Governorate which issued an administrative sanction, subsequently reduced on appeal to EUR 114 000.

29. Two confiscations orders executed so far reflect, in part, the assessment of jurisdictional risks.

Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5–8, 30, 31 & 39.)

30. In the period under review, there have been no prosecutions or convictions for TF offences. The AT considers this to be broadly in line with the jurisdiction's risk profile.

31. The ECO-FIN Unit (which would investigate any case of TF), the CdG as a whole, and all the HS/VCS authorities are acutely aware of the exposure of the HS/VCS as a potential target of terrorist and extremist activities, given the highly visible nature of the Supreme Pontiff in his pastoral role.

32. TF investigations would be identified by SARs, by police intelligence or instituted in the context of a terrorism investigation. Any SAR containing TF elements is given priority by the ASIF. Each ML or predicate offence-related SAR is analysed by the ASIF also from a TF perspective. One TF-related SAR has been submitted so far, but no TF elements were found. On the other hand, there has been one situation where a preliminary investigation/inquiry into TF suspicion was carried out by the CdG. The analysis confirmed that there were no TF elements and the case was then archived. Being fully aware that TF can involve small sums, it is commendable that ECO-FIN Unit is also developing preventive strategies, such as spot checks of persons carrying cash below the EUR 10 000 threshold. The application of this measure allows the CdG to identify movements of funds which, together with other information, may either indicate that ML or TF might be taking place, or, may exclude such possibility

33. The CdG has a comprehensive anti-terrorism strategy for protecting the HS/VCS. This strategy forms a part of the overall security plan of the jurisdiction. However, the evaluators have not noted in the strategy documents, security plans and force instructions shown to them a clear requirement for the conduct of parallel financial investigations in any terrorist enquiry.

34. In the event of any TF investigation failing to produce sufficient evidence to prosecute for TF, then other terrorism offences may be considered, especially if the financier was part of the group involved. Since no concrete indication of TF has ever emerged, there has been no need to apply disruptive measures.

35. Despite not being a member of the UN, the HS/VCS has committed itself to implementing the UN Security Council TF and PF-related TFS. To this end, it has adopted a domestic mechanism that

allows it to give effect to such sanctions without undue delay. However, the AT found that, on three occasions, updates related to UNSCR 1267 and UNSCR 1718 were either not transposed or transposed with a significant delay into the HS/VCS national list. This raises some concerns over the effective implementation of TF and PF-related TFS by the competent authorities.

36. The transposition of designations under UNSCRs 1267, 1373 and 1718 to the national list takes place in accordance with a practice that is not fully documented. This may affect the overall effectiveness of the practice.

37. A detailed NPO risk assessment for ML/TF was conducted in 2020 which, inter alia, collected information through a self-assessment questionnaire. The residual risk derived from the risk assessment is presented in the sectorial report as an aggregate of both ML and TF risk. As a result, the subset of NPOs vulnerable to TF abuse was not identified by the authorities. At the same time, based on information provided by the HS/VCS competent authorities, there are indications that some other charitable legal entities might fall within the scope of the FATF definition of NPOs.

38. Representatives of the NPO sector met onsite were aware of the results of this sectorial risk assessment. They confirmed that the self-assessment questionnaire completed at the request of the authorities had helped them advance their understanding of potential ML/TF risk and expressed appreciation for the supervisory authorities' work in this area. However, the sector's understanding of TF risk is considered by the AT to be at an embryonic stage. The ASIF adequately monitors and ensures compliance by the ASIF authorised institution with its obligations regarding PF-related TFS.

39. No funds or other assets have been frozen in relation to designated persons or entities under the TF and PF-related TFS regime and there have been no international requests (formal or informal) for assistance.

Preventive measures (Chapter 5; IO.4; R.9–23)

40. Overall, the ASIF authorised institution has a sound understanding of its ML/TF risks which it assesses as medium-low. This is considered to be a reasonable assessment, though it is not split between ML and TF. Nonetheless, the methodology followed to assess risk needs some further refinement. The institution has a very thorough understanding of its AML/CFT obligations.

41. In general, risk-based mitigating measures are applied that are commensurate with risk. All of the necessary elements are in place, including a framework to measure ML/TF risk and a comprehensive customer risk-rating mechanism that enables the institution to identify when and what mitigating measures are to be applied. The mechanism, however, may benefit from some refinement in one particular area.

42. In general terms, CDD and record-keeping obligations have been diligently applied. CDD information and documentation is collected at the time of onboarding and customer risk assessments are automatically reviewed on a monthly basis. In addition, relationships are reviewed periodically based on risk. There is a rigorous risk-based transaction monitoring programme that requires the collection of CDD information and documentation as necessary throughout the course of a business relationship.

43. Effective measures are applied to address higher risk customers. Use is made of screening tools to ensure that the institution complies with obligations related to politically exposed persons (PEPs), wire transfers, TFS and higher risk countries.

44. The AT considers the number of SARs to be reasonable, and that the reporting obligations have been met throughout the assessment period by the ASIF authorised institution. However, until 2019, there had been some delays in the reviews of transaction alerts, and it seems that there was a degree of over-reporting in earlier years. The quality of SARs in recent years is considered to be good, though it is not clear whether reports are in line with risks identified in the GRA, since this is not monitored.

45. Internal control measures and procedures to facilitate and ensure compliance with AML/CFT obligations have significantly improved in recent years and the measures put in place are generally effective.

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

46. The AML/CFT supervisory team in place in the ASIF has relevant private sector experience. Officers are supported by senior management with substantial supervisory experience in the jurisdiction. The AT considers that the right skillset is in place to apply the ASIF's AML/CFT Supervisory Methodology, recognising that it has authorised just one financial institution (with a simple business model) and that skilled external resources are brought in as necessary on occasion (to support full scope on-site inspections every few years).

47. Controls implemented by the ASIF authorised institution and supervisor prevent criminals and their associates from sitting on the institution's Board. Adequate controls are in place over senior management. The Commission of Cardinals – who represent the Holy Father (as shareholder) - and the Prelate do not directly fall within the ASIF's licensing responsibilities but instead are subject to ex-ante canonical checks by the Secretariat of State and ex-post checks by the ASIF. These sufficiently address fitness and propriety.

48. The supervisor has a good to very good understanding of the risk profile of the ASIF authorised institution. It has received, and receives, a substantial level of information from the institution and meets routinely with the FIU.

49. Based on its current assessment of AML/CFT risk, the ASIF's AML/CFT methodology provides for a full scope onsite inspection of the ASIF authorised institution every four/five years, supplemented by targeted inspections in between. The most recent full scope inspection took place in 2019 and, before that, in 2014. Coverage of the inspection and its quality look to be very good, including consideration of domestic threats identified in Chapter 1. Overall, supervision has some very good elements of a RBA. However, the AT is not persuaded that full scope AML/CFT onsite inspections every four/five years is enough. There is scope for the approach to be enhanced to allow for a more demonstrably sophisticated and systematic approach and to better address potential abuse of the HS/VCS system by insiders for personal or other benefits.

50. To date, four sanctions have been imposed by the ASIF (2015) – all orders to remediate. This is on the basis that the severity of other breaches during the review period has not justified the imposition of sanctions. This is in line with the risk profile and application of preventive measures of the ASIF authorised institution. There is no lack of commitment or will by the ASIF to seek imposition of sanctions when appropriate, but the absence of formal policies/procedures is not helpful in demonstrating this further. Under the AML/CFT law, the ASIF would present a case to the Governorate for the imposition of a more serious sanction; this body has no experience in applying

sanctions for breaches of supervisory standards and policies/procedures have not been established. Hence, the AT is left with a concern about the robustness of this part of the framework.

51. Supervisory actions are having an effect on compliance with the AML/CFT law. The quality of the interaction with the ASIF has developed to a level which is not only informative and reliable but also has elements of comprehensiveness. The ASIF has promoted a clear understanding of AML/CFT obligations and ML/TF risks by the ASIF authorised institution.

Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)

52. There are only a small number of legal persons. None are established to pursue private industrial or commercial purposes – rather they exclusively serve the mission of the HS/VCS and the Catholic Church which makes the sector of legal persons very homogeneous overall. No legal person has shareholders or complex control or ownership structures.

53. The different types, forms and basic features of legal persons of the HS/VCS are described to some extent in the Code of Canon Law, the Law on Civil Legal Persons, the Law on the Registration and Supervision of NPOs and the Law on Regulation of Voluntary Activities, all of which are publicly available. However, there is no guidance or overarching law that comprehensively addresses registration, administration and winding up of legal persons.

54. A comprehensive and in-depth assessment of the ML/TF risk presented by legal persons that are NPOs has been conducted for the first time in 2020 and the authorities have a good understanding of ML/TF risks. A ML/TF risk assessment of other legal persons is underway. The ML/TF risks of these legal persons are readily comparable to those of NPOs as they pursue the same activities (i.e. support of the mission of the HS/VCS and the Catholic Church).

55. Legal persons register with the Governorate and this is conditional upon prior authorisation. This authorisation vets the natural persons that will be involved in the management and oversight of such legal persons and prevents criminals or their associates from sitting on either the administrative or control bodies (corporate bodies). There is also significant on-going oversight of activities of legal persons at different levels, which further prevents their misuse. This includes ongoing reviews of minutes of meetings, budgets, and financial statements, together with ex-ante fit and proper checks where there are subsequent changes in composition of the administrative or control bodies. In their totality, these checks form a robust and effective supervision of legal persons.

56. Basic information is held centrally. Given the nature of legal persons established in the HS/VCS, the BO will be the person or persons controlling the legal person through the role held (i.e. members of the administrative body) and so this information is also held centrally.

57. The adequacy, accuracy and currency of basic and BO information held is ensured by two complementary measures: (i) the Governorate conducts checks of basic and BO information every six months to ensure that information is updated regularly; and (ii) as noted, it is practice for a change to a member of the corporate bodies to be approved in advance. Competent authorities can access basic and BO information kept in the registers held by the Governorate on a timely basis.

58. No enforcement actions for infringements of the information requirements of R.24 and R.25 have been taken by the competent authorities as no opportunities have presented themselves.

59. Regarding legal arrangements, the AT has satisfied itself that the administration of foreign trusts in the HS/VCS can be virtually ruled out in practice.

International cooperation (Chapter 8; IO.2; R.36–40)

60. As explained above, ML threats are generally external. Most predicate offences are committed outside the jurisdiction and most customers of the ASIF authorised institution are non-resident. Accordingly, international cooperation is important in the context of the HS/VCS. Most ML investigations relate to alleged criminal activity that has been committed in Italy or involve Italian citizens. Under the Lateran Treaty, the HS/VCS enjoys enhanced cooperation with Italy.

61. The HS/VCS provides legal assistance to other jurisdictions based on provisions for judicial cooperation set out in international conventions ratified by the HS/VCS. An overall increase in the number of incoming and outgoing MLA requests has been observed since 2018. When it appears necessary for execution, or when it may facilitate such execution, additional information is requested from the requesting state. Incoming requests are executed on a timely basis and no obstacles noted.

Priority Actions

- In the next iteration of the GRA (2021), the authorities should: (i) focus more intensively on the articulation of threats (both foreign and domestic), including those presented through abuse of the system by insiders for personal or other benefits, and related ML; (ii) articulate residual risks (including likelihood and consequences (e.g. reputational risk)).
- The authorities should complete the assessment of ML/TF risk for public authorities and ensure that findings are fully incorporated into the next iteration of the GRA.
- The HS/VCS competent authorities should enhance the use of financial intelligence in criminal investigations with a view to proactively pursuing parallel financial investigations and ensure that evidence is gathered in a timely manner.
- Policies and procedures of the competent authorities should be reviewed in such a manner so as to ensure that intelligence and information originating from other sources, particularly incoming MLA requests and cross-border cash declarations, is appropriately assessed to determine whether an analysis or an investigation in the HS/VCS is warranted.
- The implementation of an effective FIU staff retention strategy is necessary to reduce the high rate of staff turnover, including the risk of institutional memory loss. As a matter of priority, staff should undergo specialised training on operational and strategic analysis. Also, the FIU should ensure that all new staff joining its operational and strategic analysis teams have sufficient AML/CFT experience and expertise.
- The authorities should: (i) recruit more prosecutors with practical experience of prosecuting financial crime in other jurisdictions, and ensure all new prosecutors work exclusively for the HS/VCS; (ii) strengthen the expertise of the ECO-FIN Unit's financial investigators and consider the need for additional in-house accountancy or other relevant technical expertise for complex financial analysis; (iii) introduce a protocol/operational procedures to be followed by all prosecutors to facilitate investigations and prosecutions of ML and serious financial crime by setting targets for initial review of new ML and serious financial crime cases, and targets for progressing such cases to indictments; and (iv) establish a comprehensive procedure for petitioning the Holy Father when requesting consent to pursue a criminal prosecution against cardinals and bishops.
- The authorities should ensure that money trails are followed thoroughly in all complex financial investigations in order to trace all direct and indirect proceeds and instrumentalities used.
- The authorities should establish a fully documented mechanism ensuring the effective communication of designations and transposition of all UNSCR TFS designations into the national list without delay.
- The ASIF should enhance its approach so that a more comprehensive and systematic approach to its supervision is adopted, in particular reviewing the frequency of full inspections and the selection of topics for targeted inspections so as to address all relevant risks more demonstrably.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings[6]

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

Technical Compliance Ratings[7]

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

[6] Effectiveness ratings can be high (HE), substantial (SE), moderate (ME), or low (LE) levels of effectiveness.
[7] Technical compliance ratings can be compliant (C), largely compliant (LC), partially compliant (PC), or non-compliant (NC). Recommendations can be not appliable (N/A).

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place as at the date of the on-site visit. It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of the AML/CFT system and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the Assessment Team during its on-site visit to the country from 30 September to 13 October 2020.

The evaluation is not an investigation of past or present allegations of criminal activities linked to the HS/VCS nor an audit of any particular HS/VCS public authority or financial institution, except to the extent covered by the 2013 Methodology. The evaluation does not extend to Catholic institutions outside the HS/VCS, such as dioceses and parishes, which are subject to the legislation of the jurisdiction where they operate.

The evaluation was conducted by an assessment team consisting of:

Assessors

- Ms Tatevik Nerkararyan, Head of Legal Compliance Division, Financial Monitoring Centre, Central Bank of Armenia, Armenia (legal expert)
- Mr John Ringguth, Barrister-at-law (Gray's Inn), former prosecutor and Co-chair of the MONEYVAL Working Group (legal expert)
- Mr Alfred Zammit, Deputy Director, Financial Intelligence Analysis Unit, Malta (law enforcement expert)
- Mr Albert Kaufmann, Head of Foundation Supervisory Authority, Office of Justice, Liechtenstein (financial expert)
- Mr Richard Walker, Director of Financial Crime Policy and International Regulatory Adviser, Policy & Resources Committee, Guernsey (financial expert)

MONEYVAL Secretariat

- Mr Andrew Le Brun, Deputy Executive Secretary of MONEYVAL
- Mr Lado Lalicic, Head of Unit, MONEYVAL
- Mr Panagiotis Psyllos, Senior Project Officer

The report was reviewed by Mr Matis Mäeker, Head of the AML/CFT and Supervision Department, Financial Supervision and Resolution Authority, Estonia, Dr Lajos Korona, Acting Head of Division, Metropolitan Prosecutor's Office, Hungary, and the FATF Secretariat.

The Holy See (including the Vatican City State) previously underwent a MONEYVAL Mutual Evaluation in 2012, conducted according to the 2004 FATF Methodology. The 2012 evaluation report, including the 2013, 2015 and 2017 progress reports have been published and are available

at https://www.coe.int/en/web/moneyval/jurisdictions/holy_see. In line with MONEYVAL's Rules of Procedure, monitoring was discontinued in 2019.

That Mutual Evaluation concluded that the country was compliant with 3 Recommendations; largely compliant with 19; partially compliant with 14; and non-compliant with 9. The HS/VCS was rated compliant or largely compliant with 8 of the 16 Core and Key Recommendations.

1. ML/TF RISKS AND CONTEXT

1. The Holy See, the Catholic Church and the Vatican City State are three different legal entities with different status under international law.

2. The **Holy See** (HS) is a sovereign entity enjoying full legal personality under international law with the same rights and obligations as other states. It maintains diplomatic relations with 183 states and is a member state, or observer state, of several international organisations. It is an observer state to the United Nations (UN) General Assembly and to the Council of Europe (CoE). It enjoys a treaty making capacity in international law and has become a party to a number of multilateral conventions, including several negotiated under the auspices of the UN. As an observer state of the CoE, the HS/VCS may choose not to abide by all CoE conventions. As such, the jurisdiction has not become a party to the 1990 CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime or its successor, the Warsaw Convention of 2005. The notion of the HS refers to the Roman Pontiff and, unless the contrary is clear, the Roman Curia (offices and bodies supporting the Roman Pontiff).

3. The **Catholic Church** is a non-territorial faith-based community with members all over the world. Whilst the Supreme Pontiff presides in charity over the College of Bishops, local bishops have autonomous authority within their own dioceses and cannot be regarded as agents or representatives of the HS. The HS is thus responsible for ensuring the unity of faith and governance in the Church while respecting the prerogatives and responsibilities of individual bishops[8]. The HS does not exercise jurisdiction, as that term is understood in international law, over individual Catholics and institutions located outside the territory of the Vatican City State. Catholic institutions outside the Vatican City State, such as dioceses and parishes, are subject to the legislation of the jurisdiction where they operate. The administration and supervision of their assets fall under the competence of local ecclesiastical authorities (bishops etc).

4. In the context of this report, the AT has limited itself to those activities and entities that legally fall within the direct jurisdiction of the HS/VCS. As stated above, local churches (dioceses) outside the immediate jurisdiction of the VCS are subject to AML/CFT legislation in the jurisdiction in which they are based and do not fall, therefore, to be considered in this mutual evaluation report (MER).

5. The **Vatican City State** (VCS) is a sovereign and independent state that was established in 1929 pursuant to the Lateran Treaty. It covers 0.44 km2 and is a walled enclave close to the Western bank of the River Tiber surrounded by the territory of the Republic of Italy. Its population is around 620, of which just over 450 are resident citizens. It is the smallest sovereign state in the world. The VCS has a monarchical form of government in which the Roman Pontiff has full legislative, executive and judicial powers. However, those powers are exercised through the governmental organs established by the Fundamental Law of the VCS. The VCS is a party to various bilateral and multilateral treaties but does not maintain diplomatic relations with other states; ambassadors are accredited not to the VCS but to the HS. It is not a Member State of the European Union (EU) but has

[8] Vatican Council II, Dogmatic Constitution Lumen Gentium, nn. 20, 23, 27; 1983 Code of Canon Law, cc.375, § 1, 381, § 1, 391, § 1.

signed a Monetary Agreement[9] with the EU (2009) in order to have the euro as its official currency. The Canonical legal system is the supreme source of law of the VCS and the first point of reference for statutory interpretation. Additional sources include the Criminal Code (CC) and Code of Criminal Procedure (CCP). Italian law is applied where there are gaps or where it is not possible to apply domestic law[10]. Pursuant to the Lateran Treaty, crimes committed in the VCS may be prosecuted by the Italian authorities upon explicit request by the HS.

1.1. ML/TF Risks and Scoping of Higher Risk Issues

1.1.1. Overview of ML/TF Risks

6. Overall, the HS/VCS faces medium-low money laundering (ML) risk and low terrorist financing (TF) risk.

7. The overall crime rate in the HS/VCS is low – mainly petty crimes, e.g. robbery and theft, committed by visitors. There are approximately 18 million visitors annually to the VCS.

8. ML threats are, instead, mainly linked to foreign predicates. Most suspicious activity reports (SARs) are linked to foreign citizens and jurisdictions where assets (mainly bank balances and investments) are held and/or managed in the HS/VCS. Most of the ML investigations initiated by the OPJ have, as their starting point, the FIU's analytical reports. In addition, different state authorities have submitted eight ML/predicate crime-related criminal complaints directly to law enforcement. The most complex cases of economic crime, including ML, have included, inter alia, domestic criminal activity (embezzlement).

9. The most recent risk assessment conducted by the authorities shows that the predicate offences reported most frequently since 2013 are cumulatively (in order – domestic and foreign): (i) tax evasion (25.3%); (ii) fraud (21.3%); (iii) embezzlement (18.7%); (iv) goods fictitiously registered in the VCS (9.3%); (v) insider trading and market abuse (6.7%); and (vi) bribery and corruption (6.7%). Between 2013 and September 2019, there were 32 outgoing requests for mutual legal assistance (MLA) concerning cases related to ML predicate offences (i.e. mainly fraud and tax evasion), and MLA was granted in 20 cases relating to economic crime issues. Estimated proceeds from criminal activity (domestic and foreign) vary between EUR 2.7 million in 2019 and EUR 26.9 million in 2015[11].

10. Italy is identified in risk assessments as presenting a cross-border threat, given that it surrounds the VCS and accounts for a significant percentage of cross-border transfers. Italian firms are the principal suppliers to the HS/VCS and about 90% of employees are resident or domiciled in Italy. Also, about 70% of customers accessing financial services in the HS/VCS are resident or domiciled in Italy. Considering the limited types of person able to access financial services, agreements in place between the HS/VCS and Italy, and cross-border cash controls, no specific residual risks with Italy have been identified.

11. Significant donations for religious and humanitarian purposes pass through the HS each year, including through public authorities (which have operated on a decentralised basis). Donations

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[9] In 2014, an Ad Hoc Arrangement was agreed to apply relevant EU principles and rules to entities carrying out financial activities on a professional basis.

[10] Under the conditions underlined by Art. 3(1)(2) of Law on the Sources of the Law (LXXI) of 1 October 2008.

[11] Excludes attempted operation in respect of LP case of EUR 520 million. See IO.7.

come from the most developed regions of the world and are directed to developing regions, some of which are in, or close to, conflict zones and which do not have a fully developed financial system or do not permit (or make it very difficult) for institutions of the Catholic Church to open a bank account (though transactions to high risk countries are low). However, no specific residual risks have been identified. Further details on donations are set out in section 1.2.

12. Whilst the HS/VCS is not a regional financial centre, most of the customers of the one entity - the Institute for the Works of Religion - that has been authorised to carry out financial activities are non-resident (hereafter referred to as the ASIF authorised institution). Accordingly, the volume of international transactions is high, but with low transaction volumes to high risk countries (1.5% of outgoing cross-border transfers (EUR 25 million) and 0.35% of incoming wire transfers (EUR 121 400)). No specific residual risks have been identified. Further details are provided under section 1.4.3.

13. The use of cash in the HS/VCS is falling as a result of measures taken by the authorities. In particular, the amount of cash declared in incoming cross-border cash declarations between 2015 and 2019 has fallen by 52% (to EUR 4.7 million in 2019) and outgoing declarations have dropped by the same amount (to EUR 11.8 million in 2019). Cash transactions in the VCS now account only for a third of all transactions (a much lower percentage than in Italy). No specific residual risks have been identified.

14. The HS/VCS is exposed to terrorist threats due to the high symbolic and religious profile of the Roman Pontiff. Nevertheless, there is no evidence of potential TF threats based on SARs, requests for international cooperation or intelligence exchange in this respect between the CdG and its counterparts. In the small population, there is no evidence of the presence of radicalised groups and there are only a limited number of non-profit organisations (NPOs) linked to humanitarian and charitable activity abroad.

1.1.2. Country's Risk Assessment & Scoping of Higher Risk Issues

15. The first national risk assessment of the HS/VCS (the GRA) was adopted in November 2017 (and subsequently published in an abridged form). It was prepared based on the methodology developed by the World Bank's National ML and TF risk assessment tool. Experts from the World Bank provided technical support. The process identifies and assesses ML/TF threats and vulnerabilities. There have been three subsequent updates – adopted in December 2018 (this update considered also the FATF Methodology), December 2019 and September 2020 (focussed on actions taken).

16. A specific ML/TF risk assessment for NPOs has also been completed in 2020, and ones for public authorities and legal persons are ongoing.

17. The Financial Security Committee (FSC) is the competent authority for establishing criteria and procedures and approval of the GRA. The Committee created two technical Working Groups – one for national threats and vulnerabilities and a second for vulnerabilities in the financial sector – which operated from 2016 to the adoption of the first GRA (2017). These have now been replaced by a technical secretariat. Recently, a technical sub-group on countering the financing of the proliferation of weapons of mass destruction (PF) has been constituted.

18. The GRA assesses ML/TF risk at national level and sectorial level. The risk assessment was carried out in three phases: (i) familiarisation with the World Bank tool; (ii) identification of input

variables – data, information and documents; and (iii) assessment of relevant factors. The process involved the ASIF authorised institution.

19. All the risk levels indicated in the GRA are "residual risks", which were determined considering the effectiveness of the legal and institutional system, as well as the quality of preventative measures in the ASIF authorised institution.

20. The assessment team (AT) believes that the conclusions reached in various iterations of the GRA are reasonable. However, as explained under IO.1, there are some concerns as to the degree to which domestic threats are formally recognised and acknowledged by all authorities.

21. The AT identified several areas requiring increased focus in the evaluation through an analysis of information provided by the authorities and by consulting various open sources.

22. As a result of some high-profile cases reported by the media in recent years, the AT paid attention to potential threats posed by c**orruption** of senior public officials, including fraud against public authorities.

23. The AT explored the extent to which **TF risks** identified in the GRA are understood and preventative measures are in place, and considered methods used to provide humanitarian aid. The team also considered whether the absence of TF investigations and prosecutions is consistent with the jurisdiction's risk profile.

24. The AT considered risks presented by strong connections between the HS/VCS and Italy, taking account of threats identified in **Italy's national risk assessment**.

25. Following its two-month **suspension from the Egmont Group** at the end of 2019, the AT explored the extent to which the financial intelligence unit's operations had been prejudiced.

26. Assessors considered the capacity of the Office of the Promoter of Justice (OPJ) and the Corps of the Gendarmerie (CdG) and approach taken to progressing good **ML investigations and prosecutions**, including complex cases and cross-border cases, and whether results on the law enforcement and investigative/judicial side have improved since the last MER. The team considered also whether the provision of services in Italy by adjunct Promoters of Justice and judges could create a potential **conflict of interest**.

27. The team discussed strategies in place for **autonomous prosecution of crimes** related to foreign jurisdictions, as well as the methods for coordinating and requesting investigative activities. More generally, it explored the extent to which **proceeds of crime were seized and confiscated** and whether law enforcement objectives and activities have evolved to address ML/TF threats.

28. ML has a significant cross-border element in the HS/VCS and so the existence of robust **MLA mechanisms** and other forms of international cooperation were considered.

29. Just one financial institution (FI) is registered with the Supervisory and Financial Information Authority (ASIF) (supervisor). Accordingly, the team explored the **scope of financial and other activity** in the HS/VCS, including whether business is conducted on a professional basis by professionals based outside the jurisdiction.

30. The majority of the cust**omers of the ASIF authorised institution are resident outside the HS/VCS** and their use of cash is still common, though in decline. Assessors explored the authorities' and institution's understanding on ML/TF risk deriving from its current customer base

(and around 4,800 relationships terminated up to 2015), appropriateness of client risk segmentation, focus on mitigating measures, and understanding and implementation of reporting obligations. Reasons for the high number of transactions carried out in cash and extent to which the ASIF authorised institution is used to deposit **donations made to the Catholic Church** were also considered.

31. **Wire transfers** are the principal source of financial inflows and outflows. The majority come from, and go to, Italy whilst a relatively small number are linked to higher risk countries. Assessors focussed on the effectiveness of preventive measures and supervision in this area.

32. The team considered factors impacting the **reporting regime**, including termination of accounts referred to above. It considered whether the quality of SARs has improved during the assessment period and whether the ASIF authorised institution receives enough guidance on reporting.

33. The AT considered the recent assessment of ML/TF risk prepared for **NPOs** and extent to which the sector adequately understands its AML/CTF obligations. It also considered whether any TF typologies involving NPOs.

34. The AT considered the reasons for the decrease of **border controls** and the effectiveness of such controls to detect false cross-border cash declarations, identify ML/TF suspicions and identify non-reporting. The use of intelligence obtained from such declarations was also explored.

1.2. Materiality

35. In 2019, reported HS revenue was EUR 307 million, its expenditure EUR 318 million and net assets valued at EUR 1.402 billion.

36. Reported HS revenue consists mainly of: (i) the proceeds of sovereign financial activities and assets (around 50%); (ii) contributions from local dioceses and donations (around 20%); and (iii) commercial activities (around 15%). Revenue covers the sixty institutions at the service of the Supreme Pontiff in the HS (e.g. Administration of the Patrimony of the Apostolic See (APSA) and the Secretariat of State (SoS)) and so excludes other activities of the Catholic Church, such as episcopal conferences, dioceses, parishes, congregations and religious institutes. Reported revenue also excludes VCS revenue (that is the Governorate) (see below), donations to the Office of Peter's Pence and Pontifical Missions Society, the ASIF authorised institution, and several foundations that collaborate with various departments.

37. The VCS does not have a productive system and it is not possible to assign a "gross value" to its activities or calculate the cost of goods and services consumed. It does not measure its gross domestic product. VCS revenue - EUR 293 million in 2018 – is composed of the management of patrimony and services provided to the general public (e.g. admission to museums and postal services).

38. Together, the assets of the HS, VCS, Peter's Pence, the ASIF authorised institution, the pension fund and foundations are valued at about EUR 4 billion[12].

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[12] https://www.vaticannews.va/en/vatican-city/news/2020-10/vatican-balance-sheet-interview-guerrero-secretariat-economy.html

39. Most donations are received through three offices: (i) Pontifical Missions Societies (to support missionary activities as well as charitable and humanitarian activities) (USD 89 million in 2019); (ii) the Office of Peter's Pence (to support the Roman Pontiff) (EUR 53 million in 2019); and (iii) the Office of Papal Charities (to support the poor) (EUR 2.4 million in 2019) – see Chapter 2. Large donations are also received by the Congregation for the Oriental Churches (EUR 13 million) which is a dicastery (ministry). In 2019, Peter Pence's was used to cover 32% of the operational expenses of the HS. Not all donations are recorded in the financial records of the HS. For example, Pontifical Missions Society donations are generally made directly from one diocese to another through accounts held at the ASIF authorised institution.

40. There is only one entity that has been authorised by the ASIF to carry out financial activities. It takes deposits, lends, and manages wealth for a limited category of customers (mostly non-resident) and does not offer products or services to the general public. There are no foreign FIs. No designated non-financial businesses or professions (DNFBPs) operate in the jurisdiction and virtual asset service providers (VASPs) are prohibited.

41. Given the size of the jurisdiction and restrictions placed on business activities, there is no informal sector or shadow economy. Given its geographical position, the jurisdiction has very strong links with Italy.

1.3. Structural elements

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

43. However, there are regular media reports alleging financial misconduct in the HS/VCS in relation to abuse of the system and unauthorised profiting from church funds. The most recent one concerns an investment in London property in 2014 (USD 220 million) by the SoS - based on advice from parties outside the VCS - in a fund that held property and various investments in securities. The investigation conducted in this regard has revealed several anomalies and criminal offences, including speculative investments inconsistent with institutional purposes, conflicts of interest and misappropriation of funds by some members of the SoS. In October 2019, as part of an ongoing investigation, searches were carried out – on the authorisation of the OPJ - at the ASIF and SoS. In-depth investigations have also required use of international judicial cooperation. The offences currently being considered against the suspects are embezzlement, misappropriation, fraud, ML and abuse of office. Other details of this ongoing investigation remain confidential. The suspects are expected to be brought to trial by summer 2021.

44. One other high-profile case where action has been taken involves former senior managers of the ASIF authorised institution who were charged with embezzlement of EUR 57 million in real estate in 2004. The indictment also included self and third-party ML. The third-party element was introduced into the case when a further defendant was added to the indictment in 2018. The investigation was formally launched in 2013 and conviction achieved on 21 January 2021.

45. Since the last mutual evaluation, there has also been a further prominent leak of official documents– referred to as Vatileaks II (2016) – on the basis of which some have alleged abuse of power and a lack of financial transparency.

46. Further to these developments, the AT paid particular attention to the legislative provisions which regulate criminal proceedings/criminal liability of senior clergy vis-à-vis the principles of Canon Law. The Canon Law of the Catholic Church is supreme in the civil legal system of the VCS and so there was a need to clarify possible repercussions of this supremacy on the criminal prosecution of cardinals and bishops. The Law on the Judicial System of the VCS, in particular Art. 24, states that 'the Court of Cassation is the only forum competent to judge, with the prior consent of the Supreme Pontiff, the Most Eminent Cardinals and the Most Excellent Bishops in criminal cases, apart from the cases provided by canon 1405(1) of the *Codex Iuris Canonici*'. To clarify this matter, long and fruitful discussions were held with the HS/VCS authorities on the exact meaning, interpretation, and jurisprudence in applying this norm. HS/VCS authorities advanced that, in general, no immunity from criminal prosecution exists in the VCS, apart from the immunity granted to the Supreme Pontiff. This conclusion is inferred from their interpretation of both civil law and Canon Law and is further supported by Art. 3 of the CC, which states that anyone who commits a crime in the territory of the State is punished under VCS law.

47. The authorities provided an official interpretation according to which 'prior consent of the Pontiff'' (as per Art. 24 of the said law) is a form of authorisation which resembles similar principles in other European jurisdictions where some coercive actions against officials (e.g. arrest or house search against members of the parliament; trial against a minister) require prior authorisation by parliament. Given the structure of the state authorities in the VCS, this power is given to the Supreme Pontiff. Consequently, the Supreme Pontiff is informed by the OPJ in case an investigation/prosecution against cardinal(s)/bishop(s) is underway, and then he decides whether to grant or deny a consent to pursue with the trial. With regard to the jurisprudence in this matter, the authorities discussed a case when a bishop and apostolic nuncio was arrested upon the OPJ's request for a serious crime – a fact which per se shows that there is no immunity from criminal investigations. Further proceedings in this case were not carried out due to the bishop's death while investigation was still ongoing. Finally, the other exception made in the afore-mentioned Art. 24, in relation to cases provided by canon 1405(1) of the *Codex Iuris Canonici* concerns the violation of ecclesiastical laws related to spiritual matters and thus has no influence on criminal liability of senior clergy.

48. In order to promote greater transparency, several reforms have been undertaken. In 2014, three new bodies were created: (i) Council for the Economy; (ii) Secretariat for the Economy (SfE); and (iii) Office of the Auditor General. Inter alia, the SfE is responsible for: (i) monitoring the administrative and financial activities of HS entities; (ii) an annual risk assessment of the financial and asset situation of the HS; and (iii) preparation of the annual budget for, and financial statements of, the HS. The Auditor General is responsible for auditing the financial statements of the HS, the Governorate of the VCS and the individual dicasteries and institutions connected to the HS or that refer to it. The Office of the Auditor General now also has the role of anti-corruption authority for the HS/VCS and its intervention helped to trigger investigation of the London property acquisition referred to above.

49. More recently, vulnerabilities were identified in the procurement of public contracts, and so Rules on Transparency, Control and Competition of Public Contracts of the HS/VCS (the

Procurement Code) were promulgated (June 2020) along with related implementing regulations. The Procurement Code creates a register of vetted contractors who can bid to supply goods and services to the HS/VCS and centralises approval of acquisitions under APSA or the Governorate (except some cases concluded directly by the SoS and the Governorate which are overseen by a Commission on Confidential Matters). The Code excludes any contract with operators that have a conflict of interest in the deal or which have been convicted for corruption, fraud, ML, TF or human trafficking.

50. Looking forward, whilst management of the majority of investments is already centralised in the APSA and many other investments made by institutions linked to the HS take place through the ASIF authorised institution, a programme to further centralise investments – led by the Council for the Economy - is underway in order to promote greater transparency and more precise control. The objective of this programme is for all investment decisions to be reviewed and taken centrally.

1.4. Background and Other Contextual Factors

51. The Law on the Economic, Commercial and Professional Order (ECPO) creates what is in effect a public monopoly regime within the territorial jurisdiction of the HS/VCS. In particular, the Law states that nobody is entitled to set up a private industrial or commercial business of any kind without obtaining authorisation by the Governorate of the VCS (ECPO, Art. 7). Accordingly, there is no free market in the economic, financial and professional sectors. There is no financial market, nor public debt instruments, capital instruments or securities. There is no privately-owned real estate and no private business is carried on. There is no tax system.

52. Goods and services are imported mostly from Italy and the labour force largely originates in Italy.

53. Entrance to the VCS is controlled through four gates, except for free access for visitors to St Peter's Square, St Peter's Basilica and Vatican museums. Whilst the control mechanism for cross-border transportation of cash is in place, statistics for the period 2011 to 2019 show a progressive reduction in the instances of cross-border transportation of cash. This trend is linked mainly to the progressive increased use of other forms of transfer of values, e.g. wire transfers.

54. Almost all customers of the ASIF authorised institution are employees of the HS/VCS or entities of the Catholic Church. The latter are engaged in charitable and missionary activities, consistent with humanitarian support offered by the Catholic Church, so that the most developed regions of the world are net exporters of financial resources, which are then transferred to developing countries (by wire transfer).

55. In 2013, an international consulting and auditing firm was appointed to screen all the customer relationships of the ASIF authorised institution. In 2015, under the close monitoring of the ASIF, the closure of all relationships no longer in line with customer policies was completed.

56. There are 20 NPOs, 3 voluntary organisations and 21 other charitable legal persons registered in the HS/VCS – engaged in charitable and missionary activities.

1.4.1. AML/CFT strategy

57. Each GRA has included suggested actions to be taken in order to mitigate identified ML/TF risks. In addition, the FSC has adopted an action plan and requested each competent authority to prepare its own action plan. A plan identifying five priority measures and related timelines has been adopted by the Committee (January 2020).

58. Under its action plan, the FSC has four objectives: (i) to coordinate the adoption and regular updating of policies and procedures for combating ML, TF and PF; (ii) coordination of the preparation and delivery of individual actions plans for each of the competent authorities in order to consider their effectiveness in mitigating risks; (iii) monitoring of threats, vulnerabilities, and mitigation measures in order to identify and mitigate risks; and (iv) preparation of updates to the GRA. Noting that threats have not diminished and the evolving environment in terms of transparency and control of financial activity, the Committee has agreed a Strategic Plan which describes the lines of action regarding identification and assessment of risks, strengthening of preventative and enforcement mechanisms, and coordination of relevant authorities.

1.4.2. Legal & institutional framework

59. The **Financial Security Committee** (FSC) (established in 2013) promotes coordination amongst relevant authorities and is responsible for adoption and maintenance of the GRA and suggesting actions. It also has the duty to monitor, evaluate and coordinate policies, procedures and measures adopted by members in order to mitigate risks identified. In addition to all the bodies listed below (except for the Tribunal), its membership also includes the Pontifical Swiss Guards Corp and the SfE[13] (supervisor of public authorities). The Committee's president has established a secretariat to support its work.

60. The institutional framework involves a broad range of authorities.

61. **The Secretariat of State** (SoS) is responsible for: (i) setting AML/CFT strategies and policies; (ii) implementation and adherence to international treaties and agreements; (iii) participation in international organisations and intergovernmental bodies; (iv) supervision of NPOs and other charitable legal persons; and (v) receipt and coordination of incoming requests for MLA and dissemination of outgoing requests (at the instigation of the OPJ).

62. The **Governorate** of the VCS, is responsible for: (i) the adoption of preventive AML/CFT measures; (ii) application of administrative sanctions; (iii) adoption and maintenance of the list that names persons that threaten international peace and security; (iv) maintaining the four registers of legal persons that have their registered office in the HS/VCS; and (v) supervision of voluntary organisations.

63. The **Office of the Promoter of Justice** (OPJ) is responsible for the investigation and prosecution of ML/TF offences and related predicate offences[14]. It is also competent for cases of administrative liability of legal persons registered in the VCS resulting from criminality. An ad hoc

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[13] Under a MoU dated 13 February 2020, the SfE carries out analyses of budgets and financial statements of NPOs for the SoS.

[14] The Office may also ask the CdG to carry out investigations or may do so itself.

Section for Economic and Financial Crimes (established in 2017) is led by an adjunct Promoter of Justice. Since 2017, the Office has had premises separate from the Tribunals in order to enhance the distinction between prosecutorial and judicial functions.

64. The **Tribunals of the VCS** are responsible for judicial activity, including ML/TF cases. The Tribunals consist of: (i) a Single Judge who deals with simple cases such as traffic violations; (ii) Tribunal - court of first instance in criminal and civil cases which do not fall under the jurisdiction of the Single Judge; (iii) Court of Appeal; and (iv) Court of Cassation – the highest court.

65. The **Corps of the Gendarmerie** (CdG) (part of the VCS Directorate of Security and Civil Protection Services) is the police force of the VCS with general competence, and so responsible for conducting economic and financial crime investigations, including ML/TF. Officers investigate under the direction of the OPJ. Offices working on financial crime are: (i) External Relations Office, divided into the Interpol Office and the Economic and Financial Crime Unit (ECO-FIN Unit) (operating as a specific unit for AML/CFT since 2016); (ii) Judicial Police Unit; (iii) Security Operations Centre; and (iv) Anti-Terrorism Unit. The ECO-FIN Unit includes an agent who carries out coordination activities on the control of cross-border currency movements.

66. The regulatory and supervisory regime in the HS/VCS has been completely overhauled since the last mutual evaluation. The **ASIF** is responsible for: (i) the regulation and supervision of FIs and DNFBPs, including the application of some administrative sanctions; (ii) receipt, analysis (operational and strategic) and dissemination of financial intelligence; (iii) ML/TF training; and (iv) assessment of the ML/TF risk of reporting entities, also indicating – in agreement with the competent supervisory authority – the recommended actions. It has been responsible for (i) to (iii) since 2015.

67. The **Office of the Auditor General** (established in 2014 and operational since the autumn of 2015) carries out audits of entities of the HS and VCS and, since 2019, has exercised the function of anti-corruption authority.

68. The FSC is also responsible for coordinating policies and operations to counter PF.

69. Given its nature as a public legal entity and its mission (which is aligned, broadly speaking, with the HS/VCS), the **ASIF authorised institution** has a stronger role within the institutional framework than what would usually be expected of an FI. It has been treated as a FI for the purposes of this MER, based on the definition of FI in the FATF Standards. Nevertheless, the institution is an atypical institution: it is a public legal entity in the form of a foundation established as a canonically recognised legal person created by the Holy Father, separate and independent from the HS/VCS, which carries out activities by right of the Holy Father, as well as commercial or private acts.

70. The AML/CFT system was introduced in 2011 and consolidated into the Apostolic Letter for the Prevention and Countering of ML, TF and PF (August 2013) and AML/CFT law (October 2013).

71. As well as establishing preventative measures and reporting requirements, the AML/CFT law sets out: (i) the AML/CFT supervisory functions and powers of the ASIF and availability of administrative sanctions; (ii) functions and powers of the ASIF in respect of the receipt, analysis and dissemination of financial intelligence; (iii) prudential functions and powers of the ASIF and availability of administrative sanctions; (iv) basis for the ASIF to share information with domestic and foreign authorities; (v) the creation of a national list of persons who threaten international peace and security to enforce, inter alia, UN Security Council Resolutions (UNSCRs); and (vi) the regulation

of cross-border transportation of currency. The AML/CFT law also transposes the EU's fourth and fifth AML/CFT Directives.

72. The ASIF has issued a number of regulations pursuant to provisions of the AML/CFT law. These are listed under c.34.1 in the TC Annex. In addition, three instructions have been adopted, which are again listed under c.34.1 in the TC Annex.

73. The Law on General Norms on Administrative Sanctions (Law No. X 2013) regulates the imposition of administrative sanctions.

74. The 1889 Criminal Code of Italy (as subsequently amended by domestic legislation in the HS/VCS in line with emerging threats) establishes ML and TF offences. Powers to confiscate, freeze and seize property, including preventative measures, extradite, natural persons and to cooperate internationally are set out in the CC and CCP.

75. Other relevant laws include: (i) Law on the Registration and Supervision of NPOs (Law on NPOs); (ii) Law on Regulation of Voluntary Activities; and (iii) Ordinance No. CCCLXIV which requires legal persons and voluntary organisations to apply preventative measures to combat ML, TF and PF, including conducting risk assessments, reporting suspicious activity and preparation of accounting records.

1.4.3. Financial sector, DNFBPs and VASPs

76. The limited financial sector present in the HS/VCS supports the mission of the HS and provides basic services to entities of the Catholic Church. It is therefore extremely limited. There are no DNFBPs and VASPs.

77. The ASIF authorised institution – situated exclusively on the sovereign territory of the VCS - is authorised as a FI to carry out financial activities on a professional basis and is under the supervision of the ASIF[15]. Its purpose is "to provide for the custody and administration of movable and immovable property transferred or assigned by natural or legal persons and intended for works of religion or charity", which includes the provision of bank accounts. The FI does not provide services to the general public and has just over 100 employees.

78. At the time of the on-site visit, the ASIF authorised institution had just under 15 000 customer relationships (11 000 for individuals), of which 97% are domiciled in foreign jurisdictions. Ordained clergy in the Roman Catholic Church, including cardinals, bishops and nuns, and employees and retired employees of the HS/VCS account for more than 96% of this figure. Dioceses, institutes of consecrated life and causes of beatification account for more than 75% of legal persons. The total value of assets held, including assets under management, is EUR 5.26 billion (September 2019). During 2019, the ASIF authorised institution processed more than 58 000 cross-border transactions, amounting to approximately EUR 1.35 billion, with 137 countries.

[15] In the previous mutual evaluation, the APSA was also treated as a FI. By the end of 2015, all non-institutional accounts held by the APSA had been transferred to the ASIF authorised institution or closed. The SfE now exercises supervisory control over APSA.

79. In addition, the Vatican Post Office carried out limited money transmission services for residents until September 2020 but was covered by an exemption and so not subject to the AML/CFT law. Amounts were not material.

80. There are no longer any DNFBPs in the HS/VCS. Whilst the last MER in 2012 revealed that external accountants licenced in Italy were providing services to legal persons within the HS/VCS, this is no longer the case, due to the introduction of stronger governance arrangements (see above). Functions previously exercised by external accountants are now undertaken by public authorities. In addition, a requirement for all legal persons registered in the HS/VCS to establish an internal control body has been introduced. This has eliminated the need for external accountants (except for the audit of the ASIF authorised institution).

81. There is no property market in the HS/VCS as all real estate is owned by the State. As regards DPMS, all activities in relation to dealing with goods are solely exercised by the State, and as regards TCSPs, the types of legal persons established in the HS/VCS do not involve professional directors or secretaries or make use of third-party addresses. Casinos are legally forbidden in the HS/VCS.

82. Whilst there are state lawyers practising in the HS/VCS, they do not carry on DNFBP activities in the situations set out in R.22. The services of lawyers who are enrolled in the register of VCS lawyers held by the Chancellery of the Tribunal are only limited to legal representation in front of the judicial offices of the HS/VCS.

83. There are state notaries practising in the HS/VCS who provide mainly the following services: (i) drawing up of wills, including safekeeping and publication; (ii) establishing civil legal persons through notary deeds; and (iii) public certification of powers of attorneys, minutes and other deeds. The drawing up of wills and notary deeds can be qualified as the creation of a legal arrangement and legal person respectively, therefore, constitutes a DNFBP activity under R.22. However, since 1995, only employees of the Governorate of the VCS have been appointed as notaries. At the time of the assessment, there are two notaries acting in this capacity as public officials of the HS/VCS. These notaries do not receive any additional commission or compensation for performing these public services. As there are only notaries in the HS/VCS who are civil servants, they do not provide client-facing services.

84. It is forbidden to provide virtual asset (VA) services in the HS/VCS (AML/CFT law, Art. 5).

85. The only professional firm falling under the remit of the AML/CFT law is the auditor of the ASIF authorised institution, but its services are outside the scope of the FATF Standards (which do not cover auditing).

1.4.4. Preventive measures

86. Preventative measures apply through the AML/CFT law to all the activities covered by FATF definitions for FI and DNFBP, except casinos which are forbidden, to real estate transactions for which the value of the transaction amounts to less than EUR 10 000 and to the Vatican Post Office, which benefits from an exemption. VASPs are also prohibited. In line with EU Directives, the AML/CFT law extends also to: (i) all activities of auditors, external accountants and fiscal advisors; (ii) persons who trade in goods or services in relation to cash transactions of EUR 10 000 or more (including linked transactions); (iii) persons trading or acting as intermediaries in the trade of works of art, where the value of the transaction or series of linked transactions amounts to EUR 10 000 or

more; and (iv) persons storing, trading or acting as intermediaries in the trade of works of art when this is carried out by free ports, where the value of the transaction or series of linked transactions amounts to EUR 10 000 or more.

87. Public authorities and legal persons (including NPOs) of the HS/VCS are required to: (i) identify, assess, manage and contain the risk that their activities are exploited for ML/TF purposes (AML/CFT law, Chapter II of Title II); and (ii) report suspicions of ML/TF to the ASIF in respect of fulfilment of their institutional purposes (AML/CFT law, Chapter VI, Title II). Whenever there are reasonable grounds to suspect that funds or other assets, activities, projects or transactions are linked to ML/TF, an NPO must also file a report with the ASIF under the Law on NPOs (Art. 7)[16], and a voluntary organisation or a canonical or civil legal person must file under Ordinance CCLXXIV (Art. 2).

1.4.5. Legal persons and arrangements

Legal persons

88. As described above, there is a closed market economy in the HS/VCS which prevents the incorporation of legal persons for any private purposes. In fact, no legal persons are established in the HS/VCS to pursue private industrial or commercial purposes – rather they exclusively serve the mission of the HS,/VCS and the Catholic Church and are set up in cooperation with public authorities of the HS/VCS. This cooperation ensures, even before the establishment of a HS/VCS legal person, that it is structured in such a way that its purpose is in accordance with the mission of the HS/VCS and the Catholic Church.

89. Legal persons may be incorporated under Canon Law, Civil Law or both. The Code of Canon Law and the Law on Civil Legal Persons are therefore the primary legal sources for the incorporation of all legal persons in the HS/VCS. With regard to the latter, however, it should be noted that this law consists only of a reference to the Italian Civil Code and, accordingly, the relevant legal provisions are to be found in that foreign source.

90. Once established, a canonical or civil legal person may be required to register also as an NPO or voluntary organisation on the basis of the provisions of the Law on NPOs and the Law on Regulation of Voluntary Activities respectively. Legal persons that primarily engage in raising from and distributing funds to the public for charitable purposes are qualified as NPOs, and voluntary organisations are characterised by the fact that members make their time and work available to the Church for the realisation of projects. NPOs and voluntary organisations are thus subject to the provisions of the respective special law in addition to Canon Law, Civil Law or, both. These special laws set requirements that are normally found in companies' legislation.

91. Legal persons that do not meet the criteria of an NPO or voluntary organisation are subject exclusively to Canon law, Civil Law or, both. These are a mixture of sovereign and non-sovereign legal persons.

[16] *Motu Proprio* of 8 August 2013.

92. The Governorate keeps the following four separate registers of legal persons: (i) canonical legal persons; (ii) civil legal persons; (iii) NPOs; and (iv) voluntary organisations. Registration is possible in several registers at the same time, e.g. canonical register, civil register and NPO register.

93. For the purposes of this assessment, legal persons are classed as follows: (i) sovereign instrumentalities; (ii) NPOs; (iii) voluntary organisations; and (iv) other charitable legal persons that do not primarily raise funds from, and distribute them to, the public (other charitable legal persons). Although the latter category is covered by the FATF definition of NPO, the authorities do not classify them as such because raising funds from, and distributing them to, the public is not their predominant activity. This category is discussed further under IO.10.

94. Sovereign instrumentalities are set up by public authorities, are operated as an integral part of that authority, the members of their corporate bodies are appointed by the HS/VCS, their activities (e.g. transactions) are monitored by bodies of the HS/VCS, and they are solely funded by the HS/VCS. This includes the ASIF authorised institution and four other state-owned legal persons such as Radio Vatican. Given this close relationship with the HS/VCS, sovereign instrumentalities are considered to be outside the scope of the assessment under IO.5 and R.24.

95. At the time of the assessment, all legal persons registered in the HS/VCS are established in the legal form of a foundation or an association. The two Pontifical Academies mentioned below qualify as associations and are also entered as such in the registers. While the Law on NPOs and the Code of Canon Law only permit the legal forms of foundations and associations, the Law on Civil Legal Persons and the Law on Regulation of Voluntary Activities do not restrict the use of other legal forms. However, according to the authorities, only the foundation and the association are permitted as legal forms, and accordingly only these two legal forms are admitted for entry into the registers.

Table 1: Numbers of legal persons registered in HS/VCS – at 31 December 2019

Type of legal person	Number
Sovereign instrumentalities	
Foundations[17]	11
Associations (Pontifical Academies)	2
Non-profit organisations	
Foundations	19
Associations	1
Voluntary organisations	
Associations	3
Other charitable legal persons	
Foundations	16
Associations	5
Total	**57**

96. All legal persons are required to set up two corporate bodies, namely an administrative body, which is usually the board of directors, and a control body. The control body is an internal body responsible for keeping the accounts and drawing up the financial statements.

[17] Including the ASIF authorised institution and 4 state-owned legal persons that have been integrated into the Dicastery for Communication, but which have been suspended.

97. In the HS/VCS there are no branches or similar of foreign legal persons.

98. In addition, foreign legal persons hold assets through the ASIF authorised institution. According to the GRA, 4 154 legal persons were customers at 30 September 2019 (out of 14 930 customers) – mostly foreign institutes, societies, dioceses, parishes and other entities of the Catholic Church.

Legal arrangements

99. The laws of the HS/VCS do not provide for the creation of trusts or any other legal arrangements and the VCS is not a party to the Hague Convention of 1 July 1985 on the law applicable to trusts and their recognition.

100. Accordingly, only the administration of trusts or other legal arrangements established under foreign law by professional and/or non-professional trustees in, or from within, the HS/VCS and the establishment of business relationships between the ASIF authorised institution and foreign trusts have to be considered in the assessment of IO.5 and R.25.

101. In addition to regulation under the AML/CFT law, the Governorate has implemented an authorisation regime for DNFBPs which catches professional trustees of foreign trusts (see under IO.3). The CdG and the Pontifical Swiss Guard constantly physically monitor all access points to the HS/VCS in order to ensure implementation with authorisation requirements and there is currently no intention to grant authorisations to any DNFBP (including professional trustees). On the basis of these checks, it can be ruled out that trustees travel to the HS/VCS and carry on business there on a temporary basis. According to the authorities, there is no evidence to suggest that residents of HS/VCS are acting as trustees. Moreover, the authorities have confirmed that the ASIF authorised institution does not have any business relationships with a foreign trust.

1.4.6. Supervisory arrangements

102. The ASIF is the central authority for the regulation and supervision of FIs and DNFBPs and, to this end, supervises compliance with AML/CFT requirements (AML/CFT law, Art. 46). It is forbidden to provide VA services (AML/CFT law, Art. 5). The ASIF has authority to carry out on-site and off-site inspections and has access to, and can require production of, documents, data, information, registers and books for the purposes of supervision.

103. The ASIF also has access to documents, data, information, registers and books from legal persons which are registered in the HS/VCS in relation to beneficial owners/ownership (BO), including members of management and senior management.

1.4.7. International cooperation

104. As explained above, ML threats are generally external. Most predicate offences are committed outside the jurisdiction and most customers of the ASIF authorised institution are foreign citizens. Accordingly, international cooperation is important in the context of the HS/VCS. Most ML investigations relate to alleged criminal activity that has been committed in Italy or involve Italian citizens. Under the Lateran Treaty, the HS/VCS enjoys enhanced cooperation with Italy.

105. The HS/VCS can provide legal assistance to another country based on provisions for judicial cooperation set out in international conventions ratified by the HS/VCS. The central authority for incoming and outgoing MLA requests is the SoS. Incoming requests for MLA are ordinarily put

forward by the OPJ, at the request of the SoS, and executed by the Tribunal. When it appears necessary for the execution, or when it may facilitate such execution, additional information may be requested from the requesting state.

106. As regards informal cooperation, the CdG is able to cooperate bilaterally with counterparts worldwide and has cooperation agreements in place with the Arma di Carabinieri and Guardia di Finanza (GdiF) of Italy. It also has a cooperation agreement with the National Police in Colombia. The VCS is a member of Interpol and the CdG is responsible for direct cooperation with this organisation.

107. The ASIF is a member of the Egmont Group and exchanges operational information with similar units in other countries through the latter's secure communication channel. Since the exchange of financial intelligence is conditional upon both reciprocity and basis of memoranda of understanding (MoU), the ASIF has signed agreements with 62 foreign financial intelligence units. A similar requirement governs the exchange of supervisory information, and the ASIF has signed MoUs with eight foreign AML/CFT supervisors.

108. The HS/VCS has concluded agreements in 2015 to enhance cooperation and exchange of information on tax matters with Italy and the United States.

2. NATIONAL AML/CFT POLICIES AND COORDINATION

2.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 1

a) The HS/VCS published its first national risk assessment in 2017 and it has been undertaken regularly since. The authorities are to be commended for this. The authorities have a generally good high-level understanding of ML/TF threats and vulnerabilities, aided by the limited financial activity that takes place in the jurisdiction and action taken in recent years to improve transparency of HS/VCS institutions. In a range of areas, there is a detailed understanding of risk. However, the General Risk Assessment (GRA) does not generally describe who is presenting a ML threat, where they are, or how they are doing it, and there has been some uncertainty as to the main ML risk.

b) The authorities originally concluded that the main risk of ML arose from laundering of the proceeds of crimes committed abroad by non-residents, with tax evasion seen as the dominant typology (followed by fraud). It later became clear that tax evasion is no longer considered to be the main source of ML. The dominant typologies suggested by cases and SARs include predicate offences of fraud, misappropriation, giving and receiving bribes, and abuse of office. Overall, ML risk is assessed as medium-low.

c) Cases which have received wide coverage in the media seem to have raised a red flag for potential abuse of the HS/VCS system by mid-level and senior figures (insiders) for personal or other benefits (embezzlement, fraud and abuse of office as per the CC) and ML. The activities leading to these cases were uncovered by the authorities and have led to positive actions since 2014. However, these domestic threats are not addressed within the GRA, which raises some concerns as to the degree to which resulting risks are formally recognised and acknowledged by all authorities and can be fully addressed by, and calibrated with, jurisdictional AML/CFT policies.

d) The authorities have advised the AT that they consider the risk of abuse of office for personal or other benefits presented by insiders and related ML to be low. However, the AT disagrees with this conclusion and is of the view that risks presented by insiders are important. The AT has concluded that the GRA process cannot be fully complete without a comprehensive assessment and articulation of the risks presented by insiders and the risks in relation to public authorities.

e) The limited resources available to prosecute cases during the period under review had not been identified by the country as a vulnerability, except to the extent that conflicts may arise from parts of the prosecution team practicing law in a foreign jurisdiction.

f) TF risks have been considered proactively and rated as low risk, which is consistent with the AT's view. The AT commends the authorities for proactively finding ways to substantially address their understanding of the risk profile of NPOs.

g) Jurisdictional policies and activities (established through action plans) have addressed ML/TF risks in the GRA and those presented by insiders.

h) Since the GRA does not expressly identify how ML/TF threats to the HS/VCS manifest themselves, requirements to apply enhanced CDD measures (EDD) in higher risk scenarios may

not cover all necessary scenarios. Simplified measures that are permitted for lower risk scenarios may not be in line with the risk profile of the HS/VCS.

i) Activities are consistent with action plans and with AML/CFT risks identified in the GRA. AML/CFT policies set for competent authorities are not sufficiently comprehensive or rounded.

j) There are effective coordination and cooperation mechanisms in place for the development and implementation of AML/CFT policies and activities at national level. There are also mechanisms in place in relation to proliferation financing. Cooperation is strong with respect to operational activities.

Recommended Actions

Immediate Outcome 1

a) In the next iteration of the GRA (2021), the authorities should: (i) focus more intensively on the articulation of threats (both foreign and domestic), including those presented through abuse of the system by insiders for personal or other benefits, and related ML; (ii) articulate residual risks (including likelihood and consequences (e.g. reputational risk)).

b) The authorities should complete the assessment of ML/TF risk for public authorities and ensure that findings are fully incorporated into the next iteration of the GRA.

c) In light of the reinforcement of resources in the OPJ team (after the on-site), the authorities should conduct an impact analysis on the extent to which conflicts that may arise from parts of the prosecution team practicing law in a foreign jurisdiction could limit resources and/or produce professional incompatibilities.

d) In light of elaborated risk scenarios, the authorities should review and expand as necessary the circumstances in which customer due diligence (CDD) measures must be enhanced. Also, the authorities should assess the circumstances in which simplified CDD measures are currently permitted in order to ensure that they are consistent with the risks of the jurisdiction and amend those measures as appropriate.

e) At the conclusion of the next iteration of the GRA, individual authorities should prepare more comprehensive and rounded risk-based policies, drawing on ML/TF risks identified, for use in performing their institutional activities. In due course, these documents should be adopted by the FSC and reviewed periodically.

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

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

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

110. The HS/VCS published its first national risk assessment, the GRA, in 2017 with the participation of almost all authorities and the only registered FI, the ASIF authorised institution. Update assessments have been undertaken regularly since, albeit the 2020 update was a report on progress on suggested actions arising from the previous reports. In addition to these exercises, some risks have been identified and considered but not formally assessed and documented.

111. The authorities have a good high-level understanding of their ML/TF threats and vulnerabilities, aided by the limited financial activity that takes place in the jurisdiction and action taken in recent years to improve transparency of HS/VCS institutions (described in Chapter 1). Indeed, in a range of areas, such as for NPOs, use of cash, organised crime and financial services activity, there is a detailed understanding of risk (see below). However, the GRA does not generally describe who is presenting a ML threat, where they are, or how they are doing it and, as a result, there has been some uncertainty as to what the main ML risk is facing the jurisdiction. Future GRAs would benefit from: (i) more intensity of focus on the articulation of threats (both foreign and domestic); and (ii) articulation of residual risks (including likelihood and consequences (e.g. reputational risk)).

112. While there is scope for a more comprehensive assessment and understanding of both ML and TF risks, this requires amendments to a well-established process rather than a substantial change of approach. The HS/VCS authorities are to be commended for their proactivity in undertaking annual risk assessments. A risk assessment of NPOs and the final report have also been completed. In addition, an assessment of public authorities has been undertaken jointly by the ASIF and the SfE; the report is relatively near completion but has been delayed due to the COVID pandemic. In light of the issues analysed below, the completion of a comprehensive assessment and the report is important. Some narrowly scoped and preliminary information has been shared with the AT. In addition, an assessment of legal persons (that are not NPOs) is in train.

ML (assessed as presenting a medium-low risk)

113. From a variety of data sources used for the GRA, including international requests for assistance made to the HS/VCS, the authorities originally concluded (although did not specify in the reports) that the main risk of ML arose from laundering of the proceeds of crimes committed abroad by non-residents. Laundering to facilitate tax evasion was seen as the dominant typology by the authorities (followed by fraud). Numerous predicate offences giving rise to SARs appeared to have been committed abroad (2014 to 2019), and most frequently involved tax offences committed in Italy (where undeclared assets had been held at the authorised institution). Some cases were also presented, including one on an HS/VCS employee whose bank account had been used by a relative in order to evade paying tax in Italy on work undertaken in the HS/VCS. As the evaluation process undertaken by the AT moved towards its conclusion, it became clear that tax evasion is no longer considered by the authorities to be the main source of ML.

114. The AT acknowledges that tax evasion has been a dominant typology but agrees that the risks of ML from tax evasion have diminished. This typology is no longer recognised by the ASIF authorised institution, which regards it as an historical problem (see IO.4) which has been addressed through Italian tax amnesties and its role as a de facto tax agent (through agreements between the HS/VCS and Italy and the US). It has observed a sharp decrease in tax crime-related SARs. It was also apparent to the AT that the CdG applies very good controls in relation to the transportation of cash across the HS/VCS border and that these controls and their outcomes do not suggest any use of such transportation for tax evasion or ML purposes. As part of these controls, the CdG follows up with the ASIF authorised institution in relation to cash brought to the VCS (e.g. collections in churches outside the VCS after mass which are taken to the institution to be deposited). Instead, the dominant typologies suggested by cases and SARs include predicate offences of fraud, misappropriation, giving and receiving bribes, and abuse of office.

115. More generally, the foregoing highlights the importance of detailed conclusions in risk assessment documentation which reflect consistent views of, and current thinking by, all authorities. This will help to ensure that understanding is consistent and mitigation measures are aligned.

116. Cases which have received wide coverage in the media seem to have been a substantial concern for the authorities in practice. These cases also seem to have raised a red flag for potential abuse of the HS/VCS system both by mid-level and senior figures within the jurisdiction (insiders) for personal or other benefits (embezzlement, fraud and abuse of office as per the CC) and ML. The activities leading to these cases were uncovered by the authorities and have led to positive actions since 2014 (outlined in Chapter 1 and elsewhere in this report). The actions in detecting cases of abuse of office for personal or other benefits are an indication that the authorities are aware of, and have at least some practical understanding of, such risks. However, these domestic threats are not addressed within the GRA - although three aspects of the GRA are relevant to some extent in various ways. First, there is a list of basic, aggregated, figures in relation to crime (which include abuse of office for personal or other benefits and fraud) provided in a table in the 2019 GRA report, but the analysis focusses on international tax fraud and evasion. Second, there was a general assessment of public authorities in 2016 in relation to donations and humanitarian work (see below) which considered matters such as corporate governance and internal controls, and this consideration will have been indirectly relevant to risks involving abuse of office for personal or other benefits and ML by insiders. Third, some information on the risk profile of public authorities was provided in the 2020 update to the GRA.

117. The authorities have advised the AT that they consider the risk of abuse of office for personal or other benefits and ML risks presented by insiders to be low, pointing to the actions they have taken, the low number of individuals involved in the cases relative to the population of the VCS and the prevalence of the actual/alleged criminality in relation to those cases taking place outside the VCS. However, the AT disagrees with this conclusion and is of the view that the risks presented by insiders are important. A combination of the following factors raise a complex and significant network of considerations which merit further analysis by the authorities so as to understand the risks that insiders present in detail and identify appropriate mitigating measures: (i) the significance of cases where mid-level and senior figures are under investigation; (ii) vulnerabilities identified by the authorities themselves in relation to procurement of public contracts; and (iii) identification by the OPJ of crimes against the public administration as an emerging threat in its 2018 annual report. Taken as a whole, this issue is particularly important in the context of the HS/VCS, including consequences for the reputational standing of the HS/VCS.

118. The significance of these risk scenarios in the context of the HS/VCS is apparent from IO.7, reports in the media and also in a more detailed breakdown of the statistics on underlying predicate offences in an updated table in the 2019 GRA report. In addition, the 2020 GRA update, which does consider public authority risks to some extent, states that the residual ML/TF risks of such authorities are "substantially moderate" (i.e. not low). The authorities have considered it best to await concrete conclusions (i.e. convictions) to be reached for the allegations underlying at least some of the cases before conducting a formal, articulated, risk assessment, notwithstanding that they have been ongoing for a number of years and take up enormous amounts of time. Whilst this strategy is practical, it has already been three years since the first GRA. Without recognition of these domestic cases in the GRA, the AT has some concerns as to the degree to which resulting risks: (i) are formally and consistently recognised and acknowledged by all authorities; and (ii) can be fully addressed by,

and calibrated with, jurisdictional AML/CFT policies. The AT has concluded that the GRA process cannot be fully complete without a comprehensive assessment and articulation of the risks presented by insiders and the risks in relation to public authorities.

119. Whilst significant assets continue to be held directly by dicasteries and other public authorities, funds of these public authorities within the HS/VCS are increasingly held centrally within APSA. Even before the emergence of the ongoing cases highlighted in the media, and for wider reasons of governance, control and economic efficiency, the authorities had decided to strengthen controls in relation to sovereign finance. These changes also mitigate the risk of potential abuse of office for personal or other benefits and ML. This process has been accelerated by the current COVID-19 pandemic in order to address liquidity concerns and the large majority of HS assets had been centralised by the time of the onsite visit.[18] The degree to which decentralised management might present risks, including ML risks, has not been articulated but it would appear that much of any crime risk that might be presented by non-centralised assets has already been mitigated. A more discrete and articulated analysis of threats and vulnerabilities in relation to the management of assets is needed.

120. In order to finance its activities, the HS (directly or through its instrumental entities) receives donations from local churches (dioceses and parishes) and religious institutes as well as from the faithful. These donations are significant and indispensable to the attainment of the HS's institutional goals. In particular, donations are made to the Pontifical Missions Societies for the Propagation of the Faith, Office of Peter's Pence, the Office of the Papal Charities and Congregation for the Oriental Churches (see Chapter 1). The original GRA considered whether there was a risk that any of these donations may be the proceeds of criminal activity. This assessment covered the public authorities which were most involved in receiving donations and in humanitarian work (covering the vast majority of the assets of the Roman Curia and the vast majority of such donations/work). The analysis included a range of issues, including the nature of activities; internal governance decision-making processes and internal control systems; accountability in relation to the transfer of funds; external supervision of the authorities; understanding of AML/CFT obligations; the nature of donors; the percentage of donations made in cash; and controls in relation to humanitarian support. The residual risk was considered at that time to be low.

121. The source and pattern of donations in relation to key public authorities were explored by the AT with the authorities. The patterns differ as between e.g. receipt of cash from collections in Italy after mass on a Sunday and receipt of wire transfers from corporate donors and the AT saw no information to suggest anything other than low ML or TF risk from donations. The AT retains a small degree of concern as to an absence of written consideration around the risks as to whether insiders within the framework might be able to use their influence for ML purposes (e.g., by adding to, and/or directing the destination of, funds). This concern should not be over emphasised in light of the overall actions taken by the HS/VCS. Separate to the GRA there has been centralisation of administration of donations and the GRA led to positive actions in relation to public authorities engaged in humanitarian activity: (i) the matter was discussed by the FSC; (ii) information on

[18] Subsequent to the end of the onsite examination, an apostolic letter issued *Motu Proprio* by the Pontiff transferred ownership of the funds and bank accounts, movable and immovable investments, including shareholdings in companies and investment funds, from the SoS to APSA.

AML/CFT reporting requirements were subsequently provided to the offices of the public authorities referred to above (along with other public authorities that receive donations); (iii) red flags for donations were included in ASIF Regulation No. 5 (SARs); and (iv) case examples of donations provided in the 2017 GRA and 2019 GRA update report. In the case of the latter, examples emanate from a combination of SARs to the FIU and a foreign intelligence request to the FIU, indicating that the jurisdiction is drawing upon varied sources to understand risk.

122. The vast majority of intelligence and cases which have been, or are being, investigated include a nexus in Italy. Understanding of risk has been facilitated by substantial liaison by authorities with their counterparts in Italy, including between the CdG and Italian police force. The risks of OCGs in Italy using the HS/VCS for ML have been considered by the authorities, which have concluded that they are very low. Such an assessment appears appropriate. Nonetheless, measures have been taken which may be useful in the event that this risk should arise. Specifically, article 25 of the Law on amendments to the CC and CCP (July 2013) provides for the crime of criminal association, which is similar to the crime of mafia-type association envisioned in the Italian Criminal Code. Consideration of OCGs is not formally included in the GRAs to date but is planned for a future update.

123. Notwithstanding a focus on Italy, risks arising from other jurisdictions are understood. In particular, the ASIF pays attention to payments to and from higher risk countries when it reviews information received in the context of updating the GRA and when it reviews the business risk assessment from the ASIF authorised institution; each review is on an annual basis.

124. Notwithstanding some of the issues reported under IO.7 and workload of the OPJ, the limited resources that had been available to investigate and prosecute cases during the period under review had not been identified as a vulnerability in the GRA, except to the extent that conflicts may arise from adjunct Promoters of Justice practicing law in a foreign jurisdiction. Without recognition of this general vulnerability, the AT has some concerns as to the degree to which it could have been: (i) formally recognised and acknowledged by all authorities; and (ii) fully addressed by, and calibrated with, jurisdictional AML/CFT policies. On a positive note, though not one that can be considered, the AT has noted that prosecutorial resources have increased subsequent to the on-site visit.

125. There is just one registered FI that falls within the scope of the Financial Action Task Force (FATF) requirements. As a result, it has a stronger role within the institutional framework than what would usually be expected of an FI. The product and service range of the ASIF authorised institution is limited and stable, its customer base is linked to the mission of the Catholic Church and HS/VCS employees (and so includes very few foreign politically exposed persons (PEPs)), and it has no subsidiaries or branches. It is not a VASP and products/services involving VAs are not permitted. As explained under IO.3, the ASIF receives information routinely from the ASIF authorised institution. This means that the ASIF and other authorities have a very good basis for understanding the institution's risks (which are assessed as medium-low).

126. A substantial review of the customer base of the ASIF authorised institution was undertaken by third party consultants in 2013 to ensure that its business model would be better focussed on the Catholic Church and the mission of the HS/VCS. This led to a classification of all accounts by type and the closure of a large number of them, though many were closed at the request of customers. Information on all closed accounts, including those subject to a SAR, was provided to the FIU which

undertook analysis of them, improving its risk understanding of the institution's historical customer base.

127. There are no DNFBPs or VASPs providing services to customers in the HS/VCS. This means that a range of common types of risk are not present in the HS/VCS and this significantly simplifies the authorities' task of assessing risk.

128. Legal persons, including NPOs, exclusively serve the mission of the HS/VCS and the Catholic Church and are set up in cooperation with public authorities of the HS/VCS. All are based in the jurisdiction and none are established to pursue private industrial or commercial purposes. Customers of the ASIF authorised institution are not selecting a vehicle within the HS/VCS through which to open and operate an account. The ML/TF risks of legal persons are therefore well understood by the authorities and supported by a good assessment of risks presented by NPOs (see below and also IO.5 and IO.10). A comprehensive risk assessment of other legal persons is underway.

129. Use of cash has been a considerable focus and risks are understood by the country. The authorities have assessed risk from a number of perspectives, namely: (i) cash transactions within the HS/VCS; (ii) transactions in cash by customers of the ASIF authorised institution; and (iii) cross-border transportation of cash (including both declarations and random border checks).

130. Economic activity within the HS/VCS is carried out by the State and there is no shadow economy. Transactions are monitored closely by the Governorate, and this is facilitated by the absence of commercial entities within the jurisdiction. The entities which can sell goods (e.g. museums, pharmacy, post office) constitute a monopoly owned by the HS/VCS and are monitored, with particular analysis on matching the pattern of purchases to customers and risk categorisation based on the profile of the customer, the location of the transaction, the value of the transaction and the frequency of transactions. Linked with this, there are value thresholds which lead to increased identification requirements in relation to the transaction and seniority of sign-off based on the value of a transaction. Use of cash in the HS/VCS is decreasing as a result of action taken by the authorities. While the overall figures are still high this is largely attributable to the sale of museum tickets. The value of individual cash purchases is low (with the average being EUR 25 and cash transactions over EUR 1 000 being prohibited).

131. The ASIF authorised institution requires confirmation that any proposed cash deposits with it by customers above the statutory threshold have been declared. In addition, on a weekly and monthly basis the institution checks the flows of cash entering and leaving the institution so as to verify whether there are any situations that may involve a risk of ML/TF, triggering the need to submit a SAR to the FIU and statistics to the ASIF for the purposes of monitoring its liquidity level. The CdG considers not only cross-border declarations but also intercepts the cross-border movement of cash with values lower than the threshold for statutory declaration. The rationale for each occasion when cash has been declared or intercepted has been reasonable. The AT commends the HS/VCS authorities for the framework in place in relation to cash transactions.

TF (assessed as presenting a low risk)

132. HS/VCS authorities are mindful of the need to understand terrorism and TF risk following an attack against the then Supreme Pontiff in 1981. TF has been assessed in the GRA process. In light of the absence of any concrete elements within the jurisdiction or information received from outside pointing to a higher risk, the authorities have rated TF risk as low. This is consistent with the AT's

view. TF risks have also been considered proactively at an operational level. The authorities have advised that every authority examines the possible involvement of TF elements when reviewing ML data. For example, SARs for ML are also analysed by the FIU for the possibility of TF indicators (with cooperation from the CdG where needed) and investigations by the OPJ consider whether cases are linked in some way to countries exposed to TF risk. The SfE and Office of the Auditor General also consider TF risk whilst exercising statutory oversight of public authorities. Notwithstanding this, there is scope to bring the articulation of the TF assessment as a whole up to the level of the methodology used for NPOs (see below), e.g. misuse of support for humanitarian activities in or near high risk countries and classification of country risk. This calls for refinement of the process rather than a substantial change of approach.

133. A small number of NPOs exclusively serve the mission of the HS/VCS and the Catholic Church and are set up in cooperation with public authorities. This has allowed the authorities to understand the risks presented by NPOs through the period under review. In addition, a formal risk assessment of legal persons categorised as NPOs by the authorities was carried out in 2020 using, amongst other things, a good quality questionnaire presenting ML and TF questions covering: (i) geographical areas of activity; (ii) volume and amount of assets, activities, and transactions; (iii) benefit provided; and (iv) organisational structure and controls. The responses to this questionnaire and other sources of information support a good understanding of risk by the authorities. Overall, the HS/VCS authorities are commended by the AT for proactively finding ways to substantially address understanding of the risk profile of NPOs.

134. Country understanding of risk is assisted by the fact that the majority of NPOs are customers of the ASIF authorised institution and are therefore subject to its AML/CFT measures, including risk assessment, though it is not clear whether this majority includes all NPOs that continue to be financed by donations. The pattern of donors has been considered by the authorities and, while noting occasional issues (mentioned in the GRA), the sector is assessed as presenting on average a medium-low residual ML/TF risk. With regard to the most recent full calendar year prior to the visit by the AT (2019), each NPO received on average 230 donations with a value of EUR 1 800. However, this figure is distorted by one very large NPO, an outlier, that had received 1 485 donations totalling EUR 3.7 million, and some 40% of NPOs did not receive any donations at all and another 40% received fewer than 40. The largest individual donations made in 2019 (all relating to the largest NPO) had a value of some EUR 100 000, with seven such payments being made in that year. The pattern of donors across the third sector comprises FIs, foundations linked to FIs, other well know foundations, reputable individuals and legal persons based in Italy and elsewhere in Europe, together with other occasional donations from the faithful. Of these groups, by value, donations are mostly made by natural and legal persons resident and/or domiciled and/or having their registered office in Italy. Often, donors have a tangible link with the mission of the NPO, with only two NPOs using a third party to manage fund raising. In these two cases, and in almost all cases, donations are made with a traceable means of payment.

135. Donations are received by the NPO's representative in the HS/VCS. In one case, the largest NPO, donations are paid to national operations by e.g. local churches or EU bodies, which in turn fund the central aspect of the NPO in the HS/VCS. NPOs are required to perform due diligence on their donors and assess the risks related to donations.

136. All NPOs operate directly with the persons who benefit from their activity rather than funding other organisations; with one exception (the largest, which works through its own national

operations) NPOs do not work with local operations. Therefore, vulnerability to foreign partners is reduced.

137. NPOs account for an important proportion of HS/VCS humanitarian work. As indicated above, the HS also supports work by local churches through public authorities such as the Pontifical Missions Societies. Risk assessment activity in relation to these public authorities, which was also applicable to TF, is described above (as is the AT's conclusion around the importance of further assessment in relation to public authorities and articulation of the results).

138. Whilst the HS/VCS State is not a financial centre and does not have a market economy that favours the collection or movement of funds for terrorist purposes, the authorities are conscious of monitoring use of cash and wire transfers and assessing the TF risks in relation to them. The analysis above in relation to cash also applies to TF. The authorities have presented a list of external sources that are used to identify countries with an elevated TF risk. This includes countries listed by the FATF (high risk countries) and some other reliable sources (medium and medium-high risk countries). This allows the authorities to understand whether transfers are being made to countries with a higher exposure.

139. FTFs are not a feature of the HS/VCS and there is no apparent suggestion that the HS/VCS has been used by those evading targeted financial sanctions (TFS) or for secondary TF.

2.2.2. National policies to address identified ML/TF risks

140. Jurisdictional policies and activities have addressed ML/TF risks: (i) set out in the GRA; and (ii) in cases that have raised a red flag for potential abuse of the HS/VCS system by insiders to a good extent.

141. Until the start of 2020, suggested actions specified in the various iterations of the GRA constituted such policies and plans to improve the framework for countering ML/TF. These have now been complemented by stand-alone action plans for each authority (including the FSC) and an overall strategic plan for the Committee's work (September 2020). This proliferation of plans has not led to conflicting actions or uncertainty over priorities and they are discussed at regular meetings of the FSC (made up of representatives from competent authorities – see Chapter 1).

142. Rather than have a separate action plan or plans, the HS/VCS incorporated suggested actions within each GRA. These have included: (i) gathering further evidence on the effectiveness of public authorities; (ii) capacity within the ASIF, law enforcement and the judiciary (including, for the latter, the approach to international investigations and international cooperation); (iii) a review of legislation relating to public procurement (iv) outreach to HS/VCS public authorities on donations and AML/CFT obligations; (v) training for FIs in specific areas such as the HS/VCS list of PEPs, customer risk profiling and reporting of suspicion; and (vi) specifically in relation to TF, outreach to NPOs engaged in humanitarian activities.

143. The most recent GRA update (2020) has updated these suggested actions which now include: (i) measures in relation to internal prevention mechanisms to improve AML/CFT compliance supervision of public authorities, NPOs and legal persons; (ii) refresher training for these authorities in connection with the identification of suspicion; and (iii) procedures for NPOs and public authorities, including in relation to financial flows. Specific actions with regard to TF include measures to: (i) strengthen prevention and compliance monitoring in relation to the reporting of

suspicion; (ii) strengthen supervision of NPOs; (iii) undertake more detailed onsite inspections in connection with financial flows; and (iv) define high and low risk situations.

144. The FSC and member competent authorities have now also developed stand-alone action plans to mitigate the risks identified in the GRA (see section 2.2.4 below). Progress with implementation of these plans were also considered in the most recent GRA update (2020). The action plan prepared by the FSC has identified five actions picked up from the 2019 GRA that have highest priority and set timelines for their implementation. These cover the adoption of MoUs, adoption of legislation and guidelines, and training. The plan did not prioritise actions needed to address possible conflicts that may arise from adjunct Promoters of Justice practising law in a foreign jurisdiction, which are considered by the AT to be important since they may limit availability and therefore investigation and prosecution resources. The Committee is also coordinating a working group of committee members which has been established to facilitate completion of the action plan. In light of the coordination of the action plans of individual authorities by the Committee and accountability to the Committee for compliance with them, these plans can also be considered to be aspects of national policy. See section 2.2.4 below.

145. At a high level, the Committee's action plan also explicitly covers PF. While the detail of the plan itself addresses AML/CFT, in practice elements of it are relevant to PF. In addition, while not envisaged in the plan, a working group has been set up to prevent and counter PF.

146. The AT notes that, since 2017, the profile of planning and actions has developed so that there is: (i) more intense focus on TF in particular and, more recently, PF; (ii) some focus on measures relevant to combatting institutional fraud and abuse of office for personal or other benefits; (iii) a greater assertiveness in connection with developing the capacity of individual authorities; (iv) greater outreach; and (v) to some extent, risk-based activity.

147. The Committee is seen as effective by the AT.

2.2.3. Exemptions, enhanced and simplified measures

148. There is one exemption from preventative measures based on risk - money transfers by the Vatican Post Office (which would be covered by the activity of transferring of funds).

149. Using this power, by Ordinance, the Vatican Post Office has not been designated as an obliged subject. The full rationale for this is set out in an Ordinance of the ASIF, and it has been explained that money remittance is limited in terms of volumes (in absolute and relative terms) and the ML/TF risk is considered extremely low (see c.1.6). Whilst the Ordinance explains why there is a low risk of ML, it appears that there is no restriction on beneficiaries of transfers to Italy though they are generally utility companies. Accordingly, it is not entirely clear that the exemption occurs only in strictly limited and justified circumstances. However, transfers cannot exceed EUR 999 99 and so occasional transactions (but not business relationships) would likely be outside the scope of CDD measures even without the exemption. In any event, the number and value of money remittances has not been material.

150. As indicated under c.10.17, FIs are required to apply EDD in cases of high ML/TF risks, e.g. risks associated with the category and country or geographical area of the customer, or the type of relationship, product or service, operation, or transaction, including channels of distribution. CDD must be carried out in a manner proportionate to these risks. To this end, in line with findings in the

GRA, supervised entities must apply EDD in the case of relationships, operations or transactions with persons directly or indirectly connected to high risk states. However, since the GRA does not expressly identify how threats to the HS/VCS manifest themselves, there may be other scenarios where enhanced measures are necessary but not required by the HS/VCS.

151. With reference to c.1.8 and c.10.18, based on risk assessments, the ASIF may identify by regulation, sectors and typologies of relationship, product, service, operation, transaction and channels of distribution which are low risk, and authorise the adoption by obliged entities of simplified measures in such cases. This has been done through ASIF Regulation No. 4 (CDD). Inter alia, this states that simplified CDD measures may be applied to the following categories of customers: (i) public authorities of the HS/VCS (notwithstanding that significant donations may be handled by such authorities and information shared on the assessment of public authorities); (ii) residents of the VCS (notwithstanding some of the cases that have been reported in the media); (iii) legal persons (notwithstanding that many are NPOs which are assessed in the recent risk assessment as presenting a medium-low risk); and (iv) employees of the VCS (notwithstanding a case where an employee's account was used by a family member that had signed a procurement contract with the VCS). Also, obliged entities can apply simplified CDD measures where their assessment of customer risk is low in line with these factors, as well as wealth management. The authorities have advised that the (potential) application of simplified CDD to all four categories is consistent with the GRA, and that categories (i), (ii) and (iv) are consistent with examples of potential lower risk that may be taken into account when assessing risks under the EU framework while category (iii) is congruent with the disclosure and other legal requirements in the HS for legal persons. However, while noting that the provisions in the Regulation are permissive rather than compulsory; that they cannot be applied when there is a suggestion of ML or TF or where there is high risk; and that there is no suggestion in practice that the provisions have been abused, the AT has a degree of concern arising, in particular, from the risks presented by VCS insiders (which have themselves not been articulated comprehensively in writing) combined with the absence of an express assessment of the appropriateness of the approach to simplified CDD that is taken in the Regulation.

152. In addition, even in the absence of such regulations, the ASIF can authorise the application of simplified CDD measures for any FI in the case of low ML/TF risk. In such a case, the ASIF must consider the GRA and risk assessment that has been prepared by the FI. This provision has not been used in practice.

2.2.4. Objectives and activities of competent authorities

153. The objectives and activities of individual authorities are coordinated by the FSC.

154. Stand-alone action plans, informed by the GRA, have been developed by the SfE (which includes proliferation financing), the SoS, the OPJ, the CdG, the ASIF, the Office of the Auditor General, the Tribunal and the Governorate, and agreed by the Committee in early 2020. However, these action plans reinforce the suggested actions arising from the GRA rather than setting out more comprehensive and rounded risk-based policies to be followed by individual authorities in addressing risk; the suggested actions are a single aspect of this more comprehensive approach. In the case of the supervisor, for example, such a policy might set out: (i) its functions; (ii) its role in the GRA; (iii) the effect of findings in the GRA on the performance of its supervisory functions, e.g. off-site analysis, type and number of inspections, inspection themes and outreach informed by risk; and

(iv) action points to address GRA risks. Notwithstanding this, activities of the competent authorities are consistent with action plans and with ML/TF risks identified in the GRA.

155. With regard to prevention, the ASIF takes account of risks in the GRA and has some very strong elements of risk-based supervision. It is demonstrably endeavouring to achieve comprehensive risk-based supervision in line with the jurisdiction's risks.

156. The Governorate conducts significant oversight of legal persons, which prevents their misuse. AML/CFT inspections of legal persons have begun recently. The ASIF is committed to carrying out inspections of all legal persons based on risk. At the date of the onsite visit, one NPO had been subject to such an inspection.

157. As the FIU, the ASIF plays a central role in the AML/CFT network. The quality of analytical reports it disseminates has improved and, particularly with regard to recent reports, it has been commended by the investigative authorities. Feedback is provided to the ASIF authorised institution for every SAR received. Motivation to fulfil its role is high but, as IO.6 indicates, there have been constraints on its ability to undertake its role.

158. A number of high-profile cases, involving significant assets, are still under investigation or at trial stage. In the eight years since the last MER, in part as a result of limited prosecution resources available, two convictions for ML have been achieved, suggesting that the overall results are modest. In both cases, convictions were for self-laundering and confiscation orders executed. The cases prosecuted so far reflect, in general, the risks present in the jurisdiction (see also IO.7).

159. Effective international cooperation (facilitated by effective cooperation between the authorities at domestic level) is a priority.

2.2.5. National coordination and cooperation

160. There are effective coordination and cooperation mechanisms in place for the development and implementation of AML/CFT policies and activities at national level. In the case of the HS/VCS the small size of the jurisdiction facilitates effective coordination and cooperation. The FSC is the main coordination mechanism; its coordination of measures to address proliferation of weapons of mass destruction (including PF) has recently been complemented by the establishment of a dedicated working group. The Committee is administered by a secretariat provided by the ASIF and works closely with the Council for the Economy to, inter alia, protect assets of the dicasteries of the Roman Curia and institutions collected to the HS. This PF cooperation mechanism is less developed than others.

161. Meetings of the Committee have been held routinely for several years and the AT was provided with a good level of information about the scope of its discussions since 2015. These have included: (i) the methodology and scope for the first GRA, progress on its completion and publication, action plans and subsequent updates; (ii) implementation of legislation (e.g. for legal persons, NPOs and procurement), codes (e.g. procurement and CC), policies (for public authorities) and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; (iii) ML, TF and PF risks, e.g. donations (including monitoring mechanisms) and public procurement; (iv) resourcing levels and capacity, e.g. establishment of specialised economic and financial crime teams; (v) cooperation and information exchange, e.g. between the intelligence, investigative and judicial authorities and MoUs; (vi) matters related to obliged entities, e.g. the closure of several

deposit accounts and passage of APSA from the ASIF's supervisory perimeter and ongoing supervision to the SfE; (vii) media coverage; and (viii) consideration of whether to undertake a "lessons learned" exercise for cases investigated by the OPJ. The latter exercise took place and identified areas for improvement in domestic and international cooperation and in the legal framework.

162. On a monthly basis since February 2020, the secretary of the Committee has prepared a brief report on progress in meeting suggested actions (including to what extent individual authorities have met their own stand-alone action plans), indicating whether or not the timelines for implementation have been observed.

163. On a bi-monthly basis, updates on progress have been provided to the Committee by the secretariat and individual authorities have reported progress in relation to their action plans and on the implications for the mitigation of observed risks. During each meeting, members have also described their view of threats and vulnerabilities, with the Committee being able to discuss the best approach to mitigation.

164. As a result of this coordination and cooperation, positive measures to mitigate identified risks have been undertaken, including for fraud and abuse of office for personal or other benefits, and laundering of the proceeds of these crimes by HS/VCS insiders. At a preventive level, the closure of foreign accounts and return of capital to APSA (requested by the Council for the Economy in 2018 and April 2020) and procurement regulations that centralise all purchases in APSA (June 2020) (consistent with a Motu Proprio on awarding public contracts) provide for an improved framework to address potential fraud and abuse of office for personal or other benefits. Measures are also being taken to establish an ethical investment committee to consider the nature of investments (in line with the Church's social doctrine) and their profitability. In addition, the Office of the Auditor General was appointed as the anti-corruption authority in 2019. In order to monitor the use of cash, the CdG has developed a strategy to risk categorise cash transactions and, by way of deterrence, a three tiered strategy (on a risk basis) to identify breaches of the cash declaration system, identify sums of money or other assets transported, and analyse data on individuals crossing the border and when they are within the HS/VCS.

165. With regard to resources, the CdG and the OPJ have established dedicated section for Economic and Financial Crimes. Still, the AT has concerns with regard to the resources available when carrying out complex ML/predicate offences investigations (see also IO.7) and additional hires at the CdG are currently on hold due to the current economic environment. Consequent to the reorganisation of the ASIF, three additional positions have been created and are to be filled. The ASIF authorised institution, whose representatives took part in preparation of the GRA, has also benefitted from proactive intervention by the ASIF, which, amongst other things, has led to improved governance and internal controls both within the institution and in relation to customers.

166. Cooperation between domestic authorities has developed in recent years and is strong with respect to operational activities. The ASIF has substantial liaison with the FIU and it is clear to the AT that it is proactive in assisting and also seeking information from other authorities so as to help other authorities undertake their roles and to better fulfil its functions. Numerous case studies provided under IO.6, IO.7 and IO.8 confirm this statement and regular trilateral meetings (at least three times per month) are held between the OPJ, CdG and FIU to examine issues of common interest, share information about cases under investigation and provide feedback. The OPJ and the

investigating officers of the ECO-FIN Unit regularly review (almost on a weekly basis) progress made in economic crime investigations. Where a FIU report triggers an investigation, FIU analysts will take part in these reviews. Intensive inter-agency cooperation is also observed when seizure/freezing measures are applied. Where the FIU freezes an account or when it suspends a transaction (as administrative measures), the OPJ is immediately notified. If, within the timeframe of application of the FIU's freezing measure, the Promoter of Justice decides to open an investigation, these freezing measures, could, de facto, be prolonged. Their nature would, of course, no longer be administrative but criminal. This practice minimises the risk of dissipation of assets. Cooperation between the Governorate and SoS is strong in relation to the registration of legal persons, and between the ASIF, the SfE and the SoS in respect of the ongoing supervision of NPOs.

167. Beginning in May 2020, the authorities have signed a series of MOUs in order to formalise their arrangements for cooperation and information exchange. These reflect already strong relationships. MOUs have been signed between: (i) the ASIF and the Office of the Auditor General (2019, updated in 2020); (ii) the ASIF and the OPJ (2019); (iii) the ASIF, the SfE and the SoS (2020); (iv) the ASIF and the SfE (2020); (v) the ASIF, the CdG and the OPJ (2020); (vi) the ASIF, the CdG, the Governorate and the OPJ (2020); and (vii) the Office of the Auditor General and the SfE (2020). These MoUs cover the intelligence and criminal justice aspects of the system in particular, together with other themes such as the more recent focus on NPOs. This focus is consistent with the broader concern to improve these aspects of the system.

2.2.6. Private sector's awareness of risks

168. The ASIF authorised institution participated in the original GRA and each of the updates. A full copy of the GRA and each update has been provided to the institution by the ASIF. Also, a summary of the first GRA has been placed on the website of the ASIF; this is planned also for the 2020 update. In addition, the ASIF has issued an Instruction on suspicion indicators.

169. Representatives of the NPO sector met onsite were aware of the results of the NPO risk assessment, this area having been covered in an NPO outreach event (February 2020). In addition, the authorities led similar outreach events in 2020 to legal persons (other than NPOs) (September 2020). These too covered the GRA but did not touch on the specific risks faced in each sector.

Overall conclusions on IO.1

170. Overall, with one exception, the authorities have a good high-level understanding of ML/TF threat and vulnerabilities, though future risk assessments would benefit from more intensity in focus on the articulation of threats and residual risks. The main gap is in relation to the identification and understanding of risks presented by insiders in domestic cases which are significant in the context of the jurisdiction. These have not been articulated and the AT considers that the GRA cannot be regarded as complete until the risks have been comprehensively assessed, articulated and disseminated within the HS/VCS so that all authorities have an informed and consistent understanding in relation to insiders and public authorities, and the efficacy of mitigating measures can be properly measured. The authorities consider the risks presented by insiders to be low; the AT considers this to be the most important risk and cannot agree that the risk (currently) is low.

171. There is a range of strong elements relating to compliance with IO.1 but the AT places significant weight on the matters raised above.

172. **The HS/VCS is rated as having a moderate level of effectiveness for IO.1.**

3. LEGAL SYSTEM AND OPERATIONAL ISSUES

3.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

a) The FIU's analytical reports are the main source used by the OPJ to initiate ML investigations. The OPJ considers these analytical reports to be of a good quality. Whilst the AT may confirm that the quality of the FIU's analytical reports has significantly increased in last year or so, there is little evidence that financial intelligence has been used extensively in the investigations shared with the AT.

b) In developing ML/TF investigations, sources of information (i.e. media reports; FIU to FIU requests) other than SARs have been used broadly. As regards intelligence from international requests for information, in particular MLAs, the AT is of the view that such information is not sufficiently considered to trigger ML investigations.

c) The FIU serves as the national point of contact on AML/CFT matters and cooperates closely, on operational and policy matters, with all domestic counterparts. The responsiveness and proactiveness of the FIU, including its overall engagement and assistance in ML and predicate offences investigations is commended by all HS/VCS authorities. The central role exercised by the FIU, however, strains its already limited resources and at times detracts it from carrying out its core functions.

d) In the aftermath of the October 2019 search of the FIU's offices and the subsequent suspension of access to the Egmont Secure Web by the Egmont Group of FIUs, some measures were put in place to better protect FIU information. The AT did not identify any issues concerning the FIU's operational independence and confidentiality of information.

e) Staff turnover in the FIU has been particularly high. The complete and rapid change of the entire intelligence team, including its top-most senior officials, has created a real risk that the FIU suffers from institutional memory loss. Further, the FIU did not have a comprehensive manual or a guidance document in place to guide analysts through operational analysis. As regards the new intelligence team, its AML/CFT, FIU or law enforcement experience prior to joining the HS/VCS FIU is very limited. The FIU has a significant number of cases which pre-date 2020 and some date back to 2014.

f) No ML/TF typology study or adequate strategic analysis with ML/TF typologies to guide reporting entities in the identification of suspicion and to provide law enforcement agencies (LEAs) with essential information on ML methods and trends has been produced by the HS/VCS. Some strategic analysis was carried out, albeit undocumented, that served to identify the anomaly indicators relevant to the HS/VCS that are indicated in ASIF Regulation No. 5 (SARs).

g) The quantity and quality of SARs received by the FIU has varied during the period under review – from defensive reporting, which to a certain extent characterised the period up until 2018, to good quality SARs.

h) The FIU frequently requests information both from domestic authorities and its foreign counterparts. A MoU is required for exchanging information with the latter. Although the FIU has

a policy to sign as many MoUs as possible, delays may result in cases where one is not in place. Confidentiality arrangements are in place protecting the information it receives and processes.

Immediate Outcome 7

a) Most ML investigations conducted by the OPJ and the CdG arise from FIU reports or other alerts from the Auditor General or the ASIF authorised institution. Few, if any, ML cases have been generated by parallel financial investigations in domestic proceeds-generating offences.

b) ML investigations have been protracted, partly because of late responses on MLA requests by foreign counterparts and partly because of under-resourcing on both the prosecutorial and law enforcement sides and insufficient specialisation of financial investigators until comparatively recently. Equally greater priority was given to tracing and seizing the proceeds of crime vis-à-vis their laundering.

c) No domestic investigation into a SAR/FIU report to the OPJ since 2012 generated any ML case before the Tribunal until 2018. This is partly because, up until 2018, the OPJ preferred to wait for convictions for predicate offences despite the express language of the ML offence.

d) The results in the Tribunal are modest: two convictions for self-laundering – one in 2018 and one in 2019[19]. Both of these cases were consistent with one identified ML risk – the use of the ASIF authorised institution accounts to launder the of proceeds of foreign tax or other fraud offences, by the accused for himself or for a family member. Other ML related investigations/prosecutions also generally reflect the risks identified and further discussed under IO.1.

e) No conviction for 3rd party laundering has been achieved. In one of the cases where there was a conviction for self-laundering, the other defendant was acquitted of third-party laundering, as insufficient evidence was led by the prosecution from which the court could properly draw inferences from facts and circumstances.

f) Sanctions in respect of natural persons for ML offences, as established by the relevant provisions of the CC, are proportionate and dissuasive. However, actual sanctions imposed in ML cases where there have been convictions are all below the statutory thresholds and appear rather minimal. Arguably, they are not proportionate and dissuasive.

Immediate Outcome 8

a) The legal framework for provisional measures and confiscation of proceeds and instrumentalities under the CC and CCP was upgraded after the 2012 evaluation. Confiscation is now mandatory upon conviction for ML and other proceeds-generating offences.

b) Although there is no such a statement in any of the HS's strategic documents, confiscation is pursued as a policy objective. This is further illustrated by the legislative reform undertaken in 2018 - the adoption of a robust framework for non-conviction based confiscation which has since been used in a high-profile case. Furthermore, results achieved in seizing/freezing of assets/funds (either domestically or abroad at the HS's request) confirm the proactive approach by the HS authorities in pursuing proceeds of crime.

[19] Another conviction was achieved in the L, C and S case on 21 January 2021 (discussed under KF g) and under IO.7 in more depth).

c) The OPJ and the ECO-FIN Unit of the CdG are tracing and seizing proceeds effectively. This notwithstanding, there is a considerable gap between the amounts seized and those confiscated. Only two confiscation orders were executed by the time of the on-site visit- first was made in December 2018, in an own-proceeds ML conviction, where the Tribunal confiscated EUR 1.2 million which had been seized by the authorities in April 2014. A further confiscation order was made upon conviction of a second person, in 2019, also for own-proceeds ML, where EUR 48 799 was confiscated. No other final confiscation orders have been made by the time of the on-site visit[20].

d) HS/VCS has effective controls in place to detect and confiscate cross-border currency/ bearer negotiable instruments (BNIs) that are suspected to relate to ML/TF/predicate offences or that are falsely or not declared. Cash and BNIs transported cross-border have to be reported to both, the CdG and the ASIF. Apart from regular control, the ECO-FIN Unit also analysed, in more detail, a significant number of declarations made so far. While no false declaration has been detected, one investigation was triggered following a non-declaration of cross border transportation of cash. As a consequence, an administrative sanction has been imposed.

e) Seizures and confiscations relate, in general, to the offences which constitute the main ML threats and risks.

Recommended Actions

Immediate Outcome 6

a) The competent authorities should enhance the use of financial intelligence in criminal investigations with a view to proactively pursue parallel financial investigations and ensure that evidence is gathered in a timely manner.

b) The policies and procedures of the competent authorities should be reviewed in such a manner so as to ensure that intelligence and information originating from other sources, particularly incoming MLAs and cross-border cash declarations, is appropriately assessed to determine whether an analysis or an investigation in the HS/VCS is warranted.

c) The authorities should increase the FIU's resources to ensure that it is adequately resourced to carry out its core functions effectively alongside its coordinating role within the jurisdiction's AML/CFT framework.

d) The FIU should implement an effective FIU staff retention strategy to reduce the high rate of staff turnover and the risk of institutional memory loss. As a matter of priority, its members of staff should undergo specialised training on operational and strategic analysis. Also, the FIU should ensure that all new staff joining its operational and strategic analysis teams have sufficient AML/CFT experience and expertise.

e) As a matter of urgency, the FIU should clear the backlog of active operational analysis cases and review its analytical process to ensure that backlogs are not created, and cases are processed in a timelier manner.

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[20] In addition to these confiscations, on 21 January 2021, the court, when pronouncing conviction (at first instance) in L, C and S case, ordered '*the confiscation of the sums already seized at the IOR, for an amount equal to the amount existing at the date of the seizure on the accounts in the name of each of the defendants'.* Enforceability of the confiscation order is suspended until the conviction becomes irrevocable.

f) The FIU should put in place and keep up-to-date a comprehensive analysis manual to cover, as a minimum: (i) the most prominent typologies and red-flags in the HS/VCS; (ii) a list of open source information and tools that analysts may use; and (iii) the FIU's expectations as to how an analysis should be carried out, including the analysis and visualization of transaction data as well as other information.

g) As regards SARs, the FIU should: (i) improve the retention of SAR-related statistics, particularly on the anomaly indicators and suspected predicate offence(s) (where known) of reported SARs; and (ii) conduct strategic analysis with the aim of identifying trends, typologies and red-flags taking into account the risks and context of the jurisdiction, and share the results with the reporting entities.

h) The authorities should consider removing the requirement for the FIU to enter into a MoU in order to exchange information with foreign FIUs. In the event that this requirement is not lifted, the FIU should intensify its policy to sign as many MoUs as possible.

Immediate Outcome 7

a) The authorities should recruit more prosecutors with practical experience of prosecuting financial crime in other jurisdictions, and ensure all new prosecutors work exclusively for the HS/VCS; strengthen the expertise of financial investigators in the ECO-FIN Unit and consider the need for additional in-house accountancy or other relevant technical expertise for complex financial analysis.

b) The authorities should introduce a protocol/operational procedures document to be followed by all prosecutors to: (i) facilitate investigations and prosecutions of ML and serious financial crime by setting targets for initial review of new ML and serious financial crime cases, and targets for progressing such cases to indictments; (ii) establish a comprehensive procedure for petitioning the Holy Father when requesting consent to pursue a criminal prosecution against cardinals and bishops; The OPJ should monitor progress against these targets.

c) The authorities should prepare an operational manual to assist new investigators and prosecutors responsible for ML cases, which includes: (i) the importance of proceeding in ML cases without waiting for a conviction for the predicate offence; (ii) setting out the current ML risks to the HS/VCS identified in GRA updates and typologies used to launder the proceeds; (iii) minimum evidential requirements for the prosecution of stand-alone and 3rd party laundering in the absence of a conviction for the predicate offence; (iv) tools and mechanisms to be used for gathering evidence relevant for conversion, transfer and integration of illicit proceeds; and (v) the types of evidence required to be adduced for the court properly to draw inferences from facts and circumstances (in respect of the physical and/or mental elements of the ML offence);.

d) The authorities should include performance indicators in the OPJ's annual reports and report against them on all serious prosecutions, including ML and other financial crime cases.

e) The authorities should analyse and review sentencing practices for ML with a view to developing a greater understanding of the need for a sanctioning regime which would ensure that dissuasive sanctions are applied, proportionate to the harm caused by ML.

Immediate Outcome 8

a) The authorities should ensure in all complex financial investigations that the money trails are thoroughly followed in order to trace all direct and indirect proceeds and instrumentalities used through all the stages of the ML process (placement, layering and integration). This also

includes timely information exchange and coordination with foreign counterparts in cases when there are suspicions that proceeds are located abroad.

b) The authorities should make appropriate use, to the extent possible, of the new non-conviction confiscation provisions based on suspicion, where criminal proceedings cannot be taken against persons who appear to have enriched themselves from their positions in the HS/VCS.

c) The authorities should develop an operational manual which would set out the policy objectives, procedures and relevant practices for the use of all available freezing and seizing measures by the OPJ and CdG with a view to confiscation. The manual should be kept up to date and should underline the need for early freezing measures in proceeds-generating cases, and the need for swift freezing action by the Promoter of Justice under the CC in appropriate cases, where the FIU has used its powers to suspend transactions;

d) The authorities should prepare, in conjunction with other relevant stakeholders, operational guidelines on management of different types of assets (e.g. assets valuation, preservation, disposal, etc.), for the future management of assets by judicial administrators.

e) The authorities should ensure that accurate statistics continue to be kept on freezing, seizing and criminal confiscations (property orders, value orders and confiscation of instrumentalities) and on orders for confiscation based on suspicion. These statistics should then be used for the overall performance review which would identify and inform areas where further improvements are needed.

173. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, R. 3, R.4 and R.29-32.

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

3.2.1. Use of financial intelligence and other information

174. The competent authorities of the HS/VCS use, to a certain degree, financial intelligence and other sources of information to trigger ML/TF/predicate offence investigations and trace proceeds of crime.

HS/VCS institutional framework

175. The FIU constitutes an important source of information for initiating investigations into ML, TF and predicate offences. It is the central agency for financial intelligence analysis, and it provides the OPJ and other competent authorities with analytical reports that indicate potential ML/TF activity, predicate offence(s) and their proceeds. Apart from being responsible for operational and strategic analysis, the FIU also plays a critical central and coordinating role within the HS/VCS institutional framework, as further explained in core issue 6.4. The FIU sits within the ASIF as one of its three Units – the other two being the Supervision Unit and the Regulation and Legal Affairs Unit – with each Unit having a manager. At the time of the onsite, it had three officers dedicated to the intelligence analysis roles. This figure includes the Unit's manager, but excludes the ASIF's Director and Deputy Director, which bring the total number of persons having direct FIU responsibilities up to five. As further explained in core issue 6.3, the AT finds that the FIU requires more resources. The

HS/VCS authorities with criminal investigative responsibilities are the OPJ and the CdG. The OPJ exercises prosecutorial powers and is the central recipient of the FIU analytical reports, and the ECO-FIN Unit of the CdG is a special unit which exercises law enforcement powers and carries out financial investigations. Based on the reports received from the FIU, the OPJ initiates, in case there are reasonable grounds that a ML/TF/predicate offence has been committed, an investigation in which the office would be assisted by the ECO-FIN Unit. The ECO-FIN Unit may also initiate (autonomously) a ML/TF/predicate offence investigation based on other sources of information, or upon request from foreign counterparts.

Other sources of intelligence

176. The FIU does not receive other type of reports (other than SARs and cross-border cash declarations), such as threshold-based reports. Apart from SARs, which are a primary source of intelligence for the FIU, operational analyses are also carried out upon information received from other sources. As explained further on in this IO, some cases which were opened by the FIU on its own motion also resulted in the dissemination of reports to the OPJ. In total, the FIU opened 70 cases which were not based on SARs. Most of these were based on press or open source information (18 cases) and on incoming foreign FIU requests or spontaneous intelligence reports (43 cases).

Insufficient use of intelligence

177. Nevertheless, some sources of information appear not to have been sufficiently used by the competent authorities of the HS/VCS to develop intelligence. More specifically, intelligence stemming from LEA investigations into offences other than ML/TF and information from incoming MLA requests have not triggered any ML/TF or predicate offence investigations so far. During the review period, the HS/VCS processed 24 incoming MLAs, and the authorities reassured the AT that, in every case, an analysis by the OPJ had been undertaken to determine whether there was potential for an ML/TF investigation. Despite this, given the risks and context of the jurisdiction, in particular, the HS/VCS's strong exposure to cross-border threats as is indeed acknowledged in its GRA, the AT is not entirely convinced that opportunities for the authorities to pursue ML/TF/predicate offences were not missed. Also, some doubts remain as to whether all potential avenues for seeking information are persistently explored.

Analytical process

178. The FIU's analytical process begins when a SAR or information from other sources is received/observed. SARs are prioritised manually by the manager of the FIU using two classification levels, urgent and non-urgent, in accordance with its internal circular for operational analysis. SARs which concern persons who are known to be under investigation in the HS/VCS or in other jurisdictions, and SARs concerning suspicions of TF are invariably given priority. Approximately 30% of the cases analysed by the FIU are classified as urgent.

Information requests and access to information

179. The FIU, the OPJ and the CdG have the power to request information from any authority, institution and legal person within the HS/VCS. Overall, in the period 2015 – 2020 (October), the FIU sent 96 requests for information in relation to 1 066 legal and natural persons to the different authorities and other entities in the HS/VCS. The FIU has direct access to all declarations of the cross-border movement of currency and the lists of subjects threatening international peace and security (hereinafter national list). The FIU has direct access to some external sources, including the

Pontifical Yearbook, the HS/VCS registry of the legal entities, and the Governorate registers. The FIU also explained that it has no difficulty in obtaining information from the authorities, and it is satisfied with the level of cooperation and exchange of information in the HS/VCS. The table below databases lists the databases which the FIU, the CdG and the OPJ have direct access to.

Table 2: Access to databases by the competent authorities

FIU	CdG	OPJ
National list	National list	National list
Cross-border currency declarations	Cross-border currency declarations	Cross-border currency declarations
Register of legal persons	Register of legal persons	Register of legal persons
Pontifical yearbook	Pontifical yearbook	Pontifical yearbook
Other commercial databases	Other commercial databases	Other commercial databases
Internal SAR databases (goAML and ASIF application)	Interpol Database	Internal database

Operational analysis

180. The FIU's Circular for Operational Analysis, although not perceived to be comprehensive by the AT (see core issue 6.2), outlines the checks and controls that are to be performed in order to enhance and enrich the analysis of SARs. Typically, an analysis commences by carrying out checks on the FIU's internal databases, open source databases, the registries of the HS/VCS and the database on cross-border cash declarations. It continues with the analysis of transactions and financial profiling of the persons concerned using goAML. Although no reference is made in the Circular, the FIU officers perform analysis of different transactions' relationships/links. Once prepared by an analyst, the analytical report is sent to the manager of the FIU, together with any recommended actions, including the possible suspension of a transaction, the pre-emptive freezing of a bank account, and other information (e.g. cross-border checks, etc.). After a review by the manager of the FIU, the analytical report is forwarded to the Director or the Deputy Director for their approval. Reports sent by the FIU to the OPJ are thus approved and signed by the Director or his deputy.

Reports received by the OPJ

181. As a matter of process, upon the receipt of a report submitted by the FIU, the OPJ carries out a preliminary analysis to determine whether there are sufficient grounds to proceed with a criminal investigation. If the preliminary analysis identifies the need for additional information or clarifications, the case is passed by the OPJ to the ECO-FIN Unit. Also, where the OPJ determines that a criminal investigation is warranted, the investigation is typically passed on to the ECO-FIN Unit, although this is not necessarily the case, and the OPJ may proceed with an investigation without involving them.

182. In the period 2014-2020, a total of 96 reports were disseminated by the FIU to the OPJ. The majority of these reports resulted from the analyses of 1 617 SARs received during the period under review. Out of 96 reports, 42 were new reports indicating that an offence (or more than one offence) was/were committed, and the rest were supplementary reports to others submitted previously. The 96 reports disseminated to the OPJ also include 8 cases initiated by FIU on its own motion (based on information from the press, from individuals or from its own intelligence). In addition, 8 reports/criminal complaints on potential ML were submitted directly to the OPJ by entities other than the FIU (such as by the ASIF authorised institution, the Office of the Auditor General, and the

Governorate). In such cases, the OPJ informs the FIU and requests any information it has or may obtain in relation to the subjects referred to in these reports. In fact, some of the most complex cases where initiated by the reports produced and sent to the OPJ by these institutions (IO.7 elaborates on these cases in depth).

Table 3: Use of financial intelligence

Year	SARs received by the FIU	Reports sent by the FIU to the OPJ		ML related criminal complaints sent to the OPJ by other authorities[21]	Investigations launched		Prosecutions (individuals)	Convictions (individuals)	Confiscation
		Based on SARs	*Based on other info*[22]		*Based on FIU reports*	*Based on other authorities' criminal complaints*			
2014	468	3	1	1	4	1	1-2		
2015	545	7	1	0	8	0	1-2	1	0
2016	208	5	1	1	6	1	1-1	0	0
2017	150	1	3	0	4	0	1-2	1	1
2018	83	5	1	1	6	1	1-1	1	1
2019	95	5	0	3	5	3	0	0	0
2020	68	7	2	2	9	2	0	0	0

183. The 42 new FIU analytical reports sent to the OPJ gave rise to 26 investigations, whilst the remaining 16 were archived as there were no grounds for a complete investigation. Investigations have so far resulted in three prosecutions for ML in relation to five persons (see IO.7), and two prosecutions against three persons for predicate offences. By the time of the on-site, the HS/VCS had reached two convictions for ML.

BOX 1

Case Study 1 (ML investigation triggered by a FIU report)

Following a SAR submitted in March 2014, the FIU began its analysis on the subject of the SAR. The SAR referred to a former APSA client, whose account was closed, and his funds were transferred to another bank account in country A. This closure predates the closure period of all non-institutional accounts by APSA.

In order to conduct its analysis, the FIU requested information on the reasons for opening the account, the persons authorised to operate it and other information. It also requested the ASIF authorised institution whether it had any relationship with the subject of the SAR. Moreover, information was requested from the FIU of country A concerning the BO of the abovementioned account, the owner's profile, the origin of funds and the statement of all the transactions on the account.

The FIU completed its analysis and sent a report to the OPJ in February 2015. Based on the FIU's report, the OPJ initiated an investigation and ordered the seizure of all existing materials (both paper and electronic) related to the subject in APSA. In the meantime, the FIU sent a spontaneous dissemination to the FIU of country B, where the subject conducts his business, including

[21] Governorate, Auditor General, etc.

[22] E.g. media reports, information received by individuals, FIU's own findings, etc.

information collected from its analysis. Also, the OPJ sent a letter rogatory to country B through the SoS. Subsequently, following press articles, the FIU of country C spontaneously communicated information concerning an investment fund attributable to subject of the investigation. In light of the dissemination, the FIU sent an information request to the FIU of country D related to the account held by the fund to a bank of that jurisdiction. No relevant information emerged.

Last but not least, as there was an on-going investigation on the subject in country B, based on the information initially disseminated by the FIU its foreign counterpart, the subject was convicted for market manipulation and obstruction of the supervisory functions of a bank. As a result, EUR 2.5 million were seized. The HS/VCS criminal proceedings against the subject were archived.

Case Study 2 (Embezzlement)

An entity submitted a SAR to the FIU in relation to some anomalous financial transactions carried out by the Chairman of the Board of Directors of a Hospital and President of a Foundation. The SAR specified that subject acted by virtue of proxies authorising him to operate on three current accounts held at the ASIF authorised institution by the Foundation, the Hospital - Dedicated Fund and the Hospital; as well as on two accounts opened at the APSA, in the name of the Foundation and the Fund respectively. By virtue of these mandates, a total of seven transfers were made between January and July 2014, all in favour of a foreign company, for a total amount of EUR 422 005.

Upon receipt of the report, the FIU submitted a request to the institution in late March 2014. The institution continued providing information for the following eight months.

The FIU analysis identified anomalies concerning the said transactions, as they were destined for the renovation of an apartment by the foreign company whose sole administrator is Mr x. The FIU noted that the Foundation did not have as one of its purposes to finance and carry out renovation work on buildings destined for private residence.

On the other hand, in the case in question it emerged that for the same contract (concerning the apartment and the common parts of the building), substantial payments were made by two different Entities of the State, without anybody knowing about the payments made by the other. It also emerged that there was no public procedure, or a comparison of several bids, for the awarding of the contract, since the company entrusted with the works was recommended directly by a cardinal.

In November 2014, having its analysis concluded the FIU submitted a report to the OPJ. As a result, the Director of the hospital and the treasurer of the Foundation were indicted for the crime of embezzlement. The case was closed, and Mr x was sentenced to imprisonment for one year.

Investigation

184. Although a number of ML investigations were launched on the back of FIU intelligence, it needs to be noted that the vast majority of these investigations are still on-going, and some of them have registered very limited progress despite the passage of years (see IO.7).

High-profile complex investigations

185. The AT acknowledges that a number of high-profile complex investigations were taking place when the on-site took place, and that intelligence has been actively used in these ongoing investigations. Nevertheless, the ongoing investigations have yet to come to fruition.

186. The AT observed a number of underlying factors which have impacted the HS/VCS's effectiveness in making use of financial intelligence to pursue ML and predicate offences. These include considerations relating to the current staffing level at the office of the OPJ and the CdG's level of expertise in financial crime, both of which are analysed in further detail under IO.7. The high rate of staff turnover in the FIU, coupled with a backlog of operational cases, also constitutes an underlying factor.

Use of TF-related intelligence

187. In the period under review there has been only one TF related SAR. It was submitted by the Office of Auditor General. The analysis carried out by the FIU confirmed that the suspicion was not grounded and thus no dissemination to the OPJ was made. Consequently, financial intelligence gathered so far did not provide any basis for launching a TF investigation so far.

Spontaneous disseminations to foreign FIUs

188. In 2018, the FIU made 22 spontaneous disseminations to its foreign counterparts in connection with 158 subjects. In 2019, the equivalent statistic stood at 51 spontaneous reports on 310 subjects. Representatives of the FIU explained that anytime a SAR relates to a suspicious activity involving a foreign jurisdiction, in that the activity, or part thereof, was carried out in a foreign jurisdiction, or their analysis uncovers information that may be pertinent to a foreign jurisdiction, such information is shared with the relevant foreign FIU.

Table 4: Number of spontaneous disseminations sent by the FIU to foreign FIUs

	2015	2016	2017	2018	2019	2020
Spontaneous disseminations sent	49	36	6	22	51	18

BOX 2

Case Study 1 (FIU spontaneous dissemination triggered by a NPO information)

In 2016, a NPO registered in the HS/VCS received a donation from a company registered in a foreign state (offshore jurisdiction). The wire transfer was executed from the company's account held in a European bank to the NPO's bank account held in a third foreign state. The HS/VCS Authority supervising the NPO filed an SAR with the FIU. The FIU started an in-depth analysis of the case, which included spontaneously sharing information with and requesting cooperation from foreign FIUs.

The exchange of information between the FIU and the foreign FIUs resulted in:

(i) the discovery that the BO of the foreign company was a foreign PEP;

(ii) the tracing of the assets of the company to proceeds of corruption;

(iii) the prosecution and arrest of the PEP in a foreign jurisdiction and the resulting confiscation of assets; and

(iv) the bank holding the NPOs account was subject to an inspection from its supervisory authority for failing to submit an SAR.

Offences reported to OPJ

189. The AT noted that the highest number (19 cases) of predicate offences reported by the FIU to the OPJ pertain to the offence of tax evasion. Of these, 14 were sent to the OPJ before 2017and the remaining 3 in 2017. According to the HS/VCS competent authorities the said reports gave rise to 1 investigation, whilst the remaining were archived after preliminary investigations were carried out. Other predicate offences indicated in the FIU reports to the OPJ relate to fraud (17 cases) and misappropriation (14 cases).

190. Based on the findings of the GRA, which highlights tax evasion as one of the main predicate offences noted in the HS/VCS in ML typologies, it would appear that the type of ML suspicions and predicate offences highlighted in the FIU's reports to the OPJ are generally reflective of the risks of the jurisdiction. The authorities of the HS/VCS also gave examples of the typologies observed in the HS/VCS with regard to tax evasion. In particular, a typology was the use of bank accounts with the ASIF authorised institution by relatives or friends of account holders who knowingly or unknowingly permit their account to receive funds that are undeclared. However, as acknowledged by the AT under IO.1, this typology is no longer topical as a result of the increased controls put in place by the institution and two recent agreements concluded by the HS/VCS with Italy and another with the United States on the sharing of information for tax purposes.

Domestic information exchange and cooperation

191. In relation to domestic information exchange, the interaction between the FIU, the OPJ and the CdG is extensive. Given the size of the jurisdiction, face-to-face meetings are often held where cases are discussed and information is exchanged. The AT observed no impediments to information exchange.

Table 5: FIU outgoing requests for domestic cooperation[23]

	2014	2015	2016	2017	2018	2019	2020
OPJ	0	0	0	0	0	0	1
CdG	0	1	6	9	8	7	2
APSA	5	1	6	1	2	2	7
Gen Auditor	0	1	1	0	0	0	0
Governorate	1	1	1	2	0	4	3
SoS	0	0	2	2	0	0	0
SfE	0	3	2	2	1	0	0
Other	0	2	5	4	1	2	4
Total	6	9	23	20	12	15	17
Persons involved	11	108	67	86	230*	522**	53

** The spike is caused by a single request for information sent to APSA on 163 subjects linked to a case of corruption and ML in Argentina*

[23] The statistics presented also include requests made by the FIU for information from the CdG database, including criminal records.

*** The spike is caused by a single request for information sent to the Governorate on 109 subjects (customers of the Philatelic and Numismatic Office residing in High-risk jurisdictions) and a single request to the CdG on 218 subjects.*

BOX 3

Case Study 1 (C and G case - SAR triggering domestic and international cooperation)

In December 2018, a SAR was submitted by the ASIF authorised institution related to a subject who attempted to grant powers to operate on his current account to two foreign citizens. At the same time, the subject asked not to be held accountable for the transactions made on his current account by two foreign citizens.

Although the FIU did not file a report with the OPJ, in less than two weeks after receiving the SAR, it sent a spontaneous dissemination to the CdG and a request for information to a foreign FIU. The CdG initiated an investigation in collaboration with its foreign counterparts. Information provided by the foreign FIU highlighted the presence of several anomaly indicators connected to the two persons, such as involvement in fraud and fraudulent bankruptcy cases. The joint investigation found that the operation reported to the FIU was connected to an attempted operation to launder, through the ASIF authorised institution, the proceeds of illicit activities committed in a foreign jurisdiction. The investigation led to several arrests for ML in the foreign jurisdiction.

3.2.2. STRs received and requested by competent authorities

192. The FIU acts as the central authority for the receipt of SARs from the reporting entities and the public authorities of the HS/VCS. The reports received from the ASIF authorised institution (main SARs contributor) are of good quality and contain relevant and accurate information that assist the FIU to develop operational analysis.

193. Since January 2014, the FIU received 1 602 SARs. The ASIF authorised institution filed a total of 1,534, with the remaining 63 SARs originating from public authorities and other entities or persons in the HS/VCS. Five SARs were submitted by APSA in 2014. APSA was a supervised entity up until 2015.

Table 6: SARs (2014 - 2020)

Entity Type	2014	2015	2016	2017	2018	2019	2020 up to 3rd Q
Supervised entities	462	537	192	136	77	86	67
HS/VCS Authorities	4	6	9	9	4	4	2
NPOs	0	0	0	0	0	0	1
Other	2	2	7	5	2	5	1
Total SARs	468	545	208	150	83	95	71

SARs submitted by the ASIF authorised institution

194. As for the SARs submitted by the ASIF authorised institution in the period between 2014 and 2020 374 were new SARs and 1 181 were supplemental SARs that were filed following previous SAR on the same subjects. The number of SARs (including supplemental) peaked in 2015 and started

decreasing in the following years. As further explained in IO.4, the spike in SARs was primarily due to the remediation process of the ASIF authorised institution, and a combination of other factors, such as the reduction of its customer base among others. Since 2018, SARs submitted by the ASIF authorised institution are filed electronically through goAML.

SARs submitted by public authorities and other reporting entities

195. As regards public authorities, such as the SoS, the SfE and the Office of the Auditor General among others, and other reporting entities, they submit SARs in hardcopy sent by hand delivery. When received, the FIU manually checks them for completeness and subsequently inputs the SAR information into its IT system. Given that such SARs are few and far between, this process is not seen to have a major bearing on the FIU's efficiency. Unlike the quality of SARs submitted by the institution, there appears to be a need for improvement in the quality of SARs from the authorities of the HS/VCS and other reporting entities. Notably, out of 34 SARs submitted by public authorities in the period between 2015 and 2020, 15 were deemed not to be in line with ASIF Regulation No. 5 (SARs) (e.g. insufficient description of suspicion). In such instances, the FIU requested further information from the public authorities, and also provided feedback.

Table 7: Number of SARs not in line with FIU Standard (Reg. 5)

	2015	2016	2017	2018	2019	2020
Public authorities	6	2	1	2	2	2

Requests for additional information

196. The FIU explained that a request for additional information from the reporting entities had been made in relation to 18% of SARs, including SARs filed by the ASIF authorised institution, received during the review period. This does not necessarily relate to the incompleteness of SARs, but rather the need for documents or account statements referring to longer periods of time.

Timeliness of FIU analysis

197. The FIU advised that the period needed to analyse and further disseminate a SAR depends on whether information from external sources, in particular foreign FIUs, is needed. Overall, the FIU explained that between the period 2017 and 2020, the average time varied from 33 to 13 days. Although the AT considers this to be a reasonable time period, as indicated further on, some cases have well-exceeded such timeframes. SARs which do not result in any dissemination are stored in the FIU database. This also applies to information obtained by the FIU in carrying the analysis of SARs, as well as the FIU's internal analytical reports. Such information and data, which is stored in the FIU's intelligence database, is searchable and remains available to the FIU for future use, such as in cases when a new SAR or other intelligence received by the FIU, including international requests for information, is connected to intelligence already held by the FIU.

Table 8: Average time of SARs analysis by the FIU

Year	Average time (in days)
2020*	13
2019	27
2018	27
2017	33

** Between January and October 2020.*

198. At the time of the on-site visit, it was observed that the FIU had 43 active cases, with a backlog of 27 cases that pre-date 2020 – some dating back to 2014. The FIU explained that a few of these cases had previously been closed, but were re-opened upon the receipt of new information, including international requests for information. However, this is not the case for a backlog of 16 of the 27 cases that pre-date 2020.

199. The FIU acknowledged that in some cases the time to complete an analysis exceeded the average, mainly as a result of delays to receive information from its international counterparts. The AT however is of the view that a lack of resources at the FIU coupled with a high rate of staff turnover and other concerns raised further in this immediate outcome, have also contributed to such delays and questions the FIU's efficiency and effectiveness.

SARs - Statistics on predicate offences

200. With regard to the predicate offences concerning SARs reported to the FIU, the HS/VCS authorities were unable to provide statistics on the underlying suspected predicate offences. It is therefore difficult for the AT to form a view as to whether the reporting of SARs is in line with the risk profile of the country.

201. The FIU informed the AT that in every SAR received through the goAML system, the anomaly indicators and suspected predicate offence(s) (where known) may be indicated by the reporting entity, however, this is not done in practice. Further, if the FIU, in the course of conducting its analysis, concludes that a SAR may be related to TF rather than ML, it inputs such information in the system accordingly. The FIU indeed confirmed that since 2017, every incoming SAR is systematically checked to verify whether any TF-related indicators are present. Furthermore, ASIF Regulation No. 5 (SARs) which was enacted in September 2018, contains a set of anomaly indicators specifically referring to TF, among other typologies. So far, no analytical report has been put forward as TF-related from this process.

Feedback

202. Following the completion of a SAR's analysis, the FIU provides feedback to the ASIF authorised institution. This approach is followed for every SAR that is closed, indicating whether the SAR was archived, or whether intelligence was used from the SAR in a report to the OPJ. If no feedback is provided, it is taken to mean that the analysis of the case is still ongoing. The ASIF authorised institution reported that it is very satisfied with the FIU's feedback, which has contributed to the improvement of the quality of SARs. The discussions held when on-site with the FIU and the ASIF authorised institution confirmed the usefulness of this practice.

Training & guidance

203. In order to improve the quality of SARs from all reporting entities and public authorities, the FIU implemented a training programme in 2020 which covered among other areas general anomaly indicators, case studies, and specific anomaly indicators for legal persons and VOs. The first training initiative was carried out in early 2020 and targeted the NPO sector of the HS/VCS, the second took place in June 2020 and targeted public authorities, and the third took place in September 2020 and targeted legal persons. Since 2017, only one SAR (in 2020) has been submitted from the NPO

sector[24]. These training initiatives are therefore rather recent, and as further explained in core issue 6.3, no typology studies have been produced using financial intelligence in the HS/VCS that would guide reporting entities in the identification and reporting of suspicious activity.

Cross-border cash declarations

204. With regard to cross-border cash declarations, data are registered in the proprietary database of the FIU and are used for operational analysis – typically to verify whether there is any relevant data linked to subjects of SARs. As further elaborated in core issue 6.3, the information from cross-border cash declarations is also used for the purposes of strategic analysis and to compile statistics. That said, no case was opened by the FIU based on cross-border cash declarations data.

205. It is interesting to note that the ASIF authorised institution has been authorised by the ASIF to accept cross-border cash declaration forms in the HS/VCS. In fact, it is actually the institution that effectively serves as the HS/VCS's main receiving point for incoming and outgoing cross-border cash declaration forms. All forms are then forwarded to the FIU. As explained in IO.4, the institution's policy is not to accept cash deposits exceeding EUR 10 000 unless a cross-border cash declaration form is presented to the institution. In practice, the institution therefore serves as a 'one-stop-shop' where persons entering the VCS may complete the declaration form and immediately deposit such funds.

206. Taking the above into account, and the very limited opportunities for using large amounts of cash within the confines of the VCS, it is unsurprising to note that during the review period, cases of undeclared or falsely declared incoming cash were few and far between. There has, however, been one case of a failure by an individual to declare outgoing cash as further illustrated in the case study below.

BOX 4 – Cross-border cash declaration case study

The FIU received an SAR on a customer after suspicion arose concerning the customer's cash movements. Further analysis carried out by the FIU revealed that the customer withdrew a sizable amount of cash exceeding EUR 3 million from his private account, which was then deposited in three safety deposit boxes at the ASIF authorised institution. The customer then gradually withdrew the cash from the safety deposit boxes and transported it to Italy without presenting declarations of cross-border transportation of cash.

The FIU ordered the suspension of the customer's access to the safety deposit boxes and also instructed the institution to block the customer's accounts. The FIU filed a spontaneous communication and request for information to the Italian FIU and transmitted a Report to the OPJ. Jointly with the OPJ, the FIU inspected the safety deposit boxes, and reported the case to the Governorate as a potential breach of the duty to declare the cross-border transportation of cash.

The Governorate of the VCS imposed a pecuniary administrative sanction in the region EUR 250 000 on the person in question for the failure to declare the cross-border transportation of cash. The customer challenged the decision. The Tribunal of the HS/VCS confirmed the sanction; however, it lowered it to EUR 114 000.

[24] In 2017 the Law on NPOs came into force.

Border controls

207. Between the period from 2016 and 2020, a total of 705 checks were carried out by the CdG at the borders of the VCS as further indicated in the table below. When on-site, the authorities informed the AT about a new approach taken by the CdG on cross-border cash controls. In particular, since early 2019, the ECO-FIN Unit started carrying out sub-threshold controls, and in a number of instances, persons carrying sub-threshold amounts of cash were still requested if they wished to complete a cash declaration form. Since early 2019, 54 declarations of amounts of less than EUR 10 000 were made, of which approximately 20 in 2020. These controls are intended to monitor small cash flows within the HS/VCS. The acquired information from this process is used as a source of intelligence and shared by the CdG with the ASIF and the OPJ as needed.

Table 9: Cross-border checks carried out by the CdG

	2016	2017	2018	2019	2020	Total
Total	170	80	77	244	134	**705**

BOX 5 – Sub-threshold cross-border cash declaration case study

In 2019, during a cross-border check for sub-threshold values, it emerged that a subject was carrying a quantity of cash to be deposited at the ASIF authorised institution. The final destination indicated by the bearer of cash seemed to be a high-risk country. Checks were carried out by the CdG using the tools and systems available to them, including their databases and open source checks among others, to verify all the information acquired on the subject and to verify if there were any elements of interest. In addition, information was requested from other domestic authorities. The outcome of the checks was negative, excluding any hypothesis of criminality or ML/TF.

Cross-border currency declarations

208. In the period 2014 – 2019, a total of 8 719 declarations of cross-border transportation of currency were registered, including those made at the ASIF authorised institution which were then forwarded to the FIU (see table below). Overall, the AT is satisfied with the cash declarations system in place and the controls applied by the competent authorities, which provide a clear view of the transportation of cash in and out of the HS/VCS.

Table 10: Cross-border currency declarations

Year	In		Out	
	Volume	Value (in EUR)	Volume	Value (in EUR)
2014	429	11 235 606	1 111	22 044 025
2015	367	9 697 570	1 196	24 144 340
2016	380	9 626 657	1 357	23 972 122
2017	367	4 223 154	1 439	13 072 222
2018	291	7 416 789	948	18 668 597
2019	206	4 659 479	628	11 726 020

3.2.3. Operational needs supported by FIU analysis and dissemination

209. The FIU's financial analysis supports the operational needs of LEAs to pursue the investigation of predicate offences and ML/TF. The quality of its work, particularly in recent times, has been commended by the investigative authorities – a view with which the AT concurs on the basis of discussions held on-site and sample reports (capturing the period from 2018 to 2020) provided on-site.

Quality of reports

210. Samples of the FIU reports presented to the AT demonstrate that the analytical products disseminated to the OPJ are of good quality. The reports include the analysis of the SAR and information that accompanies it (transactions, CDD documents, BO information and ownership structure, etc.), as well as the sources of additional information consulted for the purpose of the analysis. It also includes an analysis of the money flows, information on the persons (natural, legal or both) connected to the case and, when known, information on the suspected predicate offence. The documents received by the FIU from reporting subjects together with SARs, which are used to conduct its analyses, (e.g. copies of transactions data, CDD information, etc.) remain confidential and stored in the FIU archives.

211. All entities met onsite commented positively on the FIU's timely responsiveness and its willingness to engage and assist where needed, especially in more recent years.

Table 11: Number of FIU disseminated reports per annum

	2015	2016	2017	2018	2019	2020*
OPJ*[2]	22	24	8	11	15	16
CdG	1	7	6	8	5	4
ASIF (supervisor)	0	0	2	0	0	0

**updated to 12 October 2020*

**[2]Figures include supplemental reports disseminated by the FIU to the OPJ as updates to previous reports*

BOX 6 - Case Study – FIU Dissemination

On 8 January 2018, the FIU informed the CdG that an employee of the HS/VCS carried out a series of withdrawals below the threshold. The withdrawals were considered to be "linked transactions", or "as a single activity carried out through one or more operations at different stages or times", in compliance with current laws provisions. The dissemination took place in the context of strengthening the monitoring of cash flows attributable to the ASIF authorised institution account holders, in order to prevent any circumvention of the EUR 10 000 threshold.

As a result of this disclosure, the CdG carried out an investigation on the subject. Initially, the CdG carried out a desk-based analysis of the CdG archives, including bank movements provided by the ASIF authorised institution, as per CdG's request.

Following its analysis, the CdG deemed it necessary to collect additional intelligence from its international counterparts, specifically, the Italian GDF. In light of the information collected from the

investigation carried out and, from the information gathered through a "testimonial information" interview, no anomaly emerged.

In the meantime, the ASIF had also requested the Italian FIU for assistance, which confirmed to the ASIF that no adverse information was registered in their databases concerning the person of interest. Thus, the case was archived.

Circular of operational analysis

212. At the time of the on-site visit, the FIU did not have a comprehensive manual or a guidance document in place to guide analysts through an operational analysis. As noted in core issue 6.1, the FIU carries out operational analysis in accordance with its internal procedures detailed in its 'Circular of operational analysis of suspicious activity reports' that was first introduced in September 2019 and updated in August 2020. Prior to September 2019, there were no documented procedures in place. The circular covers the various stages of the analysis workflow, from the receipt of a SAR to the closure of a case.

213. While covering several internal procedural aspects, the Circular does not provide guidance as to how an operational analysis should be carried out, and falls short of setting the FIU's expectations in terms of how a financial analysis, including the analysis of transaction data, is to be performed. It does however provide a list of open-source information and tools that analysts may refer to in the conduct of their work, however this may be improved. Lastly, with regard to anomalies and red flags, although the Circular makes no mention of what analysts are to look out for, the FIU explained to the AT that the operational analysis team refers to ASIF Regulation No. 5 (SARs) in the conduct of their work. This regulation provides a comprehensive list of anomaly indicators on ML, and separately on TF, as well as other specific indicators by theme, such as on donations, public procurement, tax evasion, and cross borders transportation of cash, which are all relevant to the HS/VCS. The AT is of the view that the FIU should put in place a comprehensive analysis manual covering: (a) the most prominent typologies in the HS/VCS; (b) red-flags indicative of such typologies; (c) a comprehensive list of open source information and tools that analysts may refer to or use in the conduct of their work; and (d) relevant parts of ASIF Regulation No. 5 (SARs) in a user-friendly manner.

Requests for domestic cooperation

214. During the review period, the FIU received a total of 13 requests for domestic cooperation from the OPJ and the CDG. Both value the FIUs support. The figures show that there has been an uptake in the number of requests made by the CDG and the OPJ to the FIU since 2019, demonstrating an increased appetite by these authorities to pursue intelligence and seek the FIU's support. Examples were also made available to the AT (see Box 7 below). Apart from the above-mentioned requests, the FIU also received 9 requests from the SoS as part of the vetting process it carries out on potential donors. The FIU cooperates with the SoS providing it with the available information that it can share, and which the SoS uses in determining whether or not it will accept the donation.

Table 12: FIU incoming domestic requests for co-operation. *These are requests sent by domestic authorities to the FIU*.

	2014	2015	2016	2017	2018	2019	2020
OPJ	0	0	0	0	0	1	1
CdG	0	0	0	1	1	4	5
Total	0	1*	3*	3*	1	5	19*

**Differences in the total are due to incoming requests for domestic cooperation from authorities other than OPJ and CGD, such as the SoS*

BOX 7 - Case Study – CdG request for cooperation

In 2019, on the initiative of the CdG, specifically the ECO-FIN Unit, a request for cooperation was made to the FIU in order to acquire useful financial information on the account of an employee of the HS/VCS who appeared to lead a lifestyle that was not in line with his income.

Following verifications with the ASIF authorised institution, the FIU communicated relevant information regarding the subject and submitted the statements of account under analysis.

As a result of the analysis of the documentation received, it emerged that the subject was the actual and sole employee of company A, with a registered office in country A, operating on the web sales market and selling models and collectibles.

Because of his business activity, there were countless transactions in country B, and it appeared that he held several current accounts in country C and country A.

Last but not least, as a result of the analysis of the account statements in question, no particular issues of concern emerged and for this reason the investigate activity was closed and the file was archived.

Strategic analysis

215. Strategic analysis is an area where further efforts need to be invested in and this has also been noted by the FIU. By the time of the on-site visit, the FIU had produced only one documented strategic analysis report. The report in question focussed on the cross-border movement of funds between 2015 and 2019 – both in the form of cash (cross-border cash declarations) and also transactions carried out through wire transfers. It was completed in August 2020 and had yet to be shared with the authorities of the HS/VCS. The main aim of the strategic analysis was to provide a representation of these financial movements. In the analysis, apart from providing an overview of the worldwide regions to or from where funds originated, particular attention was also given to understand the exposure to high-risk countries and tax havens. The analysis was thus rather high-level and factual, providing general information on the trends in relation to cross-border cash declarations and wire transfers. From the analysis it was observed that there was a downward trend in incoming and outgoing cross-border cash declarations, and that wire transfers to and from high-risk countries or tax havens remain low and stable. The analysis did not seek to identify any particular ML/TF-related findings or to propose any mitigating measures.

216. It however transpired that no documented strategic analysis was carried out by the FIU to identify any ML/TF typologies or red flags. To some extent, some strategic analysis was carried out, albeit undocumented, the results of which were used in the GRA of the HS/VCS, and also in 2018 that

served to identify the anomaly indicators relevant to the HS/VCS that are indicated in ASIF Regulation No. 5 (SARs).

FIU's structure and resources

217. Turning to the FIU's structure and resources, the FIU has two key tasks: operational analysis and strategic analysis. These analyses are loosely assigned to two teams. The operational analysis team, at the time of the on-site visit, had a staff complement of two analysts and a vacant position for a third. The strategic analysis team, on the other hand, was temporarily staffed solely by the manager of the FIU, who was supported in this process by the FIU's above-mentioned two analysts. The manager of the FIU is responsible for leading both the operational and strategic analysis teams. The AT is of the view that, although the size and nature of the jurisdiction may not necessitate a full-time employee dedicated solely to strategic analysis, the responsibilities that come along with the role of the manager of the FIU may detract that person's focus from strategic analysis.

218. Further, the AT observed that the staffing situation in the period between 2015 and 2019 was rather concerning. The role of a deputy director in the ASIF did not exist, as it was introduced in 2020. The FIU had a staff complement of only two employees, and for 70% of that period (from June 2016 to November 2019), it was managed by the same employee (the former manager of the FIU). The AT observed that apart from the former manager of the FIU, the remaining post was characterised by a high rate of staff turnover, and for some time, the FIU had only one employee (its former manager). The FIU explained that the staff turnover rate was partly due to the uncompetitive staff benefits and remuneration packages offered by the FIU. The impact of the then FIU's limited resources can be seen among others in the quality of its reports and the number of incoming and outgoing requests for cooperation.

219. At an operational level (therefore excluding the President and the Board of the Directors), the FIU of the HS/VCS is composed of a Director and a Deputy Director, the manager of FIU who is also responsible for the strategic analysis (on an ad-interim basis), and two operational analysts. There is therefore a total of five persons within the ASIF having direct FIU responsibilities; six, once an additional analyst is hired. Needless to say, the Director and the Deputy Director are also involved and responsible for all the other functions of the ASIF, such as AML/CFT and prudential supervision. Considering the roles exercised by the FIU and its personnel within the HS/VCS AML/CFT institutional framework, also as further explain under core issue 6.4, the AT is of the view that the FIU requires additional resources.

220. The FIU has undergone a degree of turmoil towards the end of 2019 and early 2020 following a search carried out by the CdG on order of the OPJ in the offices of the former director of the FIU. During this time, the FIU's president, director and the manager of the FIU's intelligence office all left employment. By the end of 2019, the FIU's team had been dismantled.

221. The current manager, the Head of the FIU, and the operational analysts all joined the ASIF in or after January 2020. With regard to the Deputy Director, prior to taking on this role, he was previously in charge of the supervisory functions of the ASIF. Nonetheless, from the interviews carried out, the AT team is convinced that he was pivotal in providing some continuity to the operations of the FIU.

222. The AT did not have an opportunity to hold interviews with any of the former employees of the FIU. Therefore, the AT is not in a position to form a holistic view on the capacity of the FIU and its staff prior to 2020.

223. Considering the complete and rapid change in the FIU's staff, the AT concluded that a real risk of loss of institutional memory – or in other words, the stored knowledge within the FIU – has resulted. This is further exacerbated by the fact that none of the new employees within the FIU have previous FIU or financial crime law enforcement-related experience, the lack of documented strategic analyses carried out by the FIU prior to 2020, and the absence of a comprehensive guidance document on how operational and strategic analysis ought to be performed. The authorities explained that this risk is somewhat mitigated by the digitalisation of all of the cases analysed by the ASIF since 2013. Although the AT commends the authorities' efforts to provide relevant information, on several occasions throughout the ME process, it noted their difficulty to reply to some of the questions posed by the AT concerning the activities of the FIU during the said period.

Staff training

224. In terms of training, the FIU analysts employed at time of the on-site visit, including the manager of the FIU, received little training on AML/CFT since joining the FIU. This was in part due to the onset of COVID-19 in 2020 which foiled training plans that the FIU had in place. The training received was limited to on-the-job training, some of which was provided by the former outgoing manager of the operational analysis team. Moreover, none of the present operational analysis team members had, prior to joining the FIU, any law enforcement or FIU experience, and limited experience working in anti-financial crime. From the interviews carried out on-site, the officers met by the AT appear to be motivated and intent on carrying out their duties diligently. Nonetheless, while commending the newly established team for their efforts, the AT feels that the team would benefit from and requires more experience, expertise and specialisation.

225. As regards the FIU's operational independence, when on-site the AT held discussions with the HS/VCS competent authorities with a view to identifying relevant issues stemming from the 2019 search carried out in the FIU offices. The AT also observed that the FIU has been given increased human and technical resources, the authority within which it sits (the ASIF) has had its organisational structure strengthened, and that appropriate protocols are in place for the FIU to autonomously decide to analyse, request and/or disseminate specific information. The AT did not come across any issues questioning the FIU's operational independence.

3.2.4. Cooperation and exchange of information/financial intelligence

226. Cooperation between competent authorities, in particular, the FIU, CDG and the OPJ, takes place on a regular basis. The incredibly small size of the jurisdiction naturally facilitates in this regard. Based on sanitized minutes provided to the AT, it was observed that several meetings took place between these three authorities, at least since February 2019. To further strengthen the level of cooperation among them, a trilateral MoU was entered into between these authorities in April 2020. The MoU envisages that the authorities meet regularly to discuss: (i) cases and their progress; (ii) the use of information and provide feedback; and (iii) the outcome of investigations. The meetings also serve to identify possible areas of improvements and best practice.

227. Apart from the above MoU, several other MoUs have been entered into among authorities of the HS/VCS for the purposes of preventing and combatting ML/TF, including:

1. May 2019: ASIF, OAG – regarding general cooperation and exchange of information for the prevention of ML/TF and corruption;
2. Feb 2020: ASIF, SoS, SfE – regarding oversight and control of NPOs;
3. Feb 2020: ASIF, SfE – regarding supervisory activities of public authorities; and
4. Sep 2020: Governorate, OPJ, CDG and ASIF – regarding cooperation concerning subjects that threaten international peace and security.

228. The said MoUs appear to have a positive impact on the level of domestic cooperation. In particular, since 2018 the number of requests has significantly increased (see core issue 1.5). Examples of domestic cooperation were made available to the AT (see Box 7 above).

Table 13: Number of persons subject to domestic cooperation requests

	2015	2016	2017	2018	2019	2020
Total	117	72	91	234	423	98*

** up to 12 October 2020*

FIU's role within the HS/VCS's AML/CFT framework

229. In addition to the afore-mentioned formal arrangements, the FIU plays a central role within the HS/VCS's AML/CFT framework. It serves as the national point of contact on AML/CFT matters and cooperates closely, on operational and policy matters, with all the authorities of the HS/VCS. Notably, officials from the FIU also act as the secretariat of the FSC, are deeply involved in the operational work to produce and update the HS/VCS's GRA (which is updated annually), and assist on a daily and informal basis, the authorities and institutions of the HS/VCS on AML/CFT matters – which entities confirmed and lauded the FIU's officials for their willingness to provide prompt assistance. The FIU also provides AML/CFT training to the institutions of the HS/VCS, to the ASIF authorised institution, and to other legal persons, including NPOs, all of which have the obligation to report suspicions of ML/TF to the FIU. In other words, the FIU and its most senior officials may be regarded as the HS/VCS's factotum on AML/CFT. The central role exercised by the FIU, however, strains its already limited resources and at times detracts it from carrying out its core functions.

FIU – CdG cooperation

230. The FIU and the CdG are pro-active in seeking financial intelligence and other information from their international counterparts. The CdG also acts upon the FIU's request to carry out checks with international non-FIU counterparts, such as Interpol and other foreign LEAs. The latter channel is also particularly useful in situations where the counterpart FIU is unresponsive to requests submitted by the HS/VCS's FIU. During the period under review, the FIU submitted 33 requests for information or collaboration to the CdG. In five of these requests, the intelligence provided by the CdG was used and/or contributed to the FIU's analytical reports sent to the OPJ.

BOX 8

ALT case – FIU requests for information or collaboration to the CdG

The FIU received an SAR about a priest who requested to open an account at the ASIF authorised institution in order to deposit sums that would have been used for a church renovation. Later, the

priest deposited 100 traveller's cheques amounting to EUR 50 000 on the recently opened account, declaring that they had been donated by a foreign citizen.

The FIU suspended the operation of crediting the traveller's cheques for five days. Amount of EUR 180 530 was frozen by the FIU (as a temporary freezing measure). In the meantime, the FIU sent a request for information to the CdG about the priest and the foreign donor. Also, the FIU sent a request for information to its counterpart FIUs in those countries where links were identified with both the people and the bank accounts involved in the transaction.

A responding FIU provided information on the SARs it had received about a relative of the priest.

Moreover, CdG provided the FIU of the HS/VCS with useful intelligence about both the priest and the relative involved in the SARs mentioned by the responding FIU. In particular, information provided by CdG allowed the FIU to delineate the suspected fraudulent activities, involving the laundering of the connected proceeds, perpetrated by the relative of the priest.

The additional information received from the CdG and from the responding Italy led to the submission of a FIU report to the OPJ, highlighting the possibility that the deposit of the traveller's cheques could be related to fraudulent activities conducted in a foreign jurisdiction.

As a result of the report, the account of the priest at the ASIF authorised institution was seized by the OPJ.

Investigations on the case are still ongoing.

FIU to FIU requests

231. The FIU also sent several requests for information to its foreign counterpart FIUs. In 2019 alone, it sent 55 requests for information on 313 persons (of which: 156 natural persons and 157 legal persons). Further statistics on FIU to FIU exchanges are available under IO.2. The FIU requires an MoU in order to exchange information, which may result in delays in cases where one is not in place. Neither an approval nor a *nihil obstat* by any other HS/VCS authority is required for the FIU to sign a MoU. According to the AML/CFT law (Art. 69(2)), the SoS shall be informed of the conclusion of a MoU. Accordingly, the FIU has a policy to sign as many MoUs as possible in order to prevent such a situation arising.

Suspension of transactions

232. The FIU has the power to suspend a transaction or block an account for a maximum time frame of five days. The table provided below demonstrates that it has made use of this power a number of times, and in the review period, 21 transactions were suspended – the value of which exceeded of EUR 12 million, and the power to freeze an account, funds or other assets was used nine times with a total asset value above EUR 11 million.

Table 14: Suspended transactions and preventive freezing

	2014	2015	2016	2017	2018	2019
Suspension of transactions and operations	3	8	4	0	3	3
	EUR 561 574	EUR 8 262 565 USD 1 714 800	EUR 2 113 838	0	EUR 422 077	EUR 240 000
Preventive freezing of accounts, funds and other assets	0	4	1	1	2	1
	0	EUR 7 051 422 USD 654 800	EUR 1 550 199	EUR1 757	EUR 2 362 725	EUR 178 970

233. Regarding the suspensions and preventive measures taken by the FIU during the years 2014 to 2016 and 2018, none were followed by a seizure order issued by the OPJ. The authorities reported that the reasons for a seizure order not to be issued would typically be due to the lack of sufficient evidence or elements required by the OPJ to proceed with a seizure order. In 2015, the high amount of suspensions of transactions and freezing of accounts is due to several cases reported to the FIU in connection with the voluntary tax disclosure schemes in a neighbouring country. In such cases, the FIU used its power to suspend transactions and block accounts to determine, prior to the release of funds, whether their origin could be linked to proceeds of crime other than that of undeclaring such income to the neighbouring country. In 2017, the only case of an FIU suspension was followed by a seizure order issued by the OPJ. The subject was subsequently indicted but was acquitted. In 2019, all three of the cases of suspension by the FIU were followed by a confiscation by the OPJ. Two of these are still in the investigation phase while one case resulted in a conviction for self-laundering.

Protection of information

234. As regards the protection of information, on 1 October 2019, the FIU offices were searched by the CdG on order of the OPJ in connection with the LP case (see Box 11). The circumstances that led to the search and seizure were exceptional in nature. During the search, a number of devices and documents were seized, some of which contained information that the FIU had received from five European FIUs. The information included more than 15 communications between the FIU of the HS/VCS and the European FIUs. On 4 October 2019, the FIU formally notified the affected FIUs that the communications were seized by the OPJ and informed the FIUs that it could not exclude the possibility that the information seized would be used for judiciary and prosecutorial purposes. Subsequently, on 13 November 2019, the Egmont Group of FIUs suspended the FIU's access to the Egmont Secure Web (ESW).

235. From discussions with the HS/VCS authorities, it is unclear whether any risk assessment had been carried out by the judicial authorities in relation to the potential international consequences for the FIU that could arise from such a search and seizure.

236. Following the search carried out by the CdG at the FIU, on 11 December 2019, the FIU entered into a MoU with the OPJ to ensure that the confidentiality of information received by the FIU from foreign FIUs is protected in the event of any similar incidents in the future.

237. According to the MoU, should such an event re-occur, an official of the FIU will be tasked with reviewing all the documents submitted by foreign FIUs that may be relevant to the case and compile a list thereof. The foreign FIUs involved would then be contacted to request their authorization in

sharing the relevant communications with the HS/VCS judicial authorities. Should authorisation not be provided, the HS/VCS judicial authorities would have to resort to a MLA to obtain access to the documents.

238. Following a review carried out by the Membership, Support and Compliance Working Group (MSCWG) of the Egmont Group of FIUs of the measures adopted by the FIU in the aftermath of the search and seizure, which measures included the recently-signed MoU with the OPJ, the FIU's suspension from the ESW was lifted in January 2020 – therefore lasting for approximately 2 months.

Outgoing requests during the ESW suspension

239. During the suspension, the FIU was quick to find an alternative solution and continued sending requests to its main counterpart FIU using another secure channel. Replies were then received by the FIU once it regained access to the ESW. Statistics provided to the AT show that the numbers of international exchanges of information went up to normal levels soon after the suspension was lifted.

Table 15: FIU incoming and outgoing information and spontaneous communication, prior to, during and after the ESW suspension

ESW Suspension	Incoming	Outgoing	Total	Note
Prior	20	102	122	
During	0	7	7	All sent by certified courier to FIU Italy
Post	32	94	126	

Confidentiality measures

240. As at the time of the on-site visit, the FIU had in place a number of measures to protect the confidentiality of the information it receives and processes. This includes restricted physical access to the office of the intelligence team, and IT controls, including access rights to information. Access to reports is limited to members of the intelligence team, the Deputy Director and the Director of the ASIF. Requests for information to, and information received from the ASIF authorised institution all takes place through goAML, which provides a secure channel to transmit information. Exchanges with all other entities of the HS/VCS is done using manually by hand delivery.

241. The FIU's Circular of operational analysis mentioned earlier provides for the classification of a case's confidentiality, which is set by the head of the FIU, and the manner in which SARs classified as 'highly-confidential' are to be processed, as opposed to the ones that are classified as 'confidential'. The Circular however does not provide for any guidance in determining as to what would render a case to be classified as 'highly-confidential'.

242. As for the FIU's IT system, security checks have been carried out. In 2019, the FIU appointed an external IT consultancy company to carry out an assessment and a range of tests on the ASIF's IT infrastructure. This included, among others, a security audit, a vulnerability assessment, and a penetration test. The report, concluded in September 2019, and a copy of which was shared with the AT, demonstrated that no high-risk vulnerabilities were detected.

243. All employees of the HS/VCS's institutions undergo a screening process which is carried out by the SoS, who, on the basis of fitness and properness checks, provides his non-objection. This includes checks on FIU personnel and of the other competent authorities.

244. With regard to the ECO-FIN Unit of the CdG, two circulars, one in May 2019 on security and secrecy, and another in July 2019 on operations and workflow, were implemented.

245. Turning to the OPJ, as at the time of the onsite, the OPJ was in the process of drafting an internal circular on the security and secrecy of office documents and information. Nevertheless, since the information and documents in the possession of the Office relate to investigations and prosecutions, they are also protected by office secrecy, the violation of which is punishable as a criminal offence.

246. Despite these measures, a number of leaks of information took place in the HS/VCS, and investigations were carried out by the OPJ. Several persons were questioned as part of the investigations; however, it was not possible to identify who was responsible for the unauthorised disclosures.

Overall conclusions on IO.6

247. The FIU plays a key role in the HS/VCS's framework to prevent, detect and combat ML/TF. Its analytical reports are the main source used by the OPJ to initiate ML investigations. Despite the good quality of these reports, there is little evidence that financial intelligence has been effectively used by LEAs in the cases presented to the AT. In addition, the AT is of the view that intelligence from international requests for information, in particular MLAs, is not sufficiently considered to trigger ML investigations. The FIU receives most of the SARs through goAML. The number of SARs received reached its peak in 2015 and since 2017 is relatively stable. The quality of SARs received has varied during the period under review – from defensive reporting, which to a certain extent characterised the period up until 2018, to good quality SARs that were received in last couple of years. Despite some positive developments that took place recently and the determination of the FIU staff to improve its effectiveness, further improvements of significance are needed, particularly in the area concerning the specialisation and training of the FIU's intelligence team, the need for a comprehensive operational analysis manual, and strategic analysis to identify trends and typologies. Furthermore, throughout most of the review period the FIU was characterised by a high rate of staff turnover, which created a risk of institutional memory loss suffered by the FIU, raising doubts whether all potential avenues for seeking information are persistently explored. Lastly, the AT is also concerned on a backlog of cases that had accumulated over several years and which were still pending as at the onsite, raising doubts on the FIU's efficiency and effectiveness. The AT is satisfied with the level of domestic cooperation and information exchange between the FIU and the LEAs.

248. **HS/VCS is rated as having a moderate level of effectiveness for IO.6.**

3.3. Immediate Outcome 7 (ML investigation and prosecution)

3.3.1. ML identification and investigation

Underlying predicate crime in the HS/VCS

249. By way of background, the HS/VCS 2019 GRA update indicates that most ML disseminations/analytical reports have links to predicate crime committed in foreign jurisdictions. Many cases giving rise to SARs/analytical reports by the FIU have been committed abroad, and frequently have involved proceeds of tax crimes and other types of fraud in Italy and elsewhere, using accounts of the ASIF authorised institution for laundering purposes.

250. According to what the authorities provided to the AT: in 2013, 100% of the identified predicate crimes were committed abroad; in 2014, 50% of crimes were committed abroad; in 2015, they advised that 100% of the predicate crimes were committed abroad; in 2016 and 2017, 75% were committed abroad; in 2018, 100% of the predicate crimes were committed abroad; in 2019, 85% were committed abroad; and in 2020, 90% were committed abroad. The GRA process, however, did not estimate the proceeds from domestic crime. Estimating the precise or real levels of underlying domestic predicate crime in the HS/VCS which might generate ML cases is not easy. Some domestic offending, as in all countries, may be hidden and go undetected. The HS/VCS authorities have hitherto considered their domestic crime rate to be low[25]. In the context of IO.7, public access to the HS/VCS may occasionally give rise to incidents of robbery, theft, or shoplifting, but these are rare and unlikely to require ML investigations. On the other hand, issues raised under IO.1, regarding the threats posed by abuse of office for personal or other benefits (insiders) are important and relevant contextual factors under IO.7.

251. The 2019 GRA update estimates the proceeds from criminal activity on average as (up to) EUR 20 million per year. According to the authorities, the relevant figure for 2019 is much higher (EUR 522 million) due to an alleged operation involving EUR 520 million[26] – which is currently under investigation and which largely involves domestic proceeds-generating offences (the so-called LP case). These figures appear to point towards a potentially greater ML risk arising from offences committed domestically in the HS/VCS.

Parallel financial investigations in domestic proceeds-generating cases

252. To begin to consider how well the HS/VCS (or any jurisdiction) identifies ML domestically, information is generally needed on the overall numbers of detected domestic proceeds-generating offences, and the numbers of parallel financial investigations opened in such cases, for comparison. From the information provided by the authorities on: (i) numbers of domestic proceeds-generating cases (in each of the FATF designated categories of predicate offences) which had been recorded and investigated in the HS/VCS for the years in question; (ii) numbers of parallel financial investigations opened; (iii) other documents and case studies presented; and (iv) interviews carried out onsite, it would appear that pro-active parallel financial investigations have been developed and pursued in major proceeds-generating predicate offences. The evaluators did, however, observe that these financial investigations were targeting seizure and confiscation of proceeds rather than pursuing potential ML activity.

Resources for investigation and prosecution of ML offences

253. Turning to the investigative and prosecutorial process, as already noted under IO.6, the OPJ and the CdG, are responsible for investigation and prosecution of all crimes committed in the State, including economic crime and ML. The CdG work under the direction of the OPJ, and act as Judicial Police.

254. The Promoter of Justice (the head of the OPJ) is the only full-time permanent prosecutor in the HS/VCS.

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[25] The 2012 report states at para 46 that 90% of reported crime concerned tourists and visitors.

[26] This figure is the total amount of money involved, not the total amount of alleged proceeds of crime which is significantly lower. The former also includes the value of the property involved, owned by the SoS.

255. A small, specialist economic section in the OPJ has been created since the last evaluation. An adjunct Promoter for economic crime was appointed in July 2014. He is a professor in economic and financial criminal law in Rome. These duties are, of course, not incompatible with his role in the HS/VCS, though they may impact to some extent on the time he has available for prosecutorial duties. The OPJ also has another adjunct Promoter, who focuses on financial crimes as well as other crimes. He practices law independently outside the HS/VCS as well. At the time of the onsite visit, a fourth prosecutor was shortly to join the office[27].

256. These reinforcements are welcome. The AT noted that a comparatively recent action plan for the OPJ (resulting from the GRA analysis), committed the Promoter to *ensuring a full-time presence of a prosecutor* in the office. This action point seemed to the evaluators at least to imply that there were concerns about access to prosecutors, possibly from law enforcement.

257. The 2019 GRA update had signalled as a vulnerability the fact that not all prosecutors offer exclusive services to the HS/VCS. The GRA noted that potential professional conflicts and incompatibilities "could not be excluded". The evaluators can understand the concern expressed in the GRA on this issue. To avoid potential conflicts of interest or the perception of conflicts of interest (and for the overall effectiveness of the OPJ), it is considered that prosecutors appointed in future should work exclusively for the HS/VCS during their contracts, and not also practice law in other jurisdictions simultaneously.

258. After the creation of the Section for Economic and Financial Crimes of the OPJ in 2014, approval was given to create the ECO-FIN Unit in the CdG to assist the adjunct Promoter and other prosecutors dealing with economic crime. This Unit began operating on 22 October 2016.

259. The 2019 Circular on Operations and Workflow of the ECO-FIN Unit and its September 2020 update provide some general guidelines on investigating ML/TF. They indicate, in the context of ML, that priority should be given to cases: (i) where financial flows exceed certain thresholds (i.e. EUR 100 000); (ii) where evidence is at risk of being destroyed; (iii) where there are suspicions of serious and organised crime committed cross border; and (iv) where there is abuse of a position held in the HS/VCS to commit a crime against HS/VCS property. While this document is generally helpful and should be kept under review (particularly with regard to the financial threshold for ML), the ECO-FIN Unit Circular and its update do not comprehensively address the identification of ML, investigative red flags, or investigative techniques which might specifically be of use in the HS/VCS context.

260. The ECO-FIN Unit has now become the reference point for investigating economic and financial crimes. It now conducts parallel financial investigations in the cases assigned to it by the Promoter of Justice, and also on its own initiative where necessary in other investigations. Whenever an analytical report by the FIU shows any possibility of criminal activity, a preliminary investigation/inquiry is initiated by the ECO-FIN Unit under the direction of the Promoter. Intelligence checks and analyses of money flows and cash movements, in particular, are the first actions undertaken. If the financial flows involve one or more foreign states, international police

[27] Whilst the fourth prosecutor joined the office shortly after the on-site visit, a fifth prosecutor was also recruited soon after.

cooperation is activated and letters rogatory are sent. If countries are slow in responding, the ECO-FIN Unit can turn to the FIU to help them obtain responses through FIU contacts.

261. The ECO-FIN Unit also analyses of all the information received on cross-border movements and controls and gathers intelligence, particularly in respect of non-residents and non-employees transiting the State through the various entry-points. While this enables valuable intelligence-gathering, it has not generated any ML investigations as yet since initial suspicions have not been confirmed upon the ECO-FIN Unit's further course of action.

262. While ECO-FIN Unit officers had little or no prior practical experience of financial investigations before joining this team, they have all taken post-graduate courses in VCS Law and financial law, and received training on ML, anti-corruption and anti-fraud with the Italian GdiF, with which the CdG has an MOU. While they are all learning their financial investigation skills on the job, the ECO-FIN Unit officers are highly motivated and professional and appear to work well together as a team.

263. The ECO-FIN Unit Head is also the lead INTERPOL contact in the HS/VCS. Thus, the ECO-FIN Unit is well connected to intelligence networks in Italy, to liaison officers based in Rome, and to most relevant world-wide international police intelligence networks. The authorities indicated that, since the creation of the ECO-FIN Unit, approximately 50 of their investigations have arisen from intelligence networks to which they are linked, though no information has been provided as to whether these investigations led to proceedings in the HS/VCS or elsewhere.

264. It should also be noted, in the context of resources, that the CdG primarily exists to protect the Holy Father. Its recruitment policies are, understandably, geared towards younger officers. This principle is, however, not always applied – in case there is a need for an officer who has expertise in financial crime, their age would not be a barrier. Consequently, a senior officer specialised in financial crime investigations has recently extended his engagement with the ECO-FIN Unit for another two years.

FIU analytical reports based on SARs

265. As noted under IO.6, most ML investigations initiated by the OPJ have, as their starting point, the FIU's analytical reports to the Promoter of Justice. Most of the cases that have reached the Tribunal (for ML or for other offences) involve prior reports by the FIU.

266. The adjunct Promoter conducts regular case reviews on progress with the investigating officers of the ECO-FIN Unit. Where an FIU report has triggered an enquiry, the FIU is also invited to attend. It is understood that these progress reviews on live investigations mostly occur every 10 days or so, or more frequently, if necessary. This joint collaboration between the ECO-FIN Unit and the FIU in developing formal investigations is a positive feature of the HS/VCS system. From the cases provided in the boxes below, it can be inferred that this joint collaboration made it possible to bring forward several ML charges.

267. Over the period 2014-2020, the FIU disseminated 96 analytical reports to the OPJ. Of these 96 reports, 41 had indications that an offence (or more than one offence) was committed, while the rest simply provided additional information on previously submitted analytical reports (see also IO.6). As a consequence, in the period 2013-2020, 15 investigations have been initiated and then closed by the Promoter of Justice due to lack of evidence, and 5 have led to criminal and administrative proceedings, some of which have been completed or are still in the trial stages. 21

cases are still being investigated, the majority of which were opened in 2019 and 2020. The remaining investigations have (or had) been continuing for several years.

268. With regard to many cases, the period between an analytical report being received by the Promoter of Justice and the decision to prosecute has frequently been lengthy and protracted. A range of reasons were advanced – including complexity of some cases, and delays in receiving replies to international cooperation requests. At the time of the onsite visit there were apparently 9 ML investigations that were awaiting responses to rogatory requests, some of which were sent two years earlier. Whilst the AT may agree that these factors affected the length of proceedings, it remained unclear how far the Promoter has examined other ways in which these matters could be taken forward.

269. Some investigations were suspended pending the outcome of foreign proceedings, including - in some cases - waiting for a conviction abroad for the predicate offence before proceeding with ML in HS/VCS. Thus, in the early years under review a prior conviction for a predicate offence was in practice a pre-requisite for bringing a ML case. This approach appears to have been contrary to the ML criminalisation in the HS/VCS, which explicitly states a prior conviction is unnecessary.

270. The OPJ assured the AT that waiting for convictions from abroad before proceeding for ML now no longer happens. Exactly when, during the period under evaluation, this approach was abandoned was less clear. The authorities advised that their new approach is demonstrated in the WS and CS case in 2019, where they did not wait for Italian convictions for tax offences before proceeding with ML in the HS/VCS (details of this case are provided under the section 3.3.3 below). The evaluators urge the Promoter of Justice to bring more ML cases to the Tribunal without prior convictions for predicate offences, in line with the autonomous nature of the ML offence, by relying, where possible, on inferences which can properly be drawn from other evidence of underlying predicate criminality.

271. No domestic investigation into any report submitted to the OPJ by the FIU since the last evaluation generated a ML case before the Tribunal until 2018, which is almost 6 years. This fact raises concern as to the jurisdiction's capacity to effectively investigate and prosecute ML within a reasonable time. The HS/VCS applies the Italian Criminal Code (Art. 91 - statute of limitations) meaning that the time available to initiate a ML-related prosecution is 10 years.

272. The first ML case which resulted in a conviction is described below.

BOX 9 – Mr. P case

This case originates from a SAR submitted by the ASIF authorised institution in 2013. Mr. P (a provider of services to APSA) was a subject of this SAR. He had made numerous cash withdrawals, often for amounts slightly under the declaration threshold from his account. Withdrawals were executed in the period 2008-13, and in total amounted to EUR 3 277 746.

Between 2007 and 2012, APSA carried out 40 wire transfers and issued cheques to company E (which Mr P controlled) for a total amount of EUR 2 417 982. Six of the cheques made out to this company were deposited by Mr. P on his own account at the ASIF authorised institution.

In 2013, Mr. P was reported for other suspicious activities, such as an attempt to transfer EUR 32 000 to company Z in Cyprus. The ultimate recipient of the transfer was another company, MT from the British Virgin Islands, also owned by Mr. P. Mr P also made a request for three cashier's cheques

totalling EUR 300 000 for the payment of leasing instalments. This operation was suspended and the transaction was frozen by the FIU for five days (31/10/2013). A report was sent to the OPJ.

On 8/11/13 the OPJ opened a criminal proceeding and on 25/4/14 a seizure order was made for a value of approximately EUR 1.1 million.

Mr. P was convicted in Italy for fraudulent bankruptcy (verdict of Tribunale di Roma of 5/7/2017). Subsequently, he was sent to trial in the VCS and convicted on 17/12/18 for the crime of self-laundering, and sentenced to 2 years 6 months and confiscation of the seized amounts (EUR 1 275 974) was ordered. This was the first conviction for ML in the jurisdiction. The sentence was appealed and the Court confirmed the verdict and sentence on 13/11/2019.

273. The most complex ML case investigated and brought before the Tribunal so far, was initiated in 2013. It had not been concluded in the Tribunal at the time of the onsite visit though a decision was expected at the end of 2020[28]. Details are presented in the box below.

BOX 10 – L, C and S case

The case was investigated by the OPJ based on 2014 criminal complaints from the FIU and the ASIF authorised institution. The investigation was opened in 2014.

The reported subjects were high level officials (president and director) of the ASIF authorised institution and a lawyer/notary providing consultancy services to institution. They were suspected of having proceeded with the sale of large real estate assets that the institution owned in Italy, appropriating part of the proceeds of these sales, which were made by falsifying documents and which had not undergone any controls.

The FIU's report concerned the anomalous movements on the current accounts of the interested parties and the report from the ASIF authorised institution noted the lack of income from the sales. Through an examination of the administrative documentation, the various purchases and sales were analysed. They showed that the prices paid by the buyers were considerably higher than those resulting from the property transfer deeds. As a result, the current accounts that the interested parties had with the ASIF authorised institution were seized.

In addition, as the analysis of the financial flows ascertained that a large part of the money had flowed into Switzerland, the seizure of numerous current accounts in the name of the suspects, as well as their family members, was requested. The Swiss judicial authority also reported on its own initiative the existence of other financial resources attributable to the suspects, which the OPJ, through letters rogatory, requested to be seized. The total amount seized at the ASIF authorised institution is EUR 8 571 424, USD 3 747 205, GBP 1 151 907, AUD 805 174, and CHF 650 276. The total amount seized at various credit institutions of the Swiss Confederation is EUR 11 165 444.

During the course of the investigations, following an analysis of the financial flows, the potential responsibility also emerged of a son of one of the persons under investigation, who is alleged to have played an important role in laundering activities in Switzerland. The suspects, including the son, are indicted for the crimes of ML, self-laundering and embezzlement. The trial was still continuing at the time of the onsite visit.

274. In the L, C and S case, the investigation took 4 years before an indictment was lodged in 2018, and the trial began on 5 July of that year.

[28] Guilty verdicts were returned on 21 January 2021.

275. The AT understands the arguments put forward by the authorities that this case required intensive international cooperation and execution of numerous MLA requests thus requiring a long period of time to be brought before the tribunal. Still, the OPJ considers that such a case would be investigated much more quickly today, with the support of ECO-FIN Unit officers and an adjunct Promoter. This may be true, though in light of the resource-intensive LP investigation, the AT remains concerned that, at the time of the on-site visit, the OPJ had insufficient resources to handle simultaneously several complex economic and financial cases in a timely way without additional prosecutors with significant practical experience of prosecuting financial crime.

276. Apart from the FIU, other State Authorities have submitted eight ML/predicate crime-related alerts to the OPJ. Investigations were opened by the OPJ in all these cases. It is noted that some of the most complex cases were triggered by alerts from authorities other than the FIU, in particular the LP investigation which was ongoing at the time of the onsite visit. This resulted from a 2019 alert by the Auditor General to the OPJ. The AT considers that the practice of having other institutions, such as the Auditor General, actively engaged in ML/predicate offences identification, is a positive development, given the risks and context of the HS/VCS.

BOX 11 – LP case

The most recent high-profile case involves the purchase of real estate property in London.

The investigation focuses on the use by the SoS of at least EUR 200 million of funds entrusted to it (including contributions of the faithful – the so-called "Peter's Pence"). The funds were used in a speculative investment scheme, under which the HS/VCS indirectly acquired a significant central London property for a price allegedly higher than its value. As has been widely reported, in the course of this investigation, searches were carried out on the authority of the Promoter of Justice (who is personally handling the case) within the FIU and within the SoS in October 2019.

All ECO-FIN Unit officers are working with the OPJ on this case and have been heavily engaged in analysing financial flows through numerous accounts in different jurisdictions, some of which are financial centres. Consultant experts are also being used for aspects of this enquiry, including for the assessment of property values. This case also involves significant international cooperation. The offences currently being investigated include embezzlement, fraud, ML and abuse of office.

277. The AT is clear that this is a serious and thorough on-going investigation. It is positive that the Promoter of Justice has taken charge of this important case, but the AT questions whether it is realistic for it to be handled by him alone, given his other responsibilities as chief prosecutor. As already noted, the AT considers that the OPJ still needs a further infusion of permanent prosecutors with practical experience in the prosecution of complex financial crime beyond the one extra prosecutor currently being hired.

278. The results of this large-scale investigation are yet to be seen, but from the interviews held on-site it is evident that numerous investigative measures have already been taken or been requested, though some jurisdictions have not yet executed the MLA requests which have been sent by the Promoter of Justice (in some cases repeatedly).

279. Overall, the statistics provided, and the cases presented and discussed with different interlocutors indicate that only a limited number of ML cases investigated led to a prosecution phase. So far there have been only two convictions for ML (Mr. P case and WS and CS case, both for self-laundering and presented in different boxes under this chapter). Whereas the AT has noted that ML

and financial crime are being more actively identified and investigated in the last two years, and in particular those cases involving misuse of HS/VCS funds, more prosecutorial and investigative resources are needed if they are to be taken forward in a timely way. Investigations last for a considerable period of time and the results achieved so far suggest that tracing and seizing of proceeds of crime may have been given priority over the pursuit of ML charges. A more proactive approach by the Promoter of Justice is required to the gathering of evidence of conversion, transfer and integration of illicit property, facilitated either by the predicate offender(s) or third parties. The assessors therefore recommend for consideration the setting and monitoring of targets for completion of investigations and a further increase of prosecutorial resources to facilitate such an approach. Moreover, a reluctance, at least until recently, to bring ML cases in the absence of a conviction for the predicate offence appears to have been a contributory factor to the small number of ML investigations.

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

280. The 2019 GRA update states that the unique geographical context of the HS/VCS and the universal projection of the activities of the ASIF authorised institution create a constant exposure to cross-border threats. The GRA also refers to some statistical data which shows that the predicate offences reported by the FIU or other authorities most frequently have been: tax crimes (committed overseas), fraud, misappropriation/embezzlement, goods fictitiously registered in the VCS, insider trading and market abuse and other corruption-related offences. Specific sectors or activities in which these threats can materialise are put in the IO7 context and further discussed below.

Transparency in respect of use of HS/VCS funds

281. It is well known that the Holy Father wants greater internal and external transparency in respect of the use of HS/VCS funds and investments. Opacity on these issues can obscure underlying corrupt practices, misappropriation, and embezzlement of funds. It is positive that an Auditor General's Office has been created to oversee HS/VCS affairs. As noted, the 'LP' case referred to above was initially triggered by an alert from the Auditor General to the OPJ about alleged anomalies in financial statements.

Controls over public procurement

282. Public procurement is an important part of the limited economic activities of the HS/VCS. Lack of formalised procurement procedures in any jurisdiction can encourage corrupt practices or nepotism in the award of public contracts. It is welcome that the HS/VCS (in 2016) ratified the 2003 UN Convention against Corruption 2003[29]. Necessary procedures and controls for a transparent procurement system were, however, only promulgated in June 2020 - shortly before the onsite visit. As seen, prior to this, ML investigations have arisen out of payments made to accounts in the ASIF authorised institution in respect of public procurement contracts.

[29] Art. 9 addresses appropriate systems of procurement based on transparency, competition and objective criteria in decision-making.

Abuse of ASIF authorised institution accounts

283. Apart from HS/VCS employees and residents, some non-residents holding bank accounts with the ASIF authorised institution have used their accounts for laundering the proceeds of crime.

Abuse of positions in HS/VCS by mid-level and senior figures

284. Overall, the AT has formed the view from cases presented and discussions with the authorities, that some HS/VCS residents/employees (at different levels and to different degrees) (insiders) have (or may have) taken advantage of their situations for personal gain or for gain to others, thereby committing domestic proceeds-generating offences.

285. It is noted in this context that, in the years covered by this evaluation, the media have reported allegations of potential criminal offences in HS/VCS linked to senior ranks of the clergy, including cardinals and bishops. Criminal liability of senior clergy vis-à-vis canon law is discussed under Chapter 1. Although it is clear that there are no impediments to prosecuting any individual in the HS/VCS (apart from the Supreme Pontiff), it appears that the procedure for obtaining the consent by the Supreme Pontiff to prosecute senior clergy is yet not fully transparent. In other words, the AT could not establish what would be the exact course of action should the OPJ inform the Supreme Pontiff and request his consent to continue with the proceedings against a bishop/cardinal[30]. The AT advises that, for transparency, the HS/VCS position on this should be clarified in relevant policy documents and made generally known. The AT considers that, if the Promoter of Justice is satisfied that there is evidence against a cardinal or a bishop which would be sufficient to prosecute a lay person, the Promoter should follow a procedure as established in a policy document which would also provide a clear timeframe for completion of this action.

Consistency of ML investigations and prosecutions with these risks

286. From the cases presented to the AT, it could be concluded that ML investigations, initiated or carried out so far, are, in general, consistent with these risks though the results achieved in the Tribunal to date are quite modest.

287. Relevant cases, featuring the risks are provided below.

Public procurement

288. The details of the Mr. P case are set out at Box 9 above and are also pertinent to this criterion.

Abuse of ASIF authorised institution accounts for Tax evasion/and other offences for ML purposes

289. As noted, the use by non-account holders of the ASIF authorised institution accounts is both a risk and a ML typology (see WS and CS case and GR case below).

BOX 12 – WS and CS case

This case originated from an analytical report submitted by the FIU in 2014 in respect of an Italian company in Rome that provided printing services and stationery supplies to a public authority in the

[30] Please see Chapter 1 and Art. 24 of the Law N. CCCLI which provides that '*the Court of Cassation is the only forum competent to judge, with the prior consent of the Supreme Pontiff, the Most Eminent Cardinals and the Most Excellent Bishops in criminal cases, apart from the cases provided by canon 1405 (1) of the Codex Iuris Canonici*'.

HS/VCS entity. The company's owner, CS, issued regular invoices to the public authority for tax purposes. Upon receipt of the supplies and the invoice, the public authority would proceed with the payment, which was made by wire transfer to a current account at the ASIF authorised institutionheld by WS, an employee of the HS/VCS and brother of CS.

It was alleged that CS destroyed the original copies of invoices in his possession. In this way, the company sold supplies without an invoice, thereby failing to comply with its Italian tax obligations (in Italy the destruction of required accounting and tax documents is a tax crime). CS obtained access to the funds that were credited to his brother's bank account by means of an authorisation that WS had provided, which allowed CS to withdraw money from the account. WS was indicted for 3rd party ML, and CS was indicted for self-laundering.

WS was not convicted for 3rd party ML by the Tribunal given the fact that it did not establish a presence of a mental element (mens rea) as required by the law. CS was convicted of self-laundering and was sentenced to a prison term of 2 years and a fine of EUR 50 000, and a confiscation order of EUR 49 000 from WS's account. The Promoter of Justice did not appeal the acquittal of WS.

290. The above case came before the Tribunal in 2019 and the trial was concluded within 3 months. It remains unclear why this comparatively simple case took so long to come before the Tribunal.

BOX 13 – GR Case

It should be noted that this case does not relate to a ML prosecution, but is mentioned here because of its connection to accounts at the ASIF authorised institution.

The case concerns an administrative fine for failure to declare cash when making cross-border transportations. The origin of the funds was never the subject of a police enquiry.

GR was a non-resident customer of the ASIF authorised institution. In 2014 the FIU received a SAR about the withdrawal of sizeable amounts of cash from the account (EUR 3.2 million and USD 100 000) which were transferred to three safety deposit boxes at the institution. The customer thereafter gradually withdrew the cash from the safety deposit boxes and transferred it out of the jurisdiction, without presenting declarations of cross-border transportations of cash. The FIU ordered suspension of access to the safety deposit boxes in March 2015, inspected them and reported the case to the Governorate, as a potential administrative breach of the duty to declare cross-border transportations of cash. It does not appear that, at that time, the case was reported to the OPJ.

The Governorate issued an administrative sanction in 2015 against GR of EUR 252 000, which was reduced to EUR 114 000 on appeal in 2016. The administrative Court has no power to order confiscation.

291. In the GR case, the FIU reported the matter to the OPJ in July 2016, by which time, it was probably too late to instigate a full enquiry into any possible ML. This does appear to be a missed opportunity. The AT consider that the OPJ should have been given the opportunity of considering a possible ML investigation as soon as the transportations of cash out of the jurisdiction were identified (given the amounts in the safety deposit boxes). It is unclear why the FIU only notified the OPJ about this case one year after the event. It is understood that the case is now to be archived by the OPJ without further investigation.

Abuse of office for personal of other benefits

292. The two biggest investigations described in section 3.3.1 above are pertinent: the L, C and S case, where the charges are embezzlement and ML and which is approaching a conclusion in the Tribunal[31]; and the recent investigation that involves speculative investment operations (referred to as the LP case). These and other cases presented confirm that abuse of office for personal and other benefits may present the most serious threat in the context of the HS/VCS. Whilst the AT welcomes the fact that activities in line with the risk presented by insiders have been pursued for at least last two years, concrete results from such cases (in terms of ML convictions and confiscations) had not been achieved by the conclusion of the onsite visit in October 2020.

293. Considering the afore mentioned and further to in-depth discussions with the authorities, the AT is of the view that the ML prosecutions and convictions achieved so far are generally in line with the threats and risk profile of the jurisdiction.

3.3.3. Types of ML cases pursued

294. Some of the different types of ML cases referred to under this section have been prosecuted and have resulted in convictions in the HS/VCS, but not all types as yet.

295. The absence of a market economy means that lawyers, accountants and tax advisers do not practice privately in the HS/VCS. Thus, there are no opportunities for those third parties who are professionals to operate within the State and to become involved in facilitating ML schemes within the HS/VCS. That does not rule out professionals from outside the HS/VCS facilitating the laundering in the HS/VCS of funds generated from criminal activities.

296. The prosecution involving abuse of a bank account (WS and CS case) involved alleged 3rd party laundering on the part of the account owner (WS). WS was acquitted by the Tribunal. The AT discussed the third-party ML elements of this case (and other hypothetical cases) with the judges of the VCS Tribunal. The judges confirmed that they are entitled to draw inferences from objective, factual circumstances. However, they emphasised that evidence has to be led by the prosecution from which they can properly draw such inferences. They did not consider the prosecution had adduced sufficient evidence in this regard in the WS and CS case. The OPJ should reflect upon this outcome in domestic prosecutorial guidelines to ensure that prosecutors in future present sufficient evidence from which inferences might properly be drawn on either the mental or physical aspects of a ML offence.

297. The evaluators also consider that, without compromising their independent roles, it would be helpful for more regular dialogue to occur between the Judges and the Promoter of Justice. Dialogue on evidential issues generally in ML cases is encouraged, together with the discussions on types of ML cases identified in ongoing HS/VCS GRA(s) as currently reflecting the greatest ML risks in the jurisdiction.

298. It is understood that there is now an element of third-party laundering in the L, C and S case which, as was noted, is still ongoing before the Tribunal[32]. This element was introduced into the case

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[31] The first instance verdict was pronounced on 21 January 2021.

[32] Guilty verdicts were returned on 21 January 2021.

when a further defendant was added to the indictment in 2018. This is not really an example of autonomous or stand-alone ML, as the new defendant is being tried on the same indictment which includes the predicate offences giving rise to the proceeds alleged to have been laundered. If a conviction is obtained, it will be the first conviction in the HS/VCS for any type of third-party laundering.

299. As noted, self-laundering cases predominate, which, arguably, is consistent with economic crimes committed for personal gain in a small state with the unique economic particularities of the HS/VCS. Laundering of the proceeds of foreign predicate offences through ASIF authorised institution accounts, as has already been noted (in the Mr. P case and in the WS and CS case), had been the subject of, prosecutions and convictions.

300. The modest number of ML prosecutions where there have been convictions are all very simple cases of self-laundering. The laundering and sums involved in these cases were comparatively minor, when compared with the large sums said to be involved and the range of serious economic crimes that are currently being investigated in the LP case and some other on-going cases.

3.3.4. Effectiveness, proportionality and dissuasiveness of sanctions

301. Sanctions in respect of natural persons for ML offences under Art. 421bis CC appear on their face proportionate and dissuasive (imprisonment of between 4 – 12 years with the additional possibility of a fine from EUR 1 000 – 15 000). This level of sanction seems to be significantly greater than the penalties for embezzlement committed by a public official (imprisonment for three to five years and a fine exceeding EUR 5 000) or abuse of office (imprisonment for one to five years and a fine exceeding EUR 5 000).

302. Actual sanctions imposed in ML cases where there have been convictions are below the statutory thresholds for the ML offence. Extenuating and aggravating features can be considered in sentencing to reduce or increase statutory penalties. The authorities indicated that in the VCS system, penalties are determined in proportion to the gravity of the case and on the basis of the judicial record of the accused.

303. The Mr. P case resulted in a sentence of 2 years 6 months, which was confirmed on appeal. In the other ML conviction, CS was sentenced to 2 years and a EUR 5 000 fine. Whilst for the CS case the authorities argued that the absence of previous convictions and defendant's conduct in court were “general extenuating circumstances” allowing a sentence below a statutory threshold, it remains unknown which exact extenuating circumstances were considered in the Mr P case, given that the offender had had a prior conviction in Italy.

304. Whilst the assessors have no intention of questioning the decisions taken by the Tribunal, in their view, these sanctions appear rather minimal. Arguably, they are not proportionate and dissuasive, given the potential for significant reputational damage to the HS/VCS arising from ML cases. The final administrative sanction in the GR case, as reduced on appeal, also seems low in all the circumstances. The judges and the Promoter of Justice appeared to acknowledge that the sanctioning policy needs to be reviewed in the light of the reputational damage ML cases can cause to the jurisdiction.

305. In the view of the evaluators, if ML is to be deterred effectively by repressive measures in the HS/VCS, more significant sentences will need to be handed down in future, in appropriate cases. The AT would encourage the authorities to review and reflect further on sentencing policy in ML cases. Such a review might give consideration to taking account of jurisdictional ML risks when determining the gravity of offending in the context of particular offenders.

3.3.5. Use of alternative measures

306. As has been noted, in some cases considered by the Promoter of Justice and sent to court based on FIU reports for offences other than ML, it is not entirely clear to what extent any ML aspects of the investigations were pursued.

307. Some cases were sent to the Tribunal for other offences. From information provided by the OPJ, the AT has no reason to doubt the conclusion that ML was unsustainable as a charge.

308. It should be noted under this section as well as under IO.8, that Decree 277 of the President of the Governorate was promulgated on 10/12/2018. Inspired by Italian Organised Crime legislation, it introduces a wide-ranging preventive confiscation tool in relation to goods in the possession of a person who cannot justify their legal origin, and where their value is disproportionate to their income/economic activity. The measure can be used independently of criminal proceedings, where there is insufficient evidence to proceed with a criminal prosecution under the criminal standard of proof. The evidential basis under the Decree is the lower threshold of suspicion.

309. This measure can also be applied in criminal proceedings. It has already been used in the case involving former ASIF authorised institution senior officials in the trial phase at the time of the on-site visit. The AT was advised that it had also been used in the LP case. Apparently final orders based on this measure can also be made in criminal proceedings, together with any confiscation orders under the CC.

310. In the context of application of other criminal measures, where it is not possible for justifiable reasons to proceed with ML, this confiscation tool could be used as an effective alternative criminal justice measure. It appears it can be applied in the event of an acquittal for ML on the evidence, as the suspicion standard is lower than the criminal standard of proof. It can be applied to identified assets for up to 5 years after the death of a suspect and to relevant property identified in the hands of spouses or relatives in the 5 years following a suspect's death. Thus, had this measure been available earlier, arguably, it might have been used in some ML cases which ended in acquittals. The authorities indicated that, going forward, this potentially powerful tool could be engaged in respect of suspects within the HS/VCS against whom criminal proceedings might not be sustainable, but who appear to have unjustifiable wealth compared with their income.

Overall conclusions on IO.7

311. Recent developments such as launching of some complex investigations, improvements in the institutional framework and a more proactive approach applied by the CdG and the OPJ are encouraging. However, the actual results achieved during the period under review are modest.

312. In the eight years since the last evaluation, two convictions[33] have been achieved. Both convictions were for self-laundering. The sentences in both cases were below the minimum statutory penalty for ML. There is no conviction yet for third-party laundering. No autonomous ML prosecution has been brought where the authorities need to establish underlying predicate criminality by reliance on inferences drawn from other facts and circumstances. Despite the clear provisions in legislation, a reluctance, at least until recently, to bring ML cases in the absence of a conviction for the predicate offence appears to have been a contributory factor to the small number and protracted length of ML investigations.

313. Since according to the statistics provided by the HS/VCS, most predicate offences occur abroad, the number of stand-alone ML investigations should be higher.

314. At best, the convictions obtained demonstrate that this IO may have been achieved to a limited extent. But there remained, at the time of the onsite visit, some concerns. In the L, C and S case, the investigation lasted 4 years before it was brought to trial. Whilst it is evident that delays are partly due to late responses on MLA requests by foreign counterparts, the under-resourcing of the OPJ and lack of investigative support for the Promoter in the early years under evaluation are also factors which contributed to this. Further improvements in staffing numbers and recruitment of full-time prosecutors (particularly with practical experience in prosecuting financial crime) are needed to ensure that all ML cases are subject to initial thorough reviews (in a timely way) and then progressed with more expedition.

315. **The HS/VCS has achieved a moderate level of effectiveness for IO.7.**

3.4. Immediate Outcome 8 (Confiscation)

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

316. There is no formal policy statement from the OPJ on the policy objective to pursue confiscation in criminal prosecutions. The criminal legislation requires mandatory post-conviction confiscation of "instrumentalities proceeds, profits, and their value and other benefits that arise from their use" on an all crimes basis. The Tribunal therefore considers the confiscation issue upon convictions for ML, or for any other proceeds-generating predicate crimes. In case a defendant is found guilty, the judge orders the confiscation *of the goods used or intended to be used to commit the offence, as well as the proceeds or crime, profits, and other benefits that arise from their use*. Thus, in principle, the onus is on the judge to ensure that confiscation issues are properly considered after conviction, and on the OPJ and the CdG to prepare the necessary evidence to support confiscation orders post-conviction. This requires the Promoter of Justice in ML and proceeds-generating cases to have financial statements (or other evidence to present to the court) of the amount of proceeds alleged to have been generated by the offences (directly or indirectly), and their location and their value (if the proceeds are missing). Similar information will be required in respect of any instrumentalities used or intended for use in the offences for which the defendant has been convicted.

[33] Conviction in L, C and S case was pronounced on 21 January 2021.

317. As already noted under IO.7, the CdG are also responsible, under the Promoter of Justice's direction, for investigation, including tracing and seizure of the proceeds, of all crimes committed in the State. The Operational Circular and the Workflow of the ECO-FIN Unit as updated in 2020, give the Unit the primary competence over crimes that generate incomes of higher amounts, involving financial flows which exceed EUR 100 000. Whilst the assessors welcome this development, neither this Circular nor any other strategic document of the CdG clearly provides that seizure and confiscation of the proceeds of crime is a policy objective.

318. The lack of formal statement has, however, been compensated, at least to a certain extent, by important legislative developments which strengthened the jurisdiction's framework in pursuing proceeds of crime. The Decree 277 of the President of the Governorate of 10 December 2018 introduced a robust non-conviction based confiscation measure. Inspired by Italian organised crime legislation, this Decree introduces a wide-ranging preventive confiscation tool in relation to goods in the possession of a person who cannot justify their legal origin and where the value of them is disproportionate to income/economic activity. The evidential basis for such orders is the lower threshold of suspicion. Consequently, seizure and confiscation can be ordered independently from the criminal investigations that are carried out in the context of a predicate offence. In practice, it is a parallel criminal proceeding where a non-conviction-based confiscation could be executed. There is no minimum threshold in terms of assets value for the application of this mechanism.

319. The OPJ and ECO-FIN Unit are proactive in pursuing the proceeds of crime. This is confirmed through case studies and statistics presented to the AT (see also core issue 8.2). Given that the number of prosecutors is small, the AT was advised that procedures on confiscation have not been reduced to writing in office manuals, but that they all pursue confiscation as required by the law where this is appropriate. This notwithstanding, the assessors consider that it would be helpful for the relevant practices and procedures in HS/VCS for the application of freezing, seizing and confiscation to be set out clearly in writing for their use and reference in a policy document. This document should underline the need for early freezing measures generally in proceeds-generating cases, and the need for swift freezing action by the Promoter of Justice under the CC in appropriate cases, where the FIU has used its powers to suspend transactions. Given the limited number of cases, it is understood that the Promoter actively monitors the implementation of confiscation policies with a view to identifying where there may be delays or obstacles for resolution as necessary with the Head of the CdG and the President of the Tribunal.

320. In conclusion, the AT view is that, although there is no formal statement in any strategic document that confiscation is a policy objective, the adoption and the practical implementation of the 2018 Degree, in conjunction with the investigative actions and seizures executed so far (in country and abroad – please see core issue 8.2) clearly indicate that the HS has a policy objective to use the widest range of confiscation tools to prevent and deter those in the State who would use their positions for personal gain.

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

321. Prior to the trial phase in proceeds-generating criminal cases, the identification and the tracing of proceeds, instrumentalities and property of equivalent value is the competence of the OPJ. The Promoter of Justice then needs to prove before the Tribunal, by presenting and elaborating the

evidence gathered, that the proceeds originate from criminal activity. Tribunal then decides, when pronouncing a judgement, whether or not to approve the confiscation. The OPJ is also a competent authority for responding and for requesting information and evidence to/from foreign counterparts which concern tracing and identification of proceeds of crime.

Confiscation and freezing in cases based on criminal complaints

322. Once a criminal complaint/FIU analytical report has been received by the OPJ and a full investigation of that complaint is underway, he requests ECO-FIN Unit to identify and trace cash flows or property which are the proceeds of the offence. The Promoter of Justice may also call in other qualified experts in larger cases to assist in this. In complex cases it has been the practice of the Promoter to cooperate with the ASIF authorised institution, for a careful and in-depth reconstruction of bank movements (see 'M case' below). After these investigative activities, the OPJ would then proceed with seizure/freezing. Details of OPJ's and ECO-FIN Unit competences and the way financial investigations are carried out are also explained under IO.7.

BOX 14 - M case

The case originates from a criminal complaint submitted by the FIU , based on the ASIF's authorised institution SAR. The case concerns a priest, holder of a c/c, who accompanied by his nephew, resident in England, has paid 100 traveller's cheques with a unit value of EUR 500 each to his account with the ASIF authorised institution and in the name of the Church of which the priest is Rector. Upon arrival at the ASIF authorised institution, the above mentioned persons made a regular declaration of cash transportation and the priest declared to the counter operator that he had received the Traveller's Cheques from an Egyptian citizen, as a donation in favor of the Church, following his conversion to the Catholic faith. Considering the opacity of the operation, the operating officer of the ASIF authorised institution communicated that the Traveller's Cheques would be liquidated in the current account after a few days, in order to have some time to report the suspicious operation to the FIU. The FIU carried out the analysis and then submitted a report/criminal complaint to the CdG and the OPJ indicating the anomalies identified.

The Traveller's Cheques, apparently issued by the company American Express, were then found to be counterfeit and for this reason they were not paid by the issuing bank. Freezing order by the OPJ against the priest's accounts were then executed. The amount frozen was EUR 150 847. The suspects, i.e. the priest and his nephew, who is a UK citizen, were questioned and reported that the securities came from an Egyptian citizen and were part of the proceeds of a purchase and sale of used household appliances in Germany on behalf of a company in Dubai. The delivery of the securities would have taken place in England and then they would have been taken materially, by the nephew of the priest, first to Italy and then to the HS/VCS. The investigations of the OPJ, with the collaboration of the ASIF authorised institution, have made it possible to ascertain that the priest holder of the account has, over the years, carried out numerous operations of cash deposit, until reaching considerable amounts and completely disproportionate in relation to his income profile. As a result of this, the OPJ followed the traces of the securities at Italian and French banks, which confirmed the falsity of the securities in question. In the meantime, in September 2019, international letters rogatory were sent to the UK authorities and to the authorities of the Arab Republic of Egypt,

but they have not yet been responded. The investigation targets counterfeiting of traveller's cheques and ML.

323. Overall, in period 2013-2020 a total of 47 freezing orders were made by the OPJ. Two of them resulted in final confiscation orders and repatriation of funds (see Table 16 below) and both followed the ML convictions (details provided below Table 16). With regard to the freezing orders which are still in place, the AT noted that a vast majority of them, were made in last two years (2019-2020). This appears to be result of a growing awareness and priority given to economic crime cases by both, the CdG and the OPJ. Early freezing/seizure may be speedily achieved in cases involving criminal complaints where transactions have been suspended or accounts blocked by the FIU under their powers, if this is followed up quickly by the Promoter in appropriate cases. It is noted that, where SARs were being considered, transactions and operations were suspended by the FIU 3 times in 2014, 8 times in 2015, 4 times in 2016, and 3 times both in 2018 and 2019. In eight cases these measures were followed by a freezing order by the OPJ (see also IO6). In addition, preventive freezing of accounts, funds and other assets were ordered by the FIU 4 times in 2015 and once in 2016 (involving funds of approximately EUR 8.5 million) and once in 2017 (involving approx. EUR 1.7 million), twice in 2018 and once in 2019. When the FIU proceeds with a temporary freezing, the OPJ is immediately notified. If, in the opinion of the Promoter of Justice, there are grounds of suspicion which justify a criminal seizure, the Promoter then issues a seizure/freezing order. Case studies presented to the AT confirm this practice. The procedures for cooperation with the FIU in these cases need reducing to writing in the guidance recommended above (see RAs for IO.8).

Confiscation and freezing in law enforcement generated cases (not based on FIU reports)

324. ECO-FIN Unit officers, apart from conducting financial investigations based on the FIU reports and alerts passed to them by the OPJ, also carry out their own investigations into financial predicate offences. It is understood that ECO-FIN Unit has undertaken at least 7 investigations based on intelligence and information gathered from open sources, though in none of these actions sufficient evidence of criminal activity and proceeds generated thereof was found.

325. ECO-FIN Unit appears more autonomous than other parts of the CdG in taking financial investigative action in their (financial) crime investigations, without directions from the Promoter of Justice. They can initiate tracing actions and contact foreign counterparts where necessary to build up a body of financial evidence to present to the Promoter, with a view to timely freezing/seizing and ultimately confiscation.

326. With regard to other proceeds-generating predicate offences, like drug trafficking, investigated by other parts of the CdG, there appears to be no clear policy statement in CdG Force Orders or elsewhere (of which the evaluators are aware) recognising that parallel financial investigations will need to be considered in all proceeds-generating investigations. Thus, if there are such investigations being carried out by other units, the extent to which they identify potential proceeds is unclear. The amount of evidence available at trial to support confiscation applications in such cases may depend entirely on how early in the investigation the OPJ had been involved and had given instructions to the investigating officers.

327. On the other hand, an update to the Operational Circular and the Workflow of the ECO-FIN Unit (Prot. N. 046545/1/2020) gives the Unit the primary competence over crimes that generate incomes of higher amounts, giving priority to the cases involving financial flows which exceed EUR 100 000. The authorities also advised that in cases where CdG Units other than the ECO-FIN Unit

investigate crimes where there are grounds to believe that proceeds were generated, the investigation would then either be transferred to the ECO-FIN Unit or the ECO-FIN Unit would provide assistance in such investigation by targeting and following the proceeds and profits from these crimes.

328. This notwithstanding, the AT is still of the opinion that it might be helpful to clearly state in CdG Force Orders that, in all proceeds-generating offences, all CdG officers (not just those in the ECO-FIN Unit) should always proactively consider the likely extent of criminal proceeds, and consult with the OPJ at the earliest opportunity if they think that there may be traceable proceeds. This should encourage all investigating officers to make some preliminary enquiries on this issue at early stages without waiting for specific instructions to do so from the Promoter of Justice.

Amounts seized and confiscated in criminal investigations and prosecutions 2014-2019

329. The following statistical information was provided by the HS authorities for the years 2014-2020.

Table 16: Amounts seized and confiscated in criminal investigations and prosecutions 2014 -2020

Year	*Cases attached to the fund/property*	*Amounts frozen/property seized*	*Property confiscated*	*Property effectively recovered*
2014	L, S and C case	EUR 11 339 650 USD 3 930 000 CHF 650 116 USD 1 163 110 AUD 808 355		
	A case	EUR 36 480		
	S case	EUR 155 095		
	Mr. P case	**EUR 1 470 232**	**EUR 1 275 274**	**EUR 1 275 274**
2015	SA case	EUR 30 862		
	SR case	EUR 385 075		
	GR case	**EUR 750 000**		**EUR 114 000**
2016	CMA case	EUR 1 643 248		
2017	G case	EUR 1 757		
2018				
2019	M case	EUR 150 807		
	WS and CS case		**EUR 48 000**	**EUR 48.800**
	ALT case	EUR 180 530		
	LP case	EUR 14 424 350 CHF 70 807 900 USD 3 235		
2020	LP case	EUR 5 570 470		
Total (approx.)		**EUR103 156 000 000***		**EUR 1 438 074**

**This figure does not include the amounts frozen in those cases where confiscation was executed (Mr P, GR and WS/CS cases).*

330. There were seizures in the 2 ML cases that resulted in the convictions and confiscation (Mr. P and WC&SC cases – details of both are provided under IO7). The first ever confiscation order in the HS/VCS was imposed on 17 December 2018, when Mr. P was convicted of self-laundering and the

Tribunal made a confiscation order of EUR 1 275 274, which had been seized by the authorities in April 2014. This order took effect in 2019. In the WC and SC case, SC was convicted, and a confiscation order was made against him for EUR 48 799 in 2019. As noted under IO7, the GR case was an administrative sanction which amounted to EUR 114 000.

331. The figures presented above clearly indicate that the competent authorities have demonstrated a solid degree of effectiveness in tracing and seizing the proceeds of crime. However, considerable amounts under seizure (app. EUR 103 million) are still awaiting the completion of several cases. Arguably, the value of the confiscations executed during the period under review is far inferior to the amounts seized. This appears to be a consequence of lengthy investigations and the fact that final convictions are yet to be achieved in numerous cases with significant confiscation requests (see also IO.7 on length of criminal proceedings in the HS/VCS).

332. The AT appreciates that extensive financial investigations to trace these seized proceeds (in HS/VCS and abroad) have been required in several cases. The ongoing L, C and S case (involving former ASIF authorised institution officials accused of embezzlement and laundering) accounts for a large proportion of these sums. In the L, C and S case the Promoter of Justice inter alia succeeded in a request to the Swiss authorities to freeze considerable amounts held in that jurisdiction. This and other cases presented to the AT suggest that the authorities undertook a pro-active approach in searching and seizing assets abroad. As noted under core issue 7.5 above, the new measure provided for under Decree 277, based on suspicion, has also been applied in this case - and EUR 21 million has also been seized on this basis. In the LP case, non-conviction based confiscation as per the Decree 277 has not yet been applied, although the authorities advised that, at the time of the on-site visit, the OPJ was considering whether and to what extent this instrument could be used. It worth noting that in this case seizures were also made abroad and upon requests of the HS authorities (i.e. the OPJ). Overall, considerable amounts seized so far result from the application of both - seizure measures in the course of criminal investigation (as per the CCP), and, in last two years, by application of the Decree 277. With regard to the geographical location of execution of these seizures almost half of these funds were seized abroad (in Switzerland,) as a result of request submitted by the HS (via letters rogatory).

333. The authorities advised that the seizures executed so far clearly indicate their proactive approach in achieving the ultimate goal of such initiatives – and that is a repatriation of proceeds of crime. They believe that the seizure orders executed so far will soon turn into the confiscation. To support this statement, the authorities emphasised the fact that some large-scale cases (such as L, S and C case) had already reached a sentencing phase and the confiscation orders are to be rendered soon[34]. Despite these developments, the AT is still of the view that it is disappointing that only two final confiscation orders have been made by the Tribunal during the period under review. In these two cases, which both concern ML charges and where final confiscation was made, the orders appear to have been made in respect of funds on accounts identified as the direct proceeds of the offences. On the other hand, it is commendable that in the two cases which so far generated the seizure/freezing of significant amounts (L, C, S and LP) the competent authorities have successfully identified indirect proceeds, such as financial products and securities into which the alleged

[34] On 21 January 2021, the court convicted (at first instance) and ordered '*the confiscation of the sums already seized at the IOR, for an amount equal to the amount existing at the date of the seizure on the accounts in the name of each of the defendants'.*

proceeds have been invested, including the funds layered through networks of companies in foreign jurisdictions. The exact percentage of these funds vis-à-vis all the funds frozen in that particular case is unclear. In addition, the HS authorities advised that there are similar actions in the complex financial investigations currently underway in the LP case, but no further details were provided to the AT due to confidentiality reasons. The AT welcomes these efforts and encourages the authorities to continue to apply a proactive approach in identifying and seizing/freezing the proceeds of crime.

334. As noted, the OPJ can and does engage external expertise to carry out specific analyses of complex financial flows when he considers such assistance is needed. They have a panel of selected experts for this. Valuations of property were necessary in the LP case and external experts were brought in for that. Whilst the AT considers the approach undertaken by the authorities as a positive and results oriented, consideration may need to be given, going forward, to the engagement of some in-house accountancy or other analytical expertise, as the complexity of cases grows.

335. Value order confiscations, orders for the confiscation of instrumentalities, and orders for the confiscation of laundered property appear not to have been ordered by a court so far as the AT is aware. The absence of the applications in respect of laundered property appears understandable, as there seem not to have been any stand-alone ML cases investigated or prosecuted. However, it is unclear whether the OPJ is making sufficient efforts with regard to the confiscations of instrumentalities. The authorities have provided no information on these issues.

336. However, some of the other more difficult ancillary aspects of asset recovery seem not to have been tackled as yet in practice. Therefore, the HS/VCS's capacity to deal with some complex issues, such as assertions of 3rd party interests in property liable to confiscation or management of seized assets that are declining in value, is unclear.

337. Decree CCCXXIX of the President of the Governorate on 1 October 2019 introduced an addition to Art. 242 CCP, allowing for seized and confiscated property, real estate and financial assets to be entrusted to one or more judicial administrators to care for their management. So far as the AT is aware, this provision has not been used yet. In other words, there are no assets under judicial administrator's management at the moment. It is unclear inter alia whether new Art. 242 of the CCP encompasses selling assets which are declining in value as a function of management (without seeking judicial permission to do so). Such issues need consideration and policies putting in place before these new provisions need to be activated in practice. No guidance has been drawn up on the selection of judicial administrators or how judicial administrators should operate. The HS/VCS authorities indicated that they would address these issues, as and when the need arises.

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

338. As noted earlier, HS/VCS has a strong border enforcement regime. It has 6 gates/entrance points, most of which are generally closed after 20:00 hours. These are controlled by the Swiss Guards and the CdG.

339. HS/VCS has a written declaration system with regard to cross border transportation of cash and BNI. In the case of false or missing declarations of cross-border movements of currency, in addition to pecuniary sanctions, the monies are also confiscated.

340. Between January and December 2019, 11 511 border checks were carried out, with an additional 207 further checks on specific individuals and vehicles. From 2015 to 2019, 77

spontaneous declarations of carriage of cash above the limits were made, 83% of which involved cash destined for the ASIF authorised institution, and the remainder to the retail shops. These required no further investigation.

341. All declarations made go to the CdG and the FIU. The ECO-FIN Unit has since its inception received copies of all declarations. This is for financial intelligence purposes, including creation of risk profiles of persons likely to bring in cash. It also allows the ECO-FIN Unit to analyse money flows into and within the HS/VCS. In the period May 2013 – December 2019, the ECO-FIN Unit handled 39 cases, carrying out their own checks on 310 physical persons and 32 legal persons, based on the declarations received.

342. While no false declaration at the border has been detected so far, or by other subsequent investigative activity, one investigation (see GR case under IO.7) was triggered by an SAR submitted by the ASIF authorised institution, which was not passed to the Promoter of Justice at the time. This involved a non-declaration of cross border transportation of cash withdrawn from a safety deposit box in the ASIF authorised institution. This was not investigated by the ECO-FIN Unit at the time and was passed to the Governorate for imposition of an administrative sanction. As a consequence, the Governorate issued an administrative sanction in 2015 of EUR 252 000, which was reduced to EUR 114 000 on appeal in 2016.

343. It would appear that the infrastructure is in place for additional risk-based investigations of submitted cross border declarations, and that a significant number are in practice subject to more detailed analyses by the ECO-FIN Unit. While this process harvests some valuable intelligence, it has not detected any further false or undisclosed movements of currency or bearer negotiable instruments so far.

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

344. The achievement of significant confiscation orders depends also on the speed with which cases are being progressed. As noted, investigations are often protracted, and resources need to be made available to speed them up.

345. The estimated annual proceeds from criminal activity before 2019 was EUR 20 million a year. The 2 convictions for ML that have resulted in 2 confiscation orders amount approximately to EUR 1.3 million in total. The GRA shows that the predicate offences reported most frequently have been: (i) tax crimes committed abroad; (ii) fraud; (iii) embezzlement; (iv) goods fictitiously registered in the VCS; (v) insider trading and market abuse ; and (vi) bribery and corruption. In addition, the typology of ML offences for which the two confiscation requests were executed arose from cases which addressed areas of national risk in the GRA – the use of personal ASIF authorised institution accounts by non-residents for self-laundering of foreign proceeds, or the use of ASIF authorised institution accounts held by HS employees for the laundering of foreign proceeds. The predicates involved were tax evasion and fraudulent bankruptcy, the offences which, inter alia, are identified as major threats within the GRA framework.

346. The estimated figure for criminal proceeds for 2019 is much larger, because of inter alia one domestic proceeds-generating case under investigation (the LP case). At the time of the onsite visit,

in this particular case, a total of around EUR 85.5 million was seized, either domestically or abroad (see table above).

347. Nonetheless, the pending case of L, C and S in the trial phase involves significant domestic proceeds-generating offences, with large seizure and freezing orders in place domestically and abroad. This prosecution involves officials allegedly enriching themselves through their positions, which addresses another important area of national risk. It is, however, not a confiscation result as yet. Overall, the cases where significant amounts were seized and not yet confiscated appear to be in line with what the AT considers to be an important ML risk, and that is abuse of office for personal or other benefits.

348. Two confiscations of approximately EUR 1.3 million in total reflect, in part, the assessment of national risks. While few, if any, countries are confiscating very significant percentages of their annual costs of crime, the sums confiscated here are only a small percentage of estimated criminal proceeds in the years the offences were committed.

Overall conclusions on IO.8

349. The HS is pursuing confiscation of identified proceeds as a policy objective. However, only two confiscation orders as a result in criminal proceedings were achieved so far. These orders were handed down by the tribunal in 2018 and 2019. Whilst the authorities are proactive and effective in tracing and seizing assets, including the assets aboard, orders for value confiscation or confiscation of instrumentalities have not yet been made in criminal cases. Overall, the amount of assets confiscated is far inferior to the amounts seized. This appears to be a consequence of a lengthy investigations and the fact that final convictions are yet to be achieved in numerous cases with significant confiscation requests. The new confiscation provision (i.e. non-conviction based confiscation as per Decree 277) based on suspicion has been used in criminal proceedings, though no provisional order granted on the basis of suspicion has been finally confirmed in a criminal case as yet. HS has strong border controls and measures are in place to detect cross border transportation of cash. Seizures and confiscations executed so far reflect some of the identified national risks.

350. **The HS/VCS has achieved a moderate level of effectiveness for IO.8**.

4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

4.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

a) No incidents of TF have been identified so far. Thus, there have been no prosecutions or convictions for TF.

b) The TF risk is considered to be low. These risks have been considered proactively and in the absence of any concrete TF elements within the jurisdiction or information received from outside, the conclusion to rate the TF risk as low appears to be reasonable and grounded. Consequently, the absence of TF prosecution is in line with the risk profile of the jurisdiction.

c) The CdG and other competent authorities of the HS/VCS are acutely aware of the HS/VCS's exposure as a potential target of terrorist and extremist activities. The ECO-FIN Unit, which is responsible for TF identification and investigation, is maintaining close contacts with other parts of the CdG and is developing preventive strategies, such as spot checks of persons carrying cash below the EUR 10 000 threshold for mandatory declarations. The ECO-FIN Unit is also carrying out proactive analyses of ML SARs from the TF perspective for the better identification of possible TF.

d) While there have been no recent terrorist incidents in the HS/VCS, ECO-FIN Unit officers understand that there should be a parallel financial investigation alongside an investigation into any future terrorist attack. On the other hand, the HS strategy documents, security plans and force instructions do not set out a clear requirement for the conduct of parallel financial investigations in terrorist enquiries.

e) Since there has been no prosecutions/convictions for TF, no conclusion could be made on proportionality and dissuasiveness of sanctions applied. On the other hand, sanctions for natural persons as foreseen by the CC (5-15 years of imprisonment) are proportionate and dissuasive.

Immediate Outcome 10

a) Despite not being a member of the UN, the HS/VCS has adopted a domestic mechanism that allows it to give effect to UN sanctions without undue delay. However, the AT found that one designation and an update related to UNSCR 1267 had not been transposed to the HS/VCS national list by the time of the on-site visit. This raise concerns over the effective implementation of TF-related TFS by the competent authorities.

b) The transposition of designations to the national list under the UNSCR 1267 and UNSCR 1373, takes place in accordance with a practice between the Governorate and the SoS which is not fully documented. The AT is concerned that the overall effectiveness of this practice might be affected by its undocumented nature.

c) The residual risk determined from the NPO risk assessment and shown in the NPO Report for the sector is an aggregate of both ML and TF risk. As a result, the features and types of NPOs

which by virtue of their activities or characteristics, are likely to be vulnerable to TF abuse were not identified at sectoral level. Nevertheless, ML and TF risk has been assessed separately for each NPO.

d) There are indications that a small number of other charitable legal persons may fall within the scope of the FATF definition of NPO but which have not been classified as such by the competent authorities. These will not have been the subject of the NPO risk assessment but are currently the subject of a separate risk assessment of legal persons other than NPOs.

e) Following on from the results of the NPO risk assessment, a supervisory plan was issued covering all NPOs (and so was not risk-based) and, at the time of the onsite visit, one NPO had been visited (report outstanding). Targeted AML/CFT supervision and outreach did not appear to be a priority before 2019.

f) Representatives of the NPO sector met onsite confirmed that the findings of the sectorial risk assessment had helped them advance their understanding of potential ML/TF risk and expressed appreciation for the supervisory authorities' work in this area. However, the sector's understanding of TF risk is considered by the AT to be at an embryonic stage and solely triggered by the risk assessment.

g) Mindful of Key Finding (a), there have been no cases in the HS/VCS where the jurisdiction could have demonstrated the implementation of TFS pursuant to UNSCRs 1267/1989 or 1988. Nonetheless, the HS/VCS has designated a person in its national list under the said Resolutions following the 2015 terrorist attacks in Paris.

h) The AT is of the view that the absence of evidence of potential TF threats based on SARs or requests for international cooperation and the absence of frozen funds, are in line with the TF risk profile of the jurisdiction.

Immediate Outcome 11

a) The mechanism implementing PF-related TFS is the same as the one for TF. The AT found that an update related to UNSCR 1718 was transposed with delay (25 days) to the HS/VCS national list. This raise concerns over the effective implementation of PF-related TFS by the competent authorities.

b) Mindful of the Key Finding (a), there have been no cases in the HS/VCS where the jurisdiction could have demonstrated the implementation of PF-related UNSCRs.

c) No international request (formal or informal) linked to PF activities, movement of funds or other assets was received.

d) There is a standing Working Group dedicated to PF within the FSC. The group allows for quick exchanges of PF-related information between competent authorities. So far, the identification of areas where improvement in the implementation of PF-related TFS is required is the main topic of discussion.

e) Awareness concerning PF-related TFS of the ASIF authorised institution is at the same level as for TF. It screens against all UN lists through automatic checks for UNSCR updates, relying not only onto the national list, but also on a real-time commercial database.

Recommended Actions

Immediate Outcome 9

a) The authorities should ensure that all strategic documents and security plans for the handling and investigation of terrorist attacks in HS/VCS include a clear requirement for mandatory parallel financial investigations into the terrorist offences.

b) The authorities should ensure that ECO-FIN Unit officers and prosecutors (current staff and those newly recruited) undergo periodic trainings on emerging techniques and pathways used for TF. This training programme should include all TF related typology reports that have been prepared in the FATF global network.

c) The authorities should develop a practical reference manual for the ECO-FIN Unit on how to plan and conduct a TF related financial investigation. This manual should also provide guidelines on identification of possible TF through analysis of financial flows to those countries which may present particular TF risks.

Immediate Outcome 10

a) The authorities should review and revise the mechanism for transposing UNSCR TF-related TFS designations in light of the identified failures/delays and ensure that the mechanism is fully documented. This recommended action should also cover PF-related TFS.

b) In the next iteration of the NPO risk assessment, the authorities should: (i) include any other charitable legal persons that are NPOs; and (ii) identify how terrorist actors may abuse the identified NPOs with high TF risk.

c) The authorities should reassess the characteristics and activities of all charitable legal persons with a view to identifying any falling within the scope of the FATF definition of NPO.

d) In taking steps to remedy the shortcomings identified under R.6 and ensuring the effective implementation of TF-related TFS in a manner compatible with its status as a Permanent Observer State at the United Nations, the authorities should continue to engage with the relevant UN Organs with a view to being granted adequate access to the UN TFS mechanisms.

e) The authorities should take measures, including provision of training, to enhance the awareness of competent authorities exercising border controls on the implementation of TF-related TFS. This Recommended Action is also relevant for PF-related TFS.

f) The authorities should provide training and guidance to the ASIF authorised institution with regard to the implementation of TF-related TFS.

g) The authorities should enhance their outreach activities with the NPO sector in advancing the NPOs' understanding of TF risk. Once a subset of NPOs vulnerable to TF abuse is identified by the next iteration of the NPO risk assessment, focus should be placed on addressing risk in this subset.

Immediate Outcome 11

a) In taking steps to remedy the shortcomings identified under R.7 and ensuring the effective implementation of PF-related TFS in a manner compatible with its status as a Permanent Observer

State at the United Nations, the authorities should continue to engage with the relevant UN Organs with a view to being granted adequate access to the UN TFS mechanisms.

351. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5–8, 30, 31 and 39.

4.2. Immediate Outcome 9 (TF investigation and prosecution)

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

352. In the period under review, there have been no prosecutions or convictions for TF offences. The AT considers this to be broadly in line with the jurisdiction's risk profile.

353. The ECO-FIN Unit (which would investigate any case of TF), the CdG as a whole, and all the HS/VCS authorities are acutely aware of the exposure of the HS as a potential target of terrorist and extremist activities, given the highly visible nature of the Pontiff in his pastoral role. The CdG in particular reminded the AT that, in the protection of the Holy Father, they are always conscious of the assassination attempt on St John Paul II in St Peter's Square in 1981. As indicated in IO.7, the Head of ECO-FIN Unit is also the lead HS/VCS INTERPOL link, and it is clear that his unit is well connected to international law enforcement intelligence networks for assessments of the risks of extremist or terrorist actions against the HS/VCS or the Holy Father. Overall, the HS/VCS authorities consider that they are at a high risk of terrorist activities. HS/VCS security schemes and anti-terrorism strategies necessarily have taken into account the unique nature of this risk.

354. The authorities pointed to characteristics of the HS/VCS which make it an unlikely locus for TF activities. They underlined that the HS/VCS is not a financial centre and does not have a market economy that might facilitate the collection and movement of funds for TF. They noted also that the permanent population is rather limited, and that there is no evidence of the presence of radicalized groups in HS/VCS. They emphasized that users of financial services in the jurisdiction belong to a limited set of predetermined categories of persons.

355. TF risks have been considered proactively. Every authority examines the possible involvement of TF elements when reviewing ML data. For example, SARs for ML are also analysed by the FIU for the possibility of TF indicators (with cooperation from the CdG where needed) and investigations by the OPJ consider whether cases are linked in some way to countries exposed to TF risk. The SfE and Office of the Auditor General also consider TF risk whilst exercising statutory oversight of public authorities.

356. The AT was advised that some analysis of HS/VCS financial flows to those countries in the Middle East and elsewhere which may present particular TF risks had been undertaken. These analyses did not identify any specific TF threat. In addition, the current assessment of TF risk is broadly supported by the absence of international cooperation requests from foreign authorities regarding TF schemes or TF funds with potential links to the jurisdiction. The OPJ, the CdG (including the ECO-FIN Unit) and the FIU have never received any international cooperation requests concerning TF.

357. Consequently, the HS/VCS authorities advised that their TF risk is low. In light of the absence of any concrete elements within the jurisdiction or information received from outside pointing to a higher risk, this assessment appears to be a reasonable and grounded, and is consistent with the AT's view. Accordingly, the absence of TF prosecutions and convictions is in line with the jurisdiction's risk profile.

358. So far, there has been one TF related SAR submitted by the Auditor General's Office in 2019. The FIU analysis of this SAR confirmed that there were no TF elements in the activity which was reported (see also IO6). In addition, one non-TF SAR merited further analysis by the FIU resulting in a dissemination to the OPJ, in a form of information. Upon the Promoter's request, the CdG carried out a preliminary investigation/inquiry and found no grounds to pursue TF investigation (see the case description under core issue 9.2).

359. There were no detected matches of HS/VCS account holders with names on TF sanctions lists.

360. The "humanitarian carve-out" is an issue which was discussed in the TC Annex as a potential technical defect. A defence against a TF charge is provided for in the TF offence itself. This is to try to protect a relief agency which inadvertently provides funds or other assets, as humanitarian assistance to vulnerable groups during a humanitarian crisis. It is theoretically possible that the work of relief agencies in a humanitarian crisis might inadvertently enable a terrorist to receive funds or other assets. It is noted that the provision provides a defence, and not a bar to TF prosecutions. Common Law jurisdictions use prosecutorial discretion to decline to prosecute an offence where there are public interest factors which mitigate against a prosecution. In the HS/VCS system, the legality principle applies and all cases where there is evidence have to be prosecuted. It seems to the AT that this carve-out puts the HS in a broadly similar position to a country which can exercise prosecutorial discretion not to proceed on the facts of a particular TF case. It was concluded by the AT that this carve-out was not a technical defect under R.5, as the provision appears compatible with Art. 21 of the International Convention for the Suppression of the Financing of Terrorism 1999. In any event, the risks of this scenario arising in practice seem rather remote and therefore the chances of its impacting on the effectiveness of TF prosecutions seem equally remote.

4.2.2. TF identification and investigation

361. The CdG and its ECO-FIN Unit work very closely with the Counter-terrorism operative group in the Italian Department of Public Security. This cooperation, established through the provisions of the Lateran Treaty, ensures that any terrorism/TF investigation would be carried out by the Department of Public Security and the CdG.

362. TF investigations could be identified by SARs or by police intelligence or instituted in the context of a terrorism investigation. Any SAR containing TF elements is given priority by the FIU. As already noted, each ML or predicate offence related SAR is analysed by the FIU also from TF perspective. These TF-related analyses include checks of the individuals and entities indicated in the SAR, including those that are related to them, against the FIU's internal databases (ASIF Application, GoAML, declarations of cross-border currency transport). These checks are also extended to the external sources, such as Factiva (because of the ability to access negative news regarding the subjects), Orbis (because it indicates the individuals in a company that have been the subject of negative news) and Worldcheck (because it checks the names against global sanctions lists, global

regulatory and law enforcement lists, and Iran economic interest lists). In addition, the FIU also consults the list of subjects that threaten international peace and security, issued by the Governorate, and, when needed, requests information from its foreign counterparts. These efforts are welcome, and the AT encourages the competent authorities to continue with this practice.

363. As noted above, one TF related SAR was submitted (in 2019), but no TF elements were found, and the case was archived by the FIU.

364. On the other hand, there has been one situation where a preliminary investigation/inquiry into TF suspicion was carried out by CdG. This situation is further discussed in the box below.

BOX 15

The case originates from an SAR submitted by the ASIF authorised institution in 2020. This particular SAR did not indicate any predicate, but only a suspicious activity which included wire transfers to a high-risk jurisdiction. Upon the FIU's analysis of the SAR, information was disseminated to the OPJ. The information indicated the FIU's consideration that a TF activity might have happened. The FIU noted that the legal entity ordered a wire transfer from its account held at the ASIF authorised institution to an account held by a natural person at the ASIF authorised institution. From this account the funds were then transferred into an account held by a Lebanese intermediary.

Upon receiving this information from the FIU, the OPJ began a preliminary inquiry into possible TF. The CdG was asked to carry out analyses. These confirmed that the transfers had nothing to do with TF, but were aimed at providing humanitarian aid, executed in this way because a Catholic legal entity cannot send funds directly to Lebanon. The case was archived.

365. The ECO-FIN Unit is well linked to international intelligence information. Happily, there have been no recent terrorist incidents in the HS/VCS. Nonetheless, ECO-FIN Unit officers understand that there would need to be a parallel financial investigation into funding alongside any investigation into a terrorist attack or attempted attack. In case a terrorism incident occurs, any member of the CdG, regardless of his role or hierarchical position, is obliged to immediately inform and proceed with the transmission of information to the Commander who, by virtue of its prerogatives, would call for action the officers from various Sections of the CdG. This procedure allows synergistic, prompt and coordinated action. The Counter-terrorism Unit would be in charge to prepare a course of action commensurate with the threat, the ECO-FIN Unit would reconstruct the financial flows, whilst the Interpol Office would seek and exchange information with foreign counterparts. The OPJ would coordinate these activities and direct specific investigatory actions. It also worth noting that the competent authorities (FIU-OPJ-CdG) have signed a MoU (April 2020) which lists various forms of inter-agency cooperation on ML and TF related matter.

366. Being fully aware that TF can involve small sums, it is commendable that the ECO-FIN Unit is also developing preventive strategies, such as spot checks of persons carrying cash below the EUR 10 000 threshold for mandatory declarations. Although it is not a mandatory legal requirement, the CdG, whenever they deem appropriate, request persons crossing the HS border to declare funds even if these funds are below the afore-mentioned threshold. Information gathered as a result of this process is used as a source of intelligence. Authorities advised that the application of this measure, which started in early 2019, allow the CdG to identify movements of funds which, together with other information they have, may either indicate that ML or TF might be taking place, or, may exclude such

possibility. In addition, proactive analyses of ML SARs from the TF perspective, with a view to identifying TF in the HS, are another tool which facilitates effective TF prevention and disruption. With more resources for the ECO-FIN Unit, the analytical side of TF identification, which is slowly being developed, could be further enhanced.

367. ECO-FIN Unit officers have undergone a TF training organised by the Italian GdiF which, inter alia, discussed specific aspects of TF vis-à-vis ML and its common typologies. Whilst this is commendable, the AT believes that the TF related trainings should be held/attended on a more regular basis. So far as the AT is aware, there is currently no confidential practical manual/online reference document for new recruits in the ECO-FIN Unit (or for new prosecutors) on how to plan and conduct a financial investigation generally, or specifically in the context of TF. Practical experience that is now being developed in financial investigations needs to be captured for future personnel and for institutional memory. The AT advise consideration of developing such a resource both for parallel financial investigations in predicate offences and in the context of TF – possibly in cooperation with an external expert, if resources permit. Such a document would need to be approved by the Promoter of Justice before promulgation internally, and he may wish to share it with the Judiciary for any input before finalisation. Such a resource would need to be kept up to date, particularly as regards new investigative techniques and developments in new technologies, and the use and location of VAs.

4.2.3. TF investigation integrated with –and supportive of- national strategies

368. The CdG has a comprehensive anti-terrorism strategy/security plan for protecting the HS/VCS. This strategy forms a part of the overall security plan of the jurisdiction. This document, which is classified as confidential, requires police measures to ensure the security of the territory, especially during mass public events. It also requires the identification of terrorism threats by proactive identification of signals or information that may indicate possible TF, both in the analysis of financial flows and in the execution of cross-border controls. The document designates the ECO-Fin Unit as a central body responsible for analysis of the financial aspects in any terrorism/TF related investigation. The exact measures and course of action to be applied by the ECO-FIN Unit are discussed under the core issue 9.2 above.

369. The strategy documents, security plans and force instructions do not, however, set out a clear requirement for the conduct of parallel financial investigations in any terrorist enquiry. Whereas the ECO-FIN Unit investigators reassured the AT they are aware of the need for parallel financial investigation and that they would certainly carry it out in case such incident occurs, the AT is of the view that this requirement needs to be included in appropriate force instructions.

370. In a small jurisdiction like the HS, the integration of investigations into the development of counter terrorism strategies is much easier, as all the main players are closely linked and well known to each other. It was, as noted, clear that if there is a terrorist incident, this would take top priority for the CdG, including the ECO-FIN Unit, and all resources would be channelled into that for however long it takes. Protection of the Holy Father, the institution and the public would be the central focuses at that stage. Parallel TF investigations would be prioritised by ECO-FIN Unit once the HS/VCS was secured and the terrorism investigation commences and could be conducted in tandem with the main terrorism investigation. As a strategic point of development, the 2020 Action Plan of the ECO-

FIN Unit envisages additional training on complex TF typologies. The Plan does not, however, elaborate further on this training programme.

4.2.4. Effectiveness, proportionality and dissuasiveness of sanctions

371. This core issue is academic at present as no TF case has been prosecuted or convicted. The sanctions for natural persons appear (on paper) proportionate and dissuasive (5-15 years) though no financial sanctions are envisaged.

372. Financial sanctions in the case of legal persons include various interdictions. As per Art. 47 paragraph 4 of the Law on Supplementary Norms on Criminal Law Matters (Law VIII) 2013, these sanctions range from EUR 5 000 to EUR 200 000. In addition, the sanctions include a temporary ban on the activity of the legal person and the suspension or revocation of licence.

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

373. Again, this core issue is academic at present as no concrete indication of TF has ever emerged. In the event of any TF investigation failing to produce sufficient evidence to prosecute for TF, then other terrorism offences may be considered, especially if the financier was part of the group involved. These might include aiding and abetting the terrorism offence itself or being part of the conspiracy or criminal organisation, or other relevant public order offences. If no other offence was capable of prosecution the suspect's details would be entered into databases linked with the CdG at entry points so alerts would be raised if that person ever tried to re-enter the HS/VCS.

374. Since no concrete indication of TF has ever emerged, there has been no need to apply disruptive measures.

Overall conclusions on IO.9

375. The HS/VCS authorities are acutely aware of the exposure of the HS as a potential target of terrorist and extremist activities, given the highly visible nature of the Pontiff in his pastoral role. They have detailed security arrangements in place which are coordinated, understandably, with Italian LEAs. The HS/VCS authorities (including the Head of the ECO-FIN Unit in his Interpol liaison role) have extensive links to international law enforcement intelligence networks to ensure the security of the HS and the Holy Father. These networks are also capable of providing intelligence on possible TF risks in HS/VCS. No such TF intelligence alerts have been received so far.

376. No TF has been identified in the HS/VCS. TF risks have been considered proactively and in the absence of any concrete TF elements within the jurisdiction or information received from outside, the conclusion to rate the TF risk as low appears to be reasonable and grounded. Consequently, the absence of TF prosecution is in line with the risk profile of the jurisdiction. The fact that SARs on ML are also being analysed from the TF perspective (without any TF investigations being initiated from such analyses) gives the AT more confidence that a potential TF activity would be detected. It is strongly advised that the analysis of all ML SARs for possible TF should be an ongoing process.

377. There is growing financial investigative capacity in the ECO-FIN Unit and the Section for Economic and Financial Crimes of the OPJ. These prosecutorial and investigative skills need to be captured in a manual on financial investigation generally for institutional memory. With such a

manual as a guide, and more fully trained financial investigators, the HS/VCS will be better equipped to respond quickly and appropriately (in cooperation, as necessary, with the Counter-terrorism operative group in the Department of Public Security) if indications of TF emerge, or in the unfortunate event of a terrorist incident. Whereas the ECO-FIN Unit officers are aware of a need to carry out parallel financial investigation into any terrorism related incident, such requirement needs to be clarified in Force Orders that a parallel financial investigation should accompany any investigation into a terrorist incident or attack.

378. **The HS/VCS has achieved a substantial level of effectiveness for IO.9.**

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

4.3.1. Implementation of targeted financial sanctions for TF without delay

379. Due to its inherent nature and goals, the HS/VCS observes strict neutrality in its relations with other states. This neutrality is enshrined in the 1929 Lateran Treaty and the HS/VCS constitution. In light of the requirements set in Chapter VII of the UN Charter, the HS/VCS has long held the view that becoming a member of the UN would be incompatible with its neutrality. Nonetheless, in the context of its efforts to counter ML/TF, it has committed itself to implementing TF-related TFS. To that end, it has adopted a domestic mechanism, which establishes a single national list that allows the HS/VCS to give effect to UN sanctions while respecting its unique legal situation. The national list also includes *Motu Proprio* designations of other jurisdictions, as well as persons involved in coup d'états.

Transposition of designations

380. The transposition of designations to the national list under the UNSCR 1267/1989, UNSCR 1988 and UNSCR 1373, takes place in accordance with a not fully documented practice between the Governorate and the SoS. The former is responsible for monitoring updates to the UN lists. An officer of the Governorate is entrusted with the task of ensuring that the national list is updated without any undue delay. The Governorate can also receive information on listing from the OPJ, the CdG and the ASIF. Before making a designation, the Governorate seeks the view of the SoS. Since May 2019 the consultation process between the SoS and the Governorate has been simplified, as consent is provided via e-mail, thus allowing for the communication of designations within a matter of hours. Although when on-site representatives of the competent authorities involved in this process were comfortable explaining the practice in place and their role in it, the AT is concerned that the overall effectiveness of this practice might be affected by its undocumented nature (e.g. institutional memory loss through staff turnover).

Domestic cooperation on TF-related TFS

381. As regards domestic cooperation on TF-related TFS, this is ensured through the establishment of an informal working group in 2017 which aims to coordinate actions for the implementation of TF-related TFS. This informal working group is chaired by the SoS and it is composed of the ASIF, the OPJ, and the CdG. The meetings of the working group are held every 3-4 months. Besides this cooperation, there is also cooperation on an operational level between the ASIF and the ASIF authorised institution. The issuance of Instruction No. 6 (2019) Concerning the monitoring of the lists of designated subjects, is an example of the outcome of discussions conducted within both platforms.

Delays

382. In light of the aforementioned, the AT reviewed the national list page on the ASIF's website[35]. As a result, it was identified on two occasions that updates related to UNSCR 1267 were not transposed into the HS/VCS national list, i.e. UNSCR 1267 update of 29 March 2018, designating one person and UNSCR 1267 update of 10 September 2020[36]. This could also be explained by the technical gaps identified under R.6 (e.g. there is a discretion for the authorities to transpose the designations of the UNSCRs into the national list). Beyond the issue of the non-transposition of the said designations, the AT did not identify delays in the transposition of designations related to UNSCRs 1267/1989, 1988 or 1373 of such significant nature. However, the AT observed that a large number of UN designations are transposed to the national list in a timeframe between 72 hours to one week[37]. In some cases, this is most relevant for UN updates prior to the weekend or public holidays. Nonetheless, given that the same mechanism applies for TF and PF-related TFS, delays identified in relation to UNSCR 1718 (see IO.11) are also relevant. Accordingly, the AT has concerns over the effective implementation of TF-related TFS by the HS/VCS competent authorities, as a result of: (i) the discretionary power given by the Law in transposing designations into the national list; and (ii) the undocumented nature of the transposition process. In light of the above-mentioned, concerns are also raised with regard to the freezing of funds or other assets without delay by the competent authorities exercising border controls, as the national list is used for screening individuals entering the jurisdiction, which might not include UNSCR designations at the time of screening.

Implementation of TF-related TFS

383. There have been no occasions[38] in the HS/VCS where the jurisdiction could have demonstrated the implementation of TFS pursuant to UNSCRs 1267/1989, 1988 or 1373. Nonetheless, the HS/VCS has designated a person to its national list under the said Resolutions following a request made by the CdG after the 2015 terrorist attacks in Paris (see box below). During the review period the HS/VCS was requested once by a foreign state to give effect to TF-related freezing measures, however as the said designation was simultaneously accepted by the UN, the national list was immediately updated as part of the UN procedure. There have been no requests received by the Governorate to list an individual/entity from the ASIF or the OPJ.

BOX 16 - Case Study (Salah Abdeslam)

Following the November 2015 terrorist attacks in Paris the CdG proposed the inclusion of the sole survivor terrorist (Salah Abdeslam) into the national list of "subjects who threaten international

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[35] The updates were reviewed by "sample testing" and are not aimed at checking the transposition of all designations made by the UN Security Council during the period under assessment.

[36] This update was transposed to the national list on 16 December 2020 with Ordinance N. CCCXCIII.

[37] UNSCR updates of 10 July 2019, of 6 March 2018 were transposed to the national list respectively on 9 October 2020 with Ordinance N CCCLXXIII, on 12 July 2019 with Ordinance N. CCCXVIII and on 12 March 2018 with Ordinance N. CCXXX.

[38] Although the HS/VCS has designated a person, no match was found or freezing action was taken, as no relationship was found, and no funds were deposited with the ASIF authorised institution in relation to that person.

peace and security", before the UN designation had been made and the official communication of the "red notice" was received from the Interpol. In addition, prior to the actual designation, the CdG adopted preventive measures aiming at blocking access of the referred subject to the HS/VCS and enhanced its international cooperation with a view to acquiring intelligence related to the subject. Simultaneously, the ASIF authorised institution was requested by the FIU to verify whether it had any economic relationships or operations directly or indirectly attributable to the subject over the past ten years. As no such relationship or transaction was found, the ASIF authorised institution was ordered to block any possible future operations directly or indirectly linked to the subject. Once all the aforementioned actions were concluded, the HS/VCS authorities were informed that the subject had also been designated by the UN.

De-listing

384. There were no cases of de-listing initiated by the HS/VCS.

Communication of designations

385. The ASIF is responsible for communicating the HS/VCS list of designations to the ASIF authorised institution. The ASIF authorised institution is the sole reporting entity to receive the updated list in such a manner. The communication is made through the import of data into the special IT tool - Pythagoras Solution System - which is a unified system used both by the ASIF and the ASIF authorised institution. The list is also published on the Governorate and the ASIF websites. Beyond the HS/VCS list, as a result of the 2014 inspection by the ASIF, targeted instructions were given to the ASIF authorised institution to evaluate and purchase an external specialised database - updated in real time to reflect changes to UN lists - to screen all its relationships and transactions. The ASIF later verified that the instruction had been addressed, and controls put in place. Also, the ASIF Instruction 6 requires supervised entities to continuously monitor the lists of designated persons issued by the competent bodies of the UN Security Council and the EU.

Freezing obligation

386. During the interviews held on-site, the AT identified that there is ambiguity in some authorities' understanding of the steps required to be taken in relation to the obligation of freezing funds or other assets of designated persons (e.g. the authorities exercising border controls were not comfortable explaining their role in the identification of designated persons in complex cases, such as involving BOs as designated persons). This adds to the AT's concerns over the effective implementation of freezing measures by the HS/VCS. Moreover, the absence of a direct requirement on obliged subjects to freeze funds or other assets of designated persons (R.6, c.6.5) explained in the TC Annex could impede the effective implementation of freezing of funds or other assets. That said, this does not appear to be an issue in practice for the ASIF authorised institution, as its internal guidelines for TFS provide for the obligation to block any accounts linked to designated persons. The relevant guidelines were shared with the AT, and their use was discussed and confirmed by the institution's representative during interviews. The TFS guidelines are also used when providing training to the ASIF authorised institution employees on transactions screening.

Understanding of the ASIF authorised institution

387. The ASIF authorised institution has a good understanding of its obligations and responsibilities related to implementation of the TF-related TFS. Representatives of the ASIF authorised institution interviewed explained that checks are done using the special IT tool

Pythagoras Solution System, including screening of the entire customer database against an external commercial database. Screening also extends to BOs and the names of persons on whose behalf a transaction is performed. To date, no sanction hits have been identified by the ASIF authorised institution and, as a result, no funds or other assets of TF-related designated persons or entities have been frozen. The ASIF authorised institution has encountered a large number of false positive hits (see para. 476). The system is designed in a way that transactions are screened prior to their execution. Unresolved false positives are passed by customer facing staff to the compliance team, which is responsible for examining them. The underlying reason why a hit is considered to be a false positive is recorded. Representatives of the ASIF authorised institution explained that, upon identification of a positive match, the FIU would be informed immediately, and no funds would be moved until guidance had been received from the FIU. Although this has not been tested in practice, the AT has no concerns on the effective implementation of this process.

Guidance and training

388. The authorities are of the view that the AML/CFT law and by-laws are sufficiently detailed for the ASIF authorised institution to understand the implementation process of TF-related TFS. Therefore, no guidance or training is provided. As a result, the ASIF authorised institution relies solely on its own resources to guide staff on the implementation of TF-related TFS. The AT reviewed the TFS guidelines of the ASIF authorised institution which are of good quality. Apart from TFS screening when applying CDD measures, the guidelines provide among other things for on-going monitoring and precautionary measures adding to the understanding of the ASIF authorised institution concerning implementation. Nonetheless, the AT is of the view that the authorities should take a more proactive approach concerning TF-related TFS outreach.

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

389. The HS/VCS charitable sector is very small. As presented under Chapter 1, at the time of the on-site visit the HS/VCS had: NPOs (20), voluntary organisations (3), and other charitable legal persons (21). The most recent NPO risk assessment (April 2020) evaluated 22 NPOs (see Table 17). However, based on information provided by the authorities, there are indications that, amongst the "other charitable legal persons", there are some which provide funds for charitable, religious, educational or social activities as their main function (and which may fall within the FATF definition of NPO).

NPO risk assessment

390. Aside from the GRA and subsequent updates which identified some NPO-related risks, the ASIF conducted a dedicated ML/TF risk assessment of all registered NPOs, completed in April 2020 and updated in May 2020, for which they are commended by the AT (see IO.1). The assessment was conducted on the basis of the MoU on the Supervision and Monitoring of NPOs, signed by the SoS, the SfE and the ASIF, which has as its objectives: (i) strengthening AML/CFT internal preventive mechanisms; (ii) intensifying mechanisms for detecting/identifying ML/TF threats and vulnerabilities; and (iii) improving effectiveness of supervisory activities that assess non-compliance on the part of NPOs.

391. The assessment was conducted on the basis of qualitative and quantitative information. A questionnaire for the self-assessment of ML/TF risk was prepared by the ASIF, aiming at acquiring

data and information outlining both the residual ML/TF risks, including shortcomings or areas for improvement (see core issue 5.2 concerning the required data, including FIU data and data collected by the competent authorities from external sources). The information and data acquired with the Questionnaire have been processed with a calculation engine made up of 25 indicators that have been developed to assess the threat of each NPO, and 20 its vulnerability level. Each indicator is structured specifically for the evaluation of ML/TF risk, whilst some of them are applicable to both types of risk. All information is considered crosswise. Then, the residual risk is determined through the assessment of the risk to which a NPO is exposed due to potential threats and vulnerabilities identified and the robustness of the mitigation measures and internal control mechanisms.

Outreach

392. An outreach programme for the NPO sector was organised in February 2020 which included distribution of the questionnaire referred to above and completion instructions. No such programme concerning the NPO sector or typologies on TF abuse of the sector were conducted before. It is worth mentioning that there are plans to provide update seminars on AML/CFT for NPOs periodically, which will help in advancing the sector's understanding of TF risk.

393. The questionnaire was eventually completed by all NPOs registered in the HS/VCS. The five that did not respond were followed-up and report published in May 2020. Following the assessment, the authorities carried out follow-up reviews with all these NPOs. The following table presents the types of NPOs assessed. The grouping of NPOs was made following the AT's request.

Table 17: Breakdown of assessed NPOs by type

Humanitarian Support	Cultural Activity	Educational Activity	Religious Activity
9 NPOs*	3 NPOs	8 NPOs	2 NPOs**

* *Two ceased their activity.*

** *One ceased its activity.*

Risk level

394. Based on the results of the analysis of the questionnaire and other information sources, two NPOs were assessed as having low ML/TF residual risk, ten with medium-low ML/TF risk and six with medium ML/TF residual risk.

Methodology

395. Regarding the methodology applied to assess ML/TF risk, the authorities state that it allows them to separately distinguish between ML and TF risk, as different ML and TF threat and vulnerability factors are considered. Whilst this is the case, the NPO risk assessment itself does not identify the features and types of NPOs which, by virtue of their activities or characteristics, are likely to be at risk of TF abuse, and additional TF risk indicators may be needed to refine TF risk assessments at individual and sectorial level. In this regard, the HS/VCS is recommended to assess TF separately.

Risk-based supervision

396. In line with the approach followed in the NPO risk assessment, the authorities have not applied a fully risk-based approach (RBA) to measures applied to all NPOs. Instead, the authorities have applied preventive measures to all NPOs – given the very small number of NPOs that are involved. This approach does not appear to have disrupted or discouraged NPO activities.

Post-assessment period

397. The NPO risk assessment report was shared with all sector participants. Each NPO also received specific information on its assessment, including a timeline for the resolution of identified shortcomings or improvement actions required. The implementation of the action plan is supervised by the ASIF, which periodically updates the SoS. Furthermore, each NPO was requested by the ASIF to report on the progress made concerning the requested actions set in the timeline shared by the ASIF. At the time of the on-site visit, one supervision had been conducted on a NPO, the results of which were not available. The authorities explained that overall, the risk assessment did not reveal any significant shortcomings.

NPO sector understanding of risk

398. Representatives of the NPO sector met on-site were aware of the results of the sectorial risk assessment and had been requested to provide feedback on the assessment results. They also confirmed that the self-assessment helped them advance their understanding of potential risk and expressed appreciation for the supervisory authorities' work in this area. In general, the NPO sector appears to have an advanced understanding of risk related to the receipt and distribution of funds. They are in regular contact with local dioceses and bishops and provide support and guidance to them. However, the sector's understanding of TF risk is considered by the AT to be at an embryonic stage and triggered by the self-assessments conducted as part of the NPO sector risk assessment. As for the findings of the 2017 GRA and subsequent updates concerning the NPO sector, these were not generally known by representatives of the sector met on-site.

Legal developments

399. As mentioned under the TC annex, since 2013, a number of AML/CFT requirements on NPOs have been introduced. In particular, the *Motu Proprio*, August 2013, requires registered NPOs with a canonical personality in the HS/VCS to comply with AML/CFT measures and measures against persons who threaten peace and international security. In addition, the AML/CFT law (Art. 5 bis) requires all legal persons registered in the HS/VCS to maintain records related to their nature and activity, their BO, beneficiaries, and members and administrators for ten years. Moreover, the 2017 law on NPOs imposes additional requirements. Also, the ASIF Regulation No. 5 (SARs) introduces red flags for the misuse of NPOs. In this context, it is worth mentioning that the geographical risk criterion includes only high-risk jurisdictions listed by international or regional bodies, whilst insufficient attention is paid to conflict zones, which present greater risk of TF abuse for NPOs.

Relationship with supervisory authorities

400. NPO sector representatives confirmed that their relationship with the SoS and the ASIF for TF purposes started developing in 2017 and became more frequent as of mid-2019. Before that, they were supervised only by their dicastery of reference and, inter alia, were obliged to submit minutes and annual financial statements. Whilst this system is described under Chapter 7 as robust and effective, it did not include any specific AML/CFT elements.

TF reporting

401. In case of suspicion of TF abuse of NPOs, public authorities and legal persons, including NPOs, are explicitly required under the AML/CFT law to make a report to the FIU. All NPOs met on-

site were aware to whom they should report a suspicious activity. No TF-related SAR involving NPOs has been received by the FIU.

Sanctions

402. The SoS and the ASIF have some proportionate, and dissuasive sanctions at their disposal in case of identified shortcomings, such as imposing fines and replacement of managers (see c.8.4). Hitherto, given the novelty of the supervision system, such penalties have not been imposed.

Interagency cooperation

403. As for interagency co-operation and co-ordination among the ASIF, the SfE and the SoS (designated single point of contact for foreign authorities regarding NPO matters), it has intensified since late 2019. This is also confirmed by the February 2020 MoU among the three authorities. The importance of cooperation and coordination on NPO matters was also acknowledged by the authorities during the interviews held on-site.

4.3.3. Deprivation of TF assets and instrumentalities

404. There have been no funds and other assets frozen in the HS/VCS under UNSCRs 1267 and 1373. During the review period, the FIU received one TF-related SAR in total, for which the FIU analysis concluded that there were no sufficient TF elements. The ASIF authorised institution is aware of its TF-related TFS obligations concerning matches (potential or true) with the UN lists. The ASIF and other competent authorities have at their disposal legal mechanisms and instruments for applying freezing measures as described under the TC Annex. However, the shortcomings identified under R.6 (c.6.5) may impact on effectiveness.

405. There were no criminal seizing/freezing or confiscation orders in relation to terrorists, terrorist organisations and financiers of terrorism. The are no ongoing TF investigations either.

4.3.4. Consistency of measures with overall TF risk profile

406. In light of the absence of any concrete elements pointing to a higher TF risk profile, the HS/VCS competent authorities have rated the jurisdiction's TF risk as low. Given the unique political and legal context of the HS/VCS, the jurisdiction has committed itself to implementing TF-related TFS via a domestic mechanism, which establishes a single national list. That said the AT has concerns over the implementation of TFS without delay. As for the ASIF authorised institution, there is a good understanding of sanctions evasion risk, which is also reflected in its internal guidelines for TFS. Consistent with this, the ASIF authorised institution applies adequate measures to mitigate sanctions evasion risk.

407. Despite the above shortcoming and given the unique context (see Chapter 1) of the HS/VCS, the AT is of the view that the absence of evidence of potential TF threats based on SARs or requests for international cooperation and the absence of funds frozen, are in line with the TF risk profile of the jurisdiction.

408. The level of supervision and monitoring of the NPO sector varied throughout the review period and has been significantly enhanced since mid-2019. As highlighted above, this supervision and oversight does not take account of the risk profile of NPOs.

Overall conclusions on IO.10

409. The HS/VCS has established a mechanism, which allows it to give effect to UN sanctions without delay. The transposition of designations to the national list under the UNSCR 1267/1989, UNSCR 1988 and UNSCR 1373, takes place in accordance with a not fully documented practice between the Governorate and the SoS. However, the AT identified two occasions in which there was a failure to transpose a UNSCR 1267 related update into the HS/VCS national list. The ASIF authorised institution's internal procedures provide for the obligation to block any accounts linked to designated persons, although certain technical compliance deficiencies (c.6.5) might impact on the effective implementation of freezing measures. The AT has attached particular importance to both findings.

410. A sectorial NPO risk assessment has been conducted for which the authorities are to be commended. TF risks emanating from NPOs have been assessed in aggregate along with ML risk, hence the risk assessment did not identify the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of TF abuse. Instead, the authorities have applied preventive measures to all NPOs – which is not in line with the FATF Standards.

411. **The HS/VCS is rated as having a moderate level of effectiveness for IO.10.**

4.4. Immediate Outcome 11 (PF financial sanctions)

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

412. Given the jurisdiction's geographical position, the provisions of the 1929 Lateran Treaty and the HS/VCS constitution in observing strict neutrality, and the absence of a manufacturing and industrial economy, the HS/VCS is not exposed to PF activities. The mechanism implementing proliferation related TFS is the same as the one for TF. The AT's observations on the transposition and communication of designations as explained under IO.10 are also valid for IO.11.

Delay

413. In light of the aforementioned, the AT reviewed the national list page on the ASIF's website with a view to the transposition of PF-related TFS designations. The review revealed a significant delay in the transposition of the UNSCR 1718 designation of 30 March 2018, which was transposed into the HS/VCS national list by an ordinance issued on 25 April 2018. This might be a result of the technical gaps identified under R.7 (i.e. no requirement to automatically incorporate the designations made by the UN Security Council resolutions; etc.). In light of the abovementioned findings, the AT has concerns over the effective implementation of PF-related TFS by the HS/VCS authorities.

WG on PF

414. On 15 September 2020, a permanent working group on PF (hereinafter WG) was established within the FSC. Its aim is to oversee the implementation of TFS in a more structured and systematic way, as well as to ensure the exchange of useful information and draft proposals to strengthen PF-related controls. The WG is composed of the FIU, the SoS, the OPJ, the Governorate and the CdG. It has met once so far, and it is scheduled to meet twice a year but may also be convened upon the request of one of its members. It is worth mentioning that, during this first meeting, it discussed the

issue of imposing a ban on the export of dual-use material and agreed that the issuing of an ordinance for the Commodities Office could be opportune.

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

415. No assets of persons linked to relevant DPRK or Iran UNSCRs have been identified in the HS/VCS and as a result no assets or funds associated with PF have been frozen. There have been no PF-related SARs in the review period or earlier. False positive hits are treated by the ASIF authorised institution in the manner explained under IO.10 (see para. 386). The ASIF authorised institution holds no accounts of persons linked to the DPRK. The HS/VCS has never received an international request (formal or informal) on PF activities, movement of funds or other assets.

Understanding of freezing obligation

416. As explained under IO.10, there is ambiguity in some authorities understanding of the obligation to freeze funds or other assets of designated persons. This adds to the AT's concerns over the effective implementation of freezing measures by the HS/VCS.

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

417. The ASIF authorised institution has procedures in place that enable it to identify designated persons as a part of the implementation of PF-related TFS. No designated person has been identified by the ASIF authorised institution (see Core Issue 10.1, section 4.3.1, on the relevant controls applied by the ASIF authorised institution).

4.4.4. Competent authorities ensuring and monitoring compliance

418. The ASIF is the authority responsible for monitoring compliance with the implementation of TFS by the ASIF authorised institution. Supervision by the ASIF is assessed under IO.3, and the same methodology that applies to monitoring compliance with AML/CFT requirements applies also in an appropriate way to PF requirements. During the 2019 general AML/CFT inspection of the ASIF authorised institution, the supervisor assessed the procedures and controls of the institution with respect to the implementation of TFS, including the IT tools used. The inspection did not detect any deficiency (including in the IT screening tools used) in the assessment and monitoring system of the ASIF authorised institution with respect to the implementation of TFS.

419. Taking into account the outcome of the 2019 inspection, the jurisdiction's risk and context, the establishment of the WG and all PF-related initiatives taken by the HS/VCS authorities in 2020 (see IO.1), the AT is of the view that HS/VCS competent authorities are currently in a position to adequately monitor and ensure compliance by the ASIF authorised institution with its obligations regarding PF-related TFS.

PF interagency cooperation

420. As regards interagency cooperation on PF-related TFS matters, this was formally established in September 2020 (see section 4.4.1 above).

Overall conclusions on IO.11

421. The mechanism implementing PF-related TFS is the same as the one for TF and the same concerns apply. Although the authorities explained that there is no undue delay in the transposition of UNSCR updates, the AT identified one significant delay in an update of the single national list, which raises concerns over the effective implementation of PF-related TFS by the HS/VCS authorities, such that the AT considers that major improvements are called for in this respect.

422. No funds or other assets have been frozen in relation to designated persons or entities under the PF-related TFS regime, as no matches were identified. The ASIF authorised institution understands its PF-related TFS obligations and performs sanctions screening. Its TFS internal procedures are clear regarding the implementation of PF-related TFS. Having regard to the developments in the PF sector since 2019 (see section above) the AT is of the view that the supervisor is currently in a position to adequately monitoring and supervising compliance.

423. **The HS/VCS is rated as having a moderate level of effectiveness for IO.11.**

5. PREVENTIVE MEASURES

5.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 4

a) There is only one authorised FI and there are no DNFBPs or VASPs. The ASIF authorised institution has implemented major changes to its governance framework and CDD processes since the last MER. It has redefined its customer acceptance policy so as to align it with the mission of the HS and has only customers with a close relationship to the HS/VCS and the Catholic Church. This led to the closure of around 800 accounts between 2013 and 2015.

b) Overall, the institution has a sound understanding of ML/TF risks which it assesses as medium-low (residual risk). This is considered to be a reasonable assessment, though it is not split between ML and TF. The methodology for assessing risk needs further refinement because it does not expressly consider: (i) ML/TF typologies of the institution; (ii) issues raised about domestic criminality in media reports; and (iii) the risks associated with donations. The AT notes positively that the institution risk rates all the countries to which it is exposed, but some refinements are needed to this process, which are acknowledged and in progress. The institution has a very thorough understanding of its AML/CFT obligations.

c) In general, risk-based mitigating measures are applied that are commensurate with risk. All of the necessary elements are in place, including a framework to measure ML/TF risk and a comprehensive customer risk-rating mechanism, last updated in 2018, that enables the institution to identify when and what mitigating measures are to be applied. This mechanism, however, may benefit from some refinement in one particular area.

d) In general terms, CDD and record-keeping obligations have been diligently applied. CDD information and documentation is collected at the time of onboarding and customer risk assessments are automatically reviewed on a monthly basis. In addition, relationships are reviewed periodically based on risk, though the review period for low risk customers (ten years) is too long. Until 2019, there had been some delays in the application of these reviews. There is a rigorous risk-based transaction monitoring programme that requires the collection of CDD information and documentation as necessary throughout the course of a business relationship.

e) Effective measures are applied to address higher risk customers. All transactions are initiated by the institution (and not by customers), and use is made of screening tools to ensure that it complies with obligations related to PEPs, wire transfers, TFS and higher-risk countries.

f) The AT considers the number of SARs to be reasonable, and that the reporting obligations have been met throughout the assessment period by the ASIF authorised institution. However, until 2019, there had been some delays in the reviews of transaction alerts and it seems that there was a degree of over-reporting in earlier years, linked particularly with the decision to redefine its customer acceptance policy so as to align it with the mission of the HS, and a relatively cautious approach adopted by the institution at the time. The quality of SARs in more recent years is considered to be good, though it is not clear whether reports are in line with risks identified in the GRA, since this is not monitored by the institution.

g) Internal control measures and procedures to facilitate and ensure compliance with AML/CFT obligations have significantly improved in recent years and the measures put in place

are generally effective. In particular, a committee of the Board plays an active role in monitoring the effectiveness of the AML/CFT programme, and AML/CFT compliance officers are well-positioned to understand and assess risks. Whilst training is already offered to all staff, there is a need for further and continuous training on the interpretation of red flags identified during the processing of customer transactions in order to better support reporting by customer facing staff.

Recommended Actions

Immediate Outcome 4

a) The ASIF authorised institution should refine its business risk assessment methodology to: (i) assess residual TF and ML risks separately; (ii) consider reporting typologies and relevant media reports; and (iii) expressly address threats and vulnerabilities arising from donations. It should also review its customer risk assessment methodology to ensure that risks pertaining to customers who hold positions of authority and are in charge of significant amounts of church funds are expressly addressed at the time of onboarding.

b) The institution should review its methodology for rating countries to which it is exposed, in order to determine the scope of refinements needed.

c) The institution should reduce the period of time between reviews of CDD information held for low-risk relationships (currently ten years).

d) The institution should review the parameters set for transactional alerts in order to determine whether the current number supports its monitoring processes.

e) The institution should improve the retention of SAR-related statistics and assess whether its reporting of suspicious activity is in line with the risks it is exposed to and the risk profile of the HS/VCS.

f) The institution should continue its efforts in raising awareness among customer facing staff on AML/CFT measures, with a greater focus on relevant typologies and red flags.

424. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23.

5.2. Immediate Outcome 4 (Preventive Measures)

425. The AT's findings on IO.4 are based on: interviews with representatives of the ASIF authorised institution; a review of internal procedures and documents; data and statistics of the ASIF authorised institution and arising from supervisory activities; discussions with the supervisor; data on SARs and discussions with the FIU; and information contained in the latest update to the GRA.

426. As explained in Chapter 1, there is just one ASIF authorised institution and there are no DNFBPs or VASPs. An assessment of the core issues for DNFBPs and VASPs is therefore not considered necessary. The only professional firm falling under the remit of the AML/CFT law is the auditor of the ASIF authorised institution, but its services are outside the scope of the FATF Standards (which do not include auditors).

427. At the time of the onsite visit, the institution had just over 100 employees and serviced approximately 15 000 clients, almost 11 000 of which are individuals. Ordained clergy in the Roman Catholic Church, including cardinals, bishops and nuns, and employees and retired employees of the

HS/VCS account for more than 96% of this figure. Dioceses, institutes of consecrated life and causes of beatification account for more than 75% of legal persons.

428. The institution forms an integral part of the jurisdiction's institutional structure and plays a critical role in preventing and detecting ML/TF in the HS/VCS, and in safeguarding the financial system and the reputation of the HS/VCS.

5.2.1. Understanding of ML/TF risks and AML/CFT obligations

429. The ASIF authorised institution has a sound understanding of its ML/TF risks, albeit some shortcomings have been noted by the AT as further explained in this section. It carries out a ML/TF institutional risk assessment on an annual basis (business risk assessment) and representatives met onsite were able to describe in some detail the ML/TF risks to which the institution is exposed. Data provided to the AT by the institution also demonstrates that, while there is some room for improvement, the institution maintains detailed information that informs its business risk assessment (BRA) and, more generally, its understanding of risk.

430. The institution participates in the various iterations of the GRA, and, once completed, a full copy is provided to it by the authorities.

431. The ASIF authorised institution assesses its ML/TF inherent risk as medium-high, and its residual risk as medium-low. Considering the restricted customer base and the mitigating measures that it has put in place, its overall risk rating is considered to be reasonable. The main ML/TF risks identified stem from: (i) a high number of high-risk customers; (ii) the significant use of cash by customers, in particular natural persons; and (iii) transactions conducted with high- and medium-high risk countries.

432. Whilst comprehensive, the AT observed that exposure to particular typologies of ML/TF does not seem to feature in the BRA methodology used. Internal information from SARs, such as predicate offences (where known or suspected), countries connected to cases involving suspicion of ML/TF, the types of customers reported, and the amounts of funds involved are not clearly considered. The same concern also applies with regard to media reports of alleged offences considered under Chapter 1. Although exposure to cases reported in the media is monitored and assessed on a case-by-case basis, the results of such assessments and the extent to which there may be exposure to proceeds of crime (from such cases) are not considered in the risk assessment methodology. It therefore remains unclear to the AT whether the institution is fully aware of risks in these areas.

433. A significant proportion of fund movements are connected to donations and charitable activities. This includes donations through public authorities, notably the Office of Papal Charities, the Pontifical Missions Societies and the Office of Peter's Pence, the latter featuring in media reports alleging the misuse of funds. Given this, the AT would have expected to see a detailed assessment of threats and vulnerabilities connected to this stream of funds in the risk assessment. The ASIF authorised institution is of the view that donations do not present significant ML or TF risks because, inter alia, most donations are for small amounts and donors have no control over funds once they have been donated, making the typology of laundering proceeds of crime through donations in the HS/VCS unattractive. The AT concurs with this view and notes that "business as usual" mitigating measures are in place to address such risks, such as customer risk classifications and transaction

monitoring. Furthermore, from the interviews carried out and the mitigating measures put in place, it is evident that the institution is sensitive to the risks associated with donations.

434. The GRA has identified tax evasion by foreign nationals as the main predicate offence to which the jurisdiction is exposed. The institution has acknowledged that tax evasion was a typology often noted in the past but considers that it no longer presents a threat. The reduction in the size of the customer base (see below) between 2013 and 2015 and tax-related agreements signed in 2015 between the HS/VCS and the United States and Italy, were cited as the main reasons for this. The AT concurs with these observations and is of the view that the institution's understanding of the threat posed by tax evasion is more up-to-date than the conclusions reached in the GRA. This is considered further under Chapter 2 and Chapter 6.

435. The methodology used has assessed ML and TF risks together (as a single component) and has not provided a documented assessment of inherent and residual TF risks separately from ML.[39] Nevertheless, the AT observed that the ASIF authorised institution has in place various mitigating measures which specifically address TF risks, and is in a position to identify and monitor TF risks and suspicion.

Product risk

436. A full assessment of the inherent ML/TF risk presented by products and services offered has been completed by the ASIF authorised institution. Foreign wire transfers, activities related to the use of cash, and safety deposit boxes are assessed as presenting a high inherent risk. Other banking services are assessed as presenting a medium or low risk, and investment services assessed as presenting a low risk.

437. The institution has a good understanding of the ML/TF risk posed by cash, the significant use of which has been identified as one of the its main risk drivers. To understand this risk, the institution tracks, and monitors, at a granular level, the use of cash among its customers.

438. With regard to safety deposit boxes, although this service has been abused once in the past for ML purposes, the number of customers using such boxes and the frequency of access are low. Whilst risks connected with the provision of this service have not been directly addressed in the BRA methodology, it is clear that the institution's understanding of the risks presented by this service is sufficient.

Customer risk

439. In 2013, the ASIF authorised institution took a decision to close all accounts of clients who did not have a direct relationship with the Catholic Church, the HS or the VCS, so as to fully align its work with the mission of the HS. This included legal persons not recognised canonically, ex-diplomats and ex-employees. The primary objective of the exercise was not to reduce customer risk and entailed the review of CDD documentation held for the entire customer base – checking whether each customer met the revised acceptance policy and CDD requirements in place at the time. This exercise was competed in December 2015 and led to the closure of around 800 accounts.

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[39] The most recent risk assessment provided to the AT after the onsite visit considers the inherent risks and mitigating measures concerning TF separately from ML. However, with regard to the residual risks, there is still no separation of TF from ML.

440. As part of the exercise, the institution also decided to close around a further 2 500 dormant accounts and inactive accounts with low or negative balances, and around 2 400 accounts were closed upon request of the client even though such accounts met the revised eligibility criteria. In total, the exercise led to the closure of just over 5 700 relationships and greatly facilitated its understanding of the customer base, including its composition and its risk exposure to the different types of customers, such as PEPs. Whilst a notable number of relationships presenting an inherently higher risk were terminated, the exercise reduced the ML/TF risk exposure only to a limited extent as the majority of the accounts closed were medium to low risk relationships. The remediation process generated a number of SARs suggesting a degree of criminal activity.

Country risk

441. The ASIF authorised institution has a good understanding of its cross-border ML/TF risks, which mainly arise from the number of customers and transactions that are connected to high or medium-high risk countries. Also, bearing in mind the missionary and humanitarian work of the Church, such as through dioceses and parishes around the world, it is inevitable that some customers of the institution will be exposed to conflict zones, countries known to present elevated risks of terrorism and TF, and countries which lack, or have a poor, financial infrastructure (in which cash use is common).

442. Accordingly, the AT positively notes that an IT solution is used to centralise and calculate country-risk information by adopting a dynamic risk algorithm which uses multiple external sources of information to calculate country risk, including the FATF (directly through ASIF Instruction No. 1). Some refinement is needed to the methodology used. Several countries classified as presenting a low or a medium-low risk are international financial centres, and a few countries, also in this risk bracket, may present higher TF risks. With regard to the latter, further changes to better assess TF risk are being made. Given that jurisdictional risk feeds into customer and transactional risk assessments, this may affect ML/TF risk scoring of some customers and transactions. However, the effect of these anomalies is limited since transactions with such jurisdictions are not material. Furthermore, information on countries linked to SARs does not inform the institution's jurisdictional risk assessment.

AML/CFT obligations

443. The ASIF authorised institution has demonstrated a very thorough understanding of its AML/CFT obligations and of its own AML/CFT policies and procedures.

444. AML/CFT obligations are reflected in an internal AML/CFT Handbook which is shared with all members of staff, and relevant AML/CFT training is provided to employees. The manual is vetted and approved by the ASIF.

5.2.2. Application of risk mitigating measures

445. The AT is of the view that, although some minor concerns subsist, in general, the ASIF authorised institution is applying mitigating measures that are risk-based and commensurate with its risks. All of the necessary elements are in place.

446. Perhaps one of the most significant mitigating factors applied is its rather narrow customer acceptance policy – referred to above. Furthermore, the institution does not conduct occasional transactions, and, as a minimum, customers must operate a current account. Business relationships

have been established only on a face-to-face basis and internet banking services are not offered, so all transactions are initiated manually.

447. A risk appetite framework is in place which is used to measure overall risk exposure. This uses financial and non-financial indicators, and measures all types of risks, including, for example, liquidity and reputational risks. Since 2018, some high-level ML/TF risk indicators were also introduced into the framework which sets risk limits which are not to be exceeded. None were breached in 2018 or 2019.

448. In 2018, the ASIF authorised institution implemented a comprehensive CDD and customer risk-profiling solution and integrated it with its AML monitoring applications. The system used before had been described as "inefficient and inflexible". Customers are now rated from risk level 1 (low risk) to level 5 (high risk), which risk rating is automatically updated on a monthly basis, and is dependent on a large number of risk factors, including the volume, value and risk-level of transactions undertaken through the relationship, the use of cash, the source of funding (salary, donations, real estate income amongst others), and repeated transactions with countries that present a medium-risk or higher. At the time of the onsite visit, slightly less than 10% of the institution's customer base was considered to be high-risk (level 5), and just under 90% present a medium-low or a low risk of ML/TF. Very few customers are classified as presenting a medium or a medium-high risk. The AT considers that this risk distribution reflects the unique remit of the ASIF authorised institution, whereby the majority of its generic customer base presents a low or medium-low residual risk (by virtue of the customer acceptance policy) but around 10% of which have particular higher risk features. The customer base does not include the different types of customers that one might find in banks in other jurisdictions.

449. The AT has concluded that the risk-profiling applied by the institution effectively enables it to apply risk-based mitigating measures – which are explained under section 5.2.3.

450. The system used to calculate customer risk may however benefit from some refinement as the system does not directly recognise the additional risks that may be presented at the time of onboarding by persons who do not have a PEP status, but are nonetheless entrusted with a senior position of authority and who have oversight of significant amounts of congregational funds. However, the impact of this omission is limited since transactions outside such a person's profile would be picked up and flagged as part of ongoing monitoring (and risk assessment adjusted).

451. The use of cash has been declining steadily thanks to some initiatives taken by the ASIF authorised institution, such as its successful application to join the Single Euro Payments Area network – to encourage the use of electronic payments – and the provision of debit cards to customers to allow payments for goods and services outside the HS/VCS using the Visa network. Few donations are made or received in cash.

452. The institution has in place a number of measures to mitigate the ML/TF risks connected with the use of cash. Cash deposits and withdrawals over EUR 10 000 have decreased, and in the case of such deposits, cash is accepted only if a stamped cross-border cash declaration is provided

or, more usually, if it is completed at the institution[40]. Good examples of the types of questions that are asked when cash is deposited by customers were also provided, including in cases where a deposit is linked to donations/charities.

453. With regard to safety deposit boxes, as is common practice among institutions that offer this service, the ASIF authorised institution is not aware of what is held in safekeeping. However, it requires customers to confirm in writing that no prohibited items are stored and a member of staff to be present when customers access their box to monitor possible suspicious behaviour. The frequency of access by customers is also closely monitored so that any anomalies, such as sudden increased access, are reported internally.

5.2.3. Application of enhanced or specific CDD and record-keeping requirements

454. In general terms, the ASIF authorised institution has diligently applied its CDD and recording-keeping obligations, including to identify and verify the identity of the BOs of its customers, as explained further on. The application of CDD is facilitated by the institution's rather narrow customer acceptance policy whereby all its customers are, in some way, connected to the activities of, and known to, the Church, even when situated in foreign jurisdictions.

455. In carrying out all aspects of CDD, use is made of several electronic tools, including open source databases and an internal data warehouse. IT systems are in fact used for onboarding and risk profiling customers, carrying out transaction and profile monitoring, generating internal alerts, and also for external reporting to the ASIF through the goAML system.

456. CDD information and documentation is collected at the time of onboarding – which is always done on a face-to-face basis. Comprehensive and dynamic questionnaires are used to gather this information and to subsequently update it. This includes information about the purpose and intended nature of the business relationship, e.g. anticipated annual total value of funds to be credited to the customer's account and the type of income, such as salary or donations. A customer profile is created for each customer covering: (i) risk rating; (ii) CDD information held; (iii) areas of criticality (such as information on any specific anomalous behaviour or other elements of greatest risk for the customer); (iv) statistics for operations in the current year and previous two; (v) statistics on alerts from monitoring systems; and (vi) results of checks using commercial open-source databases. Profiles are updated monthly by means of an automated system in order to ensure that they remain relevant.

457. In addition to monthly reviews of customer profiles, they are also reviewed periodically by checking that the information and documentation already held is up-to-date and accurate. The institution had identified delays in completing such reviews until 2019. This periodic review is carried out at the expiry of the review deadlines according to risk, and the frequency is six to 12 months for high-risk customers, five years for medium risk customers and ten years for low risk-customers. Ten years for low risk customers (which account for around two thirds of customers) is

[40] The institution has been authorised by the ASIF to receive, on its behalf, cross-border cash declaration forms for both incoming and outgoing cash. In such instances, it forwards the declaration form to the ASIF and also submits a currency transaction report, as well as a SAR in case of suspicion.

considered to be too long a period between reviews. Reviews are also carried out based on trigger events.

458. EDD is applied at the time of onboarding to all customers rated as high-risk: they are required to provide more CDD information and have prior approval from the compliance function. At the time of onboarding, EDD is not applied to those customers rated as medium-high risk (less than 1% of customer base). Simplified CDD is applied at onboarding only to around 300 public authorities (or customers that support the government). This means that standard CDD is applied to all other customers (risk levels 1 to 4) at the time of onboarding, except high-risk customers and most institutional customers. The AT is of the view that at onboarding, the RBA is insufficiently graduated.

459. All transfers of funds equal to, or greater than, EUR 1 000 (including wire transfers) are reviewed to ensure that they are consistent with the customer's known profile and checked against anomaly indicators. For higher risk transactions (transactions for higher risk customers and transactions that have higher risk characteristics), customers are required to provide more information or supporting documentation, especially in the case of PEPs and transfers to or from higher-risk countries. This effectively deals with domestic and cross-border threats identified in Chapter 1.

460. Corporate clients account for around 25% of total clients. Due to the type of legal persons serviced, BOs will typically be those persons managing the customer, e.g. directors. The institution also monitors relationships and transactions to identify situations in which there may be third parties, other than the declared BOs, who may be controlling, in an unofficial manner, a legal person that is a customer. The legislative shortcoming noted in c.10.10 is therefore not seen to negatively impact effectiveness in this regard.

461. During the review period, the institution has not refused any customers at the time of onboarding due to the provision of incomplete CDD or otherwise for AML/CFT purposes. Given the rather narrow customer acceptance policy and face-to-face basis for opening accounts, the AT does not see this as a being a cause for concern. Since the closure of accounts referred to in section 5.2.1, no others have been closed due to holding insufficient CDD, though a small number (7) were closed following submission of a SAR and others blocked at the time of the onsite visit due to there being incomplete or expired CDD information or documentation.

462. CDD information and documentation is held for a period of 10 years from the termination of a business relationship, and, in the case of transactions and operations records, for 10 years from the date of execution of same. An electronic internal data warehouse stores these CDD records thereby enabling information and documentation to be searched and retrieved upon request.

463. In 2019, the general AML/CFT inspection carried out by the ASIF concluded that the institution had complied with CDD requirements to a good degree. The inspection did not identify any shortcomings in relation to record-keeping.

5.2.4. Application of EDD measures

Politically Exposed Persons

464. Effective measures are applied to address the additional risk that is presented by clients who are PEPs or connected therewith. As part of the onboarding CDD process, customers are required to

confirm in writing whether they occupy the position of a PEP, or whether they are connected to a PEP.

465. A list of functions in the HS/VCS for which the post-holder will be considered a PEP is published on the website of the ASIF. The ASIF also notifies the institution when a person becomes a PEP or ceases to be one. Checks of new customers (including BOs etc.) are made against this domestic list, and existing customers are checked each time the list is updated by the ASIF. The AT observed that family members and close associates are not included in the list of domestic PEPs, however, unless such persons meet the institution's rather narrow customer acceptance policy and are directly connected to the HS/VCS, they would not be eligible to establish a direct customer relationship. Use is also made of reliable external data sources (on a daily basis) to check whether any applicants or existing customers (including BOs etc) may be holding the position of, or are connected to, a PEP in a foreign jurisdiction.

466. The 2019 on-site examination conducted by the ASIF did not reveal any major deficiencies within the context of PEP measures.

467. All PEPs, domestic and foreign, are automatically classified as high-risk relationships, and onboarding requires the approval of senior management. Compared to lower risk customers, more information is also collected on the source of wealth and funds of PEPs, their associates and family members. The risk profile and all information held are reviewed on a six-monthly basis for foreign PEPs, and annually for domestic PEPs. Scrutiny of transactions is also more in-depth and supported by documentation or declarations by the customer.

Correspondent banking

468. Correspondent banking services or other similar services are not offered.

New technologies

469. In terms of new technology, the ASIF authorised institution has taken a conservative approach to the use of technology and does not offer any internet banking or fintech products. During the period under review, it has not launched any new products, services or changed its business practices.

470. VASPs are prohibited from operating in, or from, the HS/VCS.

Wire transfers

471. Overall, the AT team considers that the ASIF authorised institution is effectively implementing measures concerning wire transfer rules, and no significant concerns were noted in this regard.

472. Two different IT systems are used to carry out transactions over SWIFT and SEPA. Both are integrated with the institution's solution that: (i) checks that all incoming and outgoing payments include required data on originator and beneficiary; and (ii) screens this information against a commercial open source database. In addition to sanctions and higher-risk country checks, as explained above, all transfers equal to, or exceeding, EUR 1 000 are reviewed in order to check consistency of the transfer against the customer's profile.

473. Requests for information are periodically received from correspondent banks in the course of processing outgoing transactions. None were subsequently rejected or suspended by

intermediary or beneficiary banks. Similar checks are applied by the institution to incoming transactions, where additional information is requested from counterparties where necessary.

474. Only minor shortcomings and areas for improvement were noted in the ASIF's 2019 compliance inspection with respect to transfer of funds.

Targeted financial sanctions

475. Various measures and systems permit identification of transactions that could be linked to persons subject to TFS relating to TF and to apply specific measures, which includes the freezing of funds and informing the FIU.

476. All of the operations and transactions carried out by the ASIF authorised institution require its manual intervention. IT screening tools automatically check - before execution: (i) whether any of the parties to a transaction are listed on the HS/VCS's list of subjects that threaten international peace and security; and (ii) against a renowned commercial open source database that includes lists from international bodies (UN, EU, OFAC etc.) as well as country lists, including Italy. There are also automatic checks of CDD information collected for new customers (including BOs etc.) and daily screening of existing customers (including BOs etc.) using this commercial database. In addition to name screening, enhanced transaction monitoring checks adopting a RBA are carried out, as further explained under 5.2.3 above.

477. There have been no confirmed positive hits against the HS/VCS list or open source databases used, though there is a large number of false positive hits per month (for reasons that are unclear to the AT).

Higher risk countries

478. Enhanced measures are applied when servicing a customer or when executing a transaction that is connected with higher-risk countries identified by the FATF.

479. ASIF Instruction Number 1 on countries with strategic deficiencies in their AML/CFT systems requires enhanced and specific measures to be applied when carrying out an operation or a transaction that is connected directly or indirectly with higher-risk states. The list of higher-risk states published and updated regularly by the ASIF includes all higher-risk and other monitored jurisdictions identified by the FATF.

480. All connections to higher-risk states, e.g. origin or destination of transfer, are picked up by the institution's screening controls prior to execution of incoming and outgoing transactions and statistics about such connections are reported to the ASIF. EDD/transaction monitoring, including requesting additional supporting documentation or customer declarations, is applied. During the period, a number of SARs were sent to the ASIF concerning transactions linked to higher-risk states.

5.2.5. Reporting obligations and tipping off

481. Considering the risk profile of the ASIF authorised institution and the rather limited number and type of customers that it serves, the AT considers the number of SARs to the ASIF to be reasonable. The quality of SARs in more recent years is also considered to be good, though it is not clear whether the reports are in line with risks identified in the GRA since this information is not monitored by the institution. Overall, the AT considers that reporting obligations have been met throughout the period under review.

482. Almost all (95%) SARs received by the ASIF are submitted by the ASIF authorised institution which uses an IT tool to automatically generate alerts from the monitoring of transactions and of customer profiles. These two-types of automated alert have given rise to 60% of all the SARs filed by the institution (after review by the compliance function), while the remaining 40% came from alerts that were manually generated by customer facing staff and the compliance function.

483. A large number of automated alerts are generated each year (including TFS-related alerts). An in-house IT application is used to process these alerts which allows employees to evaluate, manage, and escalate or archive them. Parameters set in customer and transaction monitoring tools are frequently reviewed, and since most of these alerts are processed by customer-facing staff, there are sufficient resources to manage the process efficiently. The AT believes that, considering the size of the customer base, the institution's risk profile, and the number of external transactions processed per year, further calibration may be needed. Also, the institution has identified delays in reviewing of alerts until 2019.

484. Sample-based quality control tests on the checks performed by customer-facing staff have not identified any cases of failure to report suspicions of ML/TF (or late reporting). Similar checks were also carried out by the ASIF, which reported that no shortcomings were observed.

485. On average, it takes one week to assess and decide whether to archive or file a SAR with the FIU. In cases where an alert does not require any particular in-depth analysis, a timeframe of 1 to 2 days for the entire process may be sufficient.

486. During the period from 2013 to September 2020, the institution submitted 559 SARs and a further 1 186 supplemental SARs (concerning reports already submitted). With regard to supplemental SARs, these are sent when a SAR that was previously submitted in relation to the customer remains "unarchived" by the ASIF. In such a case, information on other activities carried out on the related account is sent by way of a supplemental SAR, and this continues to take place until the original SAR is archived by the ASIF. Hence, the number of supplemental SARs is relatively large (to the number of new SARs) because unarchived SARs can generate multiple supplemental SARs over the years, and because, as explained under IO.6, the ASIF has a significant number of unarchived cases, some of which date back a number of years.

Table 18: Number of SARs made by the ASIF authorised institution

	2013	**2014**	**2015**	**2016**	**2017**	**2018**	**2019**	**2020 up to 3rd Q**
Total:	190	462	534	193	136	77	86	67
New SARs (excluding account closures)	30	78	54	28	23	22	22	31
SARs on clients subject to closure	155	61	55	0	0	0	0	0
Total new SARs (including linked to account closure)	**185**	**139**	**109**	**28**	**23**	**22**	**22**	**31**
Supplemental SARs	5	323	425	165	113	55	64	36

487. The number of SARs peaked between 2013 and 2015 and decreased in the years thereafter. The spike in reporting was associated with the decision to close accounts that did not have a direct relationship with the Catholic Church (referred to in section 5.2.1). In addition, details for all

accounts to be closed, e.g. transaction data, were submitted to the ASIF prior to closure to enable the ASIF to block funds if necessary. Four such accounts that had not been reported through a SAR were investigated by the OPJ.

488. Excluding these SARs, the average number of reports between 2013 and 2015 was 54 per year, which is higher than the average since 2016. This fall in reporting is attributable to two main factors: (i) a relatively cautious approach had been adopted to reporting in the years immediately following introduction of the AML/CFT law (2013) - reports being made where there was uncertainty of the need to do so or based on automated triggers; and (ii) a significant drop (around one third) in the size of the customer base between 2013 and 2015. The FIU concurs with this view and also considers that there was some over-reporting in respect of account closures between 2013 and 2015, particularly when considering that most accounts were closed because they were dormant or had low balances. With this in mind, a small number of SARs in more recent years were examined and this shows that the quality of reports is good. SARs are complete, and information, such as CDD information, transaction data and well-formulated explanations surrounding suspicion, are included as standard. Additionally, no SARs submitted by the institution have been rejected by the ASIF.

489. The ASIF authorised institution does not keep statistics on the types of predicate offences underlying SARs (where known), nor on the reasons for suspicion leading to the submission of SARs. It was therefore not possible for the AT (nor the institution itself) to form a view on whether SARs submitted were in line with the GRA. Moreover, the lack of such statistics hampers its ability to carry out its own strategic analysis on internal and external SARs that could, in turn, inform its BRA and internal policy-making decisions on AML/CFT matters. However, sample SARs seen by the AT do not suggest that they are not in line with the institution's risks.

490. In 2018, goAML was implemented and the institution started reporting SARs through this new platform. The submission of a SAR through the goAML platform may only take place once all the required fields have been populated and complete information provided. Both the ASIF and the institution confirmed that, unlike in the past, there had not been any recent requests to improve the quality of SARs submitted and, whilst the ASIF requests additional information in respect of 18% of SARs, e.g. more documents or account statements for longer periods, this is not attributable to poor or incomplete SARs.

491. There are regular bilateral meetings with the FIU at which quality of reporting is discussed, and the institution is very satisfied with the quality and timeliness of the feedback that it receives.

492. On average, 20% of the SARs filed were in relation to pending transactions, which is considered by the AT to be a reasonable proportion. In these cases, the institution waits for the FIU's response prior to proceeding with a transaction. The ASIF's 2019 compliance inspection did not identify any shortcomings in suspicious activity reporting.

493. Turning to practical measures to prevent tipping-off, use is made of a bespoke case management system which covers all stages of reporting, from internal alerts to external reports. The system allows for the processing of internal and external SARs in a confidential manner and is linked directly with goAML for the submission of SARs. Moreover, all communication with the FIU is done through goAML in a secure and confidential manner. On a yearly basis, all employees receive training on AML/CFT matters, which includes awareness raising of their confidentiality obligations.

5.2.6. Internal controls and legal/regulatory requirements impending implementation

494. Over the years, there has been a significant improvement in internal control measures and procedures applied to facilitate and ensure compliance with AML/CFT obligations, and the measures put in place are generally effective. Representatives met onsite demonstrated a thorough understanding of the institution's processes, policies, and procedures.

495. The ASIF authorised institution has put in place the standard three lines of defence: customer facing staff; compliance team (which includes an AML Function); and internal audit. In addition, two committees have AML/CFT responsibilities. To facilitate an understanding of these AML/CFT obligations and procedures by all staff, a number of comprehensive internal documents have been published.

496. The compliance team is responsible for compliance with AML/CFT and prudential obligations. Whilst it is not focused solely on AML/CFT matters, it includes an AML office that does have such a focus. The head of compliance holds sufficient seniority within the structure of the institutions, and persons in the AML office are sufficiently experienced in terms of AML/CFT. They participate in internal committee meetings, including at board level, and are therefore well-positioned to understand and assess the ML/TF risks of activities and to channel risk information to other key personnel. The AML Office has a relatively small team and recruitment activities are underway to increase its staff complement.

497. The internal audit function assesses the effectiveness and efficiency of the institution's functions and compliance with statutory, regulatory, and procedural provisions. It does not have a specific AML/CFT audit programme and has not yet carried out a complete check on procedures and processes in the AML/CFT area. Nevertheless, during the review period, the institution has commissioned several external reviews of its AML/CFT framework by well-known international consultancy firms which did not highlight any significant issues.

498. Internal committees also consider risk at executive and board level. An executive committee consists of the heads of the different functions and meets regularly to deal with operational matters and to support management in ensuring the proper oversight of AML/CFT processes and procedures. A separate committee of the institution's Board examines reports on the control functions on AML/CFT matters and serves to identify and assess ML/TF risks. The committee meets regularly, and redacted minutes provided to the AT demonstrate that it held discussions on AML/CFT-related matters in almost every meeting.

499. AML/CFT training is carried out for all staff annually. Nevertheless, the institution has highlighted a need for further and continuous training on the interpretation of red flags identified during the processing of customer transactions in order to better support reporting by customer facing staff.

500. All members of staff are screened both at the recruitment stage and on an ongoing basis. This includes a requirement to provide a clean criminal conduct certificate, which in the case of the Board, is to be provided on an annual basis.

501. No legal limitations prevent the carrying out preventive measures, e.g. due diligence, and reporting suspicious transactions to the ASIF.

Overall conclusions on IO.4

502. The ASIF authorised institution is the only obliged entity in the HS/VCS and so the overall effectiveness of its AML/CFT programme, including its understanding of risk and the mitigating measures that it applies, is central to the conclusions of the AT with regard to IO.4. There are no DNFBPs or VASPs.

503. The institution forms an integral part of the jurisdiction's institutional structure and plays a critical role in preventing and detecting ML/TF in the HS/VCS, and in safeguarding the financial system and the reputation of the HS/VCS. Given the Holy Father's commitment to strengthening financial oversight and transparency within the HS/VCS, it comes as no surprise that the institution has undergone significant change during the review period. This is characterised by several developments across different areas, including its customer risk assessment methodology and more general use of IT tools and systems.

504. Some of these initiatives are rather recent, and the absence of advanced tools and automated systems in the past had limited the institution's effectiveness and strained its resources – resulting in a backlog of reviews of CDD information that was addressed some months prior to the on-site visit of the AT. Overall, however, the AT considers that most changes have been in place for a sufficient amount of time. For example: (i) in 2013, setting-up of its Compliance-AML Committee; (ii) in 2014, case management for internal and external suspicious reporting; (iii) in 2016, the jurisdictional risk assessment system; and (iv) in 2018, implementation of comprehensive CDD and customer risk-profiling solutions, integrated with AML monitoring applications. Accordingly, deficiencies in earlier years have not been heavily weighted.

505. In general, the institution has demonstrated having a sound understanding of its risks and applies effective mitigating measures, though some refinements are required in the manner in which it assesses institutional, country and customer risks. Generally, the institution has applied CDD and record-keeping requirements diligently, the number of SARs made is reasonable, and their quality is good. The institution now has in place a strong governance framework which demonstrates its commitment to ensuring that it has a robust and effective AML/CFT programme in place.

506. **The HS/VCS is rated as having a substantial level of effectiveness for IO.4**

6. SUPERVISION

6.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 3

a) The AML/CFT supervisory team in place in the ASIF has relevant private sector experience. These officers are supported by senior management with substantial supervisory experience in the jurisdiction. The AT considers that the right skillset is in place to apply the ASIF's AML/CFT Supervisory Methodology, recognising that it has authorised just one FI (with a simple business model) and that skilled external resources are brought in as necessary on occasion (to support full scope on-site inspections every few years). The need to introduce systematic training has been identified by the ASIF.

b) Controls implemented by the ASIF authorised institution and supervisor prevent criminals and their associates from sitting on the institution's Board of Superintendence (the Board). Board members and the Director General of the institution are subject to supervisory fit and proper tests and their appointment is not valid unless the ASIF has given consent to it. Given the strength of entry controls and limited number of individuals concerned, the ASIF has not had to use its power of dismissal in practice.

c) The Commission of Cardinals – who represent the Holy Father (as shareholder) - and the Prelate do not directly fall within the ASIF's licensing responsibilities but instead are subject to ex-ante canonical checks by the SoS and ex-post checks by the ASIF. The process has been agreed between the SoS and the ASIF. These sufficiently address fitness and propriety. Given the strength of entry controls and limited number of individuals concerned, no dismissals of any of a Prelate or the Cardinals have been necessary.

d) The ASIF authorised institution has responsibility for ensuring ongoing fitness and propriety of its senior management and advising the ASIF of the results (the supervisory authority also being able to use its powers of dismissal). While the ASIF does not yet administer fit and proper checks for senior management below the level of Director General (apart from heads of the three control functions), the AML/CFT law was recently amended to extend such checks to enable this (and for management more generally). During the review period, the ASIF has received confirmation from the institution each year on the controls that it has applied to senior management.

e) The supervisor has a good to very good understanding of the risk profile of the ASIF authorised institution. It has received, and receives, a substantial level of information from the institution and meets routinely with the FIU.

f) Based on its current assessment of AML/CFT risk, the ASIF's AML/CFT Supervisory Methodology provides for a full scope onsite inspection of the ASIF authorised institution every four/five years, supplemented by targeted inspections in between. The most recent full scope inspection took place in 2019 and, before that, 2014. Coverage of the inspection and its quality look to be very good, including consideration of domestic threats identified in Chapter 1. Overall, supervision of the institution has some very good elements of a RBA. However, the AT is not persuaded that full scope AML/CFT onsite inspections every four/five years is enough given that: (i) there is just one authorised institution; and (ii) targeted inspections between 2014 and 2019

were not sufficiently ML/TF focused. There is scope for the approach to be enhanced to allow for a more demonstrably comprehensive and systematic approach and to better address potential abuse of the HS/VCS system for personal or other benefits (embezzlement, fraud and abuse of office as per the CC) and ML. The proposed appointment of an additional member of staff may assist in this respect.

g) To date, four sanctions have been imposed by the ASIF (2015) – all orders to remediate. This is on the basis that the severity of other breaches during the review period has not justified the imposition of sanctions. There is no lack of commitment or will by the ASIF team met by the AT to seek imposition of sanctions when appropriate, but the absence of formal policies/procedures is not helpful in demonstrating this further. Under the AML/CFT law, the ASIF would present a case to the Governorate for the imposition of a more serious sanction; this body has no experience in applying sanctions for breaches of supervisory standards and policies/procedures have not been established. Hence, the AT is left with a concern about the robustness of this part of the framework.

h) Supervisory actions are having an effect on compliance with the AML/CFT law. The quality of the interaction between the supervisor and the ASIF authorised institution has developed to a level which is not only informative and reliable but also has elements of comprehensiveness

i) The supervisor has promoted a clear understanding of AML/CFT obligations and ML/TF risks by the ASIF authorised institution.

Recommended Actions

Immediate Outcome 3

a) The ASIF should enhance its approach so that a more comprehensive and systematic approach to its supervision is adopted, in particular reviewing the frequency of full inspections and the selection of topics for targeted inspections so as to address all relevant risks more demonstrably.

b) The SoS should coordinate the application of fit and proper checks on members of the Commission of Cardinals with the ASIF prior to appointment.

c) Following a recent amendment to the AML/CFT law, the ASIF should apply fit and proper checks to the members of senior management it does not already cover in line with those applied to the Director General and heads of the three control functions.

d) Once addressed in the GRA, the ASIF's supervisory programme should take full account of potential abuse of the HS/VCS system by insiders for personal or other benefits (embezzlement, fraud, and abuse of office in general as per the CC) and ML.

e) The ASIF should develop formal policies/procedures for the imposition of sanctions, and the HCS/VS should review the current requirement for the Governorate to impose more serious sanctions and consider transferring this responsibility to the ASIF. Whatever the results of the review, there should be routine training in relation to the consideration and application of serious sanctions by those responsible for making decisions in relation to such application.

f) As planned, the ASIF should recruit an additional staff member for AML/CFT supervision so as to ensure resilience and introduce systematic training of staff.

507. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, R. 26-28, R.34, and R.35.

6.2. Immediate Outcome 3 (Supervision)

508. As explained in Chapter 1, only one FI is authorised to provide services on a professional basis in the HS/VCS and there are no DNFBPs or VASPs. An assessment of the core issues for DNFBPs and VASPs is therefore not considered necessary – except under section 6.2.1 below (licensing and registration). The only professional firm falling under the remit of the AML/CFT law is the auditor of the ASIF authorised institution, but its services are outside the scope of the FATF Standards.

509. At the time of the onsite visit by the AT, the ASIF's Office for Supervision and Regulation had three full time officers: one officer dedicated to AML/CFT supervision, one officer working approximately equally for AML/CFT and prudential supervision, and one officer who is dedicated to prudential supervision. Each of these staff has relevant private sector experience in Italy. The Office is supported by the Legal Counsel of the ASIF, who is dedicated to AML/CFT and prudential regulation, and related legal issues. In addition, part of the time of two other members of senior management and, in particular, most of the time of the Deputy Director (who has substantial supervisory experience in the jurisdiction) is occupied by AML/CFT. Taking account of these additional resources, the equivalent of 2.8 full time staff (five staff in all) were available for AML/CFT oversight in 2019 and 2020. A decision has been made to appoint another person in 2021 to support AML/CFT supervision. This individual will assist with both offsite and onsite supervision, including a follow up inspection of the ASIF supervised institution planned for 2021. Overall, the AT considers that the ASIF has the right skillset in place (a mixture of private sector and supervisory experience) recognising that the ASIF has authorised just one institution (with a simple business model), that external resources can be brought in as necessary (as has been demonstrated during the period under review), and the ASIF methodology on the RBA to AML/CFT supervision (AML/CFT Supervisory Methodology) in place to guide supervisory engagement. The use of external resources to support ASIF staff in full onsite inspections is considered to be appropriate given that there is only one authorised FI and further permanent resources are not needed between inspections.

510. At the time of employment, all staff must present documentation certifying education and professional experience, and absence of a criminal record that excludes them from service. Compliance with employment requirements is re-verified on at least an annual basis.

511. Staff receive in-house training, mainly on the legal framework; external events can also be attended, with a MONEYVAL event in 2016 attended by one officer being the main example. Information is also provided by other authorities and the FSC. The need to introduce systematic training has been identified by the ASIF. The importance of each of AML and CFT as separate supervisory disciplines is recognised but the detailed implications of this will need to be reflected in the training.

512. The ASIF's statute ensures the functional separation between the supervisory and financial intelligence activities for which it has responsibility (conducted respectively by the Supervision Office and Financial Intelligence Office). More generally, ASIF's statute includes measures designed to support its operational autonomy and independence.

6.2.1. Licensing, registration and controls preventing criminals and associates from entering the market

FIs

513. Current controls prevent criminals and their associates from sitting on the Commission of Cardinals, and the institution's Board of Superintendence (the Board) and Directorate (i.e. the Director General).

514. The ASIF supervised institution has several relevant layers of authority. As a matter of Canon Law, ownership of the institution is held by the Holy Father, and he is represented by a Commission of Cardinals (5) selected by him and through whom he has the right to exercise ownership rights. Inter alia, the Commission has a responsibility to: (i) ensure that the institution abides by its statute; (ii) appoint and dismiss members of the Board and set their level of remuneration; (iii) approve the appointment and dismissal of the Director General (and any Vice Director); (iv) set dividends (paid directly to the HS); and (v) appoint the external auditor. The Prelate (an individual) links the Commission of Cardinals with the Board (six members) and Director General. The Prelate's function is to assist executives and employees in situ to govern and operate in accordance with the founding principles of Catholic ethics and in keeping with the institution's mission. The Board is responsible for the overall administration and management of the institution and for overseeing and supervising its financial and economic operations, and comprises senior, prominent individuals with existing roles, or who have retired from roles, with well-known, and in some cases, global, institutions. Under the Board, the Director General is responsible for the day to day operations of the institution; there are seven senior managers to assist the Director General.

515. Members of the Board, the Director General (and any Vice Director) and heads of control functions (internal audit, compliance and risk management) are subject to supervisory fit and proper tests based on provisions set out in ASIF Regulation No. 1 (prudential matters). Their appointment is not valid unless the ASIF has given consent to it. As a result of the recent changes to the AML/CFT law, the ASIF is able to undertake fit and proper tests at executive level for all senior and other management and plans to introduce these tests.

516. In order for a person to be appointed as a member of the Board or as Director General, the ASIF supervised institution provides the supervisor with: (i) confirmation that the Commission of Cardinals or Board (as necessary) has approved the appointment; (ii) a copy of the candidate's personal questionnaire and supporting documents; and (iii) the institution's internal analysis of the candidate's completed personal questionnaire. Inter alia, the questionnaire requests: (i) details on the candidate's experience; (ii) confirmation that the candidate has never had a criminal record (including criminality linked to corruption and fraud) or been subject to an administrative sanction; (iii) information on significant shareholdings held in companies (3% or more); (iv) details on the number of executive and non-executive roles held in commercial entities (Board only); and (v) details of conflicts of interest or other impediments. The ASIF assesses the information and documents provided, also considering the information in its internal database, tools provided by a third-party data service provider and other open sources, e.g. databases of relevant Chambers of Commerce. On a risk basis, the FIU is also asked for input about a candidate and that team reaches out to other authorities. For each appointment the ASIF also contacts foreign supervisory bodies in the jurisdictions where the candidate has worked. These jurisdictions have included Germany and the United States. In addition, there is a canonical check to verify that the person has not raised any

controversial matters vis-à-vis Canonical Law. The combination of these checks also covers whether the candidate under consideration might be an associate of a criminal.

517. The most recent changes in relation to the Board took place in 2016, while the Director General has been in post since 2015. Given the strength of entry controls and limited number of individuals concerned, it has not been necessary for supervisory purposes to reject any proposed new appointment. One application was withdrawn as a result of canonical checks.

518. In any case where a member of the Board or the Director General no longer meets the fit and proper tests set, the institution has confirmed that it would dismiss such individuals, and the ASIF would be notified post-dismissal. In addition, the Commission of Cardinals provides confirmation each year to the ASIF on the continuing fulfilment of fit and proper requirements by the Board and Director General (most recently in September 2020), including provision of a copy of the personal questionnaire of each member - updated as necessary. These confirmations have been subject to spot-checks. Also, the ASIF is advised within 30 days whenever fit and proper matters are discussed by the Commission of Cardinals or Board. The ASIF has a power to request the dismissal of an existing member of the Board or the Director General where "honourability" requirements are no longer met. It has not had to use this power in the period under review.

519. The Commission of Cardinals and the Prelate do not directly fall within the ASIF's licensing responsibilities as the Holy Father has full discretion in relation to these office holders. Initially, proposed appointees are subject to canonical checks which are similar to fit and proper tests. Such checks are conducted by the SoS which, inter alia, cover: (i) knowledge, skills, and experience; (ii) integrity; and (iii) conflicts of interest. With regard to integrity, there is verification of absence of a criminal record, administrative sanction or negative media reports that render the candidate unworthy or undeserving to provide the service required. Regarding conflicts of interest these are divided into personal (ensuring the candidate does not have close personal ties with any member of the Board) and professional (the candidate must not have close personal ties with anyone holding a managerial or high-level position within the institution). Relevant ecclesiastical bodies (dioceses, nunciatures, congregations) are involved in the completion of the checks, including the Apostolic Nunciature of the country of residence of the Cardinal. In addition, the Secretariat checks that the candidate has experience in Canon Law and in administrative duties, such that they are qualified in terms of the role undertaken for the Commission of Cardinals.

520. Immediately following the appointment of the Prelate or of a Cardinal, the SoS and the President of the Commission of Cardinals notify the ASIF and provide the results of the canonical checks carried out. The ASIF then carries out its own ex-post evaluation (following a similar approach to that taken for the Board and General Director) and, in the event that it detects any issue, its President would raise the matter directly with the Holy Father. It repeats these checks on an annual basis and, if any issues regarding fitness and propriety were to subsequently arise, the President of the ASIF, who is appointed directly by the Holy Father, would, by virtue of that direct appointment, appeal directly to the Holy Father. This process has been agreed between the SoS and the ASIF. Given the strength of entry controls and limited number of individuals concerned, no dismissal of any Prelate or the Cardinals has been necessary.

521. Heads of each control function (internal audit, compliance, and risk management) are also subject to fit and proper supervisory tests based on provisions set out in the ASIF Regulation No. 1 (prudential matters). While the ASIF does not yet otherwise apply fit and proper checks to senior

management: (i) the AML/CFT law was recently amended to extend such checks to management more generally; and (ii) the Board of the institution evaluates on at least an annual basis whether management meet fit and proper requirements and confirms to the ASIF that the evaluation has been undertaken (and what checks have been carried out). To date, dismissal of any member of management on fitness and propriety grounds has not been necessary – at the instigation of the institution or the ASIF. The adequacy of the institution's activity in relation to checking the fitness and propriety of management was verified during the ASIF's on-site inspection on prudential matters in 2020.

DNFBPs

522. The ASIF has explained that the licensing process for a DNFBP would follow those set out above for FIs (ASIF Regulation No. 1 (prudential matters). However, it should be noted that, under the provisions of Title III of the AML/CFT law, this Regulation does not extend to DNFBPs and the AT considers that it would be necessary to adapt the existing system should a DNFBP apply to be authorised (Art. 46).

523. However, any new market entrant wishing to provide professional activities - physically in the HS/VCS or remotely from another jurisdiction - would also be subject to an earlier authorisation process conducted by the Governorate. These measures would apply also to FIs.

524. According to the authorisation process of the Governorate, the applicant, be it a natural or legal person, is asked to explain in detail the motivation for their application and the activities to be offered in the HS/VCS. In order to demonstrate a professional background, the applicant provides proof of registration with the competent body in its state of residence. Furthermore, the applicant or, in the case of a legal person, all members of its management and shareholders/partners with an interest of 25 % or more, have to demonstrate to the Governorate, for instance, through a certificate, that they do not have a criminal record. It is also necessary for the applicant to demonstrate that no administrative or disciplinary sanctions have been imposed on them by their competent body, or, in the case of a legal person, on any members of its management and shareholders/partners with an interest of 25 % or more. These tests are also applied on an on-going basis.

525. Once authorisation is granted by the Governorate, all other public authorities of the HS/VCS (including the ASIF) are informed.

6.2.2. Supervisors' understanding and identification of ML/TF risks

526. Notwithstanding that some jurisdictional threats are not currently elaborated or covered in the GRA, the supervisor has a good to very good understanding of the risk profile of the ASIF authorised institution.

527. The risk profile of the institution appears to have reduced to some extent in recent years as a result of number of factors, including implementation of AML/CFT measures following the coming into force of the AML/CFT law in 2013, supervision by the ASIF, reduction in size of its customer base (following a decision to close all accounts of clients who did not have a direct relationship with the Catholic Church) and active steps taken to strengthen its governance framework. One of the outcomes of the decision to close accounts and the related CDD exercise – which used external reviewers – is the establishment of more sophisticated AML/CFT measures than had hitherto been the case. Over cautious filing of SARs is no longer an issue. In addition, the ASIF authorised institution

has a stronger role within the framework than what would usually be expected of an FI. This combination of factors means that the ASIF has a very good basis for understanding the institution's risks.

528. The institution has been assessed by the ASIF as presenting a medium-low ML risk and low TF risk (see IO.4 for the risks identified by the institution itself). This is consistent with risk assessments for ML and TF in the GRA and is not unexpected given the dominant role the ASIF authorised institution plays in the HS/VCS financial system. In line with the AML/CFT Supervisory Methodology, risk assessments of the institution are reviewed at the time that information is collected for the GRA (last collected in 2019) and when the institution presents its business risk assessment (BRA) to the ASIF (the latest being for 2019 based on 2018 data at the time of the AT's onsite visit). The risk assessment is also reviewed when trigger events occur, e.g. findings from onsite and/or offsite general and/or targeted inspections. An extensive list of triggers is provided in the AML/CFT Supervisory Methodology.

529. Substantial sources of information and data for the ASIF's identification of ML/TF risk factors are set out in its AML/CFT Supervisory Methodology. The ASIF has received, and receives, a substantial level of information in practice about the institution through: (i) annual reporting of statistics, e.g. SARs, accounts closed, transactional data (use of cash, cheques, credit cards and wire transfers (wire transfer information also being categorised by country)), assets held by customers, and customer risk distribution lists (dividing customers into four types and the number of each type of customer in each of five risk categories); (ii) ad hoc reporting, e.g. customer accounts closed as a result of the decision to terminate those without a direct relationship to the Church; (iii) risk assessments, e.g. the BRA; (iv) information gathered to support both onsite and offsite inspections and subsequent reports on measures taken to remediate deficiencies and implement instructions on best practice provided by the ASIF; (v) internal and external reports, e.g. by internal audit and external consultants; (vi) open sources, e.g. the institution's annual report (published since 2019); and (vii) risk assessment of NPOs, which collected information, inter alia, on bank accounts and transactions.

530. Over the past three years, the ASIF has had some eight formal bilateral meetings each year with representatives of the control functions (internal audit, compliance, and risk management) of the institution. Inter alia, these meetings covered control activities, the evolution of ML and TF risks and remediation responses after inspections and support the ASIF's understanding of risk.

531. Whilst the ASIF's statute ensures functional separation between its supervisory and financial intelligence activities, the co-existence of the two offices (which are in the same building) facilitates effective coordination and assists in the identification of ML/TF risks through weekly and ad hoc exchanges of information at senior management meetings and daily contact between officers. Periodically, or in any case when requested, the FIU provides statistics on SARs, along with its assessment of their quality and identifies elements that may be relevant to the supervisor's assessment of risk, e.g. use of cash (which led to a targeted inspection).

532. The director of the ASIF is also the secretary of the FSC, the permanent body whose duty is to promote coordination and cooperation between competent authorities, including with respect to the GRA. This facilitates the ASIF's understanding of risks faced at jurisdictional level and the interaction of these with its understanding of the institution's risks.

6.2.3. Risk-based supervision of compliance with AML/CFT requirements

533. Overall, supervision of the ASIF authorised institution has some very good elements of a RBA. However, the AT is not persuaded that full scope AML/CFT onsite inspections every four/five years (five years being the practice to date) is enough given that: (i) there is just one FI; and (ii) targeted inspections between 2014 and 2019, whilst meaningful, were not sufficiently ML/TF risk focussed. There is scope for the approach to be enhanced to allow for a more demonstrably comprehensive and systematic approach and to better address potential abuse of the HS/VCS system for personal or other benefits (embezzlement, fraud and abuse of office in general as per the CC). The proposed appointment of an additional member of staff should assist in this respect.

534. The ASIF designed the basis for its current approach to risk-based supervision in 2014 after the first full scope onsite inspection of the institution. At that stage, there were two FIs (APSA being the other) and the approach differentiated between the two institutions. The AML/CFT Supervisory Methodology used by the ASIF first identifies inherent risk factors, then assesses how well those risks are mitigated and then assigns an overall risk score, which is shared with the institution, which can provide comments and observations.

535. Based on its assessment of ML/TF risk, the ASIF's AML/CFT Supervisory Methodology provides for: (i) one offsite (targeted) inspection every three to five years (depending on inherent risk factors); and (ii) one full scope onsite (general) inspection of the institution every four/five years – both with a team of two/three people. The AML/CFT supervisory inspection programme for the year is set by the board of the ASIF at the end of the previous year. This programme includes prudential and AML/CFT aspects and scope is left for ad hoc inspections.

536. As mentioned above, regular formal bilateral meetings are held to identify ML/TF risks; they also cover specific matters of interest. Information obtained at these meetings, along with the information and data collected for identification of risk factors (see section 6.2.2), is used for supervisory analysis and to inform onsite inspections, e.g. for defining the nature of questions, the information and documentation to be acquired during the inspection, and the nature and composition of sample and "walk-through" tests.

537. The ASIF has carried out two **offsite inspections**, one of which (undertaken in 2017) is directly relevant to AML/CFT as it concerned inspection of CDD measures adopted following a SAR. Whilst the second covered CDD and record-keeping measures, the primary objective of the inspection was to determine the nature of the activity carried out by a particular customer.

538. The first full **onsite inspection** was undertaken in 2014, with the second taking place in 2019. Each inspection followed the ASIF's supervisory process and took place over a three-month period. The head of the inspection team was a senior staff member of the ASIF with support from three staff seconded from the financial crime and compliance unit of a major consultancy firm to support the process. In addition, the onsite team was supported by other members of senior management. Both general inspections focussed on the overall effectiveness of the "flow" of measures, including the adequacy of measures for the identification and assessment of the risk of each customer relationship, whether the level of CDD and EDD is appropriate to the risk of the relationship, whether customer and transaction monitoring is sufficient, the role of the compliance function and IT, and the recognition and reporting of suspicion. The 2014 inspection also established an understanding of how the institution had responded to the then new AML/CFT framework and

the ongoing exercise on the closure of accounts which did not have a direct relationship with the Catholic Church. One of the outcomes of this first inspection was the adoption by the institution of a more detailed approach to categorising HS/VCS officials and, more generally, enhancements to monitoring of relationships. The 2014 inspection was also a milestone which allowed the ASIF to provide input into the institution's methodology for assessing customer risk (see IO.4).

539. Significant information was provided to the ASIF ahead of the 2019 inspection, including by way of illustration: (i) a list of all accounts closed from the beginning of 2015 and reasons for the closure; (ii) a list of all dormant accounts with supporting details; (iii) a list of active relationships as at 30 June 2019 with supporting details on each relationship; and (iv) a log of all wire transfers made in the first half of 2019.

540. The coverage of the 2019 inspection and its quality look to be very good. In addition to the matters referred to above, it covered transfers of funds (particularly wire transfers connected with high risk geographical areas), cash transactions (particularly those above EUR 10 000), use of cheques, use of safety deposit boxes, freezing of assets, designated persons under TFS, cross-border transportation of currency, internal controls, record keeping, and training. A reasonable number of customer files for a full scope on-site inspection was sampled, with an increased focus on higher risk and analysis was deeper in areas identified as presenting higher risks.

541. The ASIF sees general AML/CFT onsite inspections as the most comprehensive of its tools for supervising the potential incidence of domestic abuse of office for personal or other benefits (embezzlement, fraud and abuse of office in general as per the CC) and controls within the institution to mitigate this risk. During the 2019 onsite inspection, it considered: (i) knowledge, understanding and controls in relation to the anomaly indicators in ASIF Regulation No. 5 (SARs) on public procurement; (ii) adequacy of checks to ensure that the customer or any delegates of the customer are not involved directly or indirectly in fraud and corruption; (iii) risk profiling and adequacy of CDD and EDD in relation to this; (iv) adequacy of risk mitigation for persons operating on behalf of customers and BOs; (v) adequacy of controls for the identification of PEPs and mitigation of PEP risk; (vi) corruption risk associated with transactions; (vii) adequacy of information on source of funds and wealth; (viii) use of screening systems for anti-corruption purposes; and (ix) adequacy of customer monitoring and interrogation of changes to patterns of information, including the level and flow of funds.

542. The 2019 inspection also covered a range of elements to consider the risk that the provenance of donations made to customers may be illicit. In particular, it considered: (i) whether anomaly indicators related to donations indicated in ASIF Regulation No. 5 (SARs) were properly included in monitoring systems; (ii) adequacy of controls in place to distinguish donations from other types of transaction; (iii) whether reasons for donations are provided; (iv) monitoring of changes in the scale or pattern of donations; (v) whether transaction monitoring systems detect when a sum of money comes in and is suddenly taken out; and (vi) assessment of the origin of funds, including whether the donor or vehicle used for the transaction is directly or indirectly linked to a high risk country.

543. A checklist was used to guide the 2019 onsite inspection (set out in the AML/CFT Inspection Guide). Based on a review of this document, the AT considers that there is scope to demonstrate a sharper focus on: (i) TF (including TFS) (although it is clear that both ML and TF were considered as part of the inspection); (ii) threats (in line with the analysis in Chapter 2) and customer, geographic,

transaction, and product/service/distribution channel risks; (iii) BO (an important global issue); and (iv) areas identified as presenting higher risks. These amount to enhancements and would not call for a significant revision to the supervisory approach.

544. The two full-scope onsite inspections have been interspersed with targeted on-site inspections. As with the general AML/CFT inspections, a checklist is used for targeted inspections. In each case, governance and engagement by the board and senior management, the effectiveness and adequacy of IT and staff resources, the engagement and adequacy of the compliance and internal audit functions, procedures, the adequacy and flow of information, controls and measures in practice, and decision-making mechanisms around these are assessed.

545. There was a targeted inspection in 2015 aimed at ensuring that customer accounts at the ASIF authorised institution were segregated from its own assets. This was to ensure there was transparency and mitigation of potential for internal fraud and corruption.

546. An inspection in 2016 was targeted at addressing the disclosure of confidential information. In particular, the team reviewed access to, and storage and use of, confidential information, which is indirectly relevant to AML/CFT as it covered compliance with record-keeping requirements.

547. Another inspection in 2016 addressed the operation of an account following formal notification to the supervisory team by the FIU of a SAR on its use by two junior clerical figures. In practice, one individual was using the account for a salary and the other using it to deposit funds received for caring for the ill. The inspection resulted in the two individuals (who were not engaged in criminality) being required to open separate accounts.

548. An inspection in 2017 addressed investment management of a particular type of charitable account (accounts of a type of foundation) and application of CDD, record-keeping and reporting measures thereto.

549. This was followed by a further inspection in 2018 to assess controls around wire transfers arising from information provided by the institution to the ASIF about a potential transfer by a HS/VCS authority for which the payment instruction seemed to be unusual. This inspection was risk-based and targeted; it addressed fraud and corruption risk within the HS/VCS in relation to a potential cross-border payment and followed up an area found in the 2014 inspection calling for an enhanced approach. As the issue arose from an absence of formal procedures and understanding within an authority as to which post holders should in practice issue payment instructions, the matter was relatively easily resolved. A process has been established to prevent recurrence of the problem.

550. An inspection in 2019 was undertaken in relation to joining SEPA. The assessment as to whether or not systems were in place to join SEPA considered the design of CDD and record-keeping process for outgoing and incoming wire transfers and integration with existing transaction monitoring systems.

551. The AT notes that targeted inspections were not conducted in some areas where this might be expected following a comprehensive RBA, e.g. NPOs, TFS, BO and legal persons, international/cross-border risks, EDD, and other issues identified in the GRA.

552. Other inspections were prudential in focus but had relevance to AML/CFT. One in 2018 covered the granting and management of advances (covering CDD controls on the advance) and a

second, in 2020, inspected use of cash by customers following an SAR to the FIU. Most recently (2020), a full scope prudential inspection was conducted which covered relevant AML/CFT aspects, including the adoption of systems and controls for assessing and managing ML/TF risk and wider effectiveness of the compliance (including AML) function. More specifically, the inspection considered: (i) assessment of overall customer risk by the institution for three selected periods and reasons for variations; (ii) EDD applied to high-risk relationships; and (iii) more general application of CDD. The team included an IT specialist to review the adequacy of IT systems, including those used for AML/CFT purposes. The IT specialist used was a highly qualified professional seconded to the ASIF from a foreign supervisory authority.

553. Whilst no longer an obliged entity, an onsite inspection was conducted at APSA in 2015 in order to determine its regulatory status.

6.2.4. Remedial actions and effective, proportionate, and dissuasive sanctions

554. The ASIF requires remediation of breaches of AML/CFT requirements found during its inspections by means of requirements in exit letters or reports following the inspection.

Table 19: Breaches of AML/CFT requirements requiring remediation identified during AML/CFT examinations (including the 2020 prudential inspection)

	Onsite (general)	Onsite (targeted)	Offsite (targeted)	Total	Significant shortcoming[41]	Minor shortcoming
Risk assessment	2	-	-	2	-	2
Internal controls	5	10	-	15	-	15
CDD	17	1	2	20	-	20
Funds transfers	3	3	-	6	-	6
SARs	1	-	-	1	-	1
Record-keeping	-	-	1	1	-	1
Total	**28**	**14**	**3**	**45**	**0**	**45**

555. The quality and timing of remediation is discussed with the ASIF authorised institution and an action plan (with deadline(s) agreed around a month after the report is issued. Prior to the date specified for remediation, the ASIF follows up with the institution to ensure that it remains on track. Responses are also discussed at the bilateral meetings referred to above. As indicated in the table above, all breaches noted to date have been classified as minor by the ASIF. Breaches in the recent onsite inspection in 2019 were reviewed by the AT and none of these, in isolation or in combination, were considered to be significant.

[41] A significant shortcoming is defined in the Supervisory Methodology as: (i) a lack of compliance or partial compliance with AML/CFT requirements in respect of CDD, record-keeping etc,; and/or (ii) a deficiency which represents a potential risk for the correct functioning of the supervised institution and which shall be promptly mitigated, corrected and removed.

556. To date no administrative sanctions have been imposed by the ASIF (or the Governorate) other than four orders to comply with specific instructions and to make regular reports on measures adopted (in 2015). Nor has the ASIF made a report on criminal irregularities to the OPJ. This is on the basis that the severity of the breaches has not justified the imposition of sanctions and that all remediation action plans have been addressed. This number of sanctions is consistent with the ASIF's risk assessment of the institution (ML - medium-low and TF – low) – which has not changed since completion of the 2014 onsite inspection.

557. The quality of the 2019 inspection is discussed above. The areas for revision specified elsewhere in this chapter might have had an effect on the sophistication and depth of the inspection regime during the period under review and, therefore, on the possibilities for enforcement. There was no lack of commitment or will by the ASIF team met by the AT to seek imposition of sanctions when appropriate, and the AML/CFT Inspection Guide lists some of the quantitative (amount and incidence) and qualitative (e.g. topicality and success of internal controls in highlighting compliance failures) factors to be taken into account. However, the absence of formal policies/procedures describing how such factors must be considered in practice and a description of what are "serious cases" (whereupon a recommendation must be made to the Governorate) is not helpful in demonstrating this further. Under the AML/CFT law, the ASIF would present a case to the Governorate for the imposition of a more serious sanction in practice. Notwithstanding that this body is supported by a legal office (which would consider the recommendation for sanction) that has a wide ranging and complex remit and required to take account of principles of natural justice, it has no experience or training in applying sanctions for breaches of supervisory standards and policies/procedures have not been established. Hence, the AT is left with some degree of concern about the robustness of this part of the framework.

6.2.5. Impact of supervisory actions on compliance

558. Supervisory actions are having a positive effect on compliance with the AML/CFT law. The ASIF measures the effects of its actions through on-site inspections (both general and targeted), assessment of data and information provided on regular basis by the institution (e.g. the BRA, data on customers and transactions) and periodic meetings with relevant control functions (internal audit, compliance and risk management).

559. The supervisor has noted from its offsite and onsite supervision that the ASIF authorised institution has improved standards not only by remediating breaches found by the supervisory authority but also by following instructions and improving the culture and controls applicable to AML/CFT at all levels from risk identification and assessment to day-to-day mitigation. As part of this, the institution has become more sure-footed in its approach with, for example, the filing of SARs moving from an approach of considerable caution to an approach where filing is more clearly based on suspicion. The quality of SARs has also improved.

560. In addition, the quality of supervisory activity and the interaction between the ASIF authorised institution and the supervisor has developed to a level which is not only informative and reliable but also has elements of comprehensiveness (e.g. the level and types of information provided to the supervisor by the institution, the number of routine meetings between the two, the 2019 general onsite inspection, and the weekly meetings with the FIU). As indicated in IO.4, the ASIF

authorised institution demonstrates effectiveness in a substantial range and number of areas, and this in part is due to active supervision by the ASIF.

6.2.6. Promoting a clear understanding of AML/CFT obligations and ML/TF risks

561. Generally, the supervisor has promoted a clear understanding of AML/CFT obligations and ML/TF risks by the ASIF authorised institution. There is substantial interaction between the ASIF and the institution at meetings and by other means which enables the former to provide information and guidance to the institution such as on supervisory expectations, best practice, and changes to requirements. This has included providing comments on the institution's risk methodology, identification of PEPs, treatment of NPOs and on reporting. More formally, the institution is required to share its annual BRA with the ASIF, which provides feedback thereon, and the ASIF shares its assessment of ML/TF risk. Both help to promote a clear understanding of risk. Inspections also provide an opportunity to disseminate information on good practice through visit findings and discussion during and after the inspections.

562. Iterations of the GRA (except the 2020 update) have been provided to the ASIF authorised institution. As indicated in IO.1, threats identified in the GRA are linked mainly to international and/or cross-border activities but do not explain what type of actors present a threat to the HS/VCS and the ways in which the threat is or would be presented.

563. R.34 articulates instructions and guidance which have been issued by the ASIF. In addition, instructions have been issued on points of specificity to routinely complement the regime and to seek to ensure the HS/VCS remains in line with best practice. There is, however, scope to issue improved guidance in relation to TFS (see IO.10).

Overall conclusions on IO.3

564. The HS/VCS has only one authorised FI and no DNFBPs or VASPs. This allows it to focus its supervisory effort on a single institution in a way that is not possible in other jurisdictions.

565. Attention has been drawn to the supervisory visit cycle set by the ASIF. It has been explained that the team has not been persuaded that the five-year gap between full inspections in 2014 and 2019 is sufficient. In considering the impact that this has on the rating, the AT has considered the prudential review conducted in 2020, which included some important AML/CFT elements. The AT's conclusion is that this additional (though very recent) element means that the supervisory plan requires only moderate improvements.

566. The AT has also highlighted the low number of sanctions applied during the period under review. It has assessed this within the context of the extent to which the institution is exposed to ML/TF risk and assessment of application of preventive measures under IO.4 (substantial). Its view is that the low number can be supported and so this has not been weighted heavily in arriving at the rating. The number of sanctions means that the AT's concern about the role of the Governorate in sanctioning has also not been weighted heavily.

567. Otherwise, the AT notes the improvement of AML/CFT supervision over the period of review, adequacy of resources, effectiveness of controls in preventing criminals from using the system, good level of AML/CFT understanding, quality of the 2019 onsite inspection of the FI (including the risks covered, which include domestic abuse of office for personal or other benefits) and the existence of some very good elements of risk-based supervision.

568. **The HS/VCS is rated as having a substantial level of effectiveness for IO.3.**

7. LEGAL PERSONS AND ARRANGEMENTS

7.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 5

a) In the HS/VCS there are only a small number of legal persons. None are established to pursue private industrial or commercial purposes – rather they exclusively serve the mission of the HS/VCS and the Catholic Church which makes the sector of legal persons very homogeneous overall. No legal person has shareholders or complex control or ownership structures.

b) The different types, forms and basic features of legal persons of the HS/VCS are described to some extent in the Code of Canon Law, the Law on Civil Legal Persons, the Law on NPOs and the Law on Regulation of Voluntary Activities, all of which are publicly available. However, there is no guidance or overarching law that comprehensively addresses registration, administration and winding up of legal persons.

c) In addition to on-going oversight of activities of all legal persons (see below), a comprehensive and in-depth assessment of the ML/TF risks presented by legal persons that are NPOs has been conducted for the first time in 2020. The modalities underlying the risk assessment are well thought-out and require only refinements. The authorities have a good understanding of ML/TF risks of NPOs, which had already been developed to some extent by on-going oversight of all legal persons. A ML/TF risk assessment of legal persons other than NPOs is underway. The ML/TF risks of these legal persons are readily comparable to those of NPOs as they pursue the same activities (i.e. support of the mission of the HS/VCS and the Catholic Church).

d) Legal persons established in the HS/VCS register with the Governorate. Registration is conditional upon prior authorisation by the Pontifical Commission/Governorate or by the SoS. This authorisation vets the natural persons that will be involved in the management and oversight of such legal persons and prevents criminals or their associates from sitting on either the administrative or control bodies (referred to as corporate bodies). It also acts as an effective mechanism for the identification of individuals looking to act as nominee members of corporate bodies or exercise control over a legal person other than through sitting on the administrative body. Legal persons are prevented from sitting on corporate bodies in practice.

e) There is also significant on-going oversight of the activities of legal persons at different levels, which further prevents their misuse. In particular, a review of minutes of the corporate bodies and review/audit of budgets and financial statements, together with application of ex-ante fit and proper checks (outlined above) where there are subsequent changes in composition of the corporate bodies, in their totality form a robust and effective system of supervision by the SoS/Governorate. All of these oversight measures have been applied since 1983 (where established under Canon Law) and 1993 (where established under Civil Law). The ASIF has also started to inspect legal persons and, by the end of the AT's on-site visit, one NPO had been subject to such an inspection.

f) Basic information is held centrally in registers kept by the Governorate. Given the nature of legal persons established in the HS/VCS, the BO will be the person or persons controlling the legal person through the role held (i.e. members of the administrative body) and so this information is also held centrally.

g) The adequacy, accuracy and currency of basic and BO information on legal persons held in the jurisdiction is ensured by two complementary measures: (i) the Governorate conducts

checks of basic and BO information every six months to ensure that information is updated regularly; and (ii) as noted above, it is practice for a change to a member of the corporate bodies to be approved in advance by the SoS or the Governorate.

h) Competent authorities can access basic and BO information on legal persons kept in the registers held by the Governorate on a timely basis. This has been extensively tested by the ASIF as part of its ML/TF risk assessment on NPOs. Access to the registers by other competent authorities has also been positively tested in practice (though only in a limited number of cases due to a lack of need).

i) No enforcement actions for infringements of the information requirements of R.24 and R.25 have been taken by the competent authorities as no opportunities have been identified to apply sanctions. This is essentially due to the factors outlined above that ensure adequacy, accuracy and currency of basic and BO information. Sanctions available for legal persons other than NPOs are not considered to be effective in deterring future compliance by the sanctioned person or dissuasive of non-compliance by others.

j) Regarding legal arrangements, such as trusts, the AT has satisfied itself that the administration of foreign trusts in the HS/VCS can be virtually ruled out in practice.

Recommended Actions

Immediate Outcome 5

a) The authorities should continue to pursue the introduction of an overarching law to cover the registration, administration and winding up of legal persons in the HS/VCS. Until such a law is available, the Governorate and the SoS should elaborate guidance on the different types, basic features and processes for the creation of legal persons in order to provide an overview of the applicable legal provisions and processes applied in practice and make it publicly available.

b) The ASIF should complete the ML/TF risk assessments for legal persons other than NPOs that have already started and the ASIF and the SoS should assess and conclude on the overall ML and TF risk separately in future updates to the recent NPO risk assessment.

c) The Governorate should review the administrative sanctions applicable to legal persons other than NPOs in order to ensure future compliance by sanctioned persons and deterrence to non-compliance by others. In this context, the Governorate should examine whether the application of administrative sanctions to all legal persons could be addressed within the framework of the new overarching law (see RA(a) above).

d) The authorities should consider whether – post incorporation – the prior approval of appointment of members to corporate bodies by the SoS or the Governorate should be regulated by legislation. The HS/VCS should consider addressing this point in the new overarching law (see RA(a) above).

e) The authorities should consider introducing a clear statutory basis to allow only natural persons to assume the function of a member of the administrative and control body of a legal person. The HS/VCS should consider addressing this point in the new overarching law (see RA(a) above).

569. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24-25.[42]

7.2. Immediate Outcome 5 (Legal Persons and arrangements)

570. With reference to explanations in Chapter 1, the subjects of this assessment are the following legal persons: NPOs (20), voluntary organisations (3), and other charitable legal persons (21). These are established as foundations or associations.

571. The NPO sector has been described as the "corporate sector" of the HS/VCS. This is because NPOs, in the view of the authorities, could present a relatively higher TF risk due to their activities in areas of the world with humanitarian emergencies. On the other hand, no legal persons are established in the HS/VCS to pursue private industrial or commercial purposes – rather they exclusively serve the mission of the HS/VCS and the Catholic Church and are set up in cooperation with public authorities of the HS/VCS. This cooperation ensures, even before the establishment of a HS/VCS legal person, that it is structured in such a way that its purpose is in accordance with the mission of the HS/VCS and the Catholic Church.

572. As mentioned under Chapter 1, legal arrangements cannot be established in the HS/VCS. Moreover, the administration of foreign trusts in the HS/VCS – on both a professional and non-professional basis – can be virtually ruled out in practice. Consequently, legal arrangements are only dealt with in this assessment where deemed necessary.

7.2.1. Public availability of information on the creation and types of legal persons and arrangements

573. The different types, forms and basic features of legal persons of the HS/VCS are described in basic terms in the Code of Canon Law and in the Law on Civil Legal Persons, whereby the latter consists only of a reference to the Italian Civil Code currently in force and, accordingly, the relevant legal provisions are to be found there. Additional provisions in relation to the creation and basic features of legal persons can also be found in the Law on NPOs and in the Law on Regulation of Voluntary Activities (see also Chapter 1). All the mentioned laws (with the exception of the Italian Civil Code) are publicly available on the website of the VCS (in Italian)[43] and are published, including any amendments to these laws, in the Acta Apostolicae Sedis, which is the official gazette of the VCS.

574. However, information on the basic features and processes for the creation of the different types of legal persons can be extracted from the HS/VCS laws only to a limited extent. Neither the Code of Canon Law nor the Law on Civil Legal Persons contain specific and comprehensive provisions in relation to establishing or administering foundations or associations. The AT has not been provided with relevant translated parts of the Italian Civil Code. Even if it can be assumed that this Code contains provisions on basic features of foundations and associations, some elements of incorporation and administration of HS/VCS legal persons do not have a statutory basis (see in section 7.2.3). For this reason, the HS/VCS has started drafting an

[42] The availability of accurate and up-to-date basic and BO information is also assessed by the OECD Global Forum on Transparency and Exchange of Information for Tax Purposes. In some cases, the findings may differ due to differences in the FATF and Global Forum's respective methodologies, objectives and scope of the standards.

[43] https://www.vaticanstate.va/it/normativa-persone-giuridiche-vaticane.html

overarching law that will deal with the registration, administration and winding-up of legal persons.

575. The AT has been provided with explanations on the creation and basic features of the different types and forms of legal persons, but there is no publicly available guidance. Accordingly, there is a lack of specific and detailed information on the basic features and the processes for the creation of legal persons that is publicly available. However, since there is no possibility for legal persons to pursue private industrial or commercial activities, due to the specific regulatory environment in the HS/VCS, the public's need for information on the creation and types of legal persons is limited compared to many other jurisdictions.

7.2.2. Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

576. GRAs conducted to date have touched on ML/TF risks presented by legal persons, in particular NPOs. However, these assessments were very generic and not focussed on legal persons. Subsequently, the authorities have decided to assess the ML/TF risks presented by different types of legal person, rather than legal persons generally, and more comprehensively and in detail. They have already conducted such an assessment for NPOs and have started an assessment of other types of legal person.

577. As regards NPOs, a comprehensive and in-depth ML/TF risk assessment has been conducted jointly by the ASIF and the SoS. For the purpose of this assessment, a self-assessment questionnaire was prepared and distributed to all NPOs in February 2020. The results of the assessment were formalised within the Report on Supervision and Monitoring of NPOs in April 2020, updated in May 2020 (NPO Report). This was the first comprehensive and in-depth ML/TF risk assessment of NPOs and considered how they could be misused: (i) as legal persons; and (ii) as NPOs for TF purposes. The latter is addressed separately under IO.10.

578. Through the self-assessment questionnaire, a wide range of ML/TF risk-relevant information has been collected by the ASIF. Comprehensive information has been obtained on the: (i) geographical areas of the main activity; (ii) amount of assets and number and amount of incoming and outgoing transactions (including donations) (divided into wire and cash transactions); (iii) involved subjects (i.e. beneficiaries and donors); and (iv) internal organisation of each NPO and its activities. In addition, publicly available information such as negative news from media, adverse information provided by foreign counterparts of the ASIF and any additional information provided by the FIU has been taken into account in the assessment process. The combination of these sources is considered to be sufficient to conduct a comprehensive ML/TF risk assessment of NPOs.

579. According to the methodology developed by the ASIF, a residual risk for ML and TF for each NPO is calculated on the basis of an analysis of the potential threats and vulnerabilities, taking into account risk-mitigating measures and internal control mechanisms. In the view of the AT, the methodology used supports appropriate and sound calculations of both ML and TF residual risk. However, the NPO Report does not address ML and TF risk separately and, instead, assesses the overall combined risk level for the NPO sector as "medium-low". In the view of the AT, it is doubtful that the overall ML and TF risk levels for the NPO sector are the same and there would be greater value in assessing ML and TF on a sectorial level separately. Given the small number of NPOs (20), the authorities have still been able to demonstrate an understanding of sectorial risk and so this is considered a point of refinement. Overall, the HS/VCS authorities are commended by the AT for the quality of the ML/TF risk assessment of NPOs.

580. An understanding of ML/TF risks of NPOs had already developed to some extent before the ML/TF risk assessment in 2020, in particular as a result of the significant on-going oversight by the SoS of activities of legal persons as referred to under section 7.2.3. As a result of this oversight and the risk assessment of NPOs, the authorities have a good understanding of ML/TF risks of NPOs.

581. It is intended by the ASIF and the SoS to repeat this risk assessment exercise for NPOs annually. Such a short period makes it possible to keep the risk profiles for each NPO up-to-date and allows the authorities to react quickly to changes.

582. With regard to voluntary organisations and other charitable legal persons, a ML/TF risk assessment comparable to that of NPOs was underway at the time of the on-site visit. A training seminar for these legal persons was held in September 2020 in which self-assessment questionnaires were distributed. When considering the activities that are pursued by these legal persons, it is clear that their characteristics correspond to those of NPOs. This is because all legal persons in the HS/VCS are set up to support the mission of the HS/VCS and the Catholic Church. Thus, the ML/TF risks of legal persons other than NPOs are readily comparable to those of NPOs and, therefore, it is not to be expected that the outstanding risk assessment will identify high ML/TF risks, which was confirmed by the authorities based on preliminary findings. Furthermore, it must also be taken into account that an understanding of risk is already present to some extent among the authorities as a result of the significant on-going oversight of the activities of voluntary organisations and other charitable legal persons as referred to under section 7.2.3.

7.2.3. Mitigating measures to prevent the misuse of legal persons and arrangements

583. Legal persons that are created in the HS/VCS register with the Governorate. The Governorate keeps four separate registers: (i) canonical legal persons; (ii) civil legal persons; (iii) NPOs; and (iv) voluntary organisations.

584. In order to incorporate a legal person in the HS/VCS, prior authorisation by the Pontifical Commission for voluntary organisations and by the SoS for all other types of legal persons (NPOs and other charitable legal persons) is required. After incorporation of a legal person, any changes to the composition of corporate bodies are, in practice, also being authorised in advance by the Pontifical Commission or the SoS. The effect of these two authorisation processes is that criminals or their associates are prevented from holding a management or control function in a legal person (and, by default, also becoming a BO – see below in section 7.2.4) and that there is close contact between the authorities, legal persons and those holding management or control functions.

585. Both authorisation processes (by the SoS or the Pontifical Commission which has delegated the performance of checks to the Governorate)) take place in two stages. In a first step, the applicant explains the reasons for creation and provides the draft act of incorporation and the draft statutes, indicating the names of persons who will become members of the administrative and control bodies, together with further documents (CV, identification documents and certificates of criminal record). NPOs are also required to attach a statement of the organisation's assets and liabilities, indicating clearly initial patrimony and the origin of assets. In a second step, the SoS or the Governorate check that the statutory purpose is compatible with the mission of the HS/VCS and the Catholic Church, along with integrity and professionalism of persons who will become members of the administrative and control bodies. To this end, the CdG, and relevant bishops, dioceses and other ecclesiastical bodies are consulted. A similar process is followed where there is a subsequent change in members of the corporate bodies.

586. Once the SoS or the Pontifical Commission has granted authorisation, the legal person is established by a public act of incorporation (i.e. decree of erection issued by the Supreme Pontiff or, a notary public deed), otherwise the legal person is not validly established. The SoS then notifies the Governorate of the creation of the legal person and forwards all the documents, together with its authorisation, to the Governorate. This process ensures that all legal persons established under the law of the HS/VCS are registered.

587. According to the authorities, only natural persons are eligible to be members of the corporate bodies. Although a legal basis for this requirement is missing, implementation is ensured in practice within the framework of the respective authorisation procedure. From the AT's view, this requirement provides an additional means to promote transparency of legal persons.

588. The issuance of any bearer share instruments is legally forbidden in the HS/VCS. Apart from that, the issue of bearer shares does not play a role in the HS/VCS, as legal forms registered do not issue shares. Given that the legal persons registered in the HS/VCS do not have shareholders, risks presented by nominee shareholders are not applicable. In order to avoid the misuse of legal persons using nominee directors (or equivalent), the HS/VCS has subjected all legal persons to the authorisation mechanism described above. These fit and proper checks are designed to identify links to criminal activity but, in the view of the authorities and the AT, will also highlight cases where directors propose to act as nominees (see also c.24.12). None have been observed to date.

589. The SoS and the Governorate also receive minutes of all meetings of the administrative and control bodies of legal persons in order to verify compliance of their activities with statutory purposes, statutes and legislation. This means that the authorities are continuously informed about the activities of all legal persons. Should the SoS or the Governorate come across resolutions that are incompatible, it will take supervisory measures. For instance, on the basis of the Law on NPOs, the SoS can declare resolutions void or remove the management of a NPO and nominate an extraordinary administrator, whenever the members of the administrative body have acted in serious breach of the Law on NPOs or statutes.

590. Legal persons must also submit their budgets and final financial statements to the SoS or Governorate annually. In the case of NPOs and other charitable legal persons, these are then forwarded to the SfE, which carries out a preliminary analysis of the financial statements and reports to the SoS on whether it considers an audit by the Office of the Auditor General or by an external auditor to be necessary. This may be the case, for instance, if any anomalies in comparison to the figures of the previous years are identified. In the years 2017 to 2019, the SoS has not found it necessary to request such an audit. In the case of voluntary organisations, the State Accounting Office carries out an internal audit of the budget and final financial statements. If anomalies or irregularities are detected in the course of the audits, the SoS or the Governorate will examine the need for supervisory measures (see under para. 589 and 591).

591. In their totality, the effect of the above measures is to form a robust and effective system of supervision, which is based on the relevant authorities being aware of the activities of legal persons and those holding management or control functions from the outset. This knowledge enables the authorities, in particular, to report suspicious activities to the ASIF (even though, so far, no SARs have been submitted by the authorities to the ASIF due to suspicions resulting from the above-mentioned oversight measures). In this context, it is emphasised that all oversight measures have been applied in practice by the HS/VCS authorities since 1983 (for legal persons established under Canon Law) and 1993 (where established under Civil Law). Accordingly, the relevant authorities have built up a high level of knowledge regarding the common activities and

persons involved in legal persons, which in turn strongly contributes to their risk understanding (see above in section 7.2.2.). In addition, legal persons themselves are obliged to report suspicious activities to the ASIF.

592. Since 2020, the ASIF has started to request the submission of a self-assessment questionnaire for all legal persons in order to determine a risk category for each and to identify any weaknesses in relation to internal control mechanisms (see also above). It had not done so for all legal persons at the time of the on-site visit. The ASIF intends to collect these questionnaires on an annual basis. Identified weaknesses, together with suggested actions for remediation, had been communicated at the time of the on-site visit to each NPO for the first time through individual reports with attached action plans set up by the ASIF. This process has worked well with regard to NPOs and enables weaknesses to be addressed individually and in a targeted manner, thus making a significant contribution to risk mitigation. The experience that was gained in this process has been incorporated into the on-going process concerning other types of legal persons (i.e. voluntary organisations and other charitable legal persons).

593. At the time of the on-site visit, one NPO had been subject to an inspection by the ASIF. Inspections follow a methodology set up by the ASIF, which contains specifications on the documents and data to be inspected as well as checklists to be used. The inspection already carried out and the inspection methodology have established a solid basis for the continuation of the AML/CFT inspections of NPOs, which will be extended by the ASIF to all legal persons in future. The frequency of these inspections will be determined by the risk category assigned, ranging from annual visits for high risk entities to every five years for low risk entities, and the methodology already in use for the inspections of NPOs will be used for the inspections of all other legal persons.

594. Moreover, there is now periodic training of all legal persons to raise their awareness to collect and maintain basic and BO information. However, this training has only been taking place at regular intervals since 2020. Besides this, the Governorate keeps legal persons informed of their legal obligations by sending them new relevant laws, ordinances and regulations (e.g. ASIF Regulation No. 5 (SARs) and amendments thereto.

7.2.4. Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

Access to basic and BO information of legal persons

595. The registers of legal persons maintained by the Governorate contain all necessary basic information, along with details of beneficiaries of their work. The incorporation documents (including those resolutions by means of which the statutes or the composition of the corporate bodies were amended) and identification documents of the members of the corporate bodies are also included in the registers. The registers are kept electronically and include current and historical information. The Governorate issues register extracts on request to any person on request. This does not apply to the authorities referred to in para. 598, which have direct access to the registers.

596. The Governorate ensures that legal persons are included in the appropriate register and registered information is verified by the Governorate every six months through checks of the registers. In particular, it checks whether corporate body members' terms of office have expired, identification data is complete, and identification documents remain valid. Furthermore, accuracy and currency of the registered information is ensured by the fact that changes to the statutes and in the composition of the administrative and control bodies are, in practice, being approved in

advance by the SoS or the Governorate (as the implementing body for the Pontifical Commission) – in line with the process set out in section 7.2.3 above. Once authorisation is granted, it is communicated immediately by the SoS to the Governorate, which then updates the register. In the case of voluntary organisations, the information regarding changes is already present with the Governorate anyway. Even though there is no legal basis for this practice, it works in practice given the particular circumstances of the HS/VCS, especially the low number of legal persons and their proximity to the authorities through on-going and close contact. Accordingly, current basic information is not only held by the Governorate, but also by the SoS in relation to NPOs and other charitable organisations.

597. A number of mechanisms are designed or available to ensure availability of adequate, accurate and current BO information on legal persons: (i) requiring legal persons to hold BO information; (ii) requiring legal persons to communicate BO information to the Governorate thus creating four central BO registers for the small number of legal persons established in the HS/VCS; and (iii) requiring FIs and DNFBPs to obtain BO information in accordance with R.10 and R.22. In practice, however, given the charitable nature of legal persons established in the HS/VCS, their structuring as foundation or association and the fact that the funds come from donors, the BO will be the person or persons controlling the legal person through the role held (i.e. members of the administrative body, e.g. board of directors) – information which is already held centrally in registers kept by the Governorate. The adequacy, accuracy, and currency of this information is considered above.

598. The SoS, the ASIF, the Office of the Auditor General, the SfE, the CdG and the ASIF authorised institution all have direct and full access to all basic and BO information kept in the four registers held by the Governorate – at any time. Due to this direct access, no figures on searches are available. If the OPJ or the Tribunal need access to basic and/or BO information kept by the Governorate, they retrieve it through the CdG. The information is made available on the same day.

599. Access to basic and BO information kept in the registers for competent authorities is therefore ensured. This has been extensively tested by the ASIF as part of the ML/TF risk assessment on NPOs where BO information collected via the self-assessment questionnaires was compared by the ASIF to BO information held by the Governorate. Access to these registers by other competent authorities has also been positively tested in practice (though only in a limited number of cases due to a lack of need).

600. Whilst there is no obligation for legal persons to maintain a bank account with the ASIF authorised institution, more than 90% do have such an account. The authorities indicated that BO information is therefore also available in a timely manner at the institution.

601. To date, the ASIF has requested basic/BO information from legal persons in the course of the inspection of one NPO (see under para. 593). There have been no further such requests by the ASIF. This is because there has not yet been an investigation case involving an NPO, voluntary organisation or other charitable legal person registered in the HS/VCS. The latter statement also applies to the LEAs.

Access to basic and BO information of legal arrangements

602. It is recalled that the laws of the HS/VCS do not provide for the creation of trusts or any other legal arrangement and the administration of foreign trusts by trustees in the HS/VCS can be virtually ruled out in practice (see Chapter 1). Moreover, the ASIF authorised institution does not maintain any business relationships with trusts.

603. Notwithstanding this, it should be noted that access by competent authorities to basic/BO information held by a professional trustee in relation to a foreign trust is legally ensured (AML/CFT law, Art. 46(b)). With regard to non-professional trustees and basic/BO information held by them, access to this information is possible through LEAs (Art. 166, CCP). These powers have never been used because administration of foreign trusts by trustees in the HS/VCS can be virtually ruled out in practice.

7.2.5. Effectiveness, proportionality and dissuasiveness of sanctions

604. NPOs are subject to administrative sanctions in case the requirement to register with the Governorate is breached. Violations of the obligations to maintain basic/BO information, to notify any changes to this information to the Governorate and to disclose basic/BO information to requesting authorities may also be sanctioned under the Law on NPOs. The administrative sanctions are ascertained by the SoS and imposed by the President of the Governorate. Whilst administrative sanctions have not been imposed by the Governorate on NPOs (as no opportunities have been identified by the authorities to apply sanctions), sanctions are available and considered effective in ensuring future compliance by the legal person and dissuasive of non-compliance by others.

605. With regard to voluntary organisations and other charitable legal persons, the obligations to register, to submit basic/BO information and changes thereof to the Governorate and to disclose basic/BO information to requesting authorities are based on the provisions of the AML/CFT law. If one of these obligations is breached, the President of the Governorate may impose administrative sanctions on the basis of the Law on General Norms on Administrative Sanctions. So far, no administrative sanctions have been imposed by the Governorate on voluntary organisations and other charitable legal persons as no opportunities have been identified by the authorities to apply sanctions. In this context, it is noted that a maximum fine of EUR 5 000 is not considered to be effective or dissuasive, especially as other charitable legal persons may manage larger volumes of assets.

606. The AT has considered the absence of application of sanctions. One explanation is that, as mentioned under sections 7.2.3 and 7.2.4 above, there has been just one inspection of a legal person and no investigations – so failures to comply with registration and information requirements have not been detected. Apart from that, compliance with the requirements is ensured in particular by a combination of the following measures: (i) obtaining prior approval by the SoS/Governorate for changes to members of corporate bodies; and (ii) six-monthly checks of the registers conducted by the Governorate.

Overall conclusions on IO.5

607. In the HS/VCS there are only a small number of legal persons. None are established to pursue private industrial or commercial purposes and they do not have shareholders or complex ownership structures. Accordingly, the opportunity for abuse of legal persons seen in many other jurisdictions is rather limited.

608. Notwithstanding this, there is significant on-going oversight of legal persons at different levels, including prior authorisation of appointments to the corporate bodies of legal persons, in order to ensure that activities are in line with the mission of the HS/VCS and the Catholic Church.

609. Whilst risk assessments have not yet been completed for all types of legal person, oversight measures have been applied by the HS/VCS authorities for many years and have contributed to the development of an understanding of ML/TF risk.

610. Set in this particular context, less weighting has been attached to shortcomings identified by the AT. **Therefore, the HS/VCS is rated as having a substantial level of effectiveness for IO.5.**

8. INTERNATIONAL COOPERATION

8.1. Key Findings and Recommended Actions

Key Findings

Immediate Outcome 2

a) There is a comprehensive legal framework to provide and request MLA in criminal matters. In the context of the HS/VCS, there is a good understanding of the importance of international cooperation. Italy is the most important counterpart, although cooperation with other jurisdictions has risen during the assessment period as well.

b) Incoming MLA requests are executed in due time and the AT noted no particular obstacles in this area. In the context of providing constructive international cooperation, the authorities will not only include the requested information, but also other relevant information gathered during the process of executing the request.

c) Despite the absence of a specific case management system to prioritise requests for international cooperation, this does not appear to impact on execution due to the small number of requests received and sent. The authorities categorise requests as "priority" or "not priority". In case of an ML/TF related request, the authorities have explained that it will automatically receive priority.

d) Outgoing MLA requests are being sent regularly. The number of outgoing MLA requests has increased over the past two years, in contrast to 2013 to 2017 when the number was low. There are several requests confirming that the HS/VCS closely cooperates with several jurisdictions. Difficulties in receiving a response to outgoing rogatory letters were reported by the HS/VCS only with reference to one country.

e) The FIU, the CdG and the ASIF proactively exchange information with equivalent authorities of foreign jurisdictions on the condition of reciprocity and on the basis of a MoU. The AT saw useful examples of such cooperation. However, the condition for a MoU may result in delays in cases where one is not in place. That said, the FIU as of 2020 proactively seeks to sign as many MoUs as possible. However, with reference to the ASIF, at the time of the on-site there were only eight MoUs in place, two of which provide for limited exchange of information.

Recommended Actions

Immediate Outcome 2

a) The authorities are recommended to proactively seek and explore different possibilities to obtain information in cases where the answer to their MLA request is not being provided for a long period of time, including through other forms of cooperation by LEAs.

b) The authorities should also take steps to amend legislation so as to exclude any possible negative impact of shortcomings identified under R.5 and on the effectiveness of international cooperation.

611. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40.

8.2. Immediate Outcome 2 (International Cooperation)

8.2.1. Providing constructive and timely MLA and extradition

612. The HS/VCS CCP sets out a comprehensive legal framework for MLA, which enables the authorities to provide the widest possible range of assistance in relation to investigations, prosecutions and related proceedings concerning ML, associated predicate offences and TF. Details about the legal and institutional framework, including the conditions under which information can be provided, are available under R.36-R40.

613. The AT received positive feedback from the global AML/CFT network (feedback was received from 11 jurisdictions) in relation to the quality and timeliness of assistance provided by the HS/VCS, however the examples are on occasional cases which is understandable.

614. The authorities have thorough understanding of the importance of international cooperation in the context of the HS/VCS which is evidenced by their proactivity in seeking and providing assistance. As noted under other chapters of this report the majority of the reported potential predicate offenses has been linked to international tax fraud and evasion (up until 2017), committed by foreign citizens in foreign jurisdictions. Hence, the HS/VCS adopted a clear policy to enhance international cooperation for the prevention and countering of tax fraud and evasion and has signed ad hoc agreements with Italy and the USA for the exchange of fiscal information.

Incoming MLA requests

615. The HS/VCS received 24 MLA requests in the period between 2013 and 2020. All requests but four were duly executed (see below). Overall, the AT did not identify any impediments concerning the timely execution of incoming MLA requests. The feedback received from the global network in general confirms the good quality of assistance. As seen in the table below, 19 of those requests related to ML. The SoS acts as the central authority for incoming MLA requests. The revision of MLA requests by the SoS is of a formalistic nature, aiming at understanding whether requests meet the required criteria. After the revision of requests, the SoS forwards them to the Tribunal or to the OPJ for execution. MLA requests on investigatory stage are executed by the OPJ, and by the Tribunal on the trial stage. The Tribunal sends requests to the OPJ for it to express an opinion and then decides accordingly. The CdG is involved in the process of the execution of MLA requests where the OPJ asks for further investigation.

Table 20: Number of incoming MLA requests broken down by nature of offence

YEAR	ML	OTHER OFFENCE
2020	3	1 Misappropriation 1 Embezzlement 1 Fraud
2019	1	1 (Fraud)
2018	0	0
2017	1	0
2016	2	1 (Tax evasion)
2015	2	0
2014	4	0
2013	6	0

616. The vast majority of requests is received from Italy, being the HS/VCS main counterpart for international cooperation. There is a small number of requests received from Switzerland, and the Slovak Republic. The OPJ highlighted the effectiveness of having close relations with the Swiss and Italian authorities in the recent years, which has facilitated the sending of requests as informal contact usually precedes a formal request.

Nature and timeliness of MLA requests

617. Acquisition of documents is the investigative act most frequently requested by foreign states in connection with the ML offence. Banking documents were required in 11 cases from 2013 to September 2020. In 2019, there was also one request on seizure of an account. On average, requests for ML-related MLA are processed within 1 to 4 months, depending on the nature of the request, the type of assistance requested and the complexity of the request. Overall, the timeliness of information exchange between 2013 and 2020 remains stable, which adds to the effectiveness of the system. It is noteworthy that during the said period only a small number of requests was received. According to the authorities, the significant increase observed on the average response in 2016, was a result of delay concerning a request for which a significant number of documents was required and another request for which there was an on-going investigation in the HS/VCS. As for the average time taken to execute not ML-related MLAs, usually it takes two weeks. The authorities explain the difference on average time taken to respond to MLA request in general and on ML-related MLA with complexity of investigations of ML-related cases.

Table 21: Timeliness of ML-related incoming MLA Requests

YEAR	Average time for the execution of requests (in days)
2020	12
2019	71
2018	No incoming requests
2017	No incoming requests
2016	255
2015	31
2014	23
2013	17

618. In the box below a case study is presented as a positive example of international cooperation as it proved to be beneficial for both HS/VCS and Italy.

BOX 17 – CASE STUDIES

Execution of MLA request – Mr P. case

Details on the Mr P. case be found under IO.7 (Box 9). As for the international cooperation aspect of the case it is important to note the following:

In 2017, the Italian authorities sent a rogatory letter requesting the HS/VCS authorities if the ASIF authorised institution had an account in the name of Mr P. Upon receipt of the letter, a request was sent by the FIU to the ASIF authorised institution. The ASIF authorised institution identified an account and conducted analysis showing that the financial flows were limited between the two

jurisdictions. The ASIF authorised institution provided the requested information to the FIU which later forwarded it to the OPJ. The HS/VCS authorities provided a response within 12 days.

Another rogatory letter was received in 2018, requesting the HS/VCS authorities to forward to the Italian authorities the amounts seized. A negative answer was provided as at the time there were on-going legal proceeding in the HS/VCS with regard to Mr P.

Based on the information provided by the OPJ, Mr P was convicted in Italy for fraudulent bankruptcy. Subsequently, Mr P was sent to trial in the HS/VCS and was convicted for self-laundering, including the confiscation of seized amounts. The sentence was appealed, and the Court confirmed the verdict on 13 November 2019.

Requests refused

619. The majority of assistance in connection with the identifying, freezing, seizing and confiscating assets occurs with Italy. Throughout the reporting period there were in total 3 incoming requests for seizure (1 request in 2014 and 2 requests in 2019), all from Italy. These requests were not executed as there were on-going investigations in the HS/VCS concerning the persons of reference in these requests. There was also one request on repatriation of assets in 2018 which was rejected (see Boxes 20 and 10). An explanation for all four requests was provided to the relevant foreign counterparts.

Prioritisation of MLA requests

620. Despite the absence of a specific case management system to prioritise requests for international cooperation, this does not appear to impact on the execution due to the small number of incoming and outgoing requests. The authorities categorise requests as "priority" or "not priority". In case of a ML/TF related request, the authorities explained that it will automatically receive priority. ML/TF requests involving higher volumes will receive priority over the ones involving lower volumes. This practice was applied throughout the review period and it was further supported by the March 2020 Decision of the President of the Tribunal that set it into writing and it was shared with the AT. Whilst this ordinance is mandatory for the judicial authorities, it is of an advisory nature inviting the OPJ and the CdG to give urgency and priority within their competence. Moreover, the Internal Procedure of the OPJ issued in January 2019 establishes that priority must be assigned in investigating activities and investigation of files concerning requests for judicial assistance in the context of international cooperation, in particular concerning matters of: a) ML and related predicate offenses; b) self-laundering and related predicate offenses; c) TF; d) illegal activities potentially aimed at financing international terrorism. Given the average timeframe taken to execute MLAs the AT is satisfied how the prioritisation is set up and the way it functions in practice.

TF-related MLA requests

621. During the review period, no incoming TF-related requests or requests for extradition were observed. With a view to the latter, dual criminality issues could arise in the context of extradition due to some potential problems with the financing of individual terrorists for legitimate purposes including financing of travel for providing of TF (please refer to R.5).

Other relevant information

622. The internal procedure of the OPJ issued in January 2019 provides that when executing MLA requests issues on which an investigation activity has already formally begun, in addition to what is

formally requested by the foreign authority, information can also be provided on further elements that do not affect the ongoing activities The competent authorities informed that they, however, have never come across with such information.

JIT

623. The HS/VCS authorities have never established or been requested to be part of a joint investigation team (JIT) with foreign jurisdictions. However, the authorities informed that there are currently parallel investigations going-on with their foreign counterparts (please refer to boxes 11 and 18 on LP case).

8.2.2. Seeking timely legal assistance to pursue domestic ML, associated predicates and TF cases with transnational elements

624. Based on the information provided during the on-site visit the AT is of view that authorities seek international cooperation in all cases with foreign element. The CCP does not pose any obstacles in effectively requesting information. MLA requests are being sent regularly by the HS/VCS. The number of outgoing MLA requests has increased over the past two years, comparing with the period between 2013 and 2017 where numbers are low.

625. The SoS acts as the central authority for outgoing MLA requests. The OPJ or the Tribunal are responsible for preparing MLA requests which are then passed to the SoS. A formal review is carried out by the SoS aiming at understanding whether the request meets the required criteria. Once the review is carried out, the SoS sends the request to the relevant foreign counterparts through diplomatic channels. The authorities have not encountered any instances where the SoS had to go back with a request to the OPJ or the Tribunal, which proves that the process is well organised and there is a clear understanding of roles' distribution.

Table 22: Outgoing MLA Requests

YEAR	ML	Other Offences
2020	0	2
2019	15	8
2018	4	1
2017	0	0
2016	1	0
2015	0	2
2014	0	0
2013	0	1

626. The majority of outgoing MLA requests is associated with fraud and tax evasion, which seems to be consistent with the GRA findings. As happens with incoming MLA requests, Italy and Switzerland are the main recipients of the HS/VCS outgoing requests. As a result, close relations with the authorities of both countries have been developed in the recent years which adds to the effectiveness of the system in place. Requests were also sent to other jurisdictions, such as Slovenia, Jersey, UK, Germany etc. When on-site the AT was shown with an example of extensive international cooperation related to an ongoing investigation (Please see the box below concerning the LP case). As regards the spike of outgoing MLAs observed in 2019 (table above), the authorities explained that

this was triggered by the following complex cases: 3 requests related to L,C and S case (See Box 10), 4 requests related to the M case (See Box 14), 6 requests related to the P case (See Box 17), and 2 requests concerning the LP case (See Boxes 11 and 18). A number of these requests, although officially referring to the ML offence, also aimed at freezing of proceeds. The results achieved in this area (freezing of proceeds located abroad) is also discussed under IO.8.

Timeliness of outgoing MLA requests

627. Although most HS/VCS outgoing MLA requests are duly executed by its partners, delays are observed with a view to some requests (see section 3.3.1 under core issue 7.1). The authorities informed that no request was refused, whilst on 3 occasions a request was executed with unsuccessful outcome as the information received did not provide enough ground to identify the accounts of interest. All three refer to the same case, person and jurisdiction. A justification was sought by the HS/VCS authorities, which were informed that the information contained in their requests is not sufficient enough to track some banking accounts. Difficulties were reported with regard to one specific country where requests received no formal acknowledgement. Particular attention has been paid by the HS/VCS authorities aiming at understanding the source of this issue and find alternative ways to establish communication.

Subsequent finding triggered by an outgoing MLA

628. There is an on-going case in which it was possible to identify the financial flows that were the object of the ML activities through the financial information obtained from the Swiss authorities via an MLA. The AT was provided also with information on a case on predicate offence, which is described in the box below.

BOX 18

Case study 1 - International cooperation on LP case - ongoing case

Details on the London property case can be found under IO.7.

As for international cooperation, activities began in the context of intelligence with the Italian Police Forces and at the same time the first MLA was sent to Italy. Elements indicating the involvement of foreign jurisdictions (in addition to the Italian one) were identified after which MLAs were sent to Switzerland, UK and Jersey.

Following the MLA, cooperation was established between the CdG and the NCA of the UK. In addition, the FIU was involved in obtaining intelligence from other FIUs. The first results came from the MLA relating to the acquisition of financial elements of the parties involved.

Two officers of the GdF of Italy specialised in the analysis of assets were included in the team to carry out a joint cooperation. Cooperation with the Italian Police Force is constant and continues until today. In the course of investigation, a request for search and seizure of a Swiss citizen residing in Switzerland originated from the CdG. Further investigations are carried out on the accused and suspected. From the evidence acquired, an arrest warrant for one person was issued who was then arrested (crimes ascribed to ML, fraud, aggravated fraud, extortion).

The results of the investigative activities carried out with the arrested subject led to the opening of further avenues of investigation, also reinforcing the investigative hypotheses already in place.

The information acquired from the testimonies led to a broadening of the investigative spectrum. The police forces of the USA and the Dominican Republic were involved in the acquisition of information for intelligence purposes. The case is still open and international cooperation continues.

Case study 2 - Outgoing MLA request – ongoing case

Details on the MC case can be found under IO.7. As for the international cooperation aspect of the case it is important to note the following:

As part of the OPJ's investigation, a MLA request was sent to Italy, aiming at finding out about the existence of accounts or other banking relationships where the proceeds could have been deposited. The Italian authorities provided information on a whole series of accounts opened with Italian banks, both in the name of the entity and its director.

Thanks to this collaboration, the OPJ was able to identify the financial flows that proved that the entity's unauthorised activity abroad.

The authorities are currently in the process of filing a charge of embezzlement.

Seizure and repatriation

629. Throughout the reporting period, the HS/VCS authorities issued seven outgoing requests on seizure and one on repatriation of assets. It is worth mentioning that the new confiscation measure provided for under Decree 277 of 10/12/18, based on suspicion, has been applied once in international cooperation context (see section 3.3.5 and Box 10 (L, C and S case). As regards incoming request concerning repatriation of assets, there is only received throughout the review period. The request was refused (see Mr. P case, Box 9). The statistics show a positive trend on seizure and asset recovery since 2017, which is not only reflected in the number of outgoing requests, but also in the value of sums (see Table 16 under section 3.4.2).

Table 23: Outgoing requests on seizure and repatriation

Year	Outgoing Requests on Seizure	Destination	Outgoing Requests on Repatriation of Assets	Destination
2020	5	Slovenia Switzerland Italy Jersey UK	0	
2019	1	Switzerland	0	
2018	0		1	Switzerland
2017	1	Switzerland	0	
2016	0		0	
2015	0		0	
2014	0		0	

630. During the review period, no outgoing TF-related requests or requests for extradition were observed.

8.2.3. Seeking and providing other forms of international cooperation for AML/CFT purposes

631. Other forms of international cooperation are provided by the ASIF (both as a supervisory authority and FIU) and on law enforcement matters by the CdG.

Corp of Gendarmerie

632. The CdG closely cooperates with Italian LEAs and there are successful cases of information exchange between those authorities. MoUs were signed between the CdG and 3 counterparts of 2 jurisdictions (Colombia: Colombian National Police; Italy: Corps of Carabinieri and GdiF). The CdG is also a member of INTERPOL, which is widely used for information exchange with foreign LEAs. According to established practice, the CdG also maintains relations with the Police Liaison Offices present at the Foreign Diplomatic Representations in Italy. By virtue of this consolidated collaboration the crimes relating to ML are also dealt with.

Table 24: Number of Incoming and Outgoing INTERPOL and Liaison Officer Requests

Year	Incoming INTERPOL	Outgoing INTERPOL	Incoming Liaison Officer	Outgoing Liaison Officer
2020	0	2	0	2
2019	0	12	0	3
2018	0	4	0	1
2017	0	0	0	3
2016	1	1	0	2
2015	0	0	0	0
2014	0	0	0	0

BOX 19 – CASE STUDY - Incoming request from foreign LEAs

On 22 November 2016, the CdG received an informal communication from the Maltese INTERPOL office concerning a Note of the Maltese FIU describing a case of suspected ML by Mr AB in collaboration with Mr PG.

This communication was sent to the OPJ and it was supplemented with a request to extend a freezing of funds, already carried out by the Maltese authorities, in order to allow for the continuation of the investigation.

Upon receipt of the information, the OPJ sent a request to the GdiF in order to investigate the potential connections with tax evasion ascribable to the subjects under investigation.

The OPJ found that all transactions took place between Italy and Malta. In view of this development, the HS/VCS competent authorities informed their Maltese counterparts that no link was identified with the HS/VCS financial sector and established communication between the Maltese and the Italian authorities. Moreover, in agreement with the Italian authorities, the CdG agreed to support their work.

In the end, Mr AB settled his tax irregularities with the Italian authorities through a "Voluntary Disclosure". Therefore, the absence of elements of interest was communicated to the OPJ, which in turn, considering the elements in its possession, requested the Judge to archive the case.

633. The channel of international outgoing requests through the CdG is activated mainly when requested by the OPJ. Statistics provided show effective international cooperation within the LEAs in recent years. More attention should be paid to requests which were not answered. The authorities should adopt a proactive approach to seeking feedback on pending requests by non-formal channels. There were no cases of refusing the request both from the side of HS/VCS and to the response to their requests.

Table 25: CdG incoming and outgoing requests

	2013	2014	2015	2016	2017	2018	2019	2020
Incoming requests	0	0	1	1	0	1	27	6
Outgoing requests	0	0	2	4	0	10	66	6

BOX 20 – CASE STUDY - Other forms of cooperation with foreign LEAs

Further details on the WS and CS case can be found under IO.7. As for the international cooperation aspect of the case it is important to note the following:

In 2018 the ECO-FIN Unit was delegated by the OPJ to investigate a case involving an employee of the HS/VCS, a natural person with no apparent connection to the HS/VCS, and a legal person under Italian law contracted to provide various services and supplies of goods to the Vatican Printing House. By virtue of the agreement between the Italian GdiF and the CdG, the competent Department of the GdiF was activated, asking for support and cooperation in order to ascertain the predicate offense of tax evasion and excerpt of the invoice issued in Italy for an Italian company. Based on a tax audit performed by the GdiF in relation to the invoices, it was established that the company was concealing the proceeds of the commercial activity carried out in the HS/VCS, in an account in the ASIF authorised institution owned by a dependent family member of the HS/VCS employee.

The investigations highlighted that the two natural persons were brothers and that the one who was employee of the HS/VCS and who held a current account with the ASIF authorised institution decided to facilitate the business activity of his brother, who was the sole owner of the legal person, of an Italian company, in order to collect the payments for the services that the company provided to the Vatican Printing House from 2010 to 2014.

This facilitation resulted in the handling of a total of EUR 463 944 during the period indicated (2010 - 2014). The services provided by supplier company to the Vatican Printing House were paid via an internal transfer between two current accounts at the ASIF authorised institution. Regular cash withdrawals were made by the employee's brother thanks to a "delegation to operate".

The External Relations Office of the CdG, through the INTERPOL channels and in particular the GdiF, sent a request for verification of the registration of the invoices issued for the services rendered to the Vatican Printing House. As a result, several anomalies were identified related to the conservation

of the accounting records and in the taxation of the invoices relating to services provided to the HS/VCS.

At the end of the inspection activity, the GdiF was able to confirm the crime of tax evasion and the write-off of invoices for the year 2014 only, whilst other years being time barred.

Ultimately, thanks to the evidence acquired, following the transmission of the documents to the Judicial Authority and the subsequent indictment ordered by the it, an indictment was confirmed for the crimes of self-laundering and ML for the persons under investigation.

The trial ended in October 2019, with a sentence of 3 years' imprisonment, payment of court costs and a confiscation order of EUR 44 000 for the brother of the employee and an acquittal for the employee, as he was found to be unrelated to the facts.

Financial Intelligence Unit

634. The ASIF, in its capacity as financial intelligence unit, cooperates and exchanges information with its foreign counterparts. According to the provisions of Art. 69 (b) of the AML/CFT law, the exchange of information with equivalent authorities of foreign jurisdictions takes place on the condition of reciprocity and on the basis of MoUs. In this regard, the FIU has in place MoUs with 62 jurisdictions. That said, the AT is of the view this condition may result in delays in cases where one is not in place. The FIU explained that when it comes to signing a MoU on its side it responds as quickly as possible. The FIU also presented an example of a recently signed MoU within the timeframe of two weeks. However, this is not always the case. The AT is of the view that this is particularly relevant for the period before 2020, given the institutional memory loss identified under IO.6.

635. According to the ASIF's MoUs (Art. 16), in the section of Data Protection and Confidentiality, "exchange of information shall be used only for the purpose for which the information is sought or provided. Any dissemination of the information to other authorities or third parties, or any use of this information for administrative, investigative, prosecutorial or judicial purposes, beyond those originally approved, shall be subject to prior authorisation by the requested authority".

ESW suspension

636. The FIU has been a member of the Egmont Group of Financial Intelligence Units (hereinafter Egmont Group) since 2013 and exchanges regularly information with its counterparts via the Egmont Secure Web (ESW). As regards the FIU's two-month (November – December 2019) suspension from the ESW, its impact on the FIU's overall capacity for international cooperation appeared to be limited. The FIU mentioned that, during that period, it sent communications through alternative means only to the Italian FIU. The Italian FIU provided information to all requests received during the suspension period - through protected channels - as soon as the connection with the ESW was re-established. As for communication with other foreign FIUs, it immediately reached the prior suspension levels. Following the lifting of the suspension, the ASIF signed a number of MoUs with its foreign counterparts.

637. A MoU was also signed between the FIU and the OPJ aiming at ensuring consistency of the search and seizure procedures of the OPJ with the Egmont Group Principles for Information Exchange.

FIU to FIU cooperation

638. The FIU regularly files requests for information to its international counterparts. The FIU Italy is the main counterpart of the HS/VCS FIU regarding both requests and spontaneous disseminations. Figures show an upward trend in relation to outgoing requests. The statistics also show a significant increase of requests since 2016, which can be attributed not only to the increased level of cooperation attained by the ASIF over the years with its foreign counterparts, but also the increase in the number of MoUs signed with its foreign counterparts in 2017. Since 2015, the FIU has also focused its attention on providing spontaneous disseminations. When identifying useful information stemming from SARs' analyses the FIU sends spontaneous disseminations. A successful example of an outgoing spontaneous dissemination that led to the conviction of a person in a foreign jurisdiction was provided during on-site. (C&G case, see IO.6.)

639. As for disseminations from foreign counterparts, they have been assessed to be very useful. On that note, the authorities provided an example of a significant on-going case triggered by a spontaneous dissemination.

Feedback

640. With regard to incoming requests for information, the feedback received from the global network confirms in general that co-operation with the ASIF was effective resulting into quality assistance. The authorities explained that all incoming requests were duly responded. It is not a regular practice to request feedback from foreign counterparts with regard to incoming requests. The following table 2provides statistics on exchange of information with 52 different foreign counterparts.

Table 26: FIU to FIU incoming and outgoing requests, including spontaneous disseminations

	2014*	2015	2016	2017	2018	2019	2020
Number of requests received	5	3	13	9	7	11	**11**
Spontaneous disseminations received	4	6	1	3	3	10	**8**
Number of requests sent	6	13	36	41	43	55	**46**
Spontaneous disseminations sent	**1**	**49**	**36**	**6**	**22**	**51**	**18**

** Approximate figures*

FIU prioritisation and responsiveness

641. With regard to the prioritisation system in place, the FIU explained that incoming requests for information are processed in the same way as SARs. On average requests are executed within 20 days. The same average applies to outgoing requests. The FIU has a three-week mark in following-up on its requests.

Table 27: FIU responsiveness (in days)

	2014	2015	2016	2017	2018	2019	2020
Average time	18	17	15	15	12	20	20*

** Timeliness impacted by the COVID-19.*

642. Given the significant increase in the number of incoming and outgoing requests in the past two years, including the current FIU resources (two analysts tasked with processing international cooperation requests among other tasks), the AT is of the view that the authorities would benefit from additional resources.

LEA to LEA and FIU to FIU cooperation

643. Another example of other forms of international cooperation which includes both LEA to LEA and FIU to FIU cooperation is presented in the box below.

BOX 21 – CASE STUDY (Fuengirola)

Other forms of cooperation with foreign LEAs and foreign FIUs

In 2017, following information received from a foreign FI the FIU uncovered that the BO of the foreign company and the alleged foreign NPO referenced in a SAR were foreign nationals who were fraudulently using the name of a FI based in the HS/VCS in order to obtain donations from unsuspecting donors. The FIU send a spontaneous dissemination to the CdG, which activated the channels of collaboration with the Spanish police. At the same time, the FIU requested information from the ASIF authorised institution about the subjects, receiving negative feedback.

In 2018 the Spanish police succeeded in prosecuting the aforementioned criminal organisation with the arrest of four people, three of whom were Spanish citizens and one Colombian, by seizing a firearm, large capacity cars and a luxury boat, as well as large amount of cash and bars of pure gold and other materials. After the arrest, a spontaneous communication to FIU Spain was made by the HS/VCS FIU.

Supervision

644. The ASIF in its capacity as AML/CFT supervisor, cooperates and exchanges information with relevant domestic authorities and foreign counterparts. Pursuant to Art. 20(3) of ASIF Regulation No. 1 (prudential matters), the ASIF assesses the competence and honourability requirements of the candidates for the senior management positions of the supervised entities. In light of this, the ASIF contacts the foreign supervisory authorities to receive information which may advise against the potential appointment of candidates. This information is intended to verify, inter alia: positions held, potential conflicts of interest, absence of criminal convictions or severe sanctions. The authorities informed that information is received on average within 20 days. A three-week follow-up mark of requests is applicable.

Table 28: F&P Requests

Type	2015	2016	2017	2018	2019	2020
Outgoing Requests	9	10	10	12	13	0
Incoming Requests	0	0	0	0	0	1

ASIF Supervision MoUs

645. According to the provisions of the AML/CFT law (Art. 69 (b)), the exchange of information with foreign authorities takes place on the condition of reciprocity and on the basis of a MoU. In this

regard, the ASIF has signed MoUs with 8 jurisdictions: United States, Luxemburg, Germany, Brazil, Poland, Italy, Malta and Panama.

ASIF supervision requests

646. Since 2015, the ASIF has received ten requests from its foreign counterparts concerning financial information and other identification data. All requests were duly executed within a timeframe ranging from 5 to 20 days, and on average 10 days. Overall, the timeliness depends on the extent of the number of requested documents and the type of information required by foreign supervisory authorities. The authorities also explained that upon receipt of a requests the ASIF immediately sends an acknowledgement of receipt informing its foreign counterpart that the request is being processed. As for incoming F&P requests, the authorities informed that on average respond within the said timeframe.

Table 29: ASIF incoming and Outgoing requests

Type	2015	2016	2017	2018	2019	2020
Incoming	2	0	3	2	0	1
Outgoing	10	11	11	13	14	2
Spontaneous disseminations	2	0	4	4	2	2

647. Overall, requests for information are exchanged mainly to check the competence and integrity requirements of candidates for senior management or management of the supervised entity and of the central entities of the HS/VCS.

648. It is highlighted, that in the reporting period the ASIF has not denied the provision of information.

8.2.4. International exchange of basic and beneficial ownership information of legal persons and arrangements

649. Currently there are 52 legal persons registered in the HS/VCS. None is established to pursue private, industrial or commercial purposes and all of them ultimately serve the mission of the HS, the VCS and the Catholic Church (see IO.5).

650. Direct access to basic and BO information kept in the four registers kept by the Governorate is ensured for competent authorities (i.e. the SoS, the ASIF, the Office of the Auditor General, the SfE, the CdG and the ASIF authorised institution).

Requests on basic/BO information

651. No request on basic/BO information related to the HS/VCS legal persons has been received to date.

652. The HS/VCS authorities have requested such information from their foreign counterparts on a number of occasions, e.g. in the LP case, the FIU sent requests for information to 9 different FIUs seeking for BO information concerning a number of entities. Whilst there are no exact figures on BO related MLA or spontaneous requests to foreign jurisdictions (the FIU does not keep statistics on such requests - the table below presents statistics on such requests made by the ASIF Supervision department only) the AT is of the view that the authorities have been proactive in seeking such assistance in the last couple of years.

Table 30: Basic/BO Information Outgoing Requests

	2015	2016	2017	2018	2019	2020
Number	1	1	0	0	1	2

653. The SoS is the competent authority responsible for exchanging information on NPOs' functioning, mission and activities. In case of an incoming request, this will be executed through diplomatic channels (Law of NPOs, Art. 10 (I, II)). There were no requests received by the SoS on requesting information on NPOs.

Overall conclusion on IO.2

654. There is a comprehensive legal framework to provide and request MLA) in criminal matters. In the context of the HS/VCS, there is a good understanding of the importance of international cooperation. Incoming MLA requests are executed in due time and the AT noted no particular obstacles in this area. Outgoing MLA requests are being sent regularly. The number of outgoing MLA requests has increased over the past two years, in contrast to 2013 to 2017 when the number was low. Difficulties in receiving a response to outgoing rogatory letters were reported by the HS/VCS only with reference to one country. Given the significant increase in the number of incoming and outgoing requests in the past two years the authorities would benefit from additional resources.

655. **The HS/VCS is rated as having a substantial level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations in numerical order. It does not include descriptive text on the country situation or risks and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).

Where both the FATF requirements and national laws or regulations remain the same, this report refers to analysis conducted as part of the previous MER in 2012. This report is available from MONEYVAL's website.

Recommendation 1 – Assessing risks and applying a risk-based approach

This is a new Recommendation (R.) which was not assessed in the 2012 MER of the HS/VCS.

Criterion 1.1 – The Holy See (including the Vatican City State) (HS/VCS) has identified and assessed money laundering (ML) and terrorist financing (TF) risks. It produced a national risk assessment report in the form of the "General Risk Assessment on the Prevention of Money Laundering and the Financing of Terrorism" (GRA). The first GRA was adopted by the Financial Security Committee (FSC) in 2017 and updated each year since. In September 2020, the update adopted analyses developments from January to September 2020 (mostly actions taken by authorities). The assessment was carried out based on the World Bank (WB) methodology ("National Money Laundering and Terrorist Financing Risk Assessment Tool"). WB experts were involved in the process, although their contribution was limited to providing technical support for proper implementation of the methodology. The HS/VCS authorities analysed threats and vulnerabilities (as per Modules 1 and 2 of the WB Methodology) as well as the financial sector vulnerabilities (Module 3) and carried out the TF risk assessment (Module 8).

The GRA is a reasonable assessment which considers the cross-border threat the HS/VCS is exposed to, including also an analysis of services that may be misused for ML/TF purposes. However, it does not articulate residual risks (including likelihood and consequences), which constitutes a shortcoming. A risk assessment of non-profit organisations (NPOs) (particularly relevant to the assessment of TF risk) has been completed and one for public authorities (considered by the AT to be material) is in train.

Not all domestic risks are addressed within the GRA. Threats highlighted by cases covered in the media concerning the potential abuse of the HS/VCS system by mid-level and senior figures (insiders) for personal or other benefits (embezzlement, fraud, and abuse of office as per the Criminal Code (CC)) have not been articulated. This raises some concerns as to the degree to which these matters are formally recognised and acknowledged by all authorities. Also, the limited resources that had been available to investigate and prosecute cases during the period under review had not been identified as a vulnerability, except to a limited extent. Whilst consideration of these areas has already led to positive actions, the process and mechanism followed, and information sources used have not been explained.

Criterion 1.2 – The HS/VCS has established the FSC[44] to coordinate actions to assess risks. Inter alia, it has a duty to: (i) coordinate the identification and evaluation of ML/TF risks by the competent authorities; and (ii) establish the criteria and the methods for the elaboration of the general assessment of risks of ML/TF as well as to analyse threats, vulnerabilities and propose mitigating measures to the reporting subjects (AML/CFT law, Art. 9(1) and (2)). Relevant also is the *Motu Proprio* by Supreme Pontiff Francis of 8 August 2013 (Art. 2), as amended, about the functions of the FSC which, inter alia, requires the FSC to: (i) establish criteria and methods for the preparation of the general assessment of the following risks - ML, TF and financing of the proliferation of weapons of mass destruction (PF); and (ii) approve the GRA and its regular updating.

The Supervisory and Financial Information Authority (ASIF) is also responsible for, inter alia: (i) providing competent authorities with the data, information and analyses needed for them to carry out their own risk assessments; and (ii) informing competent authorities of the risks and vulnerabilities of AML/CFT frameworks in other states (AML/CFT law).

Criterion 1.3 – The FSC has a duty to regularly update the GRA (AML/CFT law, Art. 9(1) and FSC Statute, Art. 2). As set out under c.1.1, the first GRA was adopted in 2017 and updated in 2018 and 2019. In September 2020, an update was also adopted which analyses developments from January to September 2020 (mostly actions taken by authorities).

Criterion 1.4 – The FSC is responsible for coordinating the GRA; it comprises the relevant authorities (see c2.2). The AML/CFT law (Art. 8(6)) states that the competent authorities have a duty to actively cooperate and exchange AML/CFT information. The ASIF has a duty to communicate the results of the GRA to obliged subjects (AML/CFT law, Art. 9(2)b)). In the context of the HS/VCS institutional framework, reporting subjects also include all relevant authorities (AML/CFT law, Art. 1(23)), financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs). There are no self-regulatory bodies in the HS/VCS.

Criterion 1.5 – Policies, procedures, measures and controls must be applied consistently with risks present in the HS/VCS (AML/CFT law (Art. 7(2)). The FSC must: (i) evaluate the adequacy of the objectives and priorities, and identify the measures required by, competent authorities for the management of risk (AML/CFT law, Art. 9(2)(a)(i)); and (ii) evaluate the efficacy of the AML/CFT system (also PF), analysing the adequacy of the objectives, priorities and measures needed on the part of the competent authorities for risk management and mitigation, including the allocation of available human and material resources (AML/CFT law, Art. 9(2)).

Generally, resources have been allocated and measures implemented taking account of risk – under the oversight of the FSC. In line with risk, the authorities have introduced a number of reforms to promote greater transparency (explained in Chapter 1) and taken action to address vulnerabilities identified in the original GRA and subsequent updates (see IO.1). As noted under IO.1 and IO.7, whilst

[44] FSC is composed of: the Assessor for General Affairs of the SoS, the Under-Secretary for Relations with States, the Secretary General of the Governorate, the General Secretary of the SfE, the Promoter of Justice at the Court of the VCS, one of the Adjunct Auditor of the Office of the Auditor General, the Director of the Financial Intelligence Authority, the Director of the Security Services and Civil Protection of the Governorate and the Commander of the Pontifical Swiss Guard.

the investigative and prosecutorial work of the Office of the Promoter of Justice (OPJ) has been aligned with risk, it has had limited resources during the period under review.

Criterion 1.6 – The ASIF may exclude from the scope of preventive measures obliged subjects who carry out a financial activity on an occasional basis or limited scale where there is a low ML/TF risk, provided that specified conditions are met (AML/CFT law, Art. 3(1)). These conditions are as follows: (i) it is documented that the main activity of the subject is not a financial activity carried out professionally, nor amongst the DNFBP activities established under Art. 2(a bis) to (e), and not currency remittance; and (ii) it is documented that the subject's activity of a financial nature is ancillary and directly related to the main activity, is carried out with the customers serviced in the main activity and not otherwise with the general public, total revenue from the activity is limited, and the amount of each operation or transaction is limited (AML/CFT law, Art. 3(2)). The decision of the ASIF to exclude a subject from scope must be "motivated" (term not defined), given in writing and withdrawn if the circumstances which justified it have changed (AML/CFT law, Art. 3 (4)).

Using this power, by Ordinance of the ASIF, the Vatican Post Office has not been designated as an obliged subject. The full rationale for this is set out in the Ordinance, which explains why, despite the exemption, it would be difficult to use its money transmission services for ML/TF (including low transactional volumes and amounts, nature of transactions, limitations on use of the service and limits on amounts). In the case of "postal bills" there is an arrangement with the Italian Post Office to transfer funds to Italy up to a maximum amount of EUR 999.99, but it appears that no restriction is placed on the beneficiary of such transfers (though transfers are generally to utility companies). Accordingly, it is not entirely clear that such transfers occur in strictly limited circumstances. Whilst the Vatican Post Office had terminated the provision of remittance services in September 2020 (and so was not using the exemption at the time of the on-site visit), the Ordinance has not been withdrawn. There are no other exemptions.

Criterion 1.7 – (a) Obliged subjects are required to carry out enhanced customer due diligence (CDD) in the following cases: (i) where the customer is not physically present; (ii) correspondent relationships; (iii) politically exposed persons (PEPs) and their family members and close associates; and (iv) complex or unusual activities (AML/CFT law, Art, 25(4)). They are also required to carry out enhanced CDD (EDD) in any case where the ASIF assesses ML/TF risk as high (rather than higher – in line with the standard) (Art. 25(1) and (3)).

(b) Obliged subjects are also required to carry out CDD in a manner proportionate to the risks, taking into account the GRA of the HS/VCS and the enterprise risk assessment required under Art. 10 – hereafter referred to as a business risk assessment (BRA)(AML/CFT law, Art. 22(1) and (2)).

***Criterion 1.8* –** The ASIF may, based on risk assessments, identify by regulation, sectors and typologies of relationship, product, service, operation, transaction and channels of distribution which are low (rather than lower) risk, and authorise the adoption by obliged subjects of simplified measures in relation to these (AML/CFT law, Art. 13). This must be in line with the results of the GRA and fundamental requirements established by the legal framework. However, there is no explicit prohibition on allowing simplified measures where the FATF Recommendations identify higher risk activities for which enhanced or specific measures are required (as specified in the footnote to this criterion in the Methodology).

The provisions above are complemented by ASIF Regulation No. 4 (CDD) (Art. 4, Art. 21 and Art. 22 and Annex 2). Annex 2 articulates the cases in which simplified due diligence may be carried out (which may not be aligned to the risk profile of the HS/VCS). The authorities advised that the Annex

2 was a result of a specific risk assessment carried out by the ASIF and is to be updated in line with the results of the next update of the GRA.

Criterion 1.9 – The ASIF must monitor the effectiveness of the AML/CFT system (AML/CFT law, Art. 9.2(b)). It is required to carry out the function of supervision and regulation (AML/CFT law, Art. 8.4(a) and ASIF Statute, Art. 2(1)), and is the central authority for supervision and regulation for AML/CFT (AML/CFT law, Art. 46) and, to this end, will supervise and verify the fulfilment by obliged subjects of their obligations, including those under this criterion. The following shortcomings identified under R.26 have an impact on compliance with this criterion by FIs: (i) it has not been demonstrated that regulation and supervision is in line with the Basel Committee on Banking Supervision (BCBS) and International Organisation of Securities Commissions (IOSCO) Core Principles; and (ii) not all major events and developments trigger a review of the ML/TF risk profile of a FI.

Criterion 1.10 – See c.1.7 above.

(a) Obliged subjects are required to assess and document the risk that they are exposed to as a business (AML/CFT law, Art. 10(1) and (2)) – referred to hereafter as a business risk assessment (BRA). These risk assessments need, as a minimum, to take into account: (i) categories of customers; (ii) state or geographical areas in which they operate or to which they have exposure; (iii) typologies of relationships; (iv) level of assets deposited and the size of transactions undertaken; (v) product and services offered; and (vi) operations, transactions and channels of distribution (Art. 10 (1 bis)). A separate requirement is placed on obliged subjects to assess the risk separately for each customer (ASIF Regulation No. 4 (CDD), Chapter 4, Section 4, Art. 13 ff.).

(b) In undertaking the risk identification and evaluation steps at Art. 10(1) and 10 (1 bis), obliged subjects must pay particular attention to relationships, operations and transactions with natural or legal persons, including FIs, from, or in, states at high risk or that do not apply, or that apply insufficiently, international AML/CFT standards (AML/CFT law, Art. 10(3)). In addition, particular attention must be paid to any risk of ML or TF connected to products or operations which could favour anonymity. Whilst the authorities advised that all the relevant risk factors are to be considered and that ML/TF risks as a whole must be understood by the reporting subjects, there is no provision in the law which confirms this (Art. 10 (1 bis), when listing the factors that must be considered uses the word "inter alia" but still remains silent on the need for all factors to be taken into account). However, a copy of the BRA must be sent to the ASIF, which can call for the assessment to be reviewed where any areas are missing. Accordingly, this shortcoming is only minor.

(c) Obliged subjects should periodically update their BRA (AML/CFT law, Art. 10(1)). Whilst the law does not specify what 'periodically' means in practice, the authorities advised that FIs should update their risk assessment annually and each time the GRA update is available. In addition, and in line with the risk-based approach (RBA), each reporting subject should revise its mitigation measures when changes in relevant factors occur.

(d) Obliged subjects must document their risk assessment and send it to the ASIF, which may require it to be reviewed (AML/CFT law, Art. 10 (2)). The ASIF then shares the main conclusions of the BRA within the FSC.

Criterion 1.11 –

(a) Based on the GRA, obliged subjects must adopt policies, procedures and controls designed to manage and mitigate the identified risks of ML and TF (AML/CFT law, Art. 11(1)). Policies,

procedures, measures and controls adopted under Art. 11(1) must be approved by senior management (AML/CFT law, Art. 11(2)).

(b) Art. 11(1)(b) of the law states that the implementation of controls must be monitored and enhanced where necessary.

(c) Under Art. 11(1)(c) of the law, the reporting subjects should adopt enhanced measures to manage and mitigate risks, where higher risks are identified.

Criterion 1.12 – In addition to the HS/VCS specifying specific cases where simplified CDD may be performed (see c.1.8), the ASIF (which supervises in accordance with c.1.9) may allow a particular obliged subject to carry out simplified CDD in a case where risk is low (rather than lower), taking into account relevant risk factors, e.g. category or country or geographical area of the counterpart, type of relationship, product or service, operation or transaction, including channels of distribution (AML/CFT law, Art. 24(1)). Where the ASIF does so, then it must specify how CDD may be simplified, taking account of the results of the GRA and the entity's BRA (conducted in line with c.1.10) (AML/CFT law, Art. 24(2)). There is no explicit requirement for the application of simplified CDD measures to be conditional upon the application of risk mitigation measures (c.1.11).

Simplified due diligence cannot be applied when there is a suspicion or a high risk of ML or TF (AML/CFT law, Art. 13(3)).

Weighting and Conclusion

The main elements are in place for assessing risks and applying a RBA. National (general) risk assessments have been undertaken since 2016 and reports updated annually. However, the GRA process cannot be fully completed without a comprehensive assessment and articulation of the risks presented by insiders and the risks in relation to public authorities to support actions already taken to improve transparency generally in the HS/VCS (explained in Chapter 1) and assessment work that has been undertaken in relation to public authorities in 2016 and more recently. In addition, a number of shortcomings have been identified in provisions dealing with simplified and enhanced CDD measures (c.1.8 and c.1.12). Whilst the exemption applied to money or value transfer services (MVTS) is not clearly within the parameters set in c.1.6, this activity is not material. **R.1 is rated LC.**

Recommendation 2 - National Cooperation and Coordination

In its 2012 MER, R.31 was rated LC. The main deficiency was lack of a formal mechanism for co-operation and co-ordination or MOUs that have been established or signed. The report also noted that the amendments to the AML/CFT legislation assigned the coordination role to the Secretariat of State (SoS), the impact of which remained to be seen, due to the novelty of the provision.

Criterion 2.1 – Until the start of 2020, action plans were specified in various iterations of the GRA. These have now been complemented by stand-alone actions plans for key authorities (FSC itself, the ASIF, the Governorate, the Corps of the Gendarmerie (CdG), the Office of the Auditor General, the OPJ, the Tribunal, the Secretariat for the Economy (SfE), the Corps of the Pontifical Swiss Guard and the SoS) and an overall strategic plan. All of these plans are informed by the GRA and constitute national AML/CFT policies and plans. They are regularly reviewed by FSC, most recently in September 2020.

Criterion 2.2 – The SoS decides on AML/CFT policies and strategies and, more generally, oversees the adhesion and implementation of treaties and international agreements and participates in international institutions and bodies, including those responsible for AML/CFT (AML/CFT law, Art. 8(1)).

It is supported by the FSC which, inter alia, is required to: (i) coordinate the adoption and updating of AML/CFT policies and procedures; and (ii) evaluate the adequacy of the objectives and priorities of the HS/VCS and identify the measures required by the competent authorities for the management and mitigation of risks, including the adequacy of the human and material resources available (AML/CFT law, Art. 9(1) and (2)). Relevant also is the Motu Proprio by Supreme Pontiff of 8 August 2013 (Art. 2), as amended by Rescriptum ex Audentia SS.MI of 4 April 2016, about the functions of the FSC. Inter alia, this requires the committee to: (i) coordinate the adoption and regular updating of policies and procedures for ML, TF and PF; and (ii) adopt internal procedures and guidelines.

Criterion 2.3 – Meetings of members of the FSC – routinely held for several years - enable policy makers, the FIU, CdG, the ASIF and other relevant competent authorities to cooperate, and where appropriate, coordinate and exchange information domestically concerning the development and implementation of AML/CFT policies and activities. Regular trilateral meetings at an operational level are held between the OPJ, CdG and the ASIF to examine issues of common interest, share information about cases under investigation and provide feedback.

These arrangements for cooperation and information exchange are now formally supported by a series of MOUs. MOUs have been signed between: (i) the ASIF and the Office of the Auditor General (2019, updated in 2020); (ii) the ASIF and the OPJ (2019); (iii) the ASIF, the SfE and the SoS (2020); (iv) the ASIF and the SfE (2020); (v) the ASIF, the CdG and the OPJ (2020); (vi) the ASIF, the CdG, the Governorate and the OPJ (2020); and (vii) the Office of the Auditor General and the SfE (2020).

Criterion 2.4 – Similar cooperation and coordination mechanisms are in place to combat PF. The FSC is also responsible for: (i) coordinating the adoption and regular updating of policies and procedures for the prevention and countering of proliferation of weapons of mass destruction; and (ii) analysing the adequacy of objectives, priorities and measures needed for risk management and mitigation, including the allocation of human and material resources (AML/CFT law, Art. 9(1) and (2)). Its coordination of measures has recently been complemented by the establishment of a dedicated Working Group on Preventing and Combating the Financing of Proliferation of Weapons of Mass Destruction.

Whilst the description of responsibilities of the FSC in the AML/CFT law does not clearly extend to PF, its statute refers to PF (Art. 2(d)) and the name given to the Working Group supports the authorities' view that references to proliferation of weapons of mass destruction cover also PF.

Criterion 2.5 – The mechanism in place for considering compatibility of data protection with AML/CFT requirements (e.g. policy/procedure) and matters discussed thereunder have not been explained. However, recent changes to the AML/CFT law to limit the length of time that personal data in a public statement made by the ASIF can be published indicate that a mechanism of some description is in place.

Weighting and Conclusion

The main elements are in place for national cooperation and coordination. However, the description of responsibilities of the FSC in the AML/CFT law does not clearly extend to PF and the authorities have not explained the policy/procedure relating to cooperation and coordination in relation to compatibility of AML/CFT requirements with data protection requirements. Given the context of the HS/VCS, these shortcomings are not considered to be minor. Overall**, R.2 is rated LC.**

Recommendation 3 - Money laundering offence

In its evaluation in 2012 the HS/VCS was rated LC for both Recommendation 1 and Recommendation 2. While technical compliance was broadly achieved with the then prevailing standards under R.1 and R.2, there were effectiveness concerns on both.

Criterion 3.1 – ML is criminalised as a separate offence from receiving by Art. 421 bis CC, introduced by the Law on the Prevention and Countering of the Laundering of the Proceeds of Criminal Activities and TF (CXXVII 2010). Amendments to the original formulation of the ML offence (headed ML and self-laundering) came into force on 25/1/2012. No further amendments have been made. The offence is inspired by the language of the international conventions.

The physical and material elements are consistent with the relevant international standards. The offence is committed where any person:

a) replaces, converts or transfers currency, funds or other assets for the purpose of concealing or disguising their illicit origin or of assisting any person who is involved in the commission of such criminal activity to evade the legal consequences of his actions

b) conceals or disguises the true nature, source, location, disposition, movement, ownership of, or rights with respect to currency, funds or other assets

c) acquires, possesses, holds or uses currency, funds or other assets.

The mental element is the same for each of the 3 physical elements: "knowing that the currency etc. proceed from a predicate offence or from participation in a predicate offence". The knowledge standard is consistent with the United Nations (UN) Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention) and UN Convention against Transnational Organised Crime 2000 (Palermo Convention).

The terms "currency", funds", and "other assets" are defined in the Law on the Prevention and Countering of the Laundering of the Proceeds of Criminal Activities and TF (Art. 1 (10), (11), and 12) as revised in 2012 in broad terms which collectively incorporate the definition of "property" in the Vienna and Palermo Conventions and the FATF Methodology.

Criterion 3.2 – Predicate offences were defined in the Law on the Prevention and Countering of the Laundering of the Proceeds of Criminal Activities and TF as revised in 2012 (Art. 1(5)) by reference to a list of specific serious offences in the CC "*as well as any other criminal acts punishable …with a minimum penalty of six months or more of imprisonment or detention; or with a maximum penalty of one year or more of imprisonment or detention*". Art. 421 bis was amended after 2012 by: (i) the Law on Amendments to the CC and the Code on Criminal Procedure (CCP) (Law IX) of 2013; and (ii) by Law CCCXXIX (2019). As a consequence, the law now covers the laundering of any crime punishable by a minimum jail sentence of six months or a maximum jail sentence of more than one year. Thus,

there is no longer any list of predicate offences; rather, any crime that exceeds the above limits is included. The new law also clarifies that the predicate offence may be of a fiscal nature, which the authorities indicated would cover smuggling (including in relation to customs and excise duties and taxes) and tax crimes (related to direct and indirect taxes).

There was a range of serious offences available in HS/VCS in each of the FATF designated categories of predicate offences at the time of the 2012 evaluation. These offences in each of the designated categories of predicate offences all remain in place in HS/VCS. The list of these serious offences was published as annex II to the 2012 report and is available on the MONEYVAL website. It is also annexed to this report.

Criterion 3.3 – The HS relies entirely on a threshold approach as described above. All offences as provided for in c.3.3 (b) and (c) are capable of being predicates to ML.

Criterion 3.4 – ML extends to money, goods or other utilities resulting from a serious offence, regardless of their value (Art. 421 bis 2).

Decree CCCXXIX of 1 October 2019 introduces a new Art. 4 bis into Art. 421 bis, putting beyond doubt that ML subsists even when cash, currency assets or economic resources are "the value gained, the product or the profit from a financial or tax crime committed abroad", which appears to cover, to some extent, indirect proceeds. Although the HS authorities indicated that anything that represents the concept of product, profit or proceeds of a predicate offence is covered, which includes direct and indirect proceeds from all predicates, a provision which would include 'all offences' and not only 'financial or tax crime committed abroad' appears to be missing.

Criterion 3.5 – A conviction for the predicate offence is expressly stated in Art. 421 bis (2) as unnecessary in a ML case. That said, there will be a need to associate the proceeds of crime to a particular predicate offence in a ML prosecution, particularly where the predicate offence is defined by way of thresholds. As noted in IO.7, the Promoter of Justice did not take advantage of this provision in investigations and prosecutions until recently and chose to wait for a conviction for the predicate offence before proceeding with ML.

Criterion 3.6 – Art. 421 bis (4) provides that ML exists even when the currency, funds or other assets proceed from an offence in another State.

Criterion 3.7 – The heading of the offence makes clear it applies to self-laundering. This is confirmed in Art. 421 bis (3), which states: "the crime of ML exists even when its author is the same person who committed the predicate offence."

Criterion 3.8 – The HS authorities, including the judges of the Tribunal, advised that general intent can be inferred from facts, though no authority was provided. The HS/VCS is a party to both the Vienna and Palermo Conventions, which provide that knowledge, intent or purpose may be inferred from objective factual circumstances. The HS court is asked to infer intent and knowledge from facts and circumstances in particular cases.

Criterion 3.9 – Art. 421 bis carries a penalty for natural persons which envisages detention (imprisonment from 4-12 years) and a fine ranging from EUR 1 000 – 15 000. The sanctions have not changed since the ML offence was introduced into the CC in 2011. While the financial sanction may not be considered proportionate and dissuasive of itself, in combination with a prison sentence the total penalty may be considered proportionate and dissuasive in most cases. In the case of a

conviction for ML, imprisonment and a financial sanction are applied jointly. Additionally, under Art. 421 bis CC confiscation of the profit from the crime is mandatory.

Criterion 3.10 – Criminal liability of legal persons is considered inconsistent with the fundamental principles of domestic law of the HS/VCS as embodied in Canon Law (Canon 1752). Since the last evaluation in 2012 the legal framework for administrative liability in respect of ML (and TF) by legal persons has been further developed.

Art. 46 of the Law on Supplementary Norms on Criminal Law Matters was brought into force on 11 July 2013. A legal person is liable for ML where offences are committed in its favour or to its benefit by persons holding positions representing, managing or directing the entity … having financial autonomy, as well as by persons who manage or control, even *de facto*, the entity. Importantly, under Art. 46(5) administrative liability of the legal entity no longer depends on the securing of a conviction of a natural person, as liability of the legal person "subsists even if the author of the offence is not identified or is not imputable."

Financial sanctions for legal persons are provided for in Art. 47(4) of the Law on Supplementary Norms on Criminal Law Matters - ranging from EUR 5 000 to 200 000. In addition, the sanctions include a temporary ban on the activity of the legal person, the suspension or revocation of licence as well as the confiscation of the proceeds. While for some smaller legal persons the financial sanctions under Art. 421 bis arguably may be considered proportionate and dissuasive, for large concerns these sanctions are considered too low.

Criterion 3.11 – ML is defined to include "participation in one of the acts referred to in Art. 421 bis CC, association to commit, attempt to perpetrate, assisting, instigating or advising someone to commit ML or facilitating the execution of this offence (Law on the Prevention and Countering of the Laundering of the Proceeds of Criminal Activities and TF as revised in 2012, Art. 1(19) (b)). The authorities advised that aiding and abetting is covered through 'assisting' element of the aforementioned article. The AT accepts this interpretation and considers that such conduct is appropriately covered.

Weighting and Conclusion

Most of the criteria are met. Indirect proceeds (as per c.3.4) are only partially covered and include those of financial and tax crimes committed abroad. Financial sanctions for some legal persons are not considered to be proportionate and dissuasive. **R.3 is rated LC**.

Recommendation 4 - Confiscation and provisional measures

The HS was rated LC for the former Recommendation 3 in the last evaluation. Though there were in place legislative provisions for mandatory confiscation of instrumentalities and proceeds (and value confiscation) in a ML (and TF) context, statutory wording on this issue was less clear in respect of predicate offences. MONEYVAL recommended the introduction of a modern legislative scheme in this area. The HS has acted on this recommendation and new provisions were introduced by the Law on Amendments to the CC and CCP.

Criterion 4.1 – Art. 8 is the central provision of the Law on Amendments to the CC and the CCP, which introduces a new Art. 36 into the CC for mandatory post-conviction confiscation from

defendants of instrumentalities and proceeds on an all crimes basis. Paragraph 4 of Art. 36 CC allows for confiscation from a third party.

(a) Laundered property

Laundered property is said to be capable of confiscation under Art. 36(1) CC as goods that represent the product, property or value gained by committing a crime. There is no court practice to confirm this.

(b) Proceeds of ML or predicate offences and instrumentalities used in ML or predicate offences.

The broad wording of Art. 36 (1) which refers to 'proceeds, profits, their value and other benefits that arise from their use' as well as to 'the goods used to or intended to commit the offence' covers the requirements in c.4.1 (b).

(c) proceeds, property used in or intended/allocated for use in TF, terrorist acts, and terrorist organisations is covered by Art. 36.

(d) property of corresponding value.

Art. 36 (6) CC regulates this matter and states that '*whenever it is not possible to confiscate the goods referred to in preceding paragraphs, the judge orders the confiscation of currency, goods or assets of an equivalent value among those owned or possessed, directly or indirectly, exclusively or jointly with others, by the convict, without prejudice to the bona fide rights of third parties.*'

Criterion 4.2 –

(a) Art. 32 of the Law on Amendments to the CC and the CCP introduced a new Art. 166(1) into the CCP which formally allows officials of the judicial police in investigations to seize goods used or intended to be used to commit the offence, those which are the product of the crime, their profit or value gained. The CdG can do this themselves without the direct authority of the Promoter or a judge where an offender is caught by them in the act of committing the crime.

The judge also under Art. 36 CC can adopt measures that permit identifying and tracing money, goods or assets likely to be confiscated.

The Promoter of Justice may act on his own initiative to trace money/goods that can be confiscated without a court order.

(b) Art. 36 CC paras 7 and 8 allow the judge to issue precautionary measures which include seizing, freezing money, goods or assets likely to be confiscated "to prevent their sale, transfer or disposition". Freezing is widely defined in Art. 36.

The Promoter of Justice may act on his own initiative to proceed with the seizure of money (and/or other property/assets/goods believed to be proceeds) when there are solid grounds to believe that such money or goods are the proceeds of crime without any prior notice to the owner of the goods or money, or application to a judge.

Once the Promoter of Justice has a case to take to court, a seizure/freezing order he has made on his own initiative does not need further judicial confirmation but continues in force.

Additionally, the FIU, in the course of its analysis of information received, can suspend for up to 5 working days the execution of transactions and operations suspected of ML or TF, as well as any other linked operation or transaction, where this does not obstruct investigative or judicial activity.

It can also freeze accounts, funds, or other assets for up to 5 working days in the case of suspicions of ML or TF where this does not obstruct investigative or judicial activity (AML/CFT law, Art. 48 j and k).

(c) The Law on Amendments to the CC and the CCP (Art. 9(1)) has inserted a new Art. 36 bis in Chapter 11, which states that, when ordering the confiscation of goods, the judge declares void any deed or contract concerning the confiscated goods when it emerges that the third party knew or should have known that the goods object of the said deed or contract fall within the scope Art. 36 (para.1, 2, 5 and 6) (i.e. the confiscation provisions).

Paragraph 8 of Art. 9 clarifies that freezing of goods means that *there is a prohibition to move, transfer, convert, dispose, use, manage or access those goods so as to modify their volume, amount, location, ownership, possession, nature, destiny, as well as any other change that would allow their use*. Freezing of "other assets" likewise means that there is a prohibition on moving, transferring, converting etc. such assets. Thus, a freezing/renewed freezing application could be made if the police/Promoter of Justice become aware that an action is about to take place which may prejudice the ability of the authorities to recover property that may be subject to confiscation.

(d) As noted, the new Art. 166 CCP introduced by Art. 32 of the Law on Amendments to the CC and the CCP permits officials of the judicial police to take appropriate investigative actions which include the seizing of goods used or intended to be used to commit the offence, and those which are the product of their crime, their profit and value as well as "those which could be useful to ascertain the truth" (i.e. other relevant evidence).

***Criterion 4.3* –** New Art. 36 CC makes it clear that confiscation will not be ordered if they belong to a *bona fide* purchaser for value. A non *bona fide* purchaser for value is a third party who "knew or should have known" that the goods were liable to confiscation (Art. 36 bis CC). A bona fide purchaser may intervene in both confiscation proceedings and proceedings for precautionary measures to request restitution.

***Criterion 4.4* –** Decree CCCXXIX of the President of the Governorate on 1 October 2019 introduced an addition to Art. 242 CCP, which allows the custody of seized and confiscated property, real estate and financial assets to be entrusted to one or more judicial administrators for the purpose of its management. This Decree can also be applied in the context of property frozen or confiscated on behalf of foreign authorities.

However, there appears to be no direct provision for, where necessary, disposing of property frozen, seized or confiscated either in the domestic context (or, if relevant, in the international context). The HS authorities indicated that judicial administrator could apply to a judge for permission to sell the property where necessary. The judge, if necessary, can authorise the judicial administrator to sell the assets.

Weighting and Conclusion

There appears to be no direct provision for, where necessary, disposing of property frozen, seized or confiscated. **R.4 is rated LC**.

Recommendation 5 - Terrorist financing offence

The HS/VCS was rated LC with SRII in the 2012 evaluation. At that time, although the HS was a party to the International Convention for the Suppression of the Financing of Terrorism 1999 (TF Convention), it was not bound by any of the treaties listed in the Annex to the TF Convention. Moreover, specific criminalisation within the CC of the various terrorist acts provided for in the UN counter-terrorism treaties annexed to the TF Convention was missing. Thus, the HS TF offence was not applicable to financing specific criminal acts under these counter-terrorism treaties. Financing of individual terrorists or terrorist organisations for legitimate purposes was also not covered.

Significant legislative developments in this area took place soon after that evaluation.

Criterion 5.1 – The framework for prosecuting TF is aligned with the TF Convention. Art. 23(1) of the Law on Supplementary Norms on Criminal Law Matters (Law VIII) 2013 now contains the basic TF offence. The Law on Supplementary Norms on Criminal Law Matters treats the financing of acts covered by Art. 2 (1)(a) TF Convention in a manner independent of their purpose in a way which is consistent with the international standard. The TF offence also appropriately addresses the financing of acts covered by Art. 2(1)(b) of the TF Convention. These are treated as "acts performed for terrorist purposes". Acts performed for terrorist purposes are defined in Art. 18, which contains the appropriate purposive element based on the language of Art. 2(1)(b) TF Convention – "acts which are intended to cause death or serious bodily injury to civilians or to persons not taking active part in hostilities in cases of armed conflict, when the act, by its nature or context is carried out with intent to (i) intimidate a population; (ii) compel the public authorities or an international organisation to do or abstain from doing any act." The second sentence of Art. 23 (3) contains a limited humanitarian and charitable carve-out: "the offence does not exist if the provision of funds or assets occurs in the course of an emergency humanitarian or charitable operation, and in so far as the goods provided are those strictly indispensable to fulfil the basic needs of the beneficiaries".

This clause is intended to address narrowly the provision of legitimate humanitarian assistance to vulnerable groups or persons in cases of acute need during a humanitarian crisis. HS authorities interpret the FATF Recommendation 5 in the broader framework of International Human Rights Law and International Humanitarian Law, in order to give full effect to Art. 21 of the TF Convention. In this regard, they considered that the HS/VCS is legally bound, as a State Party, to observe the provisions of Art. 59 of the 4th Geneva Convention relative to the protection of civilian persons in times of war, and the 2nd Additional Protocol to the Geneva Conventions of 12 August 1949, Art. 10(1) and 18(2) .

Art. 2(1) of the TF Convention requires criminalisation of those who "unlawfully and wilfully" provide or collect funds etc. According to the Travaux Préparatoires considered by the AT, the term "unlawfully" was included in the definition of the offence of TF specifically to exclude from its scope the legitimate provision of humanitarian assistance.

The principle of legality exists in the legal system of the HS/VCS. Thus, the authorities consider that, as one of the main missions of the Catholic Church is to bring help to people suffering, such a carve-out is necessary, when the delivery of goods or other resources occurs during a humanitarian operation. This does not exclude that, if, in the course of the humanitarian operation, persons close to terrorists were identified, their activity would be punished. As this carve out is limited to TF only and not to other terrorist offences, they considered it is appropriate for the carve-out to be placed

within Art. 23, rather than in another part of their legislation. The authorities also noted (though this is not directly relevant to the interpretation of FATF standards) that the exception contained in the second sentence of Art. 23 (3) coincides substantially with preambular para. 38 of European Union (EU) Directive 2017/541 on combating terrorism: "The provision of humanitarian activities by impartial humanitarian organisations recognised by international law, including international humanitarian law, do not fall within the scope of this Directive, while taking into account the case-law of the Court of Justice of the European Union."

While, pursuant to the Vienna Convention of the Law of Treaties, Art. 32, the Travaux Préparatoires are only a supplementary means of interpretation of a treaty, the AT, on balance, accepts the HS/VCS's argument. Mindful of both, Art. 6[45] and Art. 21[46] of the TF Convention, and given the explanations and interpretation of the HS authorities on this matter, the AT has concluded that TF offence is criminalised based on requirements of the TF Convention. In other words, the aforementioned carve-out is not a technical deficiency under R.5.

Criterion 5.2 – The relevant parts of the basic TF offence in Art. 23 of the Law on Supplementary Norms on Criminal Law Matters, as amended by Decree CCCXXIX of 1 October 2019 are set out beneath:

"1. Whoever, directly or indirectly collects, provides, deposits or holds currency, funds or other assets, however obtained, with the intention that or in the knowledge that they are to be used, in full or in part, in order to:

a) commit one of the offenses stipulated in titles V, VI, VII, VIII of the present law[47];

b) commit or abet the commission of one or more acts for terrorist purposes;

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[45] Each State Party shall adopt such measures as may be necessary, including, where appropriate, domestic legislation, to ensure that criminal acts within the scope of this Convention are under no circumstances justifiable by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature.

[46] Nothing in this Convention shall affect other rights, obligations and responsibilities of States and individuals under international law, in particular the purposes of the Charter of the United Nations, international humanitarian law and other relevant conventions

[47] Title V (terrorism and subversion) including: Art. 19 (association for terrorist or subversive purposes); Art. 19.2 bis (travel for purposes of terrorism); Art. 20 (assistance to members); Art. 21 (recruitment and training for terrorist or subversive purposes); Art. 22 (attack for terrorist or subversive purposes); Art. 24 (kidnapping for terrorist or subversive purposes); and Art. 24 ter (public promotion of terrorism). Title VI (crimes with explosive devices) including: Art. 26 (acts of terrorism or subversion with explosive devices); Art. 27 (use of explosive devices); Art. 28 (handling of nuclear materials; Art. 29 (misappropriation of nuclear materials); Art. 30 (intimidation with nuclear materials); and Art. 23(3) also provides a penalty under ss 3 for those who finance subjects registered in the list of subjects who threaten international peace and security (the HS/VCS sanctions list). Title VII (crimes against the safety of maritime navigation, civil aviation, airports, and fixed platforms) including: Art. 32 (crimes against the safety of maritime navigation and civil aviation); Art. 33. Art. 23(3) also provides a penalty under ss 3 for those who finance subjects registered in the list of subjects who threaten international peace and security (the HS/VCS sanctions lists); Art. 34 (crimes against the safety of fixed platforms); Art. 36 (piracy). Title VIII: Art. 39 (crimes against internationally protected persons).

is punished, regardless of whether those funds or assets are used to commit or attempt to commit those acts with 5 to 15 years of imprisonment.[48]

2. The offence exists whether the acts are directed to finance groups or whether they are directed to finance one or more natural persons."

Criterion 5.2a Financing terrorist acts

All the offences in the annexed Conventions referred to in Art. 2 (1) of the TF Convention are now in HS/VCS Law and referenced in Art. 23 a of the TF offence; Art. 23 b of the TF offence appropriately covers Art. 2 (1) b TF Convention offences.

Criterion 5.2 b financing terrorist organisations and individual terrorists in the absence of a link to a specific terrorist act

It was noted above, under Art. 23 (2) of the Law on Supplementary Norms on Criminal Law Matters, that "the offence" also exists whether the acts are directed to finance groups or one or more natural persons. "The offence" presumably relates back to Art. 23 1(a) or (b) which, on its wording, applies solely to the financing of terrorist acts or acts for terrorist purposes. Thus, while it may now be possible on the basis of Art. 23(2) to prosecute a person for financing an individual terrorist as well as a terrorist group to commit the offences contemplated in Art. 23(1), it is hard to see how Art. 23(2), properly construed, is authority for prosecuting financing an individual terrorist in the absence of a link to a specific terrorist act, that is to say for general living expenses etc.

The authorities have pointed to Art. 19(2) of the Law on Supplementary Norms on Criminal Law Matters (association for terrorist purposes), part of which provides that whoever contributes to a group (that intends to commit terrorist acts) or to its activities in any way, directly or indirectly…in the knowledge that his participation or contribution aids the achievement of the group is punished…with 4-10 years of imprisonment. Thus, theoretically this could cover donations to support family members while a member of the group is serving a prison sentence.

Similarly, Art. 20 (assistance to members) criminalises any person who provides refuge, food, shelter, transportation or means of communication to a person who forms part of a group (as referred to in Art. 19) with a punishment of 3-6 years of imprisonment.

Thus, some financial support and assistance in kind to criminal organisations for otherwise legitimate purposes appears now to be covered.

However, despite these provisions, it does not appear that general financing for (otherwise) legitimate purposes to an individual terrorist has been clearly covered in HS/VCS.

Criterion 5.2bis – The HS authorities pointed to Art. 19(2) bis, 20(1), and 23(1) of the Law on Supplementary Norms on Criminal Law Matters to cover this criterion (which gives practical effect to United Nations Security Council Resolution (UNSCR) 2178).

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[48] Under Art. 24 bis CC introduced in the Decree Containing Amendments to the CC (No CCCXXIX of 1 October 2019), the penalty is doubled when it is committed for the purpose of executing or favouring the commission of a terrorist offence. Pursuant to Art. 24 ter of the same Decree "anyone who disseminates, in any way or form, a message whose finality is to provide the execution of any one offence in Titles V, VI, VII, and VIII of the present law is punished by imprisonment of 3-10 years".

Art. 23(1) (the TF offence) may cover some situations. It could cover those who provide funds (which may include costs of travel) for persons who travel abroad and then commit or abet the offences provided for in Art. 23. Abetting in this context arguably could cover certain acts of planning and preparation for specific terrorist acts. It is less clear whether a court would accept that the TF offence applies to those who fund the travel of someone who goes abroad and then receives training alone (without some other element of preparation or participation in terrorist acts by the person funded for travel sufficient to constitute abetting). It would also appear inapplicable to a person who travels abroad simply to provide terrorist training without participation in a specific terrorist act.

Art. 20(1) of the Law on Supplementary Norms on Criminal Law Matters (assistance to members, which includes transportation) may possibly be held in some circumstances to cover aspects of this criterion when the "provision" of transportation is for a person who already "forms part of a group" abroad and needs to travel back to where it is based. It would not cover the funding of a person to travel who is not already part of a group but goes out to join a terrorist group. This all pre-supposes that a court would accept that "provides transportation" really is intended to cover financing of travel as opposed to providing a vehicle for a terrorist group, which appears to be the natural meaning of this provision.

The new Art. 19(2) bis is headed "Travels for the purposes of terrorism". It reads: "*To the same penalty* (i.e. penalties foreseen for those covered by Art. 19 (2)) *is subject whomever goes abroad to a State for the purposes of enacting or contributing to an association that proposes to carry out acts whose finality is terrorism or to receive training to commit acts of terrorism*." Thus Art. 19(2) bis appears to catch travellers abroad for terrorist purposes/receipt of training for terrorism. Arguably the language may be broad enough to cover travel for the purposes of the provision of terrorist training. Since Art. 19(2) bis is covered by the TF offence, Art. 23(a), as amended by Decree CCCXXIX of 1 October 2019, it would now cover those third parties (friends/family members etc.) who finance the travel by others for these purposes, which is the central feature of this criterion.

Criterion 5.3 – Art. 23, Paragraph 1 explicitly states that the offence is committed by the collection, provision etc of currency, funds or other assets however obtained.

Criterion 5.4 – The TF offence is punishable "regardless of whether those funds or assets are used to commit or attempt to commit any specific terrorist act or an act for a terrorist purpose (Art. 23, para 1). The same goes for financing a subject included in the HS/VCS list of persons who threaten international peace and security (Art. 23, para 3). The offences of association for terrorist or subversive purposes and providing assistance to members also subsist without any link to a terrorist act (Art. 19).

Criterion 5.5 – Under applicable general principles it is possible for intent and knowledge be presumed in the light of objective facts (unless there is a requirement to the contrary). No such requirement to the contrary exists regarding TF offences.

Criterion 5.6 – The penalty for natural persons of between 5 to 15 years is available regardless of whether the funds were used to commit terrorist acts (Art. 23, para 1). No financial penalty is applicable to TF. The sanctions are proportionate and dissuasive.

Criterion 5.7 – As noted under R.3, administrative liability of legal persons arises when criminal offences (including TF) are committed in its favour or to its benefit by persons - in positions representing, managing, or directing the entity…having financial and functional autonomy, persons

who manage or control, even *de facto*, the entity, or by persons subject to the direction or supervision of one of the subjects referred to previously. This, as with ML prosecution, is without prejudice to the criminal liability of the natural person and is no longer contingent on securing the conviction of a natural person.

As noted under c.3.10, Art. 47 of the Law on Supplementary Norms on Criminal Law Matters regulates the types of administrative sanctions against legal persons. In addition to the pecuniary sanctions (ranging from EUR 5 000 to 200 000), legal persons' activities can be temporary banned, and their licence can be suspended or revoked.

Criterion 5.8 –

a) Art. 61 and 62 CC which set out the general principles on attempt apply.

b) The general principles on complicity (Art. 62, 63 CC), Art. 248 (membership of a criminal association) and Art. 19 of the Law on Supplementary Norms on Criminal Law Matters – association for terrorist or subversive purposes - may also be applied.

c) The general provisions of HS/VCS Criminal Law on directing, instructing, or coordinating someone else to commit a crime apply to TF (Art. 63[2] & 64 CC). Art. 248 CC (directing an association for terrorist or subversive purposes) can also apply.

d) This is punishable as criminal association under Art. 248 CC - as amended by Art. 25 of the Law on Amendments to the CC and the CCP. It may also constitute an offence of association for terrorist or subversive purposes under Art. 19 of the Law on Supplementary Norms on Criminal Law Matters.

Criterion 5.9 – TF is a ML predicate (Art. 421 bis amended by Law IX of 2013 and by Law CCCXXIX of 1 October 2019 – see also R.3).

Criterion 5.10 – The TF offence subsists regardless of the place where the intended terrorist act or where the terrorist is located (Law on Supplementary Norms on Criminal Law Matters, Art. 18(2)).

Weighting and Conclusion

Most of the shortcomings identified in 2012 have been rectified. The carve-out for humanitarian and charitable purposes is not considered to be a technical deficiency, as it compatible with Art. 21 TF Convention.

There remain some potential problems with the financing of individual terrorists for legitimate purposes, including financing of travel for providing of terrorist training. The remaining shortcomings are borderline minor. **R.5 is rated LC.**

Recommendation 6 - Targeted financial sanctions related to terrorism and TF

In its 2012 MER, HS/VCS was rated non-compliant (NC) with the former SR.III. The report noted a lack of guidance for obligated entities, lack of comprehensive coverage of delisting and exemption procedures, lack of publicly known procedures for unfreezing in a timely manner of the funds or other assets of persons inadvertently affected by a freezing order and lack of procedures for authorising access to funds frozen pursuant to UNSCR 1267 that have been determined to be necessary for basic expenses. In October 2013, the AML/CFT law was adopted. This piece of

legislation was also amended in June 2018 (Law No. CCXLVII). The Law, as amended, regulates the implementation of the targeted financial sanctions (TFS) in the HS/VCS.

When assessing the application of the R.6 requirements in the context of the HS/VCS, the following factors and the limitations that might create for the HS/VCS competent authorities should be considered: (a) Neither the HS nor the VCS are members of the UN, but they were granted a permanent observer status in 1964. Therefore, they are not legally bound to implement the UN Security Council resolutions; (b) Moreover, in accordance with the UN Security Council procedures for listing, the provision in place does not provide for entities other than member States the right to submit listing requests for the inclusion of individuals, groups, undertakings and entities in the UN Sanctions list; (c) Also, in accordance with the respective procedures concerning delisting, the relevant UN guidelines grant the right to submit delisting requests only to member-States, and listed individuals and entities.

Criterion 6.1 – Although not legally bound to implement the UN Security Council resolutions, the jurisdiction set up a mechanism for the creation of a single national list of *subjects who threaten international peace and security*. Measures applied against persons and entities listed are equivalent to those requested by relevant UN Security Council resolutions.

(a) The SoS, which is responsible for HS/VCS's international relations, is the authority competent to propose the relevant committees of the UN Security Council the designation of persons and entities for whom there are reasonable grounds to believe that they pose a threat to international peace and security. The decision to propose a designation is made in consultations with the President of the Governorate (AML/CFT law, Art. 74 b)).

(b) The Promoter of Justice, the CdG and the ASIF are responsible to identify and propose to the President of the Governorate the designation of persons and entities (AML/CFT law, Art. 72 (3)). The President of the Governorate may request any other information or documentation from these institutions that may contribute to his own assessment (Art. 72(4)). The designation criteria are set out in Art. 72 (1 a)-d)). These criteria are compliant with those set out in the UNSCRs.

(c) The evidentiary standard of proof applied to a designation proposal is a 'reasonable ground' (AML/CFT law, Art. 72(1)). The decision is not conditional on the existence of a criminal conviction or criminal proceeding (Art. 72 (2)).

(d) Since the HS/VCS is not a UN member state, the authorities advised that communication with relevant UN Committees is carried out through the Permanent Observer Mission of the HS/VCS to the UN. Whilst the authorities also advised that standard procedures and forms for listing would be followed, there is no such requirement in the legislation. That said, the UNSCR 1988 (2011), requires "*all States*" to implement target measures (para. 1), but it refers only to "*Member States*" when providing for the possibility of proposing new names for listing (para. 11 and 16), requiring for exceptions (para .9), delisting (para .19 and 22) and sharing of information with the sanctions committee (para .27 and 30, let. l).

(e) Apart from the requirement that the list of designated persons and entities shall contain the name and all information necessary to allow the positive and unequivocal identification of the designated person and/or entity (Art. 71 (2) of the AML/CFT law), as well as the information necessary to that end (Art. 74 b) of the AML/CFT law), there is no requirement in the AML/CFT law for the authorities to provide a statement of case, as well as of release of such statement, upon

request, with details concerning the basis for the listing neither, in case of proposing names to the 1267/1989 Committee, whether their status as a designating state may be made known.

Criterion 6.2 –

(a) The President of the Governorate is the competent authority for designating persons and entities in the national list (AML/CFT law, Art. 71(1)). The Law makes no particular reference to the UNSCR 1373 and requirements contained therein. Criteria for designation as set forth in the AML/CFT law (Art. 72(1)) are compliant with those of the UNSCR 1373. Designation may be put into effect by the President of the Governorate on his own motion, upon proposal of the Promoter of Justice, the CdG or the ASIF, or following the designation by the competent organs of the UN Security Council, the EU and other states (AML/CFT law, Art. 72 (1&5) and 74 d)).

(b) The Promoter of Justice, the CdG and the ASIF may propose to the President of the Governorate inclusion of persons and entities in the national list – as a matter of fact, the same process as the one described under c.6.1(b) would be applied to identifying targets for designations based on the UNSCR 1373 criteria.

(c) Apart from general provisions on listing procedures based on foreign countries requests, UN and EU designations (AML/CFT law, Art. 72(5)), there are no requirements to make a prompt determination of whether the authorities are satisfied that the request is supported by reasonable grounds or a reasonable basis, to suspect or believe that the proposed designee meets the designation criteria.

(d) In deciding whether to make a designation, the President of the Governorate would use the evidentiary standard of proof of 'reasonable grounds' pursuant to the AML/CFT law (Art. 72(1)). The decision is not conditional on the existence of a criminal conviction or criminal proceeding (AML/CFT law, Art. 72(2)).

(e) The SoS (which formulates designations requests to the UN Security Council, the EU or to other States) should include therein the information necessary to that end, thus fulfilling the requirement of this sub-criterion (AML/CFT law, Art. 74(b)).

Criterion 6.3 –

(a) The Promoter of Justice, the CdG and the ASIF propose to the President of the Governorate the designation of persons and entities for whom there are reasonable grounds to believe that they carry out activities referred into designation criteria (AML/CFT law, Art. 72(3)). The AML/CFT law (Art. 72(4)) provides that in drafting and updating the list, the President of the Governorate may request to the Promoter of Justice, the CdG and the ASIF any other information or documentation that may contribute to his own assessment. As for the procedures or mechanisms for soliciting, authorities refer to Art. 1 (Exchange of Information) and Art. 4 (List of designated subjects) of the memorandum of understanding (MoU) between the OPJ, the CdG and the ASIF signed on 28 April 2020. However, the MoU provides for information exchange mechanism in between the three authorities but does not provide details on procedures for soliciting information which are of relevance for potential designations.

(b) The authorities advised that there is no requirement to notify a person or entity who has been identified and whose (proposal for) designation is being considered both in case of designation or freezing of funds due to TF related suspicion. These measures would be implemented without any

notification to, or participation of, the target subject (*ex parte*). The procedures for designating a person, as set out in the lawn do not include any notification to that person.

Criterion 6.4 – There is no legal provision which states that designations pursuant to the UN sanctions regimes are effective in HS/VCS without delay. The President of the Governorate examines the designations made by the competent organs of the Security Council of the United Nations, of the EU and of other States. The AML/CFT law only provides that such designations may constitute, even on their own, sufficient grounds for designation, hence there is a discretion for the authorities to transpose the designations of the UNSCRs into the national list. The legislation does not provide for specific procedure to follow when considering whether the designation should be added to the national list of the HS/VCS. There is also no timeframe provided by the legislation for the mentioned consideration. Once a subject is designated by the HS/VCS competent authorities, the Law (Art. 75) provides that the ASIF orders obliged subjects to verify without delay and, whether funds or other assets owned or held, exclusively or jointly, directly or indirectly by the subjects listed, are deposited or managed by them and in case any such funds or assets are identified, freeze them immediately.

Criterion 6.5 –

(a) The AML/CFT law (Art. 75) provides freezing measures. The law designates the ASIF as the authority in charge to request freezing measures - the ASIF establishes the terms, conditions and limits of freezing (Art. 75(3)). In addition, the law (Art. 37) refers only to obliged subjects and does not include natural persons and legal persons, other than obliged subjects covered by the AML/CFT law, among those who should implement financial measures and other preventive measures relating to subjects who threaten international peace and security. Moreover, the law (Art. 2) does not list NPOs among obliged subjects. This gap is reduced to some extent by the 2013 *Motu Proprio* (Art. 1 and Art. 3), which lists NPOs with canonical personality as obliged subjects. Furthermore, despite not setting an obligation, all NPOs are informed by the FIU of the ML/TF risks and the most appropriate procedures, measures, and controls to contain those risks (Law on NPOs (Art. 7(2)). Although Art. 75 does not provide explicitly for the obligation of obliged subjects to freeze funds or other assets, that obligation is implicit in the ASIF's power to order the freezing of the funds (i.e. the ASIF by its own resolution, order immediately and without previous notice, to the freezing …, Art. 75(2)) and in the correlative duty of the obliged subjects to communicate to the ASIF the measures adopted to implement the freezing order (i.e. the entities carrying out professionally a financial activity communicate to the ASIF, within 30 days from the date of the adoption of the resolution referred to in paragraph 1 … , Art. 75(6)). Hence, the obliged subjects are bound to verify the presence of a direct or indirect relationship with the subject inscribed in the list (see also Art. 75 (5)) and, in case of positive matches, freeze the funds and other assets and file a suspicious activity report (SAR) to the ASIF (ASIF Instruction No. 6, Art. 3). The AT is of a view that these procedure do not ensure freezing of funds and other assets without delay by the obliged subjects. There is no requirement to freeze funds or other assets without prior notice.

(b) The obligation to freeze, as defined by Art. 75, extents to: i) the funds and other assets owned, held or controlled, exclusively or jointly, directly or indirectly, by the subjects included in the list (Art. 75(2)a)); ii) benefits and profits generated by the funds and other assets referred to in paragraph a) of Art. 75(2) (Art. 75(2) b)); and iii) funds and other assets held or controlled by other subjects, natural persons or entities, in the name of, on behalf of or in favour of subjects included in the list (Art. 75(2) c)).

(c) The AML/CFT law expressly forbids provision of funds or other assets to the persons and entities included in the list, directly or indirectly, or granting them any financial services, unless authorised by the ASIF (for payment of basic needs, extraordinary expenses and protecting the rights of *bona fide* third parties) (AML/CFT law, Art. 75(1) and (2)). As explained under c.6.5(a), the law (Art. 37) does not impose requirements on natural persons. Therefore, the scope of the law is narrower than the Standard.

(d) The ASIF is the authority responsible for communicating, without delay, designations to the financial sector (AML/CFT law, Art. 75(4)). The list of subjects, who threaten international peace and security and its updates are published on the web-site of the ASIF (Art. 71(3)), as well as at the door of the offices of the Governorate in the Cortile San Damaso and at the State's post offices door.

Guidance on the obligations of the financial sector when implementing the requirements of c.6.5(d) is provided in accordance with the law (Art. 75(3)).

(e) Obliged subjects have to verify, without delay, any presence of funds or other assets owned or held, exclusively or jointly, directly or indirectly, by the designated person and entities included in the national list and, in case such funds or assets were identified and frozen, inform, within a 30 day period, the ASIF of:

- the freezing measures indicating the persons and entities whose assets or funds were frozen, including the amount and nature of the funds and/or assets;
- any information related to the services or transactions as well as any other available data involving designated person(s) or entity(ies); and
- information regarding any attempted financial transaction, which may involve funds or other assets frozen according to the ASIF's freezing order (AML/CFT law, Art. 75(5)).

(f) The rights of the bona fide third parties are protected (AML/CFT law, Art. 75(3)).

Criterion 6.6 –

(a) The applicability of this requirement to the HS/VCS is questionable considering the relevant provision of the UN Security Council on delisting procedures (i.e. Member States and listed individuals and entities can submit de-listing requests). The unique context and materiality of the jurisdiction suggests that it is highly unlikely a de-listing request to be submitted by the HS/VCS. As for the HS national list, the Law (Art. 73) refers to some steps that need to be taken to submit de-listing requests.

(b) The President of the Governorate, in consultation with the SoS, is responsible for delisting persons and entities for whom there are no longer reasonable grounds to believe that they pose a threat to the international peace and security. The delisting may be initiated upon proposal by the Promoter of Justice, the CdG or the ASIF. The President of the Governorate also takes into account the decisions taken by the competent UN Sanctions Committees, by the EU and by other States. (AML/CFT law, Art. 73 (1) (2) (3)). Procedures for de-listing at the national level are detailed in Art. 3 of the MoU of 7 September 2020 (signed between the Governorate, the CdG, the ASIF and the Promoter of Justice).

(c) If a designated person or entity believes that he/she/it has been listed wrongly, he/she/it may apply for delisting directly to the President of the Governorate. The President of the Governorate must reply within 15 days from the receipt of the request. In the case of a negative reply, or of no reply within the established period, the designation may be contested before the

Tribunal. If the Tribunal finds that the grounds for the designation were not sufficient, it may order the delisting (AML/CFT law, Art. 73(4), (5), (7)).

(d) Apart from general provisions set in the Law , as noted under sub-criterion (a) above, no specific procedures to facilitate review by the *1988 Committee* in accordance with any applicable guidelines or procedures adopted by the *1988 Committee*, including those of the Focal Point mechanism established under UNSCR 1730, are available.

(e) No specific procedures are available for informing designated persons and entities of the availability of the United Nations Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 to accept delisting petitions.

(f) Apart from general delisting procedures as elaborated under sub-criteria a) and b) there are no specific procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), upon verification that the person or entity involved is not a designated person or entity.

(g) In case person or entity is delisted, the ASIF revokes immediately the freezing measure(s) and communicate the information on delisting and abolition of the concrete freezing measures, without delay, to the obliged subjects (AML/CFT law, Art. 75(7)). The Governorate also communicates it to the interested party, in line with the provisions of the CCP, the information that he/she/it has been delisted and invites him/her/it to take possession of the funds or other assets within six months from the date of delisting. There is no mechanism for providing guidance to FIs that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

Criterion 6.7 – The ASIF may authorise the release of funds or other assets, to the extent necessary for the payment of expenses essential to their owners, including food, rent, taxes, insurances, medical services, public services and legal expenses. In addition, the ASIF may authorise, with the nihil obstat of the President of the Governorate, the release of funds or other assets frozen for the payment of extraordinary expenses (AML/CFT law, Art. 79 (1 and 2)). Frozen accounts may continue to generate interests and may receive payments and profits coming from contracts concluded prior to the adoption of the freezing measures (Art. 79(3)). However, there is no requirement to ensure the absence of the negative decision in this regard by the Committee established pursuant to the UNSCR 1267 (1999).

Weighting and Conclusion

Despite the legislative development since the last evaluation, there is no legal provision which states that designations pursuant to the UN sanctions regimes are immediately effective in HS/VCS, and there is no direct requirement for obliged entities to freeze funds without delay. The legislation provides a discretional power for the competent authorities in transposing UNSCRs' designations into the national list. There is also lack of a requirement for natural and legal persons, which do not fall under the application of the AML/CFT law to freeze funds of persons threatening international peace and security, as well as other shortcomings under the criteria mentioned above. **R.6 is rated PC**.

Recommendation 7 – Targeted financial sanctions related to proliferation

Requirements under R.7 were first introduced into the FATF standards in 2012, therefore the HS/VCS was not assessed in the 2012 MER against this recommendation.

When assessing the application of the R.7 requirements in the context of the HS/VCS, the following factors and the limitations that might create for the HS/VCS competent authorities should be considered: (a) Neither the HS nor the VCS are members of the UN, but they were granted a permanent observer state status in 1964. Therefore, they are not legally bound to implement the resolutions of the UN Security Council resolutions; (b) Moreover, in accordance with the UN Security Council procedures for listing, the provision in place does not provide for entities other than member States the right to submit listing requests for the inclusion of individuals, groups, undertakings and entities in the UN Sanctions list; (c) Also, in accordance with the respective procedures concerning delisting, the relevant UN guidelines grant the right to submit delisting requests only to member-States, and listed individuals and entities.

Criterion 7.1 – As noted under c.6.4, there is no legal provision which states that designations pursuant to the UN sanctions regimes are effective in HS/VCS without delay. In addition, there is no requirement to automatically incorporate the designations made by the UN Security Council resolutions, and HS/VCS competent authorities have a discretional power to transpose the designations of the UNSCRs into the national list (see IO.11). The President of the Governorate examines the designations made by the competent organs of the Security Council of the United Nations, of the EU and of other States , which *may* constitute, even on their own, sufficient grounds for designation (AML/CFT law, Art. 72(5) – see also R.6).

Criterion 7.2 – Please see R6 and c.6.1 and c.6.2 – same provisions are applicable for PF TFS - the President of the Governorate is the competent authority for designating persons and entities in the national list. The designation is put into effect by the President on his own motion, upon a proposal of the Promoter of Justice, the CdG or the ASIF, or following the designation by the competent UN Security Council Committees (Art. 72 (1 and 5). The ASIF is an authority responsible for implementation of the TFS related to proliferation (AML/CFT law, Art. 75). As mentioned under R6-EC 6.5 there is no direct requirement for the obliged entities to freeze fund or other assets, which does not ensure freezing of funds and other assets without delay. There is no requirement to freeze of funds or other assets without prior notice.

(a) When there is a designation, the ASIF immediately issues an order for freezing of the funds or other assets of designated persons and entities (AML/CFT law, Art. 75). However, the AML/CFT law (Art. 37) refers only to obliged subjects and does not include natural persons and legal persons, other than obliged subjects covered by the AML/CFT law, among those who should freeze without delay any funds or other assets of designated persons and entities (see also R.6 – C.6.5(a)).

(b) Provisions referred under R.6 (C.6.5(b)) are also applicable for PF - the obligation to freeze, as defined by Art. 75, extents to: (i) the funds and other assets owned, held or controlled, exclusively or jointly, directly or indirectly, by the subjects included in the list (Art. 75(2)a)); (ii) benefits and profits generated by the funds and other assets referred to in paragraph a) of Art. 75(2) (Art. 75(2) b)); and, (iii) funds and other assets held or controlled by other subjects, natural persons or entities, in the name of, on behalf of or in favour of subjects included in the list (Art. 75(2) c)).

(c) R6 (C.6.5(c)) – provisions stated therein cover both TF and PF (AML/CFT law, Art. 75 (1, 2)).

(d) R6 (C.6.5(d)) - provisions stated therein cover both TF and PF (AML/CFT law, Art. 71(3) and Art. 75(4)).

(e) R6 (C.6.5(e)) - provisions stated therein cover both TF and PF (AML/CFT law, Art. 75(5)).

(f) R6 (C.6.5(f)) - provisions stated therein cover both TF and PF (AML/CFT law, Art. 79 and Art. 80).

Criterion 7.3 – The ASIF applies sanctions after having verified the commission of the wrongful acts, i.e. *violation of the obligations ensuring from the financial measures and to the preventive measures related to subjects which threaten international peace and security, established by Articles 75, 76, 77 and 78* (AML/CFT law, Art. 47(1)d)). However, it is worth mentioning that taking into consideration the lack of a direct requirement for obliged entities to freeze funds without delay it would be possible to sanction them only for not implementing freezing orders provided by the ASIF.

***Criterion* 7.4** –

The applicability of this requirement to the HS/VCS is questionable considering the relevant provision of the UN Security Council on delisting procedures (i.e. Member States and listed individuals and entities can submit de-listing requests). See c.6.6(a).

a) There is no legal framework enabling listed persons and entities to petition a request for de-listing at the Focal Point established pursuant to UNSCR 1730 or informing designated persons or entities to petition designated person directly.

b) There are no legal provisions regulating unfreezing of funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), upon verification that the person or entity involved is not a designated person or entity.

c) The ASIF may authorise the release of funds or other assets frozen, to the extent necessary for the payment of expenses essential to their owners, including food, rent, taxes, insurances, medical services, public services and legal expenses. In addition, it may authorise, with the *nihil obstat* of the President of the Governorate the release of funds or other assets frozen for the payment of extraordinary expenses (AML/CFT law, Art. 79 (1 and 2)). However, there is not requirement to ensure the absence of the negative decision with this regard by the relevant Committees – see also R.6 (c.6.7).

d) R.6 – EC 6.6 (g) provisions stated therein cover both TF and PF (AML/CFT law, Art. 75(7) and Art. 78 (6 and 8)), There is no procedure for providing guidance to FIs, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action.

Criterion 7.5 –

a) The accounts of the designated persons and entities which are subject to a freezing order may continue to generate interests and may receive payments and profits coming from contracts concluded prior to the listing of the person (AML/CFT law, Art. 79 (3)). The account, as well as interests, payments and profits remain frozen.

b) The authorities only referred to the ASIF power, once *nihil obstat* of the President of the Governorate is obtained, to authorise the payment of debts incurred by designated persons and entities in cases when: (i) the debt was acquired before the person or entity was designated; (ii) the

payment does not have, as its object, weapons or lethal devices or material, or technologies or services which may favour a programme for the proliferation of weapons of mass destruction; and (iii) it does not have as its counterpart another designated subject (AML/CFT law, Art. 79 (3)). However, this sub criterion requires the relevant countries to (i) determine that the contract is not related to any prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in UNSCR 2231 and any future successor resolutions; (ii) determine that the payment is not directly or indirectly received by a person or entity subject to the measures in paragraph 6 of Annex B to UNSCR 2231; and (iii) submit prior notification to the Security Council of the intention to make or receive such payments or to authorise, where appropriate, the unfreezing of funds, other financial assets or economic resources for this purpose, ten working days prior to such authorisation.

Weighting and Conclusion

Although the HS/VCS set up a mechanism for the creation of a single national list of *subjects who threaten international peace and security*, there is no requirement to automatically incorporate the designations made by the UN Security Council resolutions. In addition, there is no direct requirement for obliged entities to freeze funds without delay, and no requirement for natural and legal persons, which do not fall under the application of the AML/CFT law to freeze funds of persons threatening international peace and security. A number of shortcomings identified under R.6 are also applicable. **R.7 is rated PC**.

Recommendation 8 – Non-profit organisations

In its 2012 MER, the HS/VCS was rated NC with the former SR.VIII. The Report noted the absence: (a) of a comprehensive review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for TF purposes; b) of systematic outreach to the NPO sector; c) of comprehensive monitoring activities and inspections for the whole NPO sector; d) of an explicit legal requirement for the NPOs to maintain business records for a period of at least five years; e) of a formal mechanism established for national co-operation and information exchange between the national agencies which investigate ML/TF cases relating to NPOs; and f) of a formal mechanism established for responding to international requests regarding NPOs.

Criterion 8.1 –

(a) The HS/VCS has identified the subset of organisations falling within the FATF definition of NPO to some extent. According to the of the Law on the Registration and Supervision of NPOs (Law on NPOs), Art. 13, NPOs are associations or foundations that primarily engage in raising and/or distributing funds for charitable, religious, cultural, educational, social or humanitarian purposes. All NPOs with a legal seat in the HS/VCS are required under the Law on NPOs to register with the Registry of NPOs maintained by the Governorate. However, this register does not include some entities which fall both within the FATF and the Law's definition of NPO, such as other charitable legal persons which provide charitable, humanitarian, religious, cultural, educational, social or humanitarian activities as their main function which are not considered as NPOs[49] by the

[49] Hereinafter in the context of R.8, R.24, IO.5 and IO.10, the term NPO is used only to refer to the ones, which fall under the Law on NPOs.

jurisdiction. The conclusions of the GRA are of general nature, without fully identifying the features and types of NPOs which by virtue of their characteristics are likely to be at risk of TF abuse. In the aftermath of the 2019 GRA, a detailed analysis on the Supervision and Monitoring of the NPOs registered with the HS/VCS Registry of the Governorate was concluded in 2020 and the GRA was updated in September 2020. According to the GRA and its 2019 update some indirect sources of risk for NPOs may also be linked to humanitarian and charitable activity carried out at international level.

(b) The HS/VCS has not identified how terrorist actors may abuse the identified NPOs with high TF risk, although the 2020 Review lists a number of recommended actions aiming at mitigating potential ML/TF risk. The 2019 GRA (para. 348) states that there are no concrete elements or evidence of potential TF threats. It also indicates that registration and supervision of NPOs prevents potential risks of exploitation for TF purposes.

(c) Since 2013, a number of requirements on NPOs have been introduced. In particular, the *Motu Proprio* (August 2013) requires registered NPOs with a canonical personality in the HS/VCS to comply with AML/CFT measures and measures against persons who threaten peace and international security. In addition, the AML/CFT law (Art. 5 bis) requires all legal persons registered in the HS/VCS to maintain records relevant to their nature and activity; their beneficial owners/ownership (BO), beneficiaries, and members and administrators for ten years. Moreover, the 2017 law on NPOs imposes additional requirements (see below). Also, the ASIF Regulation No. 5 (SARs) introduces red flags for the misuse of NPOs. In addition, the MoU on the supervision and control of NPOs of February 2020 has introduced the conduct of an ad hoc assessment on the basis of data and information acquired with self-assessment questionnaires as well as the conduct of on-site inspections (see MoU and ASIF Evaluation Methodology). The conduct of periodic evaluations for NPOs became definitively mandatory with Decree No. CCCLXXII of 9 October 2020, amending the AML/CFT law.

(d) See c.8.1(c). The sector is periodically reassessed to review potential vulnerabilities to terrorist activities and ensure the effective implementation of measures taken in both GRAs and the 2020 Review of the NPO sector.

Criterion 8.2 –

(a) Although there is no specific policy document on the promotion of transparency, integrity and public confidence in the administration and management of NPOs, legal requirements can be found in the Law on NPOs. There is also a requirement for supervision of registered NPOs by the Section for General Affairs of the SoS with a view to ensuring their proper functioning and their suitability to further their declared purpose.

(b) The ASIF shall inform NPOs on ML/TF risks, including the best procedures, measures and controls to mitigate such risks (Law on NPOs, Art. 7.2). In line with this, ASIF Regulation No. 5 (SARs) includes a reference to risks in relation to NPOs. In 2018, the ASIF also issued the circular for NPOs addressing the issue of filing SARs. In addition, in February 2020, the authorities undertook outreach for 19 out of 22 representatives of the HS/VCS NPO sector, where the GRA was shared. The relevant material was also shared with those NPOs unable to participate. The outreach program covered a large scope of topics, including the potential vulnerabilities of NPOs to TF abuse and TF risks, and measures available to NPOs in shielding themselves against TF abuse. Notwithstanding the relevancy of the shared material and the outreach program itself, none of them covered the donor community.

(c) Although there is not previous systematic engagement, the 2020 Review of the NPO Sector is a result of cooperation between the authorities and NPOs. This Review concluded into certain Recommended Actions for the NPO sector aiming to protect the sector also from TF abuse. In addition, the authorities mentioned that the outreach programme was a starting point to stimulate interesting topics of debate and continuous information for indications, specific information to the ASIF and suggestions on providing guidelines for the fulfilment of the required corrective measures. These requests are satisfied both by phone, through targeted support meetings and ad hoc training.

(d) During the outreach session emphasis was placed on the use of traceable means of payment. In addition, the authorities point out the information provided in the questionnaire, which proves that attention is being paid to this aspect preliminary to this event. Moreover, the individual reports sent to each NPO indicated a higher risk if the use of regulated financial channels was lower than the sector average. In this case, the NPO was requested, also within the Guidelines sent, to adopt appropriate internal controls and measures according to the risk that emerged during the assessment activities and in accordance with the principle of proportionality. If the NPO had found a higher risk with reference to incoming and/or outgoing flows, it would have to adopt specific measures.

Criterion 8.3 – Steps to promote effective risk-based supervision of NPOs at TF risk abuse have been taken by the HS/VCS to some extent since 2019. The Law on NPOs (Art. 8) requires the proper functioning and suitability of all registered NPOs to further their declared purpose. In addition, NPOs must submit to the Section for General Affairs of the SoS the estimated budget by 1 December of the year preceding the budget period to which they refer, and the final financial statements by 30 June of the year following the budget period to which they refer (Law on NPOs, Art. 8). Moreover, in view of the appropriateness of coordinating the exercise of reciprocal competencies with regard to non-profit entities, a MoU on the Oversight and Control of Non-profit Entities was signed among the SoS, the SfE and the ASIF on 13 February 2020. According to the MoU (Art. 4), the ASIF shall prepare a questionnaire aiming at identifying and assessing potential ML/TF threats and vulnerabilities of each entity, including mitigation aids and existing internal control mechanisms. This serves as a presupposition for proposing measures aimed at mitigating identified risks and establishing a plan of oversight based on risk. Moreover, the Decree No. CCCLXXII (Art. 13 bis (1)(a)(i)), amending AML/CFT law, provides that NPOs must carry out self-assessment activities aimed at the elaboration and periodic updating of their own particular risk assessment, in line with the indications provided and on the basis of the instruments drawn up by the competent authorities. The questionnaire should cover a wide scope of areas in identifying risk profile. Nevertheless, as mentioned under – C.8.1, the 2020 Questionnaire identifies ML/TF risk, without reflecting TF risk itself, or identifying NPOs which are likely to be at a risk of TF abuse.

In addition, the President of the Governorate has a responsibility to take care that the data and information concerning the nature, activity, organisation, effective ownership and beneficiaries of legal entities are kept in the appropriate register, are updated appropriately and are accessible to competent authorities, also informing legal entities of their obligations (AML/CFT law, Art. 8(2a)). Whilst there are requirements under the law on NPOs for filing managerial and statutory documents with the register, including requirements for the President of the Governorate to check such documents, this procedure aims at understanding the completeness rather than the credibility of the required information(Art. 3 and 4).

Criterion 8.4 –

(a) See C.8.3.

(b) Breaching the law on NPOs (i.e. filing of documents; bookkeeping; record keeping; reporting of suspicion) results into an administrative sanction (Art. 12) ranging from EUR 500 to EUR 20 000. In case of repeated violations or of a breach protracted beyond 15 days from the date of the notice of violation, the fine shall be doubled and the NPO may be sanctioned with a temporary prohibition of carrying out its activities. For the same breaches, the legal representative or the manager to whom the violation may be attributed shall be punished with an administrative sanction ranging from EUR 1 000 to 30 000. In case of repeated violations or of a breach protracted beyond 15 days from the date of the notice of violation to the legal representative, to the manager or to the person responsible for the organisation, the fine shall be doubled and the person may be sanctioned with a temporary ban from managerial positions in legal persons and even removal from managerial positions.

In addition, under the Law (Art. 8), managers or representatives of the NPO can be replaced when they do not fulfil the honourability requirements and management can be dissolved and an extraordinary administrator appointed, whenever the managers have acted in serious breach of the law or the Statute of the NPO. It is worth mentioning that the authorities refer to Art. 61 of the AML/CFT law for the honourability requirements, which apply only to entities professionally providing financial services, but not to NPOs. There is also no legal framework to identify which breaches of the Law or the Statute are considered serious and are to affect dissolution of the management. This sanctioning regime does not apply to possible serious breaches of the Act of incorporation of NPOs.

While there are sanctions available, the sanctioning regime on NPOs is unclear with regard to several requirements stipulated above, as well as the provisions do not apply to the requirements for the contents of the act of incorporation/statute or to registration itself. The sanctioning regime does not preclude parallel civil or criminal proceedings with respect to NPOs or persons acting on their behalf where appropriate.

Criterion 8.5 –

(a) The law on NPOs (Art. 9) provides for exchange information in preventing the abuse of NPOs for criminal activities among the SoS, the OPJ, the Office of the Auditor General, the ASIF and the CdG. However, this provision does not cover wider coordination and cooperation matters beyond criminal activities. According to the Action Plan of the Office of the Auditor General for preventing and fighting ML/TF, the Office does not have, in its Statutes or by law, specific competences on ML/TF but a general obligation (the AML/CFT law and ASIF Regulation No. 5 (SARs)) to inform the ASIF on possible suspicious transactions arising through its activity. As Anticorruption Authority, instead, it is in charge for preventing the crime of corruption, which is considered a predicate offence of ML, and therefore indirectly preventing the ML linked to that crime. The Office as such does not engage in CFT-related cooperation.

According to the AML/CFT law (Art. 69 bis) the competent authorities referred to in Art. 8, the entities and institutions of the HS/VCS shall actively cooperate and exchange information for AML/CFT purposes in the manner and within the limits established by the Law. This provision covers also cooperation with the President of Governorate. More specific procedures on

coordination and cooperation are provided by the MoU among the SoS, the SfE and the ASIF, and the MoU among the OPJ, the CdG and the ASIF.

(b) The authorities did not provide specific information on this criterion. Instead, they referred the completion of the "area expert" AML/CFT course provided by the Italian Guardia di Finance (GdiF) by a member of the Economic and Financial Crime Unit of the CdG (ECO-FIN Unit).

(c) The documents referred to in the preceding paragraphs shall always be accessible to the SoS (Law on NPOs, Art. 6(3)). It also adds that the ASIF and the CdG may request, in the course of an investigation, that a complete copy or an extract of those documents be produced.

(d) There are no specific mechanisms to ensure that, when there is suspicion or reasonable grounds to suspect that a particular NPO: (1) is involved in TF abuse and/or is a front for fundraising by a terrorist organization; (2) is being exploited as a conduit for TF, including for the purpose of escaping asset freezing measures, or other forms of terrorist support; or (3) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations, this information is promptly shared with competent authorities, in order to take preventive or investigative action. The AML/CFT law (Art .40.2) requires NPOs to report suspicion of TF to the ASIF. When the ASIF concludes that there is reasonable ground to suspect TF, it disseminates reports, documents, data and information to the OPJ, thus promoting necessary investigative actions (AML/CFT law, Art.48(e)). Though this requirement would cover possible situations described under point 2, the other two remain uncovered. The Law on NPOs (Art. 7) requires that NPOs send a report to the ASIF whenever they have reasonable grounds to suspect that funds or other economic resources, activities, initiatives or transactions of which they become aware, are connected with ML/TF activities, which can be used as a mechanism when an NPO is being exploited as a conduit for TF, including for the purpose of escaping asset freezing measures, or other forms of terrorist support.

Criterion 8.6 – Without prejudice to instances of mutual legal assistance (MLA) and international exchange of financial information already foreseen by the Law, the SoS is competent to examine the requests of information received from foreign authorities regarding the functioning or records of NPOs (Law on NPOs, Art. 10). Requests received through diplomatic channels shall be processed in accordance with the CCP (Art. 635). The SoS may convey to the foreign competent authorities, through diplomatic channels, useful information regarding the functioning or records of NPOs, even in the absence of a prior request. Nevertheless, it is unclear whether this cooperation is provided by the SoS as a central MLA authority or as a NPOs supervisory authority, acting though Section of General Affairs. Besides, the ASIF carries out international cooperation with its foreign counterparts, to which requests can be sent from foreign FIUs

Weighting and Conclusion

Since 2017, the HS/VCS has been taking actions with regard to NPO sector, resulting into a comprehensive regulation and supervision. However, the HS/VCS has not identified the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of TF abuse. Moreover, there are other charitable legal persons which provide charitable, humanitarian, religious, cultural, educational, social or humanitarian activities as their main function, which are not considered as NPOs. Also, the supervisory approach in place is risk-based to some extent. A number of other shortcomings also impact on the weighting. **R.8 is rated PC**.

Recommendation 9 – Financial institution secrecy laws

In the 2012 MER, the HS/VCS was rated as Largely Compliant with R.4 under the 2004 FATF Methodology. It was concluded that an express exemption from the obligation to observe financial secrecy with respect to information exchange with foreign FIs was missing and therefore, could be challenged before the court. Moreover, it was found that no clear empowerment for the ASIF to exchange information with foreign supervisory authorities existed.

Criterion 9.1 – There exist three levels of secrecy rules: (i) financial secrecy which protects the confidentiality of a person's financial data from access by unauthorised third parties (ASIF Regulation No. 1 (prudential matters), Art. 3(37) and Art. 51(1) (a)); (ii) official secrecy according to which all members and employees of the Roman Curia (including judges and the Promoter of Justice) and members and staff of the ASIF are obliged to strictly observe official secrecy (respectively General Regulation of the Roman Curia, Art. 36 and AML/CFT law, Art. 67); and (iii) pontifical and state secrets, covering information related to the institutional activity of the universal church, like the identity of cardinals or bishops the Supreme Pontiff is going to appoint, and matters related to domestic public order and security.

"Official secrecy" and "financial secrecy" must not inhibit or limit: (i) the fulfilment of requirements placed on FIs by the AML/CFT law; (ii) access to information by competent authorities; (iii) cooperation between competent authorities and the exchange of information at international level; and (iv) exchange of information between reporting entities, including at international level (AML/CFT law, Art. 6 and Art. 70).

On the other hand, nothing in the AML/CFT law may prejudice the norms in force relating to pontifical and state secrets (AML/CFT law, Art. 70(2)). However, pontifical secrets do not cover financial matters and so do not appear to limit the power of competent authorities to exchange information relevant to the prevention and countering of ML/TF. Regarding state secrets, Art. 107(1) of the CC establishes a definition covering political and military secrets.

In addition, the competent authorities of the HS/VCS (including LEAs) are expected to actively cooperate and exchange information for the prevention of and countering of ML and TF, including with similar bodies in other states (AML/CFT law, Art. 69 and 69 bis). In particular, the ASIF is entitled to cooperate and exchange information with other authorities of the HS/VCS (AML/CFT law, Art. 69(3)) and with similar authorities of foreign jurisdictions, on the condition of reciprocity and on the basis of MoUs (AML/CFT law, Art. 69 bis (2)).

On the basis of the above: (i) competent authorities have access to information they require to properly perform their AML/CFT functions; (ii) information may be shared between competent authorities (domestically and internationally); and (iii) there are no financial secrecy provisions that inhibit or limit the exchange of information in relation to the transfer of funds between FIs (R.16) or in relation to correspondent relationships with FIs of other states (R.13) (AML/CFT law, Art. 6 in conjunction with Art. 27 and Art. 31 et sqq.). Reliance on CDD conducted by other FIs is prohibited – see R.17.

Weighting and Conclusion

There are no financial secrecy laws that impede the implementation of the FATF Recommendations. Therefore, **R.9 is rated C.**

Recommendation 10 – Customer due diligence

In its 2012 MER, the HS/VCS was rated PC with the former R.5. The main deficiencies noted by the assessment were related to: (i) having no requirement to verify that transactions are consistent with the institution's knowledge of the source of funds, if necessary; (ii) some blanket exemptions from CDD requirements; and (iii) application of simplified CDD measures even where higher risk scenarios apply.

The AML/CFT law (Art. 2) lists the subjects that are obliged to fulfil the requirements set out in Title II of the Law (measures to prevent and counter ML/TF). This includes natural or legal persons carrying out one or more financial activities on a professional basis within the HS/VCS, including their domestic and foreign branches and subsidiaries (AML/CFT law, Art. 2(a)). Art. 1(1) of the AML/CFT law provides the definition of "*financial activities*" which is in line with the definition of "*FIs*" provided for by the FATF Methodology, however, it extends this definition to cover any activity related to trusts or similar legal arrangements. References to FIs under R.10 to R.12 and R.14 to R.23 should be treated as a reference to obliged subjects stipulated in Art. 2(a) of the AML/CFT law.

The term "customer" is not used in the AML/CFT law; instead the Law uses the term "counterpart". This term is not defined in the AML/CFT law, though the law makes clear provision for counterparts that are legal persons and legal arrangements. However, the term "customer" is defined in ASIF Regulation No. 4 (CDD) as a natural person or legal entity to whom services are offered (Art. 3(40)), though this definition is applicable only to this Regulation. On this basis, the term "counterpart", whilst not defined, is considered to cover natural persons, legal persons and legal arrangements. For the purpose of the assessment of preventative measures below, the term "customer" is used.

The ASIF is required to adopt regulations and guidelines in cases established by law (AML/CFT law, Art. 8). This includes, in particular ASIF Regulation No. 4 (CDD). See R.34.

Criterion 10.1 – It is forbidden for FIs to open or hold accounts, deposits, savings accounts or analogous relationships under anonymous, encrypted or fictitious or fanciful names (AML/CFT law, Art. 5(a)).

Criterion 10.2 – FIs are required to carry out CDD when:

(a) they establish a relationship (AML/CFT law, Art. 15(1)(a)(i) and ASIF Regulation No. 4 (CDD), Art. 5(1)(a));

(b) they carry out operations or transactions equal to or above EUR 10 000, regardless of the fact that the operation or transaction is executed in a single operation or in several operations which appear to be linked (AML/CFT law, Art. 15(1)(a)(ii) and ASIF Regulation No. 4 (CDD), Art. 5(1)(b));

(c) they make a transfer of funds equal to or above EUR 1 000 (AML/CFT law, Art. 15(1)(a)(iii) and ASIF Regulation No. 4 (CDD), Art. 5(1)(c));

(d) there is a suspicion of ML or TF, regardless of an exemption or applicable threshold (AML/CFT law, Art. 15(2)(a) and ASIF Regulation No. 4 (CDD), Art. 5(2)(a)); and

(e) there are doubts as to the reliability or adequacy of the data previously obtained for the identification of the customer, of persons acting in the name of, and on behalf of, the customer, or of the BO (AML/CFT law, Art. 15(2)(b) and ASIF Regulation No. 4 (CDD), Art. 5(2)(b)).

Criterion 10.3 – FIs are required to identify their customer and verify their identity based on documents, data or information obtained from a reliable and independent source (AML/CFT law, Art. 16(1)(a) and ASIF Regulation No. 4 (CDD), Art. 8(1) and (2), 9(2), 11 and 12).

Criterion 10.4 – FIs are required to verify that the person who intends to act in the name of, and on behalf of, the customer is so authorised and to identify and verify the identity of that person on the basis of documents, data and information obtained from a reliable and independent source (AML/CFT law, Art. 16(1)(b) and ASIF Regulation No. 4 (CDD), Art. 8, 9 and 11).

Criterion 10.5 – FIs are required to identify the BO of the customer and adopt adequate (not explained) or reasonable measures to verify their identity on the basis of documents, data or information obtained from a reliable and independent source that they consider to be satisfactory (AML/CFT law, Art. 16(1)(c), Art. 16(1 bis) and Art. 17(3) and (4) and ASIF Regulation No. 4 (CDD), Art. 9(2) (b, e, f) and Art. 11). It is not explained for what purpose, documents, data and information must be satisfactory (i.e. to be satisfied that the BO is known).

The definition of BO is provided for by Art. 1(24) of the AML/CFT law which is in line with the FATF definition.

Criterion 10.6 – FIs are required to obtain and verify documents, data and information relating to the purpose and nature of the relationship (AML/CFT law, Art. 16(1)(e)). There is a similar requirement – to acquire and assess information on the nature and purpose of a relationship - under ASIF Regulation No. 4 (CDD) (Art. 10(4)). The authorities consider that the terms "verify" and "assess" implicitly cover the requirement for FIs to understand the purpose and intended nature of the business relationship. However, this is not explicitly stated.

Criterion 10.7 – FIs are required to constantly carry out due diligence on the business relationship, including:

(a) Monitoring the relationship, including scrutinising operations or transactions undertaken throughout the course of that relationship, so as to ensure that they are consistent with the knowledge of the customer, their *activity* (which has the same meaning as business according to the authorities) and risk profile, including the source of funds (AML/CFT law, Art. 19(1)(a) and ASIF Regulation No. 4 (CDD), Art. 17(1)(2)(a)).

(b) Updating of documents, data and information acquired for the purposes of CDD, and undertaking reviews of existing records, with particular attention to categories of high-risk customers (AML/CFT law, Art. 19(1)(b) and ASIF Regulation No. 4 (CDD), Art. 17(1) and (2)(b) and (c)). However, there is no additional requirement for documents, data or information to be kept relevant in line with the standard, which calls for attention to be given to higher risk (not high risk) categories of customer.

Criterion 10.8 – In a case where the customer is a legal person, FIs shall acquire knowledge and understanding of the structure of ownership and control and of the nature of the activity carried out by the legal person (AML/CFT law, Art. 17(1)). The definition of legal persons also includes legal arrangements (AML/CFT law, Art. 1(15)).

Criterion 10.9 – For the purpose of identification and verification of the identity of the customer, FIs shall gather the following information (AML/CFT law, Art. 17(2)):

(a) The denomination (name), legal nature and proof of the existence of the legal person (including legal arrangement) (AML/CFT law, Art. 17(2)(a)). A similar requirement is found in ASIF Regulation No. 4 (CDD) (Art. 9(2)(a)), however it is unclear whether this provision covers information on name.

(b) The organs and powers that regulate the functioning and legally bind the legal person (including legal arrangement), including, *inter alia*, the names of the persons who exercise management and senior management functions (AML/CFT law, Art. 17(2)(b)). Similar requirements are found in ASIF Regulation No. 4 (CDD) (Art. 9(2)(b)), however, there is no requirement to provide information on the powers that regulate and bind the legal person or arrangement.

(c) The address of the registered office and, if different, the principal place of business (AML/CFT law, Art. 17(2)(c)).

Criterion 10.10 – FIs are required to identify and verify the identity of the BO using the following information:

(a) The identity of the natural persons who ultimately have a controlling ownership interest in the legal person or who are its "beneficiaries" (AML/CFT law, Art. 17(3)(a) and Art. 1(24); ASIF Regulation No. 4 (CDD), Arts. 8, 9, 11 and 12). No definition is provided for the term "beneficiary" and so it is not clear what additional element is covered by this term. Furthermore, whenever entering into a new business relationship with a legal person (one on or after 10 October 2020), FIs shall collect proof of registration in the relevant register (VCS or foreign), including the presence of adequate, accurate and current information on BO (AML/CFT law, Art. 17(5)).

(b) The identity of the natural persons who exercise control of the legal person through other means, if:

i. there is a doubt as to whether the persons with a controlling ownership interest are the BO (AML/CFT law, Art. 17(3)(b)(i)); or

ii. there are no natural persons with controlling ownership interests in the legal person (AML/CFT law, Art. 17(3)(b)(ii)).

(c) The identity of the natural person who holds the highest senior management position in the legal person if no other natural persons have been identified (AML/CFT law, Art. 17(3)(c)).

For (b) and (c) above, whilst the above is in line with the standard, the definition for BO of a company uses a different formulation (AML/CFT law, Art. 1(24)(a)(i) and (ii)) – relevant to c.10.10(b) and (c). The BO is the natural person who, through ownership, direct or indirect, holds a sufficient percentage of shares in the company's capital or voting rights (also through bearer negotiable shares). Art. 1(24)(a)(ii) provides the definition of BO in those cases where there is no natural person who may be identified as the BO under Art. 1(24)(a)(i). The legal provision explains that, in such situations, the BO will be the natural person(s) holding the position of senior managing official **or** a person who exerts control through other means. This wording appears to allow a senior managing official to be treated as the BO even where there is a person controlling through other means. The authorities have not explained the reason for this different formulation, which is considered important in the context of the HS/VCS given that customers that are legal persons typically do not have shareholders.

Criterion 10.11 – Whenever entering into a new business relationship (one on or after 10 October 2020) with a trust or a legal arrangement having a structure or functions similar to trusts, FIs shall collect proof of registration in the relevant register, including the presence of adequate, accurate and current information on BO (AML/CFT law, Art. 17(5)). Also, FIs are required to identify and verify the identity of the BO using, inter alia, the following information (AML/CFT law, Art. 17(4)):

(a) For trusts, the identity of the settlor, trustee, protector, beneficiaries or category of beneficiaries, and any other natural person who ultimately exercises control over the trust, directly or indirectly (AML/CFT law, Art. 17(4)(a)).

(b) For other types of legal arrangements, the identity of persons who hold equivalent or similar positions (AML/CFT law, Art. 17(4)(b)).

Criterion 10.12 – In the case of life or other investment-related insurance, as soon as the beneficiary has been identified or designated, FIs shall, inter alia:

(a) Collect the name of the natural or legal person - when the beneficiary is identified or designated as a specific natural or legal person, or legal arrangement (AML/CFT law, Art. 18(1)(a)); and

(b) Collect sufficient information to be able to identify the beneficiary at the time of the pay-out - where the beneficiary is designated according to a set of characteristics or by category or by other criteria (AML/CFT law, Art. 18(1)(b));

(c) Verify the identity of the beneficiary at the time of the pay-out in both of the above cases (AML/CFT law, Art. 18(1)(c)).

Criterion 10.13 – FIs are required to include the beneficiary of life or other investment-related insurance among the elements relevant to a risk assessment to determine where EDD measures are applicable (AML/CFT law, Art. 18(2)). In a case where a beneficiary presents a high risk, FIs are required to apply enhanced measures, including, inter alia, measures to identify and verify the identity of the BO (natural or legal person, or legal arrangement) at the time of pay-out (AML/CFT law, Art. 18(3)). However, the standard calls for EDD measures to be applied to higher risk (not high-risk) beneficiaries.

Criterion 10.14 – FIs are required to carry out verification before establishing any relationship or executing a transaction (AML/CFT law, Art. 16(2)).

Criterion 10.15 – This criterion is not applicable as FIs are required to carry out verification before establishing any relationship or executing a transaction.

Criterion 10.16 – For existing customers (customers at the time that the revised AML/CFT law came into force on 10 October 2019), previous CDD requirements fell away, and special provisions are in place. FIs are required to apply CDD measures to existing customers on a timely basis and in line with a RBA, taking into account the requirements already fulfilled and the adequacy of the documents, data and information already acquired (AML/CFT law, Art. 20(1)).

Criterion 10.17 – FIs are required to apply EDD in cases of high ML/TF risks associated with the category and country or geographical area of the customer, or the type of relationship, product or service, operation or transaction, including channels of distribution, and where the risk level attributed to a customer is high according to the internal system of customer risk profile (AML/CFT law, Art. 25(1) and ASIF Regulation No. 4 (CDD), Art. 23(1)(b)). Enhanced measures, to be applied

on the basis of risk, are prescribed (AML/CFT law, Art. 24) and are considered to be sufficient. However, the standard calls for EDD measures to be applied in cases of higher risk (not high risk).

Criterion 10.18 – Having taken into account the HS/VCS GRA, the ASIF is able to identify (through regulation) cases of application of simplified CDD where there is a low (rather than lower) risk of ML/TF, and indicate the procedures and measures to be adopted by FIs, including the requirements to be fulfilled (AML/CFT law, Art. 13 and ASIF Regulation No. 4 (CDD), Art. 21). This includes situations where low risk has been identified by the FI (ASIF Regulation No. 4 (CDD), Art. 4). In addition, even in the absence of such regulations, the ASIF can authorise the application of simplified CDD measures to a particular FI in the case of low (rather than lower) ML/TF risk (AML/CFT law, Art. 24(1)). In such a case, the ASIF must consider the GRA and risk assessment that has been prepared by the FI (AML/CFT law, Art. 24(2)). Simplified CDD cannot be applied when there is suspicion of ML or TF or in a high-risk (rather than higher risk) case (AML/CFT law, Art. 13(3) and 24(3) and ASIF Regulation No. 4 (CDD), Art. 21 and 23).

Criterion 10.19 -

(a) In cases when FIs are unable to comply with initial identification and verification requirements, they are forbidden from establishing a relationship or, in the case of existing relationships, from performing an operation or transaction (AML/CFT law, Art. 16(3)). Notably, there is no prohibition on proceeding with "occasional transactions". FIs are also required to terminate the relationship in cases where it is not possible to apply ongoing CDD (AML/CFT law, Art. 19(2)).

(b) In all such cases stated above, FIs are required to report to the ASIF (AML/CFT law, Art. 16(3) and 19(2)), and not just consider making such a report.

Criterion 10.20 – When there is a suspicion of ML or TF and carrying out CDD could alert the customer or affect the activity of the competent authorities, the service, operation or transaction shall be conducted (without completing CDD) and a report made immediately to the ASIF (AML/CFT law, Art. 21). It is implicit from this provision that FIs are permitted not to pursue the CDD process and explicit that the FI has no choice but to proceed with any service, operation or transaction (a provision that does not apply to reporting suspicion more generally).

Weighting and Conclusion

Only a limited number of shortcomings have been identified, in particular: (i) the definition of BO for companies seems to fall short of the standard in those situations where there is no natural person controlling through ownership; (ii) there is no requirement for documents, data or information to be kept relevant; and (iii) there is no prohibition on carrying out an occasional transaction in situations where CDD may not be carried out. Given that the customer base of the HS/VCS is not complex and that occasional transactions are not undertaken, these shortcomings are minor and so **R.10 is rated LC**.

Recommendation 11 – Record-keeping

In its 2012 MER, the HS/VCS was rated LC with the former R.10 due to effectiveness issues.

Criterion 11.1 – FIs are required to maintain transactional records, irrespective of whether they are domestic or international, for a period of 10 years following execution of the transaction (AML/CFT law, Art. 38(1)(b)).

Criterion 11.2 – FIs are required to keep CDD-related documents, data and information for a period of 10 years following the termination of the business relationships or execution of the transaction (AML/CFT law, Art. 38(1)). The reference to "transaction" here is to both an occasional transaction (as defined by the FATF) and transaction undertaken in the course of a business relationship, so can be interpreted in a way that links the retention period to a particular transaction within the course of a business relationship rather than termination of that business relationship. CDD related documents are further specified in the AML/CFT law (Art. 38(1)(a)) and include all the documents collected, including identification data, account books and statements, correspondence and results of reviews and analyses undertaken.

Criterion 11.3 – All transaction-related documents, data and information must be sufficient for the reconstruction of a single transaction and, where necessary, for the collection of evidence in view of investigative or judicial activities (AML/CFT law, Art.38(1)(b)(v)).

Criterion 11.4 – FIs are required to adopt CDD and transaction record-keeping procedures that allow them to provide documents, data and information required by the ASIF or other competent authorities on a timely basis (rather than swiftly) (AML/CFT law, Art. 38(2)(b)(i)). The term "timely" ensures that something is done at the best possible moment but not necessarily quickly or at great speed.

Weighting and Conclusion

Under the AML/CFT law, it may be possible to link the destruction of CDD-related documents to the execution of a specific transaction within a relationship, rather than to the termination of that relationship. Also, an imprecise term is used to regulate the period in which records must be made available to competent authorities. **R.11 is rated LC.**

Recommendation 12 – Politically exposed persons

In the 2012 MER, the HS/VCS was rated PC with the former R.6 due to the following: (i) the requirement to put in place appropriate risk management systems to determine whether the customer is a PEP did not extend to the case of the BO; (ii) there was no express requirement to establish the source of PEPs' wealth; and (iii) some effectiveness issues.

Criterion 12.1 – The AML/CFT law does not draw a distinction between domestic and foreign PEPs: PEP is defined as a person who is, or has been, entrusted with a prominent public function in the HS/VCS, in any other State or in an international organization (AML/CFT law, Art. 1(16), ASIF Regulation No. 4 (CDD), Art. 3(24)). Categories of persons who are entrusted with prominent public functions are in line with the definition provided in the FATF Glossary (AML/CFT law, Art. 1(14); ASIF Regulation No. 4 (CDD), Art. 3(22)).

FIs are required to implement the following requirements (AML/CFT law, Art. 28(1)):

a) To determine whether the customer or the BO is a PEP (rather than put in place risk management systems).

b) To obtain senior management approval before entering into a business relationship or continuing such relationships.

c) To establish the "origin of patrimony" (which is the literal translation from the Law) and origin of the funds of customers and BOs identified as PEPs. The authorities have advised that "origin of patrimony" refers to source of wealth, and that use of the word 'patrimony' in the Italian language is equivalent to the use of 'wealth' in the English language).

d) To conduct ongoing enhanced monitoring of the business relationship.

Criterion 12.2 - The same requirements, as discussed under c.12.1, are applicable to domestic PEPs, irrespective of whether the relationship is considered to present a higher risk.

However, ASIF Instruction No. 5 (May 2019) lists particular functions that, within the HS/VCS, are qualified as PEPs.

Criterion 12.3 – The requirements set out under c.12.1 and c.12.2 are also applicable to family members and close associates of a PEP (AML/CFT law, Art. 30). However, the definition of family member is limited only to married partners, children (and married partners) and parents (AML/CFT law, Art. 1(9)) and does not include siblings or unmarried partners in line with examples provided in FATF Guidance (June 2013) for cultures where the number of family members who have influence are small. FIs are also required to carry out an assessment of the potential risk factors associated with family members not mentioned in the AML/CFT law, but covered by Canon Law (Art. 108), such as siblings and grandchildren, in order to take the most appropriate measures in line with a RBA (ASIF Instruction 5 on PEPs). Whilst this will be appropriate for domestic PEPs (which account for the majority of PEPs), this is not in line with c.12.1 (foreign PEPs). Moreover, the definition of close associates covers only economic relationships (AML/CFT law, Art. 1(21) and ASIF Regulation No. 4 (CDD), Art. 3(32)).

Criterion 12.4 – In relation to life or other investment-related insurance policies, FIs are required to determine whether the beneficiary and, where necessary, the BO of the beneficiary, is a PEP (AML/CFT law, Art. 29(1)). These measures should be applied no later than at the time of the payout, in whole or in part (AML/CFT law, Art. 29(2)). In high (rather than higher) risk cases, FIs are required to: (i) inform senior management before pay-out; (ii) apply enhanced controls on the entire business relationship with the policy holder; and (iii) consider filing a SAR with the ASIF (AML/CFT law, Art. 29(3)). No life or other investment-related insurance services are provided in the HS/VCS, but there is nothing to prevent such services being offered in the future.

Weighting and Conclusion

Some deficiencies have been identified: (i) scope of definitions for family member and close associate; and (ii) measures in relation to life or other investment-related insurance policies are to be applied in high (rather than higher) risk cases. **R.12 is rated LC.**

Recommendation 13 – Correspondent banking

In its 2012 MER, the HS/VCS was rated LC with the former R.7 due to the absence of requirements to assess: (i) whether a correspondent body has been subject to a ML/TF investigation or regulatory action; and (ii) the respondent institution's AML/CFT controls, and to ascertain that they are adequate and effective.

Criterion 13.1 – The standard defines the FI receiving correspondent services as the "respondent institution" and this term is reflected in the AML/CFT law (Art. 1(18 bis)), which defines "correspondent relationship" and refers to "respondent" (*rispondente*). Elsewhere, Art. 27 refers to the respondent as the "corresponding institution" (*istituzione finanziaria corrispondente*). In relation to correspondent relationships with FIs established in other countries, FIs are required to apply preventative measures (AML/CFT law, Art. 27; ASIF Regulation No. 4 (CDD), Art. 26). However, by virtue of the definition of "correspondent relationship", which refers to relationships only between FIs (AML/CFT law, Art. 12 ter) and does not extend also to credit institutions, correspondent requirements do not apply where an obliged subject has a relationship with a foreign bank. The following preventative measures must be applied:

(a) Gather sufficient information about the corresponding FI in order to fully understand the nature of its activities and to determine, on the basis of the information available to the public, its reputation and the quality of its supervision (AML/CFT law, Art. 27(1)(a); ASIF Regulation No. 4 (CDD), Art. 26(2)(a)). However, there is no explicit requirement to determine whether the respondent FI has been subject to AML/CFT investigation or regulatory actions.

(b) Assess AML/CFT controls applied by the corresponding FI (AML/CFT law, Art. 27(1)(c); ASIF Regulation No. 4 (CDD); Art. 26(2)(c)).

(c) Obtain senior management approval prior to opening new corresponding accounts/establishing new correspondent relationships (AML/CFT law, Art. 27(1)(d); ASIF Regulation No. 4 (CDD), Art. 26(3)(a)).

(d) Establish in writing the respective responsibilities of the FI and the corresponding FI (AML/CFT law, Art. 27(1)(e); ASIF Regulation No. 4 (CDD), Art. 26(3)(b)). However, there is no direct requirement to clearly understand respective responsibilities.

Criterion 13.2 – Payable-through accounts are defined in Art. 1(5) of the AML/CFT law, which definition meets the standard. With respect to payable-through accounts, in line with the standard, obliged subjects are required to ensure that the corresponding FI:

(a) has carried out CDD on its customers that have direct access to those accounts (AML/CFT law, Art. 27(2)(a); ASIF Regulation No. 4 (CDD), Art. 26(4)(a)); and

(b) is able to provide, upon request, CDD information (AML/CFT law, Art. 27(2)(b)); ASIF Regulation No. 4 (CDD), Art. 26(4)(b)).

The shortcomings noted in c.13.1 also apply in the assessment of this criterion.

Criterion 13.3 – It is prohibited to open or maintain correspondent relationships with a shell bank, or a FI that permits their accounts to be used by a shell bank (AML/CFT law, Art. 5(1)(c-d)). In addition, FIs (but not banks) are required to ascertain that the corresponding institution is neither a shell bank nor permits their accounts to be used by shell banks (AML/CFT law, Art. 27(1)(b); ASIF Regulation No. 4 (CDD), Art. 26(2)(b). The shortcomings noted in c.13.1 also apply in the assessment of this criterion.

Weighting and Conclusion

The deficiency observed in the definition of "correspondent relationship" (which exclude banks) is considered a major shortcoming, notwithstanding that requirements do apply to non-banking correspondent relationships. This reflects limited services available in the Institute of Works for

Religion (hereinafter the ASIF authorised institution) in respect of investment services. In addition: (i) FIs are required to document the respective responsibilities of each institution (correspondent and respondent) in writing rather than clearly understand them (c 13.1(d)); and (ii) there is no explicit requirement to determine whether the respondent FI has been subject to an AML/CFT investigation or regulatory action. **R.13 is rated NC.**

Recommendation 14 – Money or value transfer services

In the 2012 MER, the former SR.VI was rated as not applicable. In particular, the two ASIF authorised institutions confirmed that there were no natural and legal persons providing money or value transfer services, or a money or currency changing service in the HS/VCS.

The HS/VCS authorities have advised that R.14 is not applicable. This is on the basis that: (i) any person is prevented from engaging in MVTS (or any other activity) without obtaining an authorisation by the Governorate (Law No. V of 7 June 1929, Art. 7); and (ii) whilst the ASIF authorised institution is authorised to exercise financial activities carried out on a professional basis, including transfer of funds and money or currency changing services, these services are provided only to customers who have a current account relationship with the ASIF authorised institution (ASIF Regulation No. 1 (prudential matters), Art. 3) and so the institution cannot be considered a MVTS provider.

However, it appears to the assessment team (AT) that it is legally possible to carry out MVTS activity in the HS/VCS (since there is no statutory prohibition on this activity), provided it is authorised and therefore that R.14 is applicable. This view is supported by the exemption that has been provided to the Vatican Post Office in respect of money transmission services – whereby it is not considered to be an obliged subject (see c.1.6).

Criterion 14.1 – Since the scope of the AML/CFT law covers transfer of funds, MVTS providers are subject to a licensing system (see c.26.2). By exception, the Vatican Post Office is not designated as an obliged subject (see c.1.6). Due to the public monopoly regime in the HS/VCS, any economic, commercial or professional activity (including those of MVTS providers) carried on in the HS/VCS also requires prior authorisation by the Governorate, both for physical and remote provision of services.

Criterion 14.2 – The CdG and the Pontifical Swiss Guard monitor the four access points to the HS/VCS and grant entry to a person to enter the State only if there is a valid reason. This prevents services being provided without a licence. Sanctions available for unauthorised business include warnings, orders to comply with specific instructions, corrective measures, a fine and permanent or temporary interdiction of natural persons involved in carrying out activities in the economic, commercial, or professional sectors (see c.27.4). The range of sanctions available is considered to be proportionate.

Criterion 14.3 – The framework for risk-based supervision is described in c.26.5.

Criterion 14.4 and 14.5 – There are no requirements for agents of MVTS providers. Whilst, the Vatican Post Office (which provided services during the period under review) is prohibited from having agents, it is not designated as an obliged subject (see c.1.6).

Weighting and Conclusion

There are no requirements for agents of MVTS providers. Given the very limited opportunity to conduct MVTS through agents, **R.14 is rated LC**.

Recommendation 15 – New technologies

In its 2012 MER, the HS/VCS was rated PC with the former R.8 due to undue exemptions from CDD requirements and effectiveness matters.

Criterion 15.1 – As explained in Chapter 1, there is just one ASIF authorised institution and there are no VASPs. As explained under IO.4, the ASIF authorised institution has taken a conservative approach to the use of technology and does not offer any internet banking or fintech products and has not offered new products, services or changed its business practices. The institution is required to identify and assess the ML/TF risks connected to: (i) the development of new activities and products, including channels of distribution; and (ii) the use of new technologies or those being developed, for existing or new products or services, operations or transactions, including channels of distribution (AML/CFT law, Art. 23(1)). There is no reference to the identification and assessment of risks arising from new business practices. Although not explicitly stated, possible "new business practices" are included in the reference to "new activities". There is no similar requirement for the country's competent authorities.

According to Art. 9 (1) (a), "The Financial Security Committee shall […] establish the criteria and the methods for the elaboration of the general assessment of risks of money laundering, financing of terrorism and the proliferation of weapons of mass destruction of the HS/VCS, analysing the threats, vulnerabilities and mitigation measures". The provision includes also the identification and the assessment of the threats and the vulnerabilities connected to potential "new technologies".

Overall, in assessing the requirements of this criterion, the AT considered the uniqueness of the jurisdiction (see Chapter 1) and the fact no legal persons are established in the HS/VCS to pursue private industrial or commercial purposes – rather they exclusively serve the mission of the HS/VCS and the Catholic Church.

Criterion 15.2 – FIs are required to:

(a) Assess the risks prior to launching, supplying or using products or services, operations and transactions, including channels of distribution, and technologies (AML/CFT law, Art. 23 (2)(a)). There is no explicit reference to the identification and assessment of risks arising from new business practices.

(b) Adopt adequate measures for the management and mitigation of risks (AML/CFT law, Art. 23(2)(b)).

<u>Virtual assets and virtual asset service providers</u>

156. According to the legislative framework of the HS/VCS, the provision of services of issuance, sale, transfer, custody, deposit, management, loan, exchange, negotiation or brokerage of encrypted, electronic, virtual or synthetic currency is forbidden (AML/CFT law, Art. 5(g)). Thus, the HS/VCS is only assessed under c.15.3(a) and 15.3(b), 15.5 and 15.11, as the remaining criteria are not applicable according to the 2013 FATF Methodology.

Criterion 15.3 – Art. 9 and 10 of the AML/CFT law foresee two levels of risk assessment, including the GRA. The GRA encompasses an analysis of all AML/CFT potential threats and vulnerabilities (including an analysis of the risk mitigating measures). Thus, any potential ML and TF risks emerging from virtual asset (VA) activities and the activities or operations of virtual asset service providers (VASPs) should be identified and assessed in the GRA.

Notwithstanding the prohibition of providing services in relation to VA in the HS/VCS, the GRA would be expected to at least address potential risks arising from illegal VA activities and measures to ensure identification of VASPs (or other obliged subjects that may engage in VA activities) operating illegally in the HS/VCS and application of proportionate and dissuasive sanctions. In addition, attention should be paid to cross-border elements of VA activities, for instance, cross-border VA payments or transfers. Having said that, the GRA does not contain any information or findings on potential risks from illegal VA activities or from VASPs operating illegally from within the HS/VCS or providing their services remotely to customers in the HS/VCS. Even though the authorities argue that potential risks from illegal VA activities or from VASPs operating illegally are considered close to null and therefore, an assessment was not deemed necessary, a formal analysis of the structural and legal circumstances in the HS/VCS leading to this conclusion should have been conducted and included in the GRA.

Criterion 15.4 – Not applicable.

Criterion 15.5 – Due to the public monopoly regime in the HS/VCS, any economic, commercial or professional activity carried on in the HS/VCS requires prior authorisation by the Governorate, both for physical and remote provision of services (Law on the Economic, Commercial and Professional Order (ECPO), Art. 7). In order to ensure implementation of this authorisation requirement, the four access points to the HS/VCS are monitored by the CdG and the Pontifical Swiss Guard which grant entry to visitors only if there is a valid reason. These checks make it possible to detect not only infringements of the authorisation requirement, but also of the prohibition of VASP activities pursuant to Art. 5(1)(g) AML/CFT law. The Governorate may impose administrative sanctions on the basis of the Law on General Norms on Administrative Sanctions (Law X 2013) in case the authorisation requirement is breached. If someone unlawfully pursues VA activities, they can be punished by the Governorate for pursuing an illegal economic activity.

The ASIF has access to documents, data, information, registers and books, relevant for the purposes of supervision (AML/CFT law, Art. 46(b)) in order to ensure detection of any illegal VA activities. In case of violation of the prohibition of any VA activities, the ASIF may impose an administrative fine of up to EUR 5 million for natural persons, and up to 10 % of the gross annual income in the preceding financial year for legal persons (AML/CFT law, Art. 47(1)(a) and (2)(e)). This administrative fine would be imposed by the ASIF in addition to any fines imposed by the Governorate. In this regard, the ASIF explained that it has verified the existence of any VA activities during the last AML/CFT general inspection to the ASIF authorised institution and no such activities were detected. Additional measures in order to police the implementation of Art. 5(1)(g) of the AML/CFT law were not applied by the ASIF due to the preventive measures that are in place (see above).

Moreover, obliged subjects are required to comply with CDD requirements, including various identification requirements (counterpart, BO) and the requirement to obtain information on the purpose and nature of the relationship and the origin of funds. This mechanism could serve as an

additional safeguard in order to ensure identification of prohibited VA activities or VASPs in the HS/VCS as obliged subjects have to pay particular attention to unusual types of activities, operations or transactions (AML/CFT law, Art. 41). Accordingly, the ASIF might be informed of prohibited VASP activities via SARs.

In addition, the detection of any illegal VA activities or VASPs in the HS/VCS may be possible by the oversight mechanisms that are applied to legal persons. The latter are required to submit budgets and final financial statements to the SoS and the Governorate on an annual basis. Furthermore, legal persons have to submit the minutes of their meetings to the SoS/Governorate. From this information, authorities may be able to identify VA activities that are conducted by legal persons in the HS/VCS and therefore, could detect illegal VASPs operating from within the HS/VCS or providing services remotely to customers in the HS/VCS.

However, despite the measures applied, it should be borne in mind that a risk assessment was not carried out by the authorities (see under c.15.3). Accordingly, there is a lack of a fully developed understanding of VA/VASP risks, so that the measures applied may not be sufficiently targeted.

Criterion 15.6 to 15.10 – Not applicable.

Criterion 15.11 – The HS/VCS competent authorities (see definition under Art. 8 of the AML/CFT law) are required to "actively cooperate and exchange" information with similar authorities of foreign jurisdictions (which may be non-counterparts of the ASIF) (AML/CFT law, Art. 69 bis) – which is equivalent to "rapid provision". The gateways that are used by the competent authorities are described under R.37 to R.40. In particular, information on issues related to VA activities and VASPs can also be shared by the ASIF pursuant to its exchange of information powers (see R.37 to R.40). Given the prohibition of providing services in relation to VA in the HS/VCS and the measures applied by the authorities in order to identify illegal VA activities or VASPs (see c.15.5 above), the gaps that are identified (see c.40.15 – relating to the use of investigative powers),will remain without relevance due to the need for an actual exchange of information.

In its 2012 MER, the HS/VCS was rated PC with the former R.8 due to undue exemptions from CDD requirements and effectiveness matters.

Weighting and Conclusion

Most of the essential criteria are not applicable in the context of the HS/VCS. Some shortcomings have been identified under c.15.1, c.15.2 and c.15.3. Overall, given the uniqueness of the jurisdiction (see Chapter 1), the existence of only one ASIF authorised institution, the absence of legal persons pursuing private industrial or commercial purposes – rather exclusively serve the mission of the HS/VCS and the Catholic Church – the AT is of the view that the identified deficiencies do not carry significant weight. Therefore, **R.15 is rated LC**.

Recommendation 16 – Wire transfers

In the 2012 MER, the HS/VCS was rated NC with former SR. VII due to the following deficiencies: no explicit requirement to ensure that non-routine transactions are not batched where this would increase the risk of ML; absence of requirement for beneficiary FIs to have effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information; weaknesses regarding verification of identity; and too broad an

interpretation of the concept of 'domestic transfers'. Some weaknesses in effectiveness of implementation were also observed.

Criterion 16.1 – FIs are required to ensure that all cross-border wire transfers, except those made through the euro area payments system (SEPA), are accompanied by data and information on the originator and beneficiary (AML/CFT law Art. 31(1)). Similar requirements are set out in ASIF Regulation No. 2 (wire transfers) (Art. 4(1)).

(a) With respect to the originator: (i) the name and surname or, in the case of a legal person, the name in full; (ii) the account number or, in the absence of an account, a unique identification number that allows the traceability of the transaction; and (iii) the address of residence or domicile, the official personal document number, the customer identification number or date and place of birth, or, in the case of a legal person, the address of the registered office (AML/CFT law, Art. 31(1)(a) (i) to (iii)). Similar requirements are foreseen in ASIF Regulation No. 2 (wire transfers) (Art. 4(1)(a)(i) to (iii)).

(b) As regards the beneficiary: (i) the name and surname or, in the case of a legal person, the name in full; and (ii) the account number or, in the absence of an account, a unique identification number that allows the traceability of the transaction (AML/CFT law, Art. 31(1) (b)(i) and (ii)). Similar requirements are foreseen in the Regulation on transfers of funds (Art. 4(1)(b)(i) to (ii) of the Regulation).

CDD, including verification of the customer, is required where a transfer of funds is made that is equal to or above EUR 1 000 (Art. 15(1)(a)(iii) of the AML/CFT law).

Where all FIs involved in a cross-border wire transfer are part of SEPA, the transfer may be treated differently. It shall be accompanied at least by the payment account number of the originator and of the beneficiary, or, in the absence of an account, by a unique identification number that allows traceability of the transaction and its link to the originator and beneficiary. This is not in line with the standard which permits only transfers that take place entirely within the borders of the EU to be treated as domestic.

Criterion 16.2 – FIs are required to ensure that the batch file includes complete and accurate information related to the originator and beneficiary allowing traceability in the beneficiary country (Art. 32(1) of the AML/CFT law).

Criterion 16.3 – Whilst a *de minimis* threshold is applied to the requirements of c.16.1 (application of CDD measures), requirements to ensure that wire transfers are accompanied by data and information on the originator and beneficiary under c.16.1 apply to all cross-border wire transfers, except those made through SEPA) (AML/CFT law Art. 31(1)(a), Art. 4(1)(a) of the ASIF Regulation No. 2 (wire transfers). The effect of the exemption for SEPA transfers is that it is not necessary for transfers to be accompanied by the name of the originator and beneficiary.

Criterion 16.4 – FIs are required to verify the information pertaining to its customer in cases of suspicion of ML/TF (AML/CFT law, Art. 31(2)).

Criterion 16.5 – For domestic wire transfers (which does not include payments made through SEPA), FIs are required to ensure that the information accompanying the wire transfer includes the same originator information as for a cross-border transfer (AML/CFT law, Art. 33(1)), except where this information can be made available to the beneficiary FI or competent authorities by other means

(AML/CFT law, Art. 33(2)). Art. 5(1) of ASIF Regulation No. 2 (wire transfers), in addition to the requirement to accompany the wire transfer with originator information, also requires accompanying the wire transfer with beneficiary information, except where this information can be made available to the beneficiary FI or competent authorities by other means.

Criterion 16.6 – Where the data and information accompanying the domestic wire transfer can be made available to the beneficiary FI and to the competent authorities by other means, the originator FI shall include the account number, in case this is used for the transaction or, in the absence of an account, a unique identification code that allows the traceability of the transaction and which leads back to the originator or the beneficiary (AML/CFT law, Art. 33(2)). There is a similar requirement in ASIF Regulation No. 2 (wire transfers) (Art. 5(2)).

The originator payment service provider shall make the data and information available within three business days of receiving a request from the beneficiary FI or the competent authorities. In any case, supervisory, law enforcement and judicial authorities can order the immediate production of such data and information (AML/CFT law, Art. 33(3)). A similar requirement to provide data and information to the beneficiary FI is set out in the ASIF Regulation No. 2 (wire transfers (Art. 5(3)), however this applies only if the transfer of funds exceeds EUR 1 000 (which is in conflict with the AML/CFT law).

Criterion 16.7 – The ordering FI is required to maintain all originator and beneficiary information in accordance with R.11 (AML/CFT law, Art. 34(1)). Also, FIs are required to maintain transactional records, irrespective of whether they are domestic or international, for a period of 10 years following execution of the transaction (AML/CFT law, Art. 38(1)(b)).

Criterion 16.8 – Ordering FIs are prohibited from executing a wire transfer when they are not able to fulfil all requirements (AML/CFT law, Art. 34(2)).

Criterion 16.9 – In the case of a cross-border wire transfer, intermediary FIs are required to ensure that all originator and beneficiary information accompanies the transfer (AML/CFT law, Art. 35(1) and ASIF Regulation No. 2 (wire transfers), Art. 9(2)).

Criterion 16.10 – Where technical limitations prevent data and information on the originator and beneficiary accompanying a domestic wire transfer linked to a cross-border wire transfer, intermediary FIs are required to keep for ten years the data and information received from the ordering FI or other intermediary FI (AML/CFT law, Art. 35(2), Art. 9(3) of the ASIF Regulation No. 2 (wire transfers).

Criterion 16.11 – Intermediary FIs are required to adopt adequate procedures and measures that allow an immediate and direct analysis of transfers in order to identify cross-border wire transfers which lack data and information on the originator or beneficiary (AML/CFT law, Art. 35(3) and ASIF Regulation No. 2 (wire transfers), Art. 10(1)). The authorities of the HS/VCS also confirmed that cross-border wire transfers are not processed without manual intervention.

Criterion 16.12 – Intermediary FIs are required to adopt adequate risk-based policies, procedures and measures for determining: (i) when to execute, reject or suspend a wire transfer lacking required originator or beneficiary data or information; and (ii) follow-up actions (AML/CFT law, Art. 35(4) and ASIF Regulation No. 2 (wire transfers), Art. 10(2)).

Criterion 16.13 – Beneficiary FIs are required to take adequate procedures and measures, including post-event monitoring or, where possible, real-time monitoring, to identify cross-border wire transfers which lack required data and information on the originator or beneficiary (AML/CFT law, Art. 36(1), ASIF Regulation No. 2 (wire transfers), Art. 7(2)).

Criterion 16.14 – For cross-border wire transfers equal to or above EUR 1 000, beneficiary FIs are required to verify the identity of the beneficiary, if identity has not been previously verified, and keep data and information for ten years (AML/CFT law, Art. 36(2) and ASIF Regulation No. 2 (wire transfers), Art. 7(4)).

Criterion 16.15 – Beneficiary FIs are required to adopt adequate risk-based policies, procedures and measures for determining: (i) when to execute, reject or suspend a wire transfer lacking required originator or beneficiary data or information; and (ii) follow-up actions (AML/CFT law, Art. 36(3) and ASIF Regulation No. 2 (wire transfers), Art. 8(1)).

Criterion 16.16 – The authorities of the HS/VCS have confirmed that no persons are presently authorised to provide MVTS services. Furthermore, as per Art. 7 of the Law No. V, nobody is entitled to open shops, businesses or workshops, even for the exertion of simple trades, nor set up industrial or commercial enterprises of any kind, nor open offices, studios, agencies or fixed places of delivery for the exertion of any profession, without obtaining the authorisation by the Governor. Nonetheless, the requirement of an authorisation by the Governor to set up business in the HS/VCS does not in itself create a specific legal restriction against the establishment of MVTS providers. Taking this into account, should an entity receive the authorisation to carry out the service of a MVTS, there are no requirements for MVTSs to comply with the relevant requirements of R.16.

Criterion 16.17 – For the reasons set out in the assessment of c.16.16, there are no requirements for MVTSs to comply with the relevant requirements of this criterion.

Criterion 16.18 – FIs are prohibited from providing, directly or indirectly, designated persons with funds or other assets or granting financial services or services connected to them (AML/CFT law, Art. 75(1)). With respect to freezing actions, Instruction No. 6 requires entities carrying out financial activities on a professional basis to report to the FIU any designated person which has been identified autonomously by the FI. However, freezing action by the FI may only take place once the FIU establishes the terms, conditions and limits in relation to the freezing action. FIs are not able to take freezing action immediately and upon their own motion.

Weighting and Conclusion

The HS/VCS meets 12 out of 18 requirements. Shortcomings have been identified in relation to: (i) cross-border wire transfers that do not apply to transfers within SEPA; (ii) a clear obligation to freeze funds or other assets of designated persons and entities (under R.6); and (iii) there are no requirements for MVTSs to comply with R.16. **R.16 is rated PC.**

Recommendation 17 – Reliance on third parties

In its 2012 MER, the HS/VCS was not rated against former R.9 since reliance on third parties was not permitted.

Criterion 17.1, 17.2, and 17.3 – Reliance on third parties is prohibited in the HS/VCS (AML/CFT law, Art. 5(b)).

Weighting and Conclusion

R.17 is not rated, as it is not applicable to the assessed country.

Recommendation 18 – Internal controls and foreign branches and subsidiaries

In its 2012 MER, the HS/VCS was rated PC with the former R.15 and LC with the former R.22 due to the absence of: (i) a requirement to pay particular attention whether the AML/CFT measures are consistent with the home country requirements and the FATF Recommendations, in particular with respect to branches and subsidiaries in countries which do not, or insufficiently, apply the FATF Recommendations; and (ii) an express legal requirement for timely access by the AML/CFT compliance officer to customer identification data and other CDD information, transaction records, and other relevant information.

Criterion 18.1 – On the basis of an ML/TF risk assessment, obliged subjects are required to adopt policies, procedures, measures and controls (including enhanced measures) to manage ML/TF risks and monitor the implementation of controls; these controls shall be approved by senior management and shall also be proportionate to the size, nature and activity of the FI (AML/CFT law, Art. 11(1) and (2)).

Policies, procedures, measures and controls shall include, among others: (a) compliance management arrangements, including the appointment of an employee, preferably at management level, having timely access to information relating to CDD, operations and transactions; (b) employment procedures to ensure high professional and ethical standards of employees; (c) ongoing training programmes; and (d) an independent function to test the system (AML/CFT law, Art. 11(2)(a-g)). The provisions of the AML/CFT law have to be read in conjunction with the Art. 21, 22, 24, 25, 27-32 of ASIF Regulation No. 1 (prudential matters). Art. 27(1) requires obliged subjects to establish, among others, a compliance function. The responsibilities of the compliance function are broad enough, and include, among others, that of "proposing organisational and procedural modifications aimed at ensuring adequate controls over identified non-compliance risk". Moreover, Art. 27(3) requires that the persons in charge of the compliance function shall hold an adequate hierarchical and functional position and shall report to the management and to the senior management of obliged subjects. However, there's no explicit requirement for the appointed compliance officer to be at management level, with Art. 11(2)(d) of the AML/CFT law expressing this only as a preference rather than a requirement, and with Art. 27(3) of ASIF Regulation No. 1 (prudential matters) requiring persons in charge of the compliance function to report to management.

Criterion 18.2 – FIs are required to implement AML/CFT programmes that are applicable to all branches and subsidiaries of the group (AML/CFT law, Art. 11(3)). However, there is no express requirement for these to be appropriate to all branches and subsidiaries, e.g. taking into account size, nature of activities and place of establishment. In addition to the areas covered under c.18.1, the AML/CFT programme shall include: (a) policies and procedures for information and data sharing for CDD and ML/TF risk management purposes; (b) exchange of information on customers, accounts and transactions, including transmission of this data to group level compliance, accounting ('*revisione*', which is understood to refer to the audit function) and AML/CFT units; and (c) adequate procedures to ensure integrity, confidentiality and appropriate use of information exchanged. In the case of the latter, there is no explicit reference to the prevention of tipping-off.

There are no financial groups in the HS/VCS.

Criterion 18.3 – FIs are required to ensure that their foreign branches and subsidiaries apply measures consistent with the requirements of Title II of the AML/CFT law, if the legislation of the host country is less strict or is not in conformity with international standards, to the extent that host country legal system permits (AML/CFT law, Art. 12(1)). In those cases, where the legal system of the host country does not permit proper implementation of measures required by AML/CFT law, group entities shall apply adequate additional measures to effectively manage ML/TF risks and inform the ASIF (AML/CFT law, Art. 12(2)).

Moreover, Art. 2(a) of the AML/CFT law, which sets the scope of application of the said Law, extends the obligations to the branches and subsidiaries of FIs. This provision therefore does not appear to be consistent with Art. 12(1), and the effect of this requirement would be to require subsidiaries incorporated outside the HS/VCS to comply with two sets of legal requirements – which may be difficult in practice.

Weighting and Conclusion

Most of the requirements are in place, however of the following deficiencies have been identified: (i) there is no express requirement for AML/CFT programmes to be appropriate to all branches and subsidiaries; (ii) there is no requirement for the appointed employee to be at management level; and (iii) FIs are required to ensure that foreign branches and subsidiaries apply measures consistent with the requirements of the AML/CFT law rather than AML/CFT measures more generally. **R.18 is rated LC.**

Recommendation 19 – Higher-risk countries

In its 2012 MER, the HS/VCS was rated NC with the former R.21 based on the following: (i) no requirement to give special attention to business relationships and transactions with persons from, or in, countries which do not, or insufficiently, apply the FATF Recommendations; (ii) no requirement to examine transactions, background and purpose of such transactions, as far as possible, and to keep written findings available, if they have no apparent economic or visible lawful purpose; (iii) no effective measures in place to ensure that obliged subjects are advised of concerns about weaknesses in the AML/CFT systems of other countries; and (iv) no empowerment to apply appropriate counter-measures where countries continue not to apply, or insufficiently apply, the FATF Recommendations. Most of these deficiencies have been addressed.

Criterion 19.1 – ASIF Regulation No. 4 (CDD) (Art. 23) lists a number of situations where EDD shall be applied by FIs. The requirements set by the Regulation take into account the following risk factors: (a) geographic risk; (b) customer (both natural and legal persons) risk (e.g. PEPs, residents of high risk jurisdictions, etc.); and (c) typology of relationship, product or service, operation or transaction or channels of distribution. In addition, the Regulation (Art. 24) requires obliged subjects to implement a number of risk-based measures when applying EDD. The requirement of proportionality is met as certain EDD measures are applied in different phases (i.e. in case of operations or transactions unusual or inconsistent with the profile of the customer, including unnecessarily complex or illogic schemes, operations or transactions). The same article expands on the information and/or data to be acquired as part of the EDD measures.

A number of additional measures are also required (AML/CFT law, Art. 30 bis) to be applied by obliged subjects concerning relationships and transactions involving high-risk jurisdictions pursuant to the ASIF list (it also includes all countries listed by the FATF). This covers the issue of proportionality, as the Law (Art. 30 bis) not only covers countermeasures when called by the FATF, but also strengthens the measures already provided in ASIF Regulation No. 4 (CDD) (Art. 24) on EDD, as well as the provisions established in the ASIF Instruction No. 1 and Instruction No. 6 for high-risk jurisdictions and customers or transactions that are linked with high-risk jurisdictions.

Moreover, by means of Art. 30 bis (3) of the AML/CFT law, the ASIF may issue Instructions that are binding on obliged subjects. Furthermore, the AML/CFT law, Art. 25(3) empowers the ASIF to direct obliged subjects to apply countermeasures that are adequate and proportionate to the risks.

Criterion 19.2 – The ASIF is required to provide for the application of EDD measures proportionate to the risks related to the business relationships, operations / transactions, with natural or legal persons, including FIs from high-risk countries. In such cases, the ASIF indicates the countermeasures adequate and proportionate to the risks (AML/CFT law, Art. 25(3)). The ASIF also identifies and orders adequate and proportionate counter measures to the risks in the case where a country persistently does not observe or observes insufficiently the international AML/CFT standards (AML/CFT law, Art. 9(2)(b)(vii)). However, on both occasions countermeasures other than EDD are not specified.

The AML/CFT law (Art. 30bis (3)), in addition to EDD measures stipulated under Art.30 bis (1 and 2) empowers the ASIF to, through the issuance of an Instruction (taking into account a report drawn by international organisations and AML/CFT standard setters), require that obliged subjects apply additional measures. Such Instructions should take into account evaluations and reports drawn up by international AML/CFT competent organisations. The legal basis concerning the enforceability of Instructions is set out in the Code of Canon Law, Book I, Title III "General Decrees and Instructions" (canon 34). However, it is unclear what these additional measures are.

Criterion 19.3 – On the basis of GRA, the ASIF is required to inform competent authorities and obliged subjects about the risks and vulnerabilities in AML/CFT systems of foreign states and identify adequate and proportionate countermeasures (AML/CFT law, Art. 9(2)(b)(vi-vii)). The ASIF publishes a list of high-risk jurisdictions which shall be regularly updated (Instruction on high risk states, Art. 2). The list of the high-risk states provided in the Annex of the instruction has, since the Instruction's publication on 23 October 2017, been updated 8 times with the latest update published on 1 April 2020.

Weighting and Conclusion

FIs are required to apply EDD measures in cases of relationships, operations and transactions with natural persons or legal entities, including FIs, directly or indirectly connected to States at risk or High-risk States. However, it is unclear the ability of obliged subjects to apply EDD measures in a risk proportionate manner is called into question, whilst it is unclear whether the authorities are able to apply countermeasures beyond requiring obliged subjects to exercise EDD. **R.19 is rated LC.**

Recommendation 20 – Reporting of suspicious transaction

In its 2012 MER, HS/VCS was rated PC with the former R.13. The AT highlighted various deficiencies such as the fact that requirement to report attempted transactions was not explicitly covered.

Furthermore, the scope of reporting requirements was limited to 'transactions' only rather than funds. Other deficiencies concerned the reporting obligation covering funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations as the reporting obligation was limited in respect of those who finance terrorism. According to the progress reports of the HS/VCS adopted in the 43rd, 49th and 55th Moneyval Plenaries, these deficiencies were addressed by the HS/VCS throughout the ensuing follow-up period.

Criterion 20.1 – Reporting subjects (defined by AML/CFT law (Art. 1(23))) are required to send immediately a report to the FIU when: (a) they suspect or have reasonable grounds to suspect, that funds or other assets are the proceeds of criminal activities, or are linked or related to the financing of terrorism or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism; (b) in the case of activities, operations or transactions which they consider particularly likely, by their own nature, to have a link with ML/TF or with terrorist organisations or those who finance terrorism (AML/CFT law, Art. 40(1) and ASIF Regulation No. 5 (SARs) (Art. 3(14) and Art. 4(1)). By virtue of the definition of reporting subjects, the reporting obligation is extended beyond obliged subjects to also cover public authorities as well as non-profit entities. Further, reporting subjects include all operations and activities of FIs as provided for in the standard, save for MVTSs, which are covered by an exemption.

Reporting subjects shall file the SAR to the FIU immediately, as soon as they become aware, or have suspicion or reasonable grounds to suspect, the elements referred to in (a) or (b) above (AML/CFT law, Art. 40(1)(4) and ASIF Regulation No. 5 (SARs), Art. 6).

Reporting subjects shall refrain from establishing a relationship, or carrying out an operation or transaction, or from performing a service if they know of, suspect or have reasonable grounds to suspect the presence of elements the elements referred to in (a) or (b) above (AML/CFT law, Art. 42 and ASIF Regulation No. 5 (SARs), Art. 8). Where it is not possible to refrain, or where doing so would obstruct the activity of the judicial authority, the reporting subjects shall send a SAR to the FIU, without delay, after having established a relationship, carried out an operation or transaction, or performed a service.

Criterion 20.2 – Reporting subjects shall report all suspicious activities, operations or transactions, including attempted operations or transactions irrespective of their value, or any other element, including elements of a fiscal nature (AML/CFT law, Art. 40(3) and ASIF Regulation No. 5 (SARs), Art. 5(1)).

Weighting and Conclusion

R.20 is rated C.

Recommendation 21 – Tipping-off and confidentiality

In its 2012 MER, HS/VCS was rated LC with former R.14. The AT noted that the protection for persons reporting a suspicious transaction and the "tipping off" prohibition were largely in line with the standards, however, the rating of LC was achieved in view of the fact that the tipping off prohibition only appeared to cover SARs that have already been submitted, but not the fact that a SAR has been identified and is in the process of being prepared/reported. According to the progress reports of the HS/VCS adopted in the 43rd, 49th and 55th Moneyval Plenaries, this deficiency was addressed.

Criterion 21.1 – Reporting subjects, members of the management, officers, employees, advisors and assistants of any kind cannot be held criminally or civilly liable for breach of official secret, confidentiality in financial matters, or any other restriction upon communication imposed by any legislative, administrative or contractual provision when reporting in good faith a suspicious activity, including the communication of related data and information (AML/CFT law, Art. 43(1) and ASIF Regulation No. 5 (SARs), Art. 9(1)).

Moreover, this protection covers also cases in which the reporting subject does not know exactly what the underlying criminal activity may be and if it has taken place or not (AML/CFT law, Art. 43(2) and ASIF Regulation No. 5 (SARs), Art. 9(2)).

Criterion 21.2 – Reporting subjects, members of management, officers, employees, advisors and assistants of any kind shall not disclose, to the interested subject or to third parties, knowledge of the suspicious activity, nor the filing or preparation of a SAR, including related data and information (AML/CFT law, Art. 44 and ASIF Regulation No. 5 (SARs), Art. 10).

SAR-related data and information, through the use of the term 'including' refer to information that would form part of the report. It seems that there is no explicit prohibition of disclosure of 'related information' in the broader sense, such as the fact that information (which generally may be understood to be SAR-related information) has been demanded by the FIU or that information (and not necessarily a report) may be, or has been transmitted to the FIU.

The AT is informed that within the HS/VCS, there are not any financial groups (see c.18.2).

Weighting and Conclusion

A minor deficiency was noted in relation to the confidentiality obligations relating to SAR-related information. **R.21 is rated LC.**

Recommendation 22 – DNFBPs: Customer due diligence

In its 2012 MER, the HS/VCS was rated PC with the former R.12 due to the following: (i) requirements for notaries, lawyers, external accountants and tax advisers, as well as for trust and company service providers, to undertake CDD measures when establishing business relations were not broad enough; (ii) trust and company service providers were not subject to CDD and record-keeping requirements with respect to the creation, operation or management of legal persons or arrangements and buying and selling business entities; and (iii) shortcomings identified in the context of former R.5, 6, 8, 10 and 11 were also applicable to DNFBPs.

In contrast to the last assessment, the HS/VCS authorities state that none of the DNFBP activities as described in R.22 of the FATF Recommendations is exercised in, or from within, the HS/VCS[50]. This statement stands in conformity with the list of obliged subjects that is published by the ASIF on its website in accordance with Art. 4 of the AML/CFT law. Nonetheless, DNFBPs are covered by the AML/CFT law against the backdrop that the legislator has replicated the respective European and

[50] The authorities stated that there is only one DNFBP which provides auditing services as an external auditor appointed by the ASIF authorised institution. These activities are outside the scope of the FATF definition of DNFBPs and therefore, are not considered in this assessment.

FATF standards. But it was also intended as a safeguard in order to cover any future activities, or activities of which the authorities are possibly not aware.

The AT takes the view that, regardless of the question as to whether relevant services are being provided in practice or not, the obligations of all DNFBP categories mentioned in the AML/CFT law have to be assessed in the context of this evaluation, simply due to the fact that a legal AML/CFT framework for those categories has been created and it cannot be ruled out, however unlikely, that relevant services may be carried out in the future.

Criterion 22.1 – The requirements set out under R.10 apply to all obliged subjects, be they FIs or DNFBPs. The list of obliged subjects that are required to implement AML/CFT requirements is provided in the AML/CFT law (Art. 2).

(a) *Casinos* are forbidden in the HS/VCS (AML/CFT law, Art. 5(1)(e)).

(b) *Real estate agents* are required to apply R.10 when acting as intermediaries in the purchase, sale or letting of immovable property, but only in relation to transactions for which the value of the property or monthly rent amounts to EUR 10 000 or more (AML/CFT law, Art. 2(d)). From the wording of the law, it may be inferred that real estate agents need not carry out CDD in real estate transactions worth less than EUR 10 000, irrespective of whether the transaction is considered to be an occasional transaction or not.

(c) *Dealers in precious metals and stones* are required to apply R.10 when they engage in cash transactions equivalent to EUR 10 000 or more, including when the transaction is carried out in several operations which appear to be linked (AML/CFT law, Art. 2(e)). This definition covers all cash transactions, and not just those with customers.

(d) *Lawyers, notaries, other independent legal professions* are required to apply R.10 when they carry out their activity in the name of, and on behalf of, third parties in an operation or transaction relating to the following activities (AML/CFT law, Art. 2(b)): (i) transfer of any kind of rights on real estate or economic activities; (ii) managing funds or other assets; (iii) opening or managing bank, savings or security accounts; (iv) organization of contributions for the creation, management or operation of companies; and (v) creation, management, operation or trading of legal persons (including trusts), but not business entities more generally. The wording "when they carry out their activity" includes all the phases of the process, including "preparing for activities" as is referred to in the standard.

Auditors, external accountants and fiscal advisors are required to apply R.10 in respect of all activities undertaken (AML/CFT law, Art. 2(a) bis).

(e) *Trust and company service providers* are required to apply R.10 when they prepare or carry out a transaction in the name of and on behalf of a third party, relating to the following activities (AML/CFT law, Art. 2(c)): (i) the creation of a legal person; (ii) acting directly (or in such a way that a third party may act) as a director or partner of a company or in an analogous position in relation to other legal persons; (iii) providing a registered office, business address or accommodation, administrative or postal address for a company, a partnership or any other legal person or entity; (iv) acting directly (or in such a way that a third party may act) as a trustee of an express trust; and (v) acting directly (or in such a way that a third party may act) as a shareholder on behalf of a third party.

No specific reference in the AML/CFT law is made to performing the equivalent function of acting as a trustee of an express trust for another form of legal arrangement. However, as explained in R.10, the definition of "*financial activity*" provided in the AML/CFT law covers any activity related to trusts or similar legal arrangements. This definition seems to overlap with that provided in Art. 2(c) of the AML/CFT law and renders any activity in connection with trusts or similar legal arrangements as a financial activity (including performing the equivalent function of acting as a trustee of an express trust).

The term "covered DNFBP" is used hereafter to describe DNFBPs covered by Art. 2 of the AML/CFT law. In line with the analysis provided above, it excludes real estate agents engaging in transactions for which the value of the property amounts to less than EUR 10 000.

Findings, including shortcomings, under R.10 equally apply to DNFBPs (except those referring to the ASIF Regulation No. 4 (CDD) which applies only to FIs).

Criterion 22.2 – Requirements explained under R.11 equally apply for covered DNFBPs. Reference is made to the analysis for R.11. Findings, including shortcomings, equally apply to DNFBPs.

Criterion 22.3 – Requirements under R.12 equally apply for covered DNFBPs. Reference is made to the analysis for R.12 (except those referring to ASIF Regulation No. 4 (CDD) which applies only to FIs). Findings, including shortcomings, equally apply to DNFBPs.

Criterion 22.4 – Requirements under c.15.1 and c.15.2 equally apply for covered DNFBPs. Reference is made to the analysis for R.15. Findings, including shortcomings, equally apply to DNFBPs.

Criterion 22.5 – Reliance on third parties is prohibited (AML/CFT law, Art. 5(b)).

Weighting and Conclusion

Not all the situations set out in c.22.1 are covered: real estate agents are not required to carry out CDD when the value of the property amounts to less than EUR 10 000. This shortcoming is considered minor in the context of the HS/VCS where all real estate is publicly owned. Shortcomings identified under R.10, 11, 12 and 15 are equally relevant to DNFBPs. **R.22 is rated LC**.

Recommendation 23 – DNFBPs: Other measures

In its 2012 MER, HS/VCS was rated PC with the former R.16 due to the weaknesses in former R.13, 15, 21 that equally apply to DNFBPs.

Criterion 23.1 – Suspicious transaction reporting requirements equally apply to covered DNFBPs. Reference is made to the analysis for R.20.

When acting as independent legal professionals, lawyers, notaries and other legal and accounting professionals, are not required to report suspicious activities if the relevant information was obtained: (i) in the course of evaluating the legal position of their client; and (ii) when performing their role of defending or representing their client, or if their function relates to judicial, administrative, arbitration or mediation procedures (AML/CFT law, Art. 40(6) and ASIF Regulation No. 5 (SARs), Art. 4(2)).

Criterion 23.2 – Requirements under R.18 equally apply to cover DNFBPs. Reference is made to the analysis for R.18. Findings, including shortcomings, equally apply to DNFBPs.

Criterion 23.3 – Requirements under R.19 equally apply to covered DNFBPs. Reference is made to the analysis for R.19. Findings, including shortcomings, equally apply to DNFBPs.

Criterion 23.4 – Requirements under R.21 equally apply to covered DNFBPs. Reference is made to the analysis for R.21. Findings, including shortcomings, equally apply to DNFBPs.

Cases in which lawyers, notaries, other independent legal professionals and accountants, in their capacity as independent legal professionals, attempt to dissuade a client from committing an illicit activity, do not constitute a breach of the prohibition of disclosure (AML/CFT law, Art. 44(2)) and ASIF Regulation No. 5 (SARs), Art. 10(2)).

Weighting and Conclusion

Not all the situations set out in c.22.1 are covered: real estate agents are not required to carry out CDD when the value of the property amounts to less than EUR 10 000. This shortcoming is considered minor in the context of the HS/VCS where all real estate is publicly owned. Shortcomings identified under R.18, 19, and 21 equally relevant to DNFBPs. **R.23 is rated LC.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

In the 2012 MER, in the view of the evaluators, structural, legal and institutional realities within the HS/VCS at that time rendered, exceptionally, R.33 not applicable. In this assessment, R.24 is applicable and assessed on the basis of the legal framework of the HS/VCS that allows for the incorporation of different types of legal persons. The subjects of this assessment are NPOs, voluntary organisations, and other charitable legal persons. An overview of types and numbers of legal persons that are registered in the HS/VCS and explanation of the classification of legal persons for the purposes of this assessment is provided under Chapter 1.

NPOs, voluntary organisations, and other charitable legal persons are established in the legal form of a foundation or an association. The 2013 FATF Methodology, together with the FATF Guidance on Transparency and Beneficial Ownership of October 2014, stipulates that the AT should consider the application of all criteria of R.24 to all relevant types of legal person. Since foundations are explicitly referred to by the FATF, R.24 is applied to foundations, taking into account their form and structure (in particular, the absence of shareholders). With regard to associations, there is no reason to treat them differently from foundations: they are subject to the same creation process, have the same corporate bodies and pursue the same activities (i.e. support of the mission of the HS/VCS and the Catholic Church). Accordingly, R.24 is applied also to associations.

Criterion 24.1 –

(a) *Types, forms and basic features of legal persons* – The basic types of legal persons that may be created in the HS/VCS are provided in the Code of Canon Law (canons 113 to 123) and in the Law on Civil Legal Persons. On the basis of these laws, the following basic types of legal persons may be incorporated in the HS/VCS:

- Canonical legal persons (public and private juridical persons); and
- Civil legal persons.

Canonical legal persons are constituted by a competent ecclesiastical authority. If they are entrusted with a function to serve the public good that is carried out in the name of the Church, they are called "public juridical persons". If this condition is not met, the legal entity is classified as a "private

juridical person". Both types of canonical legal persons can only be established for charitable purposes (i.e. works of piety, of the apostolate, or of charity, whether spiritual or secular).

Civil legal persons are established by a notary public deed. The Law on Civil Legal Persons provides that the legislation of the Italian State is observed and is applicable to the HS/VCS as long as it is not contrary to the principles and the legal framework of the HS/VCS. In this regard, reliance can be placed on the Italian Civil Code of 1942 (together with all modifying acts) which allows for the incorporation of civil legal persons in the HS/VCS.

The Code of Canon Law and the Law on Civil Legal Persons are the primary legal sources for the incorporation of all legal persons in the HS/VCS.

At the time of the assessment, all legal persons registered in the HS/VCS are established in the legal form of a foundation or an association. While the Law on NPOs (Art. 1(3)) and the Code of Canon Law (can. 115 § 1) only permit these two legal forms, the Law on Civil Legal Persons and the Law on Regulation of Voluntary Activities do not restrict the use of other legal forms. However, according to the authorities, only the foundation and the association are permitted as legal forms, and accordingly only these two legal forms are admitted for entry into the registers.

(b) *Processes for the creation of legal persons and obtaining information* – As stated above, the relevant provisions for the creation of legal persons are laid down in the Code of Canon Law and in the Law on Civil Legal Persons. Additional relevant provisions are also provided in the Law on NPOs and in the Law on Regulation of Voluntary Activities.

In order to incorporate a legal person in the HS/VCS, prior authorisation by the Pontifical Commission for voluntary organisations (Law on Regulation of Voluntary Activities, Art. 4(3)) and by the SoS for all other types of legal persons (NPOs and other charitable legal persons) (Law on NPOs, Art. 4(2) (c)) is required. Once authorisation is granted, the legal person is established by a public act of incorporation (i.e. decree of erection by the ecclesiastical authority (Supreme Pontiff) or a notary public deed). The SoS then notifies the Governorate of the creation of the legal person and forwards all the documents, together with its authorisation, to the Governorate in order to ensure its registration. In the case of voluntary organisations, the Governorate in its function as delegate of the Pontifical Commission is already aware of the creation and authorisation of voluntary organisations.

The Legal Office of the Governorate keeps the following four separate registers of legal persons: (i) canonical legal persons; (ii) civil legal persons; (iii) NPOs; and (iv) voluntary organisations. Registration is possible in several registers at the same time. In addition to registration as a canonical and civil legal person, separate registration as an NPO <u>or</u> a voluntary organisation may also be required. As a result, the same legal person may be entered in three registers (e.g. canonical register, civil register and NPO register). The registers are kept electronically.

Each register is divided into five sections: (i) general data on the legal person, e.g. name, date of incorporation, address, legal representative, beneficiaries, statutory object; (ii) data on the administrative body, e.g. board of directors; (iii) data on the control body, e.g. board of auditors; (iv) attachments, e.g. statutes, articles of incorporation, resolutions, correspondence; and (iv) information on existing registrations in other registers. All legal persons are required to set up two corporate bodies, namely an administrative body, which is usually the board of directors, and a

control body. The control body is an internal body responsible for keeping the accounts and drawing up the financial statements.

The Governorate must ensure that basic and BO information (terms as defined by the FATF) on legal persons having their registered office in the HS/VCS is kept in the appropriate register, that basic and BO information is accessible to the competent authorities, and that basic and BO information is updated appropriately (AML/CFT law, Art. 8(2)).

(a) and (b) – The different types, forms and basic features of legal persons of the HS/VCS are described in basic terms in the Code of Canon Law and in the Law on Civil Legal Persons, whereby the latter consists only of a reference to the Italian Civil Code currently in force and, accordingly, the relevant legal provision are to be found there. Additional provisions in relation to the creation and basic features of legal persons can also be found in the Law on NPOs and in the Law on Regulation of Voluntary Activities (see also above). All the above-mentioned laws (with the exception of the Italian Civil Code) are publicly available on the website of the VCS (in Italian)[51] and are published, including any amendments to these laws, in the *Acta Apostolicae Sedis*, which is the official gazette of the VCS.

However, information on the basic features and processes for the creation of the different types of legal persons can be extracted from the HS/VCS laws only to a limited extent. Neither the Code of Canon Law nor the Law on Civil Legal Persons contain specific and comprehensive provisions in relation to establishing or administering foundations or associations. The AT has not been provided with relevant translated parts of the Italian Civil Code. Even if it can be assumed that this Code contains provisions on basic features of foundations and associations, some elements of incorporation and administration which are specifically and only applicable to HS/VCS legal persons do not have a statutory basis.

The AT has been provided with explanations on the creation and basic features of the different types and forms of legal persons, but there is no publicly available guidance. Accordingly, there is a lack of specific and detailed information on the basic features and the processes for the creation of legal persons that is publicly available. However, in this regard it is taken into account by the AT that there is no possibility for legal persons to pursue private industrial or commercial activities, due to the specific regulatory environment in the HS/VCS, so that the public's need for information on the creation and types of legal persons is limited compared to many other jurisdictions.

Criterion 24.2 – As regards NPOs, a comprehensive and in-depth ML/TF risk assessment has been conducted jointly by the ASIF and the SoS. The results of this assessment were formalised within the Report on Supervision and Monitoring of NPOs in April 2020, updated in May 2020. This was the first comprehensive and in-depth ML/TF risk assessment of NPOs. With regard to voluntary organisations and other charitable legal persons, a ML/TF risk assessment comparable to that of NPOs was underway at the time of the on-site visit. A training seminar for these legal persons was held in September 2020 in which self-assessment questionnaires were distributed.

Criterion 24.3 – NPOs must be included in a register kept by the Legal Office of the Governorate (Law on NPOs, Art. 4(1)). The information required to be recorded in the register is included in the act of incorporation or the statutes that must be submitted to the Governorate and includes: (i) the

[51] https://www.vaticanstate.va/it/normativa-persone-giuridiche-vaticane.html

organisation's name and legal address; (ii) the norms governing the organisation's functioning; and (iii) the entity's control and administrative bodies. In addition, documents recording the appointment of board members, managers, legal representatives, trustees, curators, and any other person responsible for the organisation, together with their identification data, must be submitted to the Governorate for the purpose of registration. The information recorded by the Governorate corresponds with c.24.3.

Voluntary organisations must be included in a register of voluntary organisations kept by the Legal Office of the Governorate (Law on Regulation of Voluntary Activities, Art. 4). Inter alia, a copy of the statutes of the organisation, any appropriate documentation regarding its internal organisation and a list of volunteers must be submitted prior to registration to the Pontifical Commission for the VCS (Law on Regulation of Voluntary Activities, Art. 4). The information recorded by the Governorate corresponds with c.24.3.

With regard to other charitable legal persons, there is no direct legal obligation in the Code of Canon Law which requires registration or recording of information with the Governorate analogous to NPOs and voluntary organisations (see c.24.1(b) above). The authorities have advised that the Law on Civil Legal Persons makes a direct reference to Italian legislation in force on the matter of registration (Italian Civil Code, Art. 33) but have not provided a copy of this provision to the AT.

The Governorate must ensure that all basic and BO information kept in the four registers is accessible to competent authorities (AML/CFT law, Art. 8(2)(b)). However, the public has a right to access only the register of NPOs (Law on NPOs, Art. 4(5)) and not also the registers of canonical legal persons, civil legal persons and voluntary organisations. Even though the authorities argue that the public is granted access to all registers kept by the Governorate if a reasoned request is made, from a legal point of view, access could be restricted for the public only to the NPO register.

Criterion 24.4 – NPOs are required to maintain the legal acts and documents required for incorporation and registration of NPOs as they have to be accessible to the SoS at any time (Law on NPOs, Art. 6(3)). As mentioned under c.24.3, these documents include all the basic information in line with c.24.3. Shareholders or members comparable to companies do not exist. Nevertheless, NPOs must keep in their own registers identification data of: (i) associates; (ii) BOs (natural persons who effectively exercise control over the organisation); (iii) members of their governing bodies; (iv) those persons who offer voluntary service; (v) their principal donors; and (vi) the beneficiaries of their activities, or if that is not possible due to the nature of the services, the categories of beneficiaries (Law on NPOs, Art. 6(2)). In addition, NPOs are required to record information regarding their nature, activities, BOs, beneficiaries, members and administrators (AML/CFT law, Art. 5 bis). However, there is no clear legal obligation for NPOs to maintain basic information within the VCS at a location notified to the Legal Office of the Governorate.

Voluntary organisations are required to set up and maintain articles of incorporation including basic information as required by c.24.3 (Law on Regulation of Voluntary Activities, Art. 3(3) and Art. 4(3)). Shareholders or members comparable to companies do not exist. Nevertheless, voluntary organisations must maintain a list of volunteers. In addition, voluntary organisations are required to record information regarding their nature, activities, BOs, beneficiaries, members and administrators (AML/CFT law, Art. 5 bis). There is no clear legal obligation for voluntary organisations to maintain basic information within the VCS at a location notified to the Legal Office of the Governorate.

With regard to other charitable legal persons, legal obligations to set up and maintain statutes which include basic information as required by c.24.3 are included in the Code of Canon Law (can. 94) and in the Italian Civil Code (Art. 14). However, the authorities have not provided a copy of the latter provision. Shareholders or members comparable to companies do not exist. In addition, the provision of Art. 5 bis of the AML/CFT law is relevant, which requires all legal persons to record information regarding their nature, activities, BOs, beneficiaries, members and administrators. However, there is no clear legal obligation for other charitable legal persons to maintain basic information within the VCS at a location notified to the Legal Office of the Governorate.

Criterion 24.5 –NPOs are required to submit to the Legal Office of the Governorate any legal acts modifying the act of incorporation, the statutes, and the other requirements set forth by the law, within 30 days of their adoption (Law on NPOs, Art. 4(2) (d) and (3)). This is in addition to a more general provision for all legal persons registered in the HS/VCS to keep information updated and to communicate this information to the Governorate (AML/CFT law, Art. 5 bis (1)(a) and (b)). Additionally, the Governorate is required to ensure that the information kept in the registers is updated appropriately (AML/CFT law, Art. 8(2)). For this purpose, the Governorate conducts checks of registered information every six months (Resolution No. 1 relating to the procedure for updating and verifying the data in the Registers of Legal, Canonical and Civil Persons, Non-Profit Bodies and Voluntary Associations) and receives information relevant for updating the registers from other authorities (in particular, from the SoS as supervisory authority of NPOs) (AML/CFT law, Art. 69(1)). Therefore, mechanisms that ensure accuracy and timely updating of basic information listed under c.24.3 and c.24.4 are in place.

Voluntary organisations have to communicate annually to the Legal Office of the Governorate variations to the list of volunteers and to any other information that has been submitted in the course of initial authorisation and registration (Law on Regulation of Voluntary Activities, Art. 4(5)). This is in addition to a more general provision for all legal persons registered in the HS/VCS to keep information updated and to communicate this information to the Governorate (AML/CFT law, Art. 5 bis (1) (a) and (b)). In addition, the Governorate is required to ensure that the information kept in the registries is updated appropriately (AML/CFT law, Art. 8(2)). For this purpose, the Governorate conducts checks of registered information every six months (Resolution No. 1 relating to the procedure for updating and verifying the data in the Registers of Legal, Canonical and Civil Persons, Non-Profit Bodies and Voluntary Associations) and receives information relevant for updating the registers from other authorities (AML/CFT law, Art. 69(1)). However, the combined effect of these provisions does not ensure that information is updated on a timely basis.

With regard to other charitable legal persons, the provisions in Art. 5 bis (1) (a) and (b) of the AML/CFT law are applicable (see above). Additionally, the Governorate is required to ensure that the information kept in the registries is updated appropriately (AML/CFT law, Art. 8(2)). For this purpose, the Governorate conducts checks of registered information every six months (Resolution No. 1 relating to the procedure for updating and verifying the data in the Registers of Legal, Canonical and Civil Persons, Non-Profit Bodies and Voluntary Associations) and receives information relevant for updating the registers from other authorities (in particular, the SoS as supervisory authority of other charitable legal persons) (Art. 69(1) AML/CFT law). However, the combined effect of these provisions does not ensure that information is updated on a timely basis.

Criterion 24.6 – The HS/VCS requires all legal persons registered in the HS/VCS to communicate BO information to the Governorate thus creating four central BO registers (AML/CFT law, Art. 5 bis (b))

– which must be immediately accessible to the ASIF (AML/CFT law, Art. 51 bis). This is complemented by two additional mechanisms: (i) requiring all legal persons registered in the HS/VCS to hold BO information (though there is no clear legal obligation for legal persons to maintain BO information at a specified location in the VCS (AML/CFT law, Art. 5 bis (a)); and (ii) requiring FIs and DNFBPs to obtain BO information in accordance with R.10 and R.22 (AML/CFT law, Art. 17)), though there is no obligation for legal persons to maintain a bank account in the HS/VCS.

Criterion 24.7 – Legal persons registered in the HS/VCS are required to update information on their BO (AML/CFT law, Art. 5 bis (1)). Obliged subjects are required to keep CDD information up to date on an on-going basis, with particular attention paid to high-risk categories (AML/CFT law, Art. 19). In addition, the Governorate must ensure that BO information is updated at appropriate times (AML/CFT law, Art. 8(2)). For this purpose, it conducts checks on registered information every six months (Resolution No. 1 relating to the procedure for updating and verifying the data in the Registers of Legal, Canonical and Civil Persons, Non-Profit Bodies and Voluntary Associations) and receives information relevant for updating the registers from other authorities (in particular, the SoS as supervisory authority of NPOs and other charitable legal persons) (AML/CFT law, Art. 69(1)). However, it is not clear that the combined effect of mechanisms to obtain BO information is that information must be kept as up-to-date as possible. This is because timeframes are not specified, except for checks conducted by the Governorate (every six months).

Criterion 24.8 – The legal framework of the HS/VCS does not require legal persons to have one or more natural persons who are authorised for providing all basic and BO information to the competent authorities. However, in practice, legal persons in the course of their registration with the Governorate are requested to appoint a contact person who is indicated in the registers and ensures communication of the legal person with the authorities on regular basis. In the particular circumstances of the HS/VCS, where there is continual communication between the authorities and legal persons, this is considered to be a "comparable measure" under c.24.8(c). Having said that, it is not clear to the AT, whether this contact person is accountable for providing all basic and BO information to the competent authorities.

Criterion 24.9 – Obliged subjects which maintain a business relationship with a legal person must maintain records for a period of ten years from the end of the relationship with the customer (AML/CFT law, Art. 38) – but see c.11.2. Legal persons registered in the HS/VCS are required to store all documents, data and information regarding their nature and activities, and their BOs, beneficiaries, members and administrators for a period of ten years (AML/CFT law, Art. 5 bis (1)). However, the starting point of the ten-year period is undefined and, therefore, may end as early as ten years after the date of incorporation. It is also not clear what the legal position is when a legal person is dissolved.

The Legal Office of the Governorate is the competent body for the registration of all legal persons. As such it maintains basic and BO information which it receives at the time of registration (see under c.24.3 above) and subsequently (AML/CFT law, Art. 5 bis (1) (b)). However, a time period for keeping this information is not defined.

Criterion 24.10 – The ASIF, for supervisory purposes, has access to documents, data and information that are kept by registered legal persons in the HS/VCS (AML/CFT law, Art. 5 bis (2) and

Art. 46 (c)). For NPOs, also the provision of Art. 6(3) of the Law on NPOs is relevant which ensures access for the ASIF to all records kept by NPOs in the course of investigations.

Such legal persons also have to disclose, upon request, all the documents, data and information regarding their nature and activities, and their BOs, beneficiaries, members and administrators to the competent authorities (in a timely manner) and obliged subjects (AML/CFT law, Art. 5 bis). The term "competent authorities" includes competent supervisory authorities and LEAs (AML/CFT law, Art. 8).

The ASIF acting as a supervisory authority may also request information on BOs held by obliged subjects (AML/CFT law, Art. 46 (b)). Additionally, the ASIF acting as FIU has access on a timely basis to all information of a financial, administrative and investigative nature (AML/CFT law, Art. 50).

Financial information held by obliged subjects or legal persons registered in the HS/VCS, including data on BOs, is also accessible through intervention of judicial authorities (i.e. the order of the single judge). According to Art. 166 of CCP, "officials of the investigating police can sequester (temporarily restrain) any goods that were used to commit a crime, those which were the product of the crime, and all which could be used to *ascertain the truth*". The italicised words appear to be the basic legal authority to produce requested documents as set out under this criterion.

Criterion 24.11 – Bearer shares and bearer share warrants are prohibited in the HS/VCS (AML/CFT law, Art. 5 (f)). Legal persons created in the HS/VCS do not, and have never, issued shares of any description.

Criterion 24.12 – The legal framework of the HS/VCS does not prohibit the use of nominee shares or nominee directors by legal persons. Given that the legal persons registered in the HS/VCS do not have shareholders, the present assessment of c.24.12 focuses on nominee directors (or equivalent). In order to avoid the misuse of legal persons using nominee directors (or equivalent), the HS/VCS has subjected all legal persons to an authorisation mechanism (by the SoS or Pontifical Commission/Governorate). These authorities, during their authorisation process, perform fit and proper checks on all members of the corporate bodies (including the administrative body, e.g. board of directors). The names of the members of the administrative and control bodies is collected together with further documents (CV, identification documents and certificates of criminal record), and their integrity and professionalism is verified. These checks are designed to identify links to criminal activity but, in the view of the authorities and the AT, will also highlight cases where directors propose to act as nominees.

In addition to this mechanism, nominators have to be identified by legal persons due to the obligation to find out the natural person who effectively exercises control over the assets of the legal person (though c.10.10 highlights a deficiency in the definition of BO). This information has to be communicated to the Governorate for entry in the registers and disclosed to the competent authorities upon request (AML/CFT law, Art. 5 bis and Art. 1(24) (c) (i)).

Criterion 24.13 – NPOs are subject to administrative sanctions in case the requirements to register with the Legal Office of the Governorate and to submit basic/BO information and changes thereof to the Governorate are breached (Law on NPOs, Art. 12). Under the Law on NPOs, an administrative sanction from EUR 500 to 20 000 can be imposed. In the case of repeated or protracted violations, the fine shall be doubled, and the NPO may be sanctioned with a temporary interdiction from carrying out its activities. Similar administrative sanctions may also be imposed on natural persons

having managerial responsibilities in a NPO. NPOs are also required to keep information and to disclose this information to the SoS, the ASIF and the CdG (Law on NPOs, Art. 5 and 6). This includes basic and BO information and failure to do so may be sanctioned (Law on NPOs, Art. 12(1)). The administrative sanctions are ascertained by the SoS and imposed by the President of the Governorate and the range is sufficient to allow proportionate application.

With regard to voluntary organisations and other charitable legal persons, the obligations to register (voluntary organisations only), to submit basic/BO information and changes thereof to the Governorate and to disclose basic/BO information to requesting authorities are based on the provisions of the Law on Regulation of Voluntary Activities (Art. 4) and the AML/CFT law (Art. 5 bis). If one of these obligations is breached, the President of the Governorate may impose administrative sanctions on the basis of the Law on General Norms on Administrative Sanctions. However, the range of sanctions, which provides for a maximum fine of EUR 5 000, is insufficient to sanction serious infringements appropriately.

Criterion 24.14 – The competent authorities of the HS/VCS (see definition under Art. 8 of the AML/CFT law) are required to "actively cooperate and exchange" information with similar authorities of foreign jurisdictions (AML/CFT law, Art. 69 bis (1)) – which is equivalent to "rapid provision". This is described under R.37 and R.40.

The register of NPOs is public (Law on NPOs, Art. 4(5)), so that foreign authorities can request basic information according to c.24.3 and c.24.4 from the Governorate. This information also includes information on the BOs of NPOs (see c.24.4 and c.24.6 above).

In addition, basic and BO information of NPOs can be shared by the SoS as their supervisory body (Law on NPOs, Art. 10) and the ASIF when performing its supervisory, regulatory or financial intelligence functions upon the condition of reciprocity and on the basis of MoUs (see c.40.12 to c.40.16). Furthermore, basic and BO information may also be shared via the gateway of MLA.

Since from a legal point of view, the public has no right to access the registers of canonical legal persons, civil legal persons and voluntary organisations (see c.24.3 above), foreign authorities may not be entitled to request basic and BO information from the Governorate regarding voluntary organisations and other charitable legal persons. However, basic and BO information may be requested via MLA or via the ASIF. Concerning the latter gateway, the above described conditions have to be met. Therefore, the legally foreseen mechanisms to ensure access by foreign authorities to basic information on voluntary organisations and other charitable legal persons are not deemed efficient.

Gaps that are identified (see c.40.15 – relating to the use of investigative powers by the ASIF), may restrict information exchange between the ASIF and foreign authorities.

Criterion 24.15 – The ASIF is required to keep statistics concerning international cooperation in the context of supervision and financial intelligence, especially in relation to the number of domestic and international requests received and declined, and those that were processed, in whole or in part, broken down by country (AML/CFT law, Art. 14(b)(iv)). This provision also covers outgoing requests. According to ASIF's internal procedure, a description of requested information is kept (both for incoming and outgoing requests) for statistical reporting purposes. This description allows for a separation between basic and BO information. The statistics are reported in ASIF's Annual

Report and are discussed in the coordination meetings with LEAs authorities. However, it is not clear to the AT whether the statistics of the ASIF foresee monitoring of the quality of assistance received.

No information has been provided in respect of LEAs and the SoS as supervisory body of NPOs.

Weighting and Conclusion

Several shortcomings have been identified. In particular: (i) information on the basic features and processes for creation of legal persons can be extracted from the relevant laws only to a limited extent and no guidance is publicly available; (ii) the authorities have not conducted a ML/TF risk assessment for voluntary organisations or other charitable legal persons comparable to that for NPOs; (iii) the public have a right to access basic information only for NPOs; (iv) there is no clear registration requirement for other charitable legal persons; (v) there is no clear legal obligation for legal persons to maintain basic information within the VCS at a location notified to the Legal Office of the Governorate; (vi) it is not clear that the combined effect of mechanisms used to obtain basic and BO information is that information must be kept as up-to-date as possible (or adequate in the case of BO information); and (vii) there are gaps in relation to international cooperation. These are considered moderate shortcomings. **R.24 is rated PC**.

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

In the 2012 MER, R.34, exceptionally, was declared not applicable to the HS/VCS as the laws of the HS/VCS did not provide for the creation of trusts or any other legal arrangements and the VCS was not a party to the Hague Convention of 1 July 1985 on the law applicable to trusts and their recognition. These circumstances have not changed since the last evaluation. However, the 2013 FATF Methodology together with the FATF Guidance on Transparency and Beneficial Ownership of October 2014, stipulates that R.25 includes requirements for all countries, whether they have a trust law or not. For this reason, the requirements of c.25.1(a) and (b) are not applicable in this assessment, whereas all other criteria are applicable and should be assessed with particular regard to trusts that are created under foreign law, but administered by a professional or non-professional trustee domiciled in the HS/VCS.

Criterion 25.1 – As mentioned above, c.25.1(a) and (b) are not applicable to the HS/VCS due to the fact that the legal framework of the HS/VCS does not provide for the creation of trusts or any other legal arrangements and the VCS is not a party to the Hague Convention of 1 July 1985 on the law applicable to trusts and their recognition.

In line with the standard, trustees acting on a professional basis are required to comply with the CDD requirements of Art. 16 of the AML/CFT law and have to identify the BOs of a trust (for the definition of BOs of a trust see Art. 1 (24)(b) of the said Law). The information on BOs which corresponds with c.25.1(a) must be kept for a period of ten years from the end of a relationship. However, AML/CFT requirements do not require those professional trustees to maintain basic information on other regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants, and tax advisors as listed in c.25.1(b). Accordingly, professional trustees are required to maintain BO information but not information on other regulated agents of, and service providers, to a trust.

Criterion 25.2 – Professional trustees are required to keep updated documents, data and information acquired for the purposes of CDD (information on BOs which corresponds with

c.25.1(a)) and to undertake reviews of existing records on an ongoing basis, with particular attention to categories of high-risk customers (AML/CFT law, Art. 19(1 bis)(b)). However, this does not include updating the information listed in c.25.1(b), since this is not collected in the first place (see under c.25.1 above).

Criterion 25.3 – In the legal framework of the HS/VCS, a requirement for trustees to (actively) disclose their status to FIs and DNFBPs (including foreign FIs and DNFBPs) when forming a business relationship or carrying out an occasional transaction above the threshold could not be identified by the AT. However, obliged subjects are required to verify if a customer is acting in the name and on behalf of other subjects (AML/CFT law, Art. 16(1) (d)).

Criterion 25.4 – There are no provisions in law or enforceable means which would prevent trustees from providing information to the competent authorities or to FIs and DNFBPs (AML/CFT law, Art. 6).

Criterion 25.5 – The ASIF in its competency as a supervisory authority has access to information on trusts held by obliged subjects, including professional trustees (AML/CFT law, Art. 46(b)). This includes information on BOs, residence of the trustee and any assets held or managed by obliged subjects in relation to any trustees with which they have a business relationship or for which they undertake an occasional transaction. However, the ASIF has no competency to request such information from non-professional trustees as they do not qualify as obliged subjects according to the AML/CFT law.

Additionally, the ASIF in its competency as FIU has access on a timely basis to all information of a financial, administrative and investigative nature (AML/CFT law, Art. 50). This includes any relevant information in relation to trusts and its trustees (including non-professional trustees).

Financial information held by FIs and DNFBPs and any other person (e.g. non-professional trustees), including data on BO, residence of the trustee and any assets held, is also accessible through the intervention of judicial authorities (i.e. the order of the single judge). According to Art. 166 of CCP, "officials of the investigating police can sequester (temporarily restrain) any goods that were used to commit a crime, those which were the product of the crime, and all which could be used to *ascertain the truth*". The italicised words appear to be the basic legal authority to produce requested documents as set out under this criterion.

Criterion 25.6 – The HS/VCS competent authorities (see definition under Art. 8 of the AML/CFT law) are required to "actively cooperate and exchange" information with similar authorities of foreign jurisdictions (AML/CFT law, Art. 69bis(1)) – which is equivalent to "rapid provision". This is described under R.37 and R.40 (see also analysis under c.24.14).

Basic information and information on BOs can be shared by the ASIF when performing its supervisory, regulatory or financial intelligence functions upon the condition of reciprocity and based on MoUs (see c.40.12 to c.40.16). However, the gaps that are identified in c.40.15 (relating to the use of investigative powers) may restrict information exchange between the ASIF and foreign authorities. Furthermore, basic information and information on BOs may also be shared via the gateway of MLA.

In addition, the gap which is identified regarding the obligation to maintain information (under c.25.1 above) could restrict international co-operation in relation to information on trusts.

Criterion 25.7 – Administrative sanctions and supervisory measures may be applied by the ASIF where an obliged subject or a legal person (including trust) fails to comply with the provisions of the AML/CFT law (Art. 47). The range of administrative sanctions is sufficient to allow proportionate application. There are no provisions providing for sanctions or liability for non-professional trustees, as they are not subject to any legal obligations.

Criterion 25.8 – As outlined in c.25.7, administrative sanctions and supervisory measures may be imposed by the ASIF on obliged subjects and legal persons (including trusts and persons acting on behalf of the trust) in the case of non-compliance with the provisions of the AML/CFT law. This covers the case where (timely) access by the ASIF (supervisor) to information on BOs of a trust is declined or delayed by a professional trustee. However, the relevant provision does not apply to a non-professional trustee of a foreign trust.

Weighting and Conclusion

Requirements are in place for trustees conducting business professionally in the HS/VCS to obtain information on the parties to the trust. Whilst there is no requirement for trustees to disclose their status when forming business relationships and some gaps in cooperation powers, less weighting has been attached to these shortcomings given the nature of the HS/VCS customer base. **R.25 is rated LC**.

Recommendation 26 – Regulation and supervision of financial institutions

In its 2012 MER, the HS/VCS was rated NC with former R.23 due to the following identified deficiencies: (i) lack of clarity on the role, responsibility, authority and independence of the ASIF as supervisor; (ii) directors and senior management of the two ASIF authorised institutions were not specifically evaluated on the basis of "fit and proper" criteria by the ASIF; (iii) the two institutions were "licensed" via the Chirograph and the *Pastor Bonus* respectively but not by the ASIF; and (iv) no inspections had been undertaken of the AML/CFT programme of FIs, no standard manual was available, no cycle of visits had been determined or planned for; and no feedback provided.

Criterion 26.1 – The ASIF must monitor the effectiveness of the AML/CFT system (AML/CFT law, Art. 9.2(b)). It is required to carry out the function of supervision and regulation (AML/CFT law, Art. 8.4(a) and ASIF Statute, Art. 2(9)), and is the central authority for supervision and regulation for AML/CFT (AML/CFT law, Art. 46) and, to this end, will supervise and verify the fulfilment by FIs of their obligations.

Criterion 26.2 – The ASIF is responsible for authorising the carrying out of a financial activity by way of business (AML/CFT law, Art. 1 and Art. 54, and ASIF Regulation No. 1 (prudential matters, Art. 4). There appear to be no gaps in the definition of financial activities.

283. It is forbidden to open a shell bank or hold correspondent relationships with a shell bank (AML/CFT law, Art. 5(1)(c)).

Criterion 26.3 – The ASIF is required to adopt measures necessary to avoid criminals and their associates, directly or indirectly: (i) holding or being the BOs of a significant or controlling interest; or (ii) having a management function in the executive or supervisory organs, within FIs (AML/CFT law, Art. 46(d)). In addition, expertise and integrity requirements are to be set by regulation (AML/CFT law, Art. 61) for members of management, organs of control and senior management (amongst others), and this includes an absence of criminal convictions or serious administrative

sanctions which would make a person unfit. Further, the ASIF must establish regulations on the promotion of high moral and professional standards within FIs (AML/CFT law, Art.63(1)).

Accordingly, regulations specify that the ASIF may issue an authorisation of an applicant FI after verifying the possession by members of management and senior management of the requirements for competence and honourability (i.e. honesty, integrity and independence of mind) (ASIF Regulation No. 1 (prudential matters), Title II, Chapter 1, Art. 5 (1)(c)(iv) and Chapter 4, Art. 18 and Art. 19 bis). The combined effect of these requirements is that the ASIF must verify that the persons identified as possible members of management and senior management are not:

- persons who are legally incapacitated, bankrupt, or have been convicted of a punishment entailing the prohibition, even temporary, from holding public offices or the inability to hold executive positions whether in the VCS or in a foreign state;

- persons who have been indicted or convicted whether in the VCS or in a foreign State: (i) for crimes in the financial, investment, or insurance sectors, including corporate, bankruptcy, and tax crimes; (ii) for a crime against a government or public administration, against the public trust, against social welfare, against public order, or against the public economy; or (iii) for any crime for which the legislation of the HS/VCS prescribes punishment of not less than one year of imprisonment; or

- persons who have been subject to administrative sanctions for the violation or systemic non-fulfilment of the obligations int force in the economic and financial sectors, applied by the competent authorities of the HS/VCS or foreign states.

Individuals who do not meet the honourability requirements must be dismissed by the FI (ASIF Regulation No. 1 (prudential matters), Art. 19(2)) and this must be reported to the ASIF within 30 days (through minutes of meeting of dismissal) (ASIF Regulation No. 1 (prudential matters), Art. 20(5)). In addition, the supervisory board of the FI must evaluate, at least on an annual basis, whether the members of management and senior management continue to meet competence and honourability requirements on an ongoing basis (ASIF Regulation No. 1 (prudential matters), Art. 20(4). To this end, members of management and senior management must, at least on an annual basis, certify that they continue to meet the requirements, and provide all the supporting documentation to the supervisory commission upon request.

The ASIF also has the power, at any time, to: (i) ask an FI to provide documentation proving that members of management and senior management meet the competence and honourability requirements; (ii) conduct independent verification; and (iii) ask for additional information about a relevant member, including from the competent authorities in the VCS or in foreign states (ASIF Regulation No. 1 (prudential matters), Art. 20(6)).

With regard to changes of management after authorisation of a FI by the ASIF, the FI must provide the name(s) of the candidate(s) for management and senior management positions to the ASIF at least 45 days before the potential appointment for the verification of their eligibility (ASIF Regulation No. 1 (prudential matters), Art. 20(3)).

Whilst Art. 46(d) of the AML/CFT law applies also to legal or BO of an FI, Art. 61 and Art. 63 of the AML/CFT law and ASIF Regulation No. 1 (prudential matters) are not applicable on the basis that the financial system of the VCS is publicly-owned (ECPO). In practice, ownership of the only FI is held by the Supreme Pontiff, and he is represented by a Commission of Cardinals (5 cardinals) selected by him and through whom he has the right to exercise ownership rights. Members of the

commission are subject to canonical checks by the SoS which, inter alia, verify the absence of a criminal record, administrative sanction or negative media reports that render the candidate unworthy or undeserving to provide the service required (Apostolic Constitution *Pastor Bonus* 1988, Art. 39 and 42(2)). This is in line with the standards.

It is noted also that, although the definition of "beneficial ownership" recognises the concept of control, the technical deficiency highlighted under c.10.10 is also relevant (AML/CFT law, Art. 1(24)).

The authorities have not explained what, if any, additional measures have been adopted to deal with associates of criminals.

Criterion 26.4 – All persons carrying out a financial activity professionally must be authorised (see c.26.2). Any MVTS providers would be subject to the legislative and other provisions described in the remainder of R.26 and the provisions in R.27.

The ASIF has carried out a self-assessment of compliance with the BCBS Core Principles, although the level of compliance relevant to c.26.4(a) has not been provided to the AT. A self-assessment does not appear to have been carried out in relation to compliance with IOSCO standards notwithstanding that the ASIF authorised institution is permitted to act as a market intermediary (e.g. execution of investment transactions on markets on behalf of customers). The institution is not authorised to offer insurance services.

The framework for risk-based supervision adopted by the ASIF is described in c.26.5.

Criterion 26.5 – The ASIF is required to monitor the effectiveness of the AML/CFT system and to adopt risk-based procedures and measures (AML/CFT law, Art. 9.2(b) and Art. 3). It is required to adopt policies, procedures, measures and controls and apply them consistently with the risks present in the VCS; and the nature, dimension and activities of FIs (AML/CFT law, Art. 7).

In addition, the ASIF has established a methodology that sets out a RBA to AML/CFT supervision. Section 7 states that the frequency and intensity of supervisory engagement will take into account the nature and size of the authorised FI and be commensurate with the risks identified, with section 29 stating that supervisory resources will be allocated in a way that is commensurate with an authorised person's risk profile. The risk model articulated within the methodology provides for four steps: identification of risk factors; risk assessment and profiling; supervision; and monitoring, review and follow-up.

Section 10 onwards includes a series of information sources to assess the risks of each FI, which, at sections 10 and 12, include the GRA as a source of information to be taken into account. Section 15 refers to the quality of internal governance arrangements and structures, including the adequacy of internal audit and compliance functions, the level of compliance with AML/CFT legal and regulatory requirements and the effectiveness of AML/CFT policies and procedures. The scope and totality of information used in risk assessments addresses the criterion's requirement on the characteristics of FIs. Although there is no specific reference to the degree of discretion allowed to FIs under the RBA, the diversity of information sources used for risk assessment implicitly covers this.

The only potential (minor) gap in meeting the criterion would appear to be in relation to sub-criterion (a) and whether group risk profiles are covered comprehensively. Section 13 provides that, where a FI maintains significant links with foreign jurisdictions so that it is exposed to ML/TF risks

associated with these other countries, these risks are identified. Significant links include those where: (i) the FI maintains significant business relationships with counterparties established in other jurisdictions; (ii) the FI has subsidiaries, owns (or has relevant interests in) companies established in another jurisdiction; and (iii) any other relevant links to another jurisdiction exist, which means that the FI is exposed to the ML/TF risk associated with that jurisdiction. Section 14 states that reasonable steps will be taken by the ASIF to acquire adequate knowledge, awareness and understanding of the ML/TF risks associated with these foreign jurisdictions that may affect the activities carried out by the FI. By way of context, FIs in the HS/VCS do not have group entities in other jurisdictions.

So as to facilitate implementation of its supervisory approach, the ASIF has introduced a manual to provide a framework for AML/CFT inspection activities that take into account the risk profile of the FI.

Criterion 26.6 – See c.26.5. Paragraphs 6 and 18 of the ASIF's methodology for its RBA to AML/CFT calls for ML/TF risk factors to be reviewed at least annually and, in any case, when a "trigger event" occurs. A list of trigger events is provided and include some major events and developments, but these do not extend to all major events/developments, e.g. major compliance failures and termination by correspondent of banking relationships, adverse internal and expert reports on AML/CFT systems. However, the list is not intended to be exhaustive. The gap in meeting the criterion is minor.

Weighting and Conclusion

It is not clear what measures are in place to prevent associates of criminals from being appointed to management positions. Also, it is not clear to what extent regulation and supervision are in line with BCBS and IOSCO core principles. In the context of the HS/VCS, these shortcomings are considered to be minor and so **R.26 is rated LC**.

Recommendation 27 – Powers of supervisors

In its 2012 MER, the HS/VCS was rated NC with the former R.29, due to a number of deficiencies related to ASIF's power: (a) to conduct inspections; (b) have direct access, to the financial, administrative, investigative and judicial information, required to perform its tasks in countering ML/TF; and (c) impose sanctions on directors or senior management. Effectiveness issues were also highlighted.

Criterion 27.1 – The ASIF has adequate legal powers to supervise AML/CFT compliance of FIs (AML/CFT law, Art. 46). See c.26.1. and also see the other criteria of this Recommendation.

Criterion 27.2 **–** The ASIF has authority to carry out onsite and offsite inspections (AML/CFT law, Art. 46(e)). The ASIF must also prepare and conduct offsite and onsite inspections of FIs within the framework of the schedule approved by the Board of Directors (ASIF Statute, Art. 6(2)(e)).

Criterion 27.3 **–** The ASIF has access to, and can require production of, documents, data, information, registers and books relevant for the purposes of supervision of FIs (AML/CFT law, Art. 46(b)). The ASIF has access to documents, data, information, registers and books from legal persons with a registered office, or registered in, the VCS, in relation to BOs, beneficiaries and administrators, including members of management and senior management (AML/CFT law, Art. 46(c)). It can also collect information of a financial nature and other relevant information relating to FIs (AML/CFT

law, Art. 46(f)). Together, these powers allow the ASIF to monitor compliance with AML/CFT requirements.

Criterion 27.4 **–** The Law on General Norms on Administrative Sanctions sets out the overarching framework for the issue of administrative sanctions and appeals against them. Art. 11 provides that the following administrative sanctions can be applied if they are included in relevant legislation: (a) a financial penalty; (b) permanent or temporary interdiction to the exercise of an activity; (c) permanent or temporary interdiction to the executive offices of legal entities; (d) the removal of legal entities from legal offices; (e) the limitation of powers inherent to the executive offices of legal persons; (f) suspension or revocation of authorisations, licences and concessions; (g) prohibition on contracting with public authorities; (h) confiscation; and (i) publication of the sanction. If other legislation does not provide for the amount of a penalty: (i) the minimum and maximum penalty respectively will be EUR 100 and EUR 5 000; and (ii) penalties at (b), (c), (d) and (e) must apply for between six months and three years (Law on General Norms on Administrative Sanctions, Art. 11).

The AML/CFT law (Art. 8(4)(c)) provides overarching authority for the ASIF to impose administrative sanctions on FIs for failing to comply with AML/CFT requirements.

The ASIF can apply the following "ordinary" sanctions - that do not affect the economic continuity of the FI - in accordance with the Law on General Norms on Administrative Sanctions, Art. 11: (a) a written warning; (b) an order to comply with specific instructions, with fines in case of full or partial non-compliance therewith; (c) an order to make regular reports on the measures adopted by the sanctioned subject, with fines in the case of total or partial non-compliance; (d) corrective measures; and (e) a fine of up to 10% of the gross annual income in the preceding financial year for legal persons (AML/CFT law, Art. 47(2)). In relation to (b) and (c), the levels of fine would appear to be those set in the Law on General Norms on Administrative Sanctions and might be too low to be fully dissuasive. In relation to (e), where the FI is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts, the relevant gross annual income shall be the total annual turnover or the corresponding level of income according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking. A fine could apply potentially to each and every serious breach found on an onsite inspection, in other words, several fines up to 10% of gross income could be applied.

In the most serious cases, the ASIF can recommend to the President of the Governorate (acting on behalf of the Holy Father) that one or more of the following "severe" sanctions can be applied that affect the continuity of the FI: (a) permanent or temporary disqualification of natural persons from activity in the economic, commercial or professional sector; (b) removal or limitation of the powers of members of management or senior management or similar figures; (c) suspension or withdrawal of authorisation to carry out a financial activity professionally; and (d) controlled administration (AML/CFT law, Art. 47(3)). The President then informs the Legal Office for the investigation of the case at the end of which he will draw up an opinion to be sent to the Cardinal President who will decide on the imposition to be imposed on the subject.

There is presumption for sanctions to be published although whether, when and what to publish is subject to a case by case assessment of the principle of proportionality and whether an investigation or the stability of the financial sector would be jeopardised (AML/CFT law, Art. 47(6) and (7)).

The above powers are complemented by the ASIF statute which add an element of detail in enabling the Director of the ASIF to propose the application of sanctions to the Board of Directors (Art. 6(2)(g)

and which allow the Board of Directors to apply sanctions and propose sanctions to the President of the Governorate (Art. 4(f) and (g)).

Overall, the range of administrative sanctions is sufficient to allow proportionate application. However, c.27.4 calls for sanctions to be imposed by the supervisor, including power to withdraw, restrict or suspend a FI's licence, whereas these powers are vested in the Governorate.

Weighting and Conclusion

Whilst the overall range of sanctions is considered proportionate, the supervisor is not authorised to withdraw, restrict of suspend the licence of a FI. The former is considered a moderate shortcoming. Accordingly, **R.27 is rated PC**.

Recommendation 28 – Regulation and supervision of DNFBPs

In the 2012 MER, the HS/VCS was rated as non-compliant with the requirements of R.24 due to weaknesses of the ASIF in relation to the application of sanctions and its powers to perform inspections. Moreover, the AT determined that supervision or monitoring of DNFBPs had not taken place.

In contrast to the last assessment, none of the DNFBP activities as described in R.22 and R.23 of the FATF Recommendations is exercised in, or from within, the HS/VCS[52]. This is in conformity with the list of obliged subjects that is published by the ASIF on its website in accordance with Art. 4 of the AML/CFT law. Nonetheless, DNFBPs are covered by the AML/CFT law against the backdrop that the legislator has replicated the respective European and FATF standard. But it was also intended as a safeguard in order to cover any future activities, or activities of which the authorities are possibly not aware.

The AT takes the view that, regardless of the question as to whether relevant services are being provided in practice or not, the obligations of all DNFBP categories mentioned in the AML/CFT law have to be assessed in the context of this evaluation, simply due to the fact that a legal AML/CFT framework for those categories has been created.

In line with the analysis provided under R.22, the scope of regulation and supervision excludes real estate agents engaging in transactions for which the value of the property amounts to less than EUR 10 000. Given the context of the HS/VCS (where all real estate is publicly owned), this scope gap is considered a minor shortcoming.

Criterion 28.1 – The establishment of casinos in the HS/VCS (including internet casinos and casinos on ships flying the flag of the HS/VCS) is expressly prohibited (AML/CFT law, Art. 5 (e)).

Criterion 28.2 – All categories of DNFBPs[53] as mentioned by the FATF Recommendations are subject to monitoring by the ASIF for ensuring compliance with AML/CFT requirements (AML/CFT law, Art.

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[52] There is only one DNFBP which provides auditing services as an external auditor appointed by the ASIF authorised institution. These activities are outside the scope of the FATF definition of DNFBPs and therefore, are not considered in this assessment.

[53] Auditors, fiscal advisors, persons trading in goods or services and persons trading or acting as intermediaries in the trade of works of art are also covered by the AML/CFT law, although they do not fall under the FATF definition of DNFBPs.

46). In addition, the ASIF must monitor the effectiveness of the AML/CFT system (AML/CFT law, Art. 9(2) (b)) and it is required to carry out the function of supervision and regulation (AML/CFT law, Art. 8(4) (a) and ASIF Statute, Art. 2(9)). However, as referred to above, there is a minor gap in the application of preventive measures to real estate agents.

Criterion 28.3 – All DNFBPs who are subject to the scope of application of the AML/CFT law (covered DNFBPs), are also subject to supervision for AML/CFT compliance (AML/CFT law, Art. 46). The system in place to monitor compliance with AML/CFT requirements is described in c.26.5.

Criterion 28.4 –

(a) The ASIF has adequate legal powers to supervise AML/CFT compliance of covered DNFBPs (AML/CFT law, Art. 46). The same powers apply to FIs - see analysis under c.27.1 to c.27.3.

(b) The ASIF is expected to adopt measures necessary to avoid criminals and their associates, directly or indirectly, holding or being the BO of a significant or controlling interest, or having a management function (AML/CFT law, Art. 46 (d)). The authorities have explained that DNFBPs, after having undergone the authorisation process applied by the Governorate (see Chapter 1), would also require approval from the ASIF. For its part, the ASIF has explained that the licensing process would follow provisions set out in ASIF Regulation No. 1 (prudential matters) and so it is not clear: (i) what measures would be applied to holders of significant or controlling interests; or (ii) what, if any, additional measures would be adopted to deal with associates of criminals holding management functions. However, it should be noted that, under the provisions of Title III of the AML/CFT law, this Regulation does not extend to DNFBPs (Art. 54).

(c) There are sanctions available for failures to comply with AML/CFT requirements for all covered DNFBPs. The ASIF is responsible for imposing sanctions (AML/CFT law, Art. 47(2)) except in the most serious cases, where the ASIF can recommend additional sanctions to the President of the Governorate (AML/CFT law, Art. 47(3)). The range of administrative sanctions is sufficient to allow proportionate application. See analysis under c.27.4.

Criterion 28.5 – The ASIF has established a methodology which sets out the characteristics of the RBA to AML/CFT supervision that it adopts and the steps to be taken when carrying out its supervisory activities on a risk-sensitive basis. The methodology foresees that a risk assessment is carried out in order to determine the supervised entity's risk level. This risk assessment includes an assessment of the quality of internal AML/CFT policies and procedures. Moreover, the methodology states that supervision for AML/CFT purpose must be proportionate. The frequency and intensity of supervisory engagement take into account the nature and size of the entity and must be commensurate with the ML/TF risk identified. See also c.26.5.

Weighting and Conclusion

Most elements of this Recommendation are in place. The identified shortcomings are of a minor nature given that there are no DNFBPs registered in the HS/VCS. Therefore, **R.28 is rated LC.**

Recommendation 29 - Financial intelligence units

In its 2012 MER, the HS/VCS was rated LC with the former R.26. The AT noted that the FIU's power to query additional information did not appear to extend to all entities subject to the reporting

obligation, and that the FIU's power to access information did not cover foundations located in and/or dependent from the HS/VCS.

Criterion 29.1 – By means of *Motu Proprio* "The Apostolic See" of 30 December 2010, the Supreme Pontiff established the ASIF being an institution connected to the HS/VCS in accordance with Art.186 ff. of the Apostolic Constitution *Pastor Bonus*. This *Motu Proprio* is also referred to as the ASIF's Statute. The *Motu Proprio* states that one of the functions of the ASIF is that of 'financial intelligence', thus making it the FIU of the HS/VCS. The ASIF is endowed with canonical public legal personality and has its legal seat in the VCS.

Art. 48 of the AML/CFT law concerns the receipt, analysis and dissemination of SARs and clearly states that the ASIF is the central authority for financial intelligence. Art. 48(a) states that the ASIF is responsible for the receipt of SARs, whereas Art. 48(b) states that the ASIF is responsible for receiving and, where necessary, requesting, all documents, data and information relevant to the AML/CFT purposes.

The ASIF also has the mandate to receive declarations of cross-border transportation of currency and this in terms of Art. 48(c). The functions endowed to the ASIF also include that of analysing the SARs concerning proceeds of criminal activity, documents, data and information it receives and the function to disseminate reports, documents, data and information to the Promoter of Justice if there is a reasonable ground to suspect an ML/TF activity.

Criterion 29.2 – (a) The AML/CFT law (Art. 48 and 48(a)), defines the ASIF as the central authority responsible for the receipt of SARs. Obliged subjects are obliged to file a report with the FIU as soon as they become aware, or have suspicion or reasonable grounds to suspect that (i) funds or other assets are the proceeds of criminal activities, or are linked or related to the TF or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism; (ii) in the case of activities, operations or transactions which they consider particularly likely, by their own nature, to have a link with ML/TF or with terrorist organisations or those who finance terrorism.

(b) There do not appear to be any obligations on obliged subjects to submit cash transaction reports, wire transfer reports or other threshold-based declarations or disclosures, as obliged subjects are only bound to submit reports on suspicious transactions, activities or operations.

The FIU however has the mandate to receive declarations of cross-border transportation of currency (AML/CFT law, Art. 48(c)). The role of the FIU vis-à-vis declarations of cross-border transportation of currency is covered in R.32.

Criterion 29.3 – (a) According to the Statute (Art. 9), the FIU has access to documents and data also of a confidential nature and exchange information, internally with the HS/VCS and internationally, in the cases and within the limits stable by the law. This is broadly reflected in the AML/CFT law (Art. 48(b)), which provides for the FIU to receive and, where necessary, request all documents, data and information relevant to AML/CFT purposes. Art. 48(b bis) also empowers the FIU to request information from obliged subjects, also in cases where the FIU has not received a SAR.

The FIU's powers to access information are listed in the AML/CFT law (Art. 50) which stipulates that the FIU has (a) access, on a timely basis, to all information of a financial, administrative and investigative nature relevant to AML/CFT purpose; a*bis*) has access to information that renders it possible to promptly identify any natural or legal person that holds immoveable property; (b) access to other relevant additional information possessed by all obliged subjects; and (c) access, on a timely

basis, to information of a financial and administrative nature possessed by the obliged subjects and by legal persons with their legal seat in the State or registered in the registers held by the State; d) collects and files relevant documents, data and information.

In terms of Art. 47(1), the FIU may apply administrative measures on obliged subjects after having established that they have breached any of their AML/CFT obligations, which includes the obligation (Art. 39) to make CDD data, information and documentation at the disposal of the competent authorities.

The AML/CFT law (Art. 51 bis) provides for a central register (which shall be maintained and is accessible by the FIU (Art. 51 bis (1) and (2)) that contains the following information: for account holders and persons delegated to operate on accounts, their names, biographical information and identification numbers; for BOs, the bank account identification number and the opening and closing dates of account; for safe deposit boxes, the name of the lessee and either the other information envisioned by Art. 1(6) or an identification number, as well as the duration of the lease. The Law (Art. 51 bis (4)) stipulates that the FIU shall govern, through a Regulation issued by it on 15 July 2020, the means for creating, updating, maintaining, managing and safeguarding the register. By the completion of the AT's onsite, no data had been transferred to the register.

(b) In addition to its powers (AML/CFT law, Art. 50(a)) to access all information of financial, administrative and investigative nature, relevant legal provision regarding access to information are also found in Arts.69 (1) and (2) of the Law. The first states that the HS/VCS competent authorities, the entities and institutions shall actively cooperate and exchange AML/CFT information. Art. 69(2) states that reporting subjects, including HS/VCS public authorities, shall promptly provide to the FIU documents, data and information that are relevant to help identify every instance in which there are facts and situations the knowledge of which may in any event be used to prevent ML/TF.

Criterion 29.4 – In terms of the functions assigned to the FIU by the AML/CFT law (Art. 48), its role, inter alia, is to carry out operational and strategic analysis.

(a) The FIU carries out an analysis of all SARs, documents, data and information received, and it conducts analysis at the operational level (AML/CFT law, Art. 48(d)(i)): using the documents, data and information available and obtainable in order to identify specific objectives, trace operations and transactions, establish links between the above-mentioned objectives and the potential proceedings of crimes. Additionally, the Circular on Internal Organisation and the Circular on Operational Analysis establishes the rules and workflow to be adopted by the FIU when conducting operational analyses.

The Circular provides that an analysis may be initiated by the FIU even without the receipt of a SAR, in which case, the Law (Art. 48(b) bis) explicitly empowers the FIU to request and use information from obliged subjects even if no prior report is filed.

(b) According to the AML/CFT law (Art. 48(d)(ii)), the FIU carries out analysis at the strategic level: using the documents, data and information available or obtainable, including for the purposes set out in Art. 14 of the Law. In addition, the Circular on Internal Organisation and the Circular on Strategic Analysis issued by the FIU establish the rules and workflow to be adopted by the FIU when conducting strategic analyses. The Circular on Strategic Analysis also established in more detail the purposes for carrying out strategic analysis, and include among others, that of identifying trends and patterns of ML/TF.

According to the Circular on Internal Organisation (Art. 10(2)), "the strategic analysis is not tied to the analysis of single cases, but to one of a set of quantitative and qualitative data, also on new typologies and trends, schemes and models of activity, which may point to ML/TF cases." The Circular also provides a 17-point list of activities or objectives that the FIU seeks to perform and achieve through the carrying out of strategic analysis (Art. 10(3)).One of the objectives is the elaboration of analyses on schemes, patterns, types and trends of activities for the strategic prevention of ML/TF, and aimed at providing elements for defining the FIU's strategic and operational priorities, and more in general the strategic and operational priorities of the HS/VCS authorities.

It therefore appears that the results of the FIU's strategic analysis are intended to be used in setting policy objectives by the FIU the HS/VCS Authorities.

Criterion 29.5 – The AML/CFT law (Art. 48(e)) empowers the FIU to disseminate reports, documents, data and information to the Promoter of Justice when there is a reasonable ground to suspect an ML/TF activity (which, by means of Art. 421 bis of the CC, includes predicate offences).

By virtue of Art. 69(1) of the Law, the FIU may also cooperate and exchange information with the HS/VCS competent authorities listed in Art. 8. These include: The SoS; the President of the Governorate; the FSC; the CdG; and the OPJ. Art. 69(3) of the Law stipulates the conditions under which the FIU may cooperate and exchange information with these authorities.

In order to ensure the security, integrity and confidentiality of the documents, data and information, the AML/CFT law (Art. 68) requires the FIU to adopt adequate procedures and measures: a) for data and information treatment, filing and dissemination; b) to ensure a controlled and limited access to the FIU premises and to documents, data and information in its possession, including information and technology systems; c) to ensure that staff members have necessary levels of authorisation, security, knowledge and understanding of their responsibilities in treating, analysing, filing and disseminating documents, data and information. The Authorities of the HS/VCS confirmed that the channel used to disseminated information to competent authorities within the HS/VCS is by means of hand-delivered sealed envelopes, with a signed confirmation of receipt, pursuant to the delivery protocol which is also outlined in the Circular on Operational Analysis. This same channel is used when the FIU requires to share information that is stored electronically, such as transaction data or the results of its analysis.

The Law (Art. 48(l)) lists as one of the functions of the FIU to reply, in a timely manner, to requests for information from competent authorities. The article also provides for the circumstances in which the FIU may refuse to reply, including: (a) when a reply may prejudice ongoing investigations or analyses or, (b) in exceptional circumstances, where disclosure of the information would be clearly disproportionate to the legitimate interests of a natural or legal person, or (c) irrelevant with regard to the purposes for which it has been requested." The HS/VCS authorities maintain that the wording of the law does not suggest that the FIU is obligated or bound to respond to requests for information (even if none of the aforementioned conditions are not met), however, there are no explicit provisions in the law which make it clear that the FIU retains the discretion on whether to disseminate information after having received a request from a competent authority.

Criterion 29.6 –

(a) All documents, data and information possessed by the FIU in the exercise of the function of supervision and regulation and the function of financial intelligence are to be protected for the purposes of ensuring their security, integrity and confidentiality (AML/CFT law, Art. 67(1)(b)). This provision is clearly reflected, almost word-for-word, in Art. 10 of the ASIF's Statute. A breach of the confidentiality obligations by public officials constitutes a criminal offence in terms of Art. 116bis of the CC.

Furthermore, Art. 36 of General Regulations of the Roman Curia states that: § 1. Everyone is obliged to strictly observe official secrecy. They may not, therefore, give unauthorised persons any information regarding activities or news which they know because of their job. § 2. Pontifical secrecy is to be rigorously observed, according to the norms of the Instruction SECRETA CONTINERE dated February 4, 1974.

In ensuring the security, integrity and confidentiality of the documents, data and information, the FIU adopts adequate procedures and measures: a) for their treatment, filing and dissemination; b) to ensure a controlled and limited access to its premises and to documents, data and information in its possession, including information and technology systems; c) to ensure that members of staff have necessary levels of authorisation, security, knowledge and understanding of their responsibilities in treating, analysing, filing and disseminating documents, data and information (AML/CFT law, Art .68).

In fact, the FIU has in place internal procedures, namely the Circular on Internal Organisation and the Circular on Operational Analysis. Both Circulars establish principles, rules, procedures, duties and responsibilities in handling and disseminating sensitive and confidential information.

The FIU also has in place an Information Technology Security Policy, which, inter alia, establishes user access rights which are structured in a manner so as to ensure that the members of the ASIF staff are able to access only the information and data that they require to be able to perform their duties.

With regard to the storage of information, the FIU files (archives) SARs which are not disseminated to the OPJ, and keeps the reports disseminated to the OPJ and the SARs filed for ten years in order to ensure their integrity, security and confidentiality and in such a way as to allow subsequent investigative or judicial activity (AML/CFT law, Art. 48(f) and (g)).

(b) Although the Law (Art. 68(c)) requires the FIU to adopt procedures and measures to ensure that its staff members have the necessary levels of authorisations and security clearances, no formal document explaining the procedures or measures adopted by the FIU was provided to the AT to delineate what these are and how members of the FIU are screened and security cleared, and by which authority. Nonetheless, the HS/VCS authorities explained that chosen employee candidates are subject to an internal screening process and are then screened by the SoS which must provide a *nulla osta* in order for the ASIF to proceed with their employment. Part of the screening process includes criminal background checks and a physical exam. The internal screening process adopted by the FIU varies depending the candidate's role-to-be within the Authority. The FIU also has in place a confidentiality classification protocol which stipulates that files classified as "highly-confidential" are only accessible by the Director, Deputy Director, Head of FIU and senior analysts.

(c) The FIU established an Information Technology Security Policy, a copy of which was provided to the AT and consists of a comprehensive document outlining the various information security measures and protocols applied within the ASIF.

(d) The FIU is member of the Egmont Group of FIUs since July 2013. It is therefore assumed that the ASIF uses the Egmont Secure Web (ESW) to exchange information with other FIUs, which is considered to be a secure channel.

(e) On 11 December 2019, the FIU and the Office of the OPJ signed a MoU in order to set out the most appropriate procedures to apply in the event of exceptional circumstances in which the OPJ needs to ascertain the potential criminal conduct of ASIF officials in the performance of their duties. According to the authorities, the MoU is designed to ensure the consistency of the search and seizure procedures of the OPJ with the Egmont Group Principles for Information Exchange, especially principles 28, 29, 31 and 32, with particular regard to avoiding access to and the use of confidential information received by foreign FIUs for administrative, investigative, prosecutorial or judicial purposes, beyond those originally approved, without prior authorisation. A copy of the said MoU was made available to the AT.

With regard to physical controls, the premises of the FIU are accessible only to its employees who carry an employee badge. All other visitors must be authorised and are screened by the receptionist who watches over the only entrance to the FIU premises. FIU's paper documents are stored in locked storage units and its IT equipment, including servers, is stored in a dedicated and secured room that may be accessed only by the FIU's IT personnel.

Criterion 29.7 – (a) & (b) The ASIF is endowed with canonical public juridical personality and has its legal seat in the VCS (ASIF's Statute, Art. 1(2)). The ASIF performs its functions, including those of an FIU, in full autonomy and independence (Statute, Art. 2).

(c) The ASIF is not located within the existing structure of another authority.

(d) The ASIF shall have adequate human and material resources, proportional to its institutional functions, within the limits of its organisational chart (ASIF's Statute, Art. 8(1)).

In terms of the ASIF's Statute, the ASIF is composed of: a) the President; b) the Board; and c) the Directorate. ASIF has three departments or units, namely: a) the Supervision Unit; b) the Regulation and Legal Affairs Unit; and c) the Financial Intelligence Unit. The Statute requires the ASIF to adopt the necessary measures and procedures to ensure the operational distinction between the supervisory and regulatory function and the financial intelligence function. Each department shall be led by a head of department. The President chairs the Board; he is the Authority's legal representative. The Board is composed of four members and the President, appointed by the Supreme Pontiff for a five-year period.

The Director and the Deputy Director are appointed by the Secretary of State for a period of five years, upon a proposal from the President. Art. 7(10) of the Statute requires that the applicable principles and norms contained in the Regulation on Management-Level Lay Personnel of the HS/VCS of State of 22 October 2012 shall be observed for the appointment and employment of the Director, the Deputy Director, and all other employees of the ASIF.

Among the Director's responsibilities listed in Art. 7(3) of the ASIF's Statute, the Director shall propose to the Board the recruitment of personnel, within the limits of the organisational chart and the budget and take part in the selection procedure.

The ASIF Statute requires that all persons, including the Board members, the Director, the Deputy-Director, heads of department, the personnel and the external experts are appointed or chosen among persons of proven reputation, free from any conflict of interest and having recognised professional competence in the legal, economic and financial fields as well as in the subject-matters that fall within the scope of activity of the ASIF. All persons recruited by the ASIF are subject to the approval, or rather a non-objection (*nulla osta*), of the SoS. The HS/VCS authorities maintain that to date, the SoS has never declined to give its *nulla osta*.

Based on the ASIF's Statute (Art. 4(2)), it may be concluded that the Board does not have any involvement in the ASIF's operational work as a financial intelligence unit. This is further corroborated by the operational analysis workflow annexed to the ASIF's Circular on Operational Analysis.

Criterion 29.8 – The ASIF is an Egmont Group member since July 2013.

Weighting and Conclusion

The HS/VCS meets all criteria but c.29.5. Shortcomings were observed, in particular with regard to: (1) the ASIF's discretion on whether to disseminate information after having received a request from a competent authority; and (2) the written procedures in place on screening of FIU staff. **R.29 is rated LC.**

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

The HS/VCS was rated LC in the last evaluation for the former R.27. Former R.27 has been revised significantly and replaced by a new R.30 in the 2012 FATF Recommendations together with an IN.

Deficiencies in respect of law enforcement were effectiveness related, particularly at that time in respect of training in financial investigation. From 2013 -2019 a significant training programme concerning ML/TF has been undertaken for relevant investigators and prosecutors.

Criterion 30.1 – In the HS/VCS the CdG carries out the institutional tasks of the police, including those of Judiciary Police. Under Art. 163 CCP the officials and agents of the Judicial Police carry out their assignments under the direction of the public prosecutor (the OPJ).

At the time of the last evaluation there was no branch of the CdG tasked with the specific responsibility for investigating ML and TF.

In September 2016, the ECO-FIN Unit was established within the External Relations Office of the CdG. It has exclusive competence for investigating activities in the area of ML, TF and other economic-financial crimes. Investigative acts carried out by other sections of the CdG in other crimes are transmitted to ECO-FIN if, during their investigations, elements of an economic and financial nature emerge. In performing its duties, ECO-FIN cooperates with the Security Operations Centre (responsible for IT security systems necessary for reconstruction of movements in and out of HS/VCS including surveillance cameras, and equipment for recognition of authorised number plates at access points), the Office of Foreign Relations, and the Anti-terrorism Unit.

The ECO-FIN until 2017 had 2 officers attached to it. After the 2017 GRA the establishment was increased. It currently comprises 1 officer in charge with investigative duties (previously in charge

of the Office of External Relations) and 3 permanent investigators, and 1 operator (also with investigative police functions) designated for cross border controls.

All investigations carried out by the ECO-FIN are directed and coordinated by the Promoter of Justice. A specialised section for financial crime within the OPJ was set up in October 2016. The OPJ's financial crime section comprises: a public official who acts in an advisory capacity, one prosecutor who is in charge of the section and two other prosecutors.

The CdG is charged under Art. 8(5) of the AML/CFT law to use up-to-date investigative techniques for the prevention and countering of ML and TF and to ensure the professional training and updating of its personnel relating to the phenomena of ML and TF.

The Promoter of Justice and the ECO-FIN Unit (and the CdG generally) work within the policy framework of the FSC General Action Plan on AML/CFT, under which there appears to be a commitment to the continued strengthening of the ECO-FIN Unit and the Section for Economic and Financial Crimes of the OPJ, and the pursuit of international co-operation whenever a case requires it.

Criterion 30.2 – Apart from general provision embedded in Art. 163 of the CCP (see under 30.1) there are no other regulatory references or internal provisions governing the assignment of the parallel financial investigation. The HS authorities indicated that the CdG, which investigates predicate offences, is authorised to conduct the investigation of any related ML/TF offences under the authority of the Promoter of Justice. In furtherance of this policy, the HS authorities advised that all cases of potential ML are passed to the ECO-FIN Unit, which works under the direction of the OPJ. While it is clear that potential ML cases are passed to the ECO-FIN Unit by other sections of the CdG, there appears to be some lack of clarity as to which cases should be passed to the ECO-FIN Unit and/or the Promoter for authorisation of parallel financial investigations to ascertain whether there are assets suitable for confiscation.

Nonetheless, the authorities advised that investigating the financial aspects in parallel financial investigations is a general practice in criminal enquiries in the jurisdiction. However, the evaluators have not seen any clear instructions to the CdG as to when parallel financial investigations should be considered by the Promoter of Justice and instituted in proceeds-generating offences generally. The decision to open parallel financial investigations, in any event, is taken by the Promoter of Justice, as he is in overall charge of the investigation.

When a financial investigation is required by the Promoter of Justice, the ECO-FIN would normally investigate the financial aspects, together with the predicate offence itself, as the predicate frequently is a financial crime. While the OPJ can, if necessary, conduct financial investigations itself, it would normally use the ECO-FIN, with the financial investigation aspects being conducted under the Promoter of Justice's direction.

Part of the Promoter of Justice's role involves strengthening the investigative activities of other parts of the CdG. Therefore, he can ask qualified personnel in other CdG units to conduct financial enquiries under his supervision. The HS/VCS authorities also stated that they do not rule out the possibility of the ECO-FIN Unit conducting the criminal investigation into an underlying (non-financial) predicate offence under the authority of the Promoter, as well as the parallel financial investigation in a particular case. This has not happened in practice, as far as the AT is aware.

Criterion 30.3 – Both the Promoter of Justice and CdG can autonomously identify and trace property which may be subject to confiscation as part of its investigations of criminal offences. It is understood that there are no specific written policy instructions/orders to the CdG (other than what is in the law) on their responsibilities to identify and trace property, which may be subject to confiscation as part of its investigations of criminal offences.

In any event, the CdG can act autonomously (without having been expressly instructed by the Promoter of Justice) to identify and trace property which may be subject to confiscation. When the CdG operates and acts autonomously, they can proceed, in the course of investigations, to seizures (CCP, Art. 165 and Art. 166) or, in the case of a suspect caught in commission of an offence, proceed to personal and home searches (CCP, Art. 167).

In addition to the provisions of the CCP, seizures related to ML/ TF are now also covered under the Law on Amendments to the CC and the CCP Law, Art. 32: the officers of the Judicial Police shall seize the goods used or intended to be used to commit the crime, those that are the product of the crime, their profit or value, as well as all those which may be useful to ascertain the truth, and they shall remain seized as long as is required by the process.

Art. 84 of the AML/CFT law (Checks on vehicles, luggage and persons, in the context of cross-border cash checks) provides: if there is a suspicion of ML or TF, the CdG shall seize the cash for seven days to verify the evidence and to search for evidence".

Cases of seizure made by the CdG are validated by the Promoter of Justice.

Criterion 30.4 – The Auditor General's Office carries out general tasks of an anti-corruption authority but is not empowered to investigate corruption. If, in its work, it detects criminal activity, including corruption, it must inform and report it to the OPJ. No other authority is relevant in the context of this criterion.

Criterion 30.5 – This criterion is not applicable as there are no anti-corruption enforcement authorities designated to investigate ML/TF offences other than the Judicial Police.

Weighting and Conclusion

Whilst responsibilities of CdG and OPJ are generally in line with R.30 requirements, the evaluators have not seen any clear instructions to the CdG as to when parallel financial investigations should be considered by the Promoter of Justice and instituted in proceeds-generating offences generally. **R.30 is rated LC.**

Recommendation 31 - Powers of law enforcement and investigative authorities

The HS/VCS was rated C with the former R.28 (powers of competent authorities) in the last evaluation. R 28 has been significantly revised in the 2012 FATF Recommendations and replaced by R.31.

The powers of law enforcement when conducting investigations of ML, and associated predicate offences are based on the norms of the CCP, received into HS/VCS Law by the Law on the Sources of Law 2008 and subsequent amendments made by HS legislation. In particular, after the 2012 evaluation the Criminal law and Criminal Procedural law was quickly expanded in response to the MONEYVAL recommendations and has since been regularly updated (especially the Law on

Supplementary Norms on Criminal Law Matters, Law on Amendments to the CC and the CCP, Law on General Norms on Administrative Sanctions, and the AML/CFT law).

The judicial police have the task of searching for crimes, collecting evidence, providing judicial authorities with information that can lead to the discovery and identification of guilt (CCP, Art. 162). This is done under the direction and authority of the Promoter of Justice.

Criterion 31.1 –

(a) The power to order production of documents, searches or seizure rests with the judicial authorities. Under Section 163 Italian CCP 1913 the judicial police exercise their powers under the authority of the "Attorney General". In the HS/VCS the CdG exercises its powers under the direction of the Promoter of Justice. Judicial authority encompasses the Tribunal, the Investigating Judge, and the Promoter of Justice.

Financial information held by FIs, including data collected in the context of CDD and other information covered by financial secrecy is accessible through the intervention of judicial authorities (which includes the Promoter of Justice). According to Art. 166 of the CCP, as noted earlier, "officials of the investigating police can sequester (temporarily restrain) any goods that were used to commit a crime, those which were the product of the crime, and all which could be used to *ascertain the truth*". The italicised words appear to be the basic legal authority for the production of documents as set out in (a) under this criterion. There is an "evolutionary" approach now to the provisions of the 1913 legislation (which is recognised by the Judiciary). For instance, the 1913 Act (Art. 238), which allows for seizure of correspondence, telegrams etc. *inter alia* prohibits investigative police from opening "letters under seal, other letters, folders, packages, letters of credit, telegrams, or documents", and requires investigators to transmit them intact to the judicial authority. The HS/VCS indicated to the AT that the CdG, with motivated reasons, can now open such documents when acting under Art. 166.

The AT was advised that this evolutionary interpretive approach to the CCP ensures timely access to records held in computer systems today by obliged entities. In addition, the AML/CFT law (Art. 6(b)) states that "*office secret and financial secret do not inhibit or limit access to information by the competent authorities*", meaning that financial secrecy does not in any way hinder the activities, access and exchange of information between the competent authorities for the prevention and fight against financial crimes.

(b) Art. 233 of the CCP states "If there are substantial indicators that someone is concealing goods subject to an order of sequestration or that those goods can be found in a certain place or that it would be possible to arrest the accused or a fugitive person for which there is an arrest warrant, the preliminary investigating judge may order the search of the person or house and proceed, with the assistance of officers or agents of the investigative police."

Although Art. 234 CCP in principle prohibits searches of houses or closed premises between sunset and sunrise, in urgent cases the investigative judge can issue a decree which will permit searches at night.

If judicial police officers apprehend a defendant *in flagrante delicto* (in the commission of the offence), under Art. 167 CCP, they can carry out a personal and home search whenever they have reason to believe that there are things to be seized or "traces that can be cancelled or dispersed".

(c) Statements are generally taken by the Judicial authorities.

The judicial police may take statements from defendants or witnesses (i) where they are caught in the act of committing a crime or (ii) when there are urgent reasons concerning the need to preserve evidence of a crime (CCP, Art. 169).

(d) The CCP gives the CdG wide autonomy in the search for crimes and in the collection of evidence for the purpose of presenting probative information to the judicial authority (the Promoter of Justice and/or the investigative judge, depending on whether the case is at the initial or formal stage). As noted under (b) above the provisions of Art. 167 CCP are broadly interpreted. Moreover, Art. 166 CCP was replaced by Art. 32 of the Law on Amendments to the CC and the CCP. It now provides that the judicial police shall seize the goods used or intended to be used to commit the offence (as well as their proceeds or value) as well as those "which are useful to ascertain the truth". Only what is considered necessary to ascertain the truth can be seized and used as proof.

Criterion 31.2 – The HS authorities advise that the Promoter of Justice has the power in the context of investigative activity aimed at the prevention of ML and TF and predicate offences to adopt all the 4 techniques referred to in 31.2. by virtue of Art. 238 CCP, referred to earlier. Despite the archaic language of the provision, the evaluators accept that there is a basis upon which interception of communications might be lawfully permitted. The HS authorities indicated that interception of communications and accessing computer systems under Art. 238 CCP are generic and can be extended to all offences – which seems extremely broad – but apparently are permissible for any offence and have been used. The evaluators were advised that undercover operations and controlled delivery are permitted by virtue of Art. 8 of the AML/CFT law, which permits the adoption of advanced investigation techniques in the field of preventing ML and TF under the authority of the Promoter of Justice. While the AT accept that these techniques may be lawfully applied in investigations of ML and TF, the AT cannot read into this a general authority to use undercover operations and controlled delivery in investigations into all associated predicate offences, where ML and TF are not involved. It is assumed controlled delivery could apply to an offence of corruption on the basis of Art. 50 (1) UNCAC, to which the HS is a State Party.

Criterion 31.3 –

(a) The HS/VCS authorities indicated in their replies that the HS/VCS legal framework provides mechanisms to identify whether a natural or legal person holds or controls accounts without specifying them in any detail.

There is a provision in Art. 8(6) and Art. 69 of the AML/CFT law which, in general terms, permits active cooperation and exchange of information between competent authorities and the State for the purposes of preventing and countering ML/TF. As noted under R.24 (EC 24.10), the ASIF, in its capacity as a supervisory authority, has access to documents, data and information that are kept by registered legal persons in the HS/VCS (AML/CFT law, Art. 5 bis (2) and Art. 46 (c)). Legal persons have to disclose, upon request, all the documents, data and information regarding their nature and activities, and their BOs, beneficiaries, members and administrators to the competent authorities (in a timely manner) and obliged subjects (AML/CFT law, Art. 5 bis). The term "competent authorities" includes competent supervisory authorities and LEAs (AML/CFT law, Art. 8). Both the Promoter of Justice and the CdG can also make motivated requests to other domestic entities (CCP, Art. 240). In the event that their requests are not answered or fulfilled, the Promoter can then issue an exhibition order, and if that is not complied with, search and seizure would be carried out. Similarly, the FIU

can seek information internationally through the Egmont mechanism (access to the secure web of which is understood to have been restored).

(b) If the information required by the Promoter of Justice or law enforcement is available by way of registers, then assets can be identified without prior notification to the owner. If not, both the Promoter and the CdG can make motivated requests to domestic entities. In the event that their requests are not answered or fulfilled, the Promoter can issue an exhibition order, and, if that is not complied with search and seizure, would then be carried out. The Law does not foresee the ASIF authorised institution informing their customers. If they did so, they would be proceeded against for tipping off (CC, Art. 177).

Criterion 31.4 – The HS authorities pointed to Art. 8(6) of the AML/CFT law as fulfilling this criterion. This provision does not appear to be in mandatory language (the competent authorities of the HS and of the State actively cooperate and exchange information for the prevention and countering of ML and TF…within limits established by law"). Nonetheless it is clear that competent authorities conducting investigations can request relevant information from the FIU in the expectation that they would receive it.

Weighting and Conclusion

Most of the relevant l/e powers required under R.31 appear to be available to competent authorities – some only possible by virtue of an "evolutionary" approach to the interpretation of existing legislative provisions. Notwithstanding the evolutionary approach, the AT is not satisfied that the use of undercover officers and controlled delivery are strictly permissible in associated predicate offences, without a linkage to ML or TF. In practice, only controlled delivery was applied and in cooperation with the Italian authorities. **R.31 is rated LC.**

Recommendation 32 – Cash Couriers

In its 2012 MER, the HS/VCS was rated as PC for the former SR.IX. The 2012 MER noted that the declaration requirement did not cover shipment of currency through containerised cargo. There were also doubts whether the CdG was allowed to restrain currency where there is a suspicion of ML/TF and whether the FIU was able to exchange information with counterparts on cross-border transportation. The assessment also confirmed that the voluntary payment rule substantially reduced the level of applicable sanctions and might have undermined the deterrent scope of the sanctions. The new AML/CFT law from 2013 and as amended in 2020 provides new regulations for cross border transportation of cash and bearer negotiable instruments (BNIs).

Criterion 32.1 – According to the AML/CFT law (Art. 81), every person carrying out a cross-border transportation of currency equal to or above EUR 10 000, whether entering or leaving the State, shall make a written declaration to the offices of the CdG or to any other office authorised by the FIU.

The term 'currency' is defined in the AML/CFT law (Art. 1(7)), and meets the requirements set out in R.32, with the definition being: a) currency, including banknotes and coins that are in circulation as a means of exchange; and b) bearer negotiable instruments, including monetary instruments in bearer form such as traveller's cheques; negotiable instruments, including cheques, promissory notes and money orders, that are either in bearer form, endorsed without restrictions, made out to a fictitious payee, or otherwise in such form that title thereto passes upon delivery; incomplete

instruments, including cheques, promissory notes and money orders, signed, but with payee's name omitted.

The AML/CFT law (Art. 1, para.31) specifies that the cross border transportation includes (i) transport movement by a physical person, even by means of bags or separate luggage; (ii)transport movement by vehicles or containers; and (iii) postal dispatch by a physical or juridical person. In view of this, Art. 81 is applied when transportation is carried out by a physical person, by a mail or cargo.

In the case of discovery of an unusual cross-border transportation of gold or precious metals or stones, the CdG shall request the holder to make a declaration (AML/CFT law, Art. 81), and a copy of the declaration should then be forwarded to the FIU within twenty-four hours (AML/CFT law, Art. 86).

The CdG has the power - in the case of a suspicion or while carrying out controls on the spot - to check the means of transport crossing the State's border, and to request persons crossing the State's border to show the contents of the luggage, objects and values carried (AML/CFT law, Art. 84).

Criterion 32.2 – The HS/VCS adopts a written declaration system for all travellers carrying amounts above EUR 10 000 (or equivalent currency). Art. 81(3) of the AML/CFT law provides a list of information which needs to be included in the declaration.

In the said declaration, no fields cater for information on the means of transport, whereas this is a requirement in the AML/CFT law (Art. 81(3)).

Criterion 32.3 – This Criterion is not applicable as the HS/VCS has a declaration system.

Criterion 32.4 – The AML/CFT law (Art. 81(4)) states that the duty to declare is not satisfied if the information provided is inexact or incomplete. It is therefore understood that travellers are required to provide a complete and truthful information in their declarations, as failure to do so would mean that the requirement to submit a declaration would not be met.

In the case of a false, omitted or incomplete declaration, the holder of the currency is bound to rectify, submit or complete the declaration (AML/CFT law, Art. 85(1)).

Authorities advised that considering limited commercial or professional financial activities located in the HS/VSC, as well as specific access permissions to HS/VSC, it is possible for the CdG to make immediate feedback regarding the origin and intended use of the currency declared.

On the other hand, the AML/CFT law does not specifically provide an authority to the CdG to request and obtain further information from persons making a false declaration of cross-border transportation of currency, particularly if the FIU is the receiver of a declaration.

Criterion 32.5 – In case of a false, omitted or incomplete declaration, the holder of the currency shall be subject to an administrative pecuniary penalty ranging from a minimum of 10% to a maximum of 40% of the sum in the person's possession exceeding EUR 10 000 (AML/CFT law, Art. 85(2)). The penalty is considered as proportionate and dissuasive.

In terms of Art. 85(3), upon the discovery of a violation of the duty to declare, the CdG should seize 40% of the amount exceeding the amount of EUR 10 000. The authorities advised that this percentage is fixed and in each such situation seizure of 40% is mandatory. The seizure shall remain in force until the sanctioning procedure is concluded (Art. 85(4)).

Criterion 32.6 – The Law requires submitting a written declaration to the offices of the CdG or to the offices authorised by the FIU. Art. 81(5) of the AML/CFT law requires that a copy of the declaration is to be transmitted to the FIU within 24 hours.

In case of suspicion of ML or FT, Art. 81(6) states that the declaration is forwarded immediately to the FIU. It is presumed that in forwarding a declaration to the FIU when there is suspicion of ML/TF, the CdG would inform the FIU of their suspicion, and not merely forward the declaration on an immediate basis.

Criterion 32.7 – The AML/CFT law (Art. 87) requires adequate cooperation between the authorities. In this respect, the CdG, the FIU and the other competent authorities are required to actively cooperate in monitoring of cross-border transportation of currency, as well as to exchange of information, adopt procedures, measures and controls. In addition, a proactive cooperation is required particularly in cases of a false or missing declaration. These legal requirements are properly applied in practice and there is a good level of cooperation between competent authorities.

Art. 3 of the MoU signed between the ASIF, the OPJ and the CdG specifies that the ASIF should carry out the analysis based on the data and information contained in declarations of cross-border currency transportation, any data from the FIU on their suspicion, and information transmitted periodically by the CdG in relation to the border controls executed by their side. The results of the FIU analyses are shared with the CdG in order to ensure the completeness of the information.

Criterion 32.8 –

(a) Where there is a suspicion of ML or of the TF, the CdG shall seize the currency for seven days in order to verify the suspicions and to search for evidence (AML/CFT law, Art. 84(3)). There is no legal provision for stopping/restraining currency when there is a suspicion of a predicate offence.

From the wording of Art. 84(3), it may be concluded that in cases of suspicion, the entire sum of currency may be seized, and not only the amount exceeding EUR 10 000 or its equivalent. The 7-day seizure may be prolonged by converting the police seizure into a precautionary seizure with a formal authorisation of the Promoter of Justice. Such authorisation could only be given once the investigation is officially launched by his side. Therefore, the seven-day period may not be sufficient should the CdG require to obtain additional information from foreign jurisdictions to verify suspicions and search for evidence before the investigation is officially opened by the Promoter of Justice.

(b) In cases where there is a false declaration (see also c.32.5), to guarantee payment of the fine, the CdG, at the same time of verification of the violation, may seize up to 40% of the sum exceeding the amount of EUR 10 000, and according to Art. 85(4), such seizure shall remain in force until the sanctioning procedure is concluded (AML/CFT law, Art. 85(3)).

It therefore seems that in cases where a false declaration has been made, it is not the entire sum of currency that may be restrained, but only 40% of that amount which exceeds EUR 10 000. Moreover, such seizure is intended to retain the currency as a guarantee pending the outcome of the sanctioning process and any possible penalties that may be applied.

Criterion 32.9 **–** The HS/VCS ensures that the declaration system allows for international co-operation and assistance, in accordance with R.36 to R.40. According to the AML/CFT law (Art. 87(2)), the competent authorities shall have adequate procedures, measures and controls for the

purposes of cooperation and exchange of information at the international level, in particular in the case of a false or missing declaration of cross-border transportation of currency.

With specific reference to cross-borders transportation of gold and precious metals and stones, the AML/CFT law (Art. 86(4))permits the FIU to inform equivalent authorities in the sending or receiving States, of the gold or precious metals or stones transported or attempted to be transported cross border, with a view to establishing the origin, destination and purpose of the transportation, as well as to adopt adequate measures.

a) and b) With regard to retention of information, all information contained in the declarations of cross-border transportation of currency shall be: a) treated, registered and kept in accordance with measures and procedures that ensure their security, integrity and confidentiality; b) kept for a period of ten years by the CdG, by the FIU and by the other offices authorised to receive declarations; and c) under office secret, without inhibiting or limiting the cooperation or exchange of information at the domestic or international level (AML/CFT law, Art. 82).

c) Although the AML/CFT law (Art. 82) clearly addresses the retention of data in the case of declarations, the law does not provide specific procedures that address the retention of information concerning detected cases of undeclared cross-border transportation of currency, or suspicions of ML/TF.

In light of the rectification of incomplete declarations pursuant Art. 85 (1) of the AML/CFT law, there is no requirement in the legislation to record the fact that the initial declaration, prior to being rectified, was incomplete.

Criterion 32.10 – The authorities advised that domestic legislation does not restrict trade payments between countries for goods and services and/or the freedom of capital movements, in any way.

The President of the Governorate may establish, by ordinance, limits to the use of currency within the State (AML/CFT law, Art .88). The authorities of the HS/VCS have not indicated whether any limits envisaged under Art. 88 are currently in force.

Criterion 32.11 – In case of suspicion of ML/TF or predicate offence, a case is opened, an operational analysis is conducted and, potentially, a report is disseminated to the OPJ if there is a reasonable ground to suspect an activity of ML/TF.

A criminal investigation is conducted and can lead to a) proportionate and dissuasive sanctions (see also R.3 and 5) in case a conviction is achieved; and b) confiscation measure would be completed as set out in R.4.

Weighting and Conclusion

Legislation does not provide specific procedures that address the retention of information concerning detected cases of undeclared cross-border transportation of currency, or suspicions of ML/TF. In addition**,** there is no requirement in the legislation to record the fact that the initial declaration, prior to being rectified, was incomplete. Other measures to detect physical cross border transportation of currency and BNIs, are broadly in line with the R.32 requirements. **R.32 is rated LC.**

Recommendation 33 – Statistics

In its 2012 MER, the HS/VCS was rated LC with former R.32, due to the absence of statistics concerning the application and effectiveness of the supervisory measures taken.

Criterion 33.1 – The HS/VCS authorities maintain comprehensive statistics. It is understood, from the Law (Art. 14), that the ASIF takes on the function of central authority for the collection of AML/CFT-related statistics, even those initiated independently of the FIU. The ASIF elaborates statistics on matters and activities relevant to the effectiveness of the system of prevention and countering of ML and the TF, which includes:

(a) the number of SARs and follow-up given to those reports;

(b) the investigations and judicial phases; the number of persons prosecuted or convicted for ML or financing of terrorism offences, for crimes connected to ML or the TF and the typologies of predicate offences;

(c) the value of funds or other assets frozen, seized or confiscated; and

(d) statistics concerning international cooperation in the context of supervision and financial intelligence, as well as international cooperation in course of investigative and judicial activities.

Weighting and Conclusion

R.33 is rated C.

Recommendation 34 – Guidance and feedback

In its 2012 MER, the HS/VCS was rated PC with former R.25 due to the following deficiencies: (i) Regulations and Instructions had not been updated to reflect recent amendments to the AML/CFT law; (ii) failure to provide explanations on the Regulations and Instructions issued; and (iii) no specific guidance had been provided for DNFBPs. Effectiveness issues were also highlighted.

Criterion 34.1 – The ASIF is required to adopt regulations and guidelines in cases established by law (AML/CFT law, Art. 8). Under the AML/CFT law, there are requirements to publish regulations under Art. 13 (simplified risk management and assessment), Art. 31(1) bis (transfers made using SEPA) and Title IIII (prudential regulation and supervision). There is also an explicit requirement to publish guidelines under Art. 40 and Art. 49 (guidelines relating to reporting suspicious activity) and Art. 49 (methods of reporting, supplying templates and procedures to be followed). Otherwise, the ASIF is required to provide, indicate and identify certain matters to obliged subjects (AML/CFT law, Art. 9(2)(b) (GRA), Art. 22 (RBA), Art. 24 (simplified CDD) and Art. 25 (EDD)).

As a result of the above, the ASIF has published: (i) ASIF Regulation No. 1 (prudential matters); (ii) ASIF Regulation No. 2 (wire transfers); ASIF Regulation No. 3 (payment services); (iv)ASIF Regulation No. 4 (CDD); ; and (v) ASIF Regulation No. 5 (SARs). All the sources can be found in the "Regulations and Guidelines" section of ASIF's website (www.ASIF.va). These regulations are considered to be "enforceable means".

Guidance

Along with these regulations, the ASIF has issued instructions, anomaly indicators attached to one of the regulations, and circulars in order to define procedures and strengthen the framework on

AML/CFT. All comprise guidance relevant to compliance with R.34. By virtue of an interpretation of the AML/CFT law (Art. 47(e) and Art. 46(a)), the ASIF considers that failure to comply with Instructions or guidance is to be considered as obstruction activity which can be the subject of administrative sanctions.

The ASIF has issued three relevant instructions: (i) instruction with which is published the list of high risk states with strategic AML/CFT deficiencies (23 October 2017); (ii) instruction with which is published the list of functions that within the HS/VCS are qualified as PEPs (29 May 2019); and (iii) instruction on monitoring of lists of designated subjects (19 September 2019). Such instructions are provided for under the Code of Canon Law (Book I, Title III, canon 34) and their purpose is to clarify and elaborate on legislation.

Annexes to ASIF Regulation No. 5 (SARs) of 19 September 2018 provide a list of "anomaly indicators"/red-flags in relation to recognising suspicion and filing SARs which cover: (i) ML, predicate offences and TF; and (ii) specific ML/TF indicators on donations, public procurement, tax obligations, auditing, cross-border transportation of cash, and market abuse. The ASIF has also provided "anomaly indicators" aimed at preventing potential abuse of foreign voluntary tax compliance programmes by users who could avoid complying with obligations laid down in HS/VCS law, and guidelines to help obliged subjects to comply with their AML/CFT obligations.

Of the five circulars issued by the ASIF, one, the Circular concerning the prevention of financial crimes connected to the emergence of COVID-19, of 8 May 2020, appears to be relevant to AML/CFT.

Guidance has not been provided on TFS.

Information has not been provided on any other forms of guidance provided by the ASIF to obliged subjects such as workshops and statistics on attendance. However, the ASIF holds frequent meetings with the control functions at the only obliged subject in the HS/VCS.

Feedback

In performing its statutory duties, the ASIF ordinarily provides: (i) "targeted instructions" when minor shortcomings have been identified or when such measures could improve effectiveness (as supervisor); and (ii) feedback on SARs (in its capacity as FIU). The authorities have not provided information on what feedback is provided by other competent authorities.

Weighting and Conclusion

Considering that information has not been provided on feedback provided to obliged subjects by competent authorities (except the ASIF), **R.34 is rated LC.**

Recommendation 35 – Sanctions

In the 2012 MER, the HS/VCS was rated NC with the former R.17 due to the following deficiencies: (a) conditions for the application of proportionate sanctions were not fully met; (b) no specific sanctions were available for directors and senior management; and (c) there was no power to withdraw, restrict of suspend the licence of a FI. Effectiveness issues were also highlighted.

Criterion 35.1 –

AML/CFT obligations for obliged subjects

See c.27.4 and c.28.4(c). Overall, the range of administrative sanctions is sufficient to allow proportionate application.

In addition, failure to report suspicion may be subject to a criminal offence where: (i) it covers a crime (CC, Art. 175 cc) and Art. 207); (ii) it leads to unjust damage that affects a legitimate interest; and (iii) the accomplice participates in ML (where the accomplice is the competitor in the offence) (Italian Civil Code, Art. 63).

TFS

TFS provisions at Art. 75 to Art. 78 of the AML/CFT law are subject to the sanctions provisions as described in c.27.4 and c.28.4 (AML/CFT law, Art. 47(1)(d) and Art. 47(2) onwards). Overall, the framework pertaining to TFS is sufficient to allow proportionate application, however it does not apply to natural or legal persons other than obliged subjects (see c.6.5(a)).

NPOs

See c.8.4(b), which sets out some minor shortcomings. NPOs are required to report to the FIU in the same circumstances as obliged subjects and the range of administrative sanctions is sufficient to allow proportionate application.

Criterion 35.2 – Sanctions which can be imposed under the AML/CFT law (Art. 46) can be applied to natural persons, including members of management and senior management (including directors) of legal persons (AML/CFT law, Art. 47(4)). In practice, the sanctions described in c.27.4 and c.28.4 which can apply to individuals are: (i) written warnings; (ii) orders to comply with specific instructions; (iii) fines for non-compliance with instructions; (iv) a fine; and (v) for the most serious cases, interdiction (from carrying out activities in the economic, commercial or professional sectors), and removing or limiting the powers of management and senior management. Public statements can also be imposed. In addition to interdiction, one important difference compared with c.35.1 is that the fine specified for natural persons is a maximum of EUR 5 million (AML/CFT law, Art. 47(2)). The range of sanctions powers for individuals in the AML/CFT law is proportionate.

Weighting and Conclusion

The range of sanctions that may be applied for failure to comply with AML/CFT requirements is proportionate. Whilst it is noted that the application of sanctions under R.6 is limited to obliged subjects, this is treated as a minor shortcoming given the absence of private sector activity in the HS/VCS. **R.35 is rated LC**.

Recommendation 36 – International instruments

In its 2012 MER, the HS/VCS was rated C and PC with the former R.35 and SR.I respectively, as a result of the HS/VCS failure to bring the new system concerning UNSCRs into practical operation within the relevant period.

Criterion 36.1 – The HS/VCS has been a full party to the Vienna Convention, the Palermo Convention and the TF Convention since 25/1/2012. The HS/VCS became a full party to the 2003 United Nations Convention Against Corruption (UNCAC or Merida Convention) on 19/9/2016.

Criterion 36.2 – Subject to Canon Law being the first normative order and the first criterion of interpretive reference, the Law on Sources of Law (Art. 1(4)) makes clear that treaty obligations deriving from Conventions to which the HS is a party are automatically incorporated into the legal system of the HS/VCS. While implementing measures are not formally required, some obligations of the conventions have been implemented for practical and policy reasons by specific HS/VCS instruments including the CC and CCP (notably: the ML offence; confiscation measures; the requirements of administrative liability of legal persons).

The reservations that have been made to these Conventions all relate to the settlement of disputes and participation in monitoring mechanisms – none of which impair the practical implementation of the Conventions.

Weighting and Conclusion

R.36 is rated C.

Recommendation 37 - Mutual legal assistance

In its 2012 MER, HS/VCS was rated LC with the former R.36 and SR.V. The Report noted that there were no mechanisms for determining the best venue for prosecution of defendants in the interests of justice in cases that are subject to prosecution in more than one country other than Italy. Concerns raised in Rec. 38 also impacted the rating assigned to these recommendations.

Criterion 37.1 – International judicial cooperation is regulated by the CCP, as modified, in the part dedicated to jurisdictional relations with foreign authorities, by the Law on Amendments to the CC and the CCP.

The CCP (Art. 635) stipulates that with matters related to rogatory letters, extradition, the legal effect of foreign convictions and other relations with foreign authorities concerning the administration of criminal justice, ratified International Conventions, international customs and the laws are to be observed.

The CCP (Art. 636) also provides for a list of the types of assistance that the HS/VCS authorities can provide in responding to MLAs. This list includes, inter alia, taking evidence or statements from persons; executing searches, seizures, and freezes; examining objects and sites; providing information, evidentiary items and expert evaluations; providing originals or certified copies or extracts of relevant documents and records, including public, bank, financial, corporate or business records; and identifying or tracing proceeds of crime, property, instrumentalities or other goods, for confiscation or for evidentiary purposes. This assistance, which can be provided within the limits and conditions set forth by the Law (see EC 37.4), is available in relation to ML/TF and all associated predicate offences.

Criterion 37.2 – The SoS is the central authority designated to receive and transmit MLA requests. The CCP (Art. 637) stipulates that MLA requests shall be communicated in writing to the SoS or to it through diplomatic channels, under conditions that allow to establish their authenticity.

The ordinance of the President of Tribunal (5 March 2020) foresees the prioritisation of managing and execution of MLA concerning ML/TF cases. Whilst this ordinance is mandatory for the judicial authorities, it is of an advisory nature inviting the OPJ and the CdG to give urgency and priority within their competence. Moreover, the Internal Procedure of the OPJ issued in January 2019

establishes that priority must be assigned in investigating activities and investigation of files concerning requests for judicial assistance in the context of international cooperation, in particular, concerning matters of:

- ML and related predicate offences;
- self-laundering and related predicate offences;
- TF; and
- illegal activities potentially aimed at financing international terrorism.

Despite the absence of a specific case management system to prioritise requests for international cooperation, in a jurisdiction receiving a small number of requests, this does not impact on the execution of requests. Mindful of the materiality and context of the HS/VCS the AT deems this requirement as void.

Criterion 37.3 – There appears to be no provision in the law prohibiting the HS/VCS from providing MLA or that subject the provision of MLA to unreasonable or unduly restrictive conditions. The CCP (Art. 638) lists the circumstances in which the execution of a MLA request may be refused. These circumstances include: a) when the request is not made in conformity with the provisions of the CCP (Art. 637); b) when it is deemed that execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of the HS/VCS; c) when the relevant facts underlying the proceedings in the requesting State are not foreseen as an offence under HS/VCS law; d) when the execution of the request is likely to impair on-going investigations or criminal proceedings in the State. With regard to point (d), the Law states that MLA may be deferred in case it would hinder an ongoing investigation, prosecution or judicial proceedings. The refusal to provide MLA shall be motivated. There is no provision in the legislation on the requirement of having MoUs signed as a precondition to provide MLA.

Criterion 37.4 –

(a) Taking into consideration the circumstances in which the State may refuse to provide MLA (see c.37.3), as outlined above, the State may not refuse to provide it on the sole ground that the offence is also considered to involve fiscal matters.

(b) The CCP (Art. 638) states that where expressly provided for by a ratified international convention, banking secrecy may not be relied upon to reject a request for MLA.

Considering the aforementioned, it is unclear whether MLA requests from non-signatory counterparts will be refused on the ground of banking secrecy.

Criterion 37.5 – Both the Promoter of Justice and the Tribunal, as well as CdG are Public Officials and therefore are obliged to office secrecy as stated by the CC and the CCP. In case of violation they commit a crime (CC, Art. 177). This regulation also applies to the SoS officials. However, the matter of confidentiality is stated by two norms of the CC.

The Law on Amendments to the CC and the CCP (Art. 116 bis) provides for punishing anyone whoever illicitly obtains or reveals information or documents whose disclosure is forbidden. The Law (Art. 117) also provides for punishment for public officials who violate office secrecy. Both the OPJ and the Tribunal, as well as the members of the CdG are Public Officials and subject to the requirements of Art. 117of the CC. Moreover, pursuant to the 2019 Reserved Internal Service Order

concerning the Special confidentiality provisions on office activities and confidentiality of data and information, all documents relating to investigating activities (including on international cooperation) in progress, are secret and must be kept in a safe, or in special cabinets, or rooms accessible only to office staff. Any violation of these rules constitutes a violation of official secrecy and it is punishable pursuant to the CC (Art. 116 bis and Art. 117). This order also applies to the OPJ, its staff, and those who collaborate in related activities (e.g. SoS).

Criterion 37.6 – The HS/VCS may refuse to provide MLA when the relevant facts underlying the proceedings in the requesting State are not foreseen as an offence under the HS/VCS law. The wording of the law suggests that the decision to render assistance remains discretionary, and the jurisdiction may provide assistance in cases where no coercive measures are involved, irrespective of whether the condition of dual criminality is met or not. This discretion in itself however makes unclear whether the jurisdiction shall (i.e. is obliged to) render assistance when coercive measures are not involved, and the condition of dual criminality is not met.

Criterion 37.7 – Dual criminality is not explicitly required for the HS/VCS to provide MLA, but the absence of dual criminality is one of the circumstances in which the provision of MLA may be refused (Art. 638(c)). Moreover, in determining whether a situation of dual criminality subsists, Art. 638(c) as amended by the Law on Amendments to the CC and the CCP, makes reference to the relevant facts underlying the proceedings in the requesting jurisdiction, and not to specific categories of crimes or terminologies.

Therefore, authorities explained that it is not necessary for crimes to belong to the same category or that they be denominated by the same terminology. The authorities also explained that if the fact(s) underlying the crime is the same in both countries, then that shall be deemed as dual criminality.

Criterion 37.8 – The widest possible measure of legal assistance in matters relating to judicial investigations and proceedings may be provided to the requesting State, within the limits and conditions set forth by the law (CCP, Art. 636). Moreover, according to this Law, MLA may be provided for the following purposes: a) taking evidence or statements from persons; b) effecting service of judicial documents; c) executing searches, seizures, and freezes; d) examining objects and sites; e) providing information, evidentiary items and expert evaluations; f) providing originals or certified copies or extracts of relevant documents and records, including public, bank, financial, corporate or business records; g) identifying or tracing proceeds of crime, property, instrumentalities or other goods, for confiscation or for evidentiary purposes; h) facilitating the voluntary appearance of persons in the requesting State; and i) any other type of assistance foreseen by the law.

Weighting and Conclusion

The HS/VCS meets or mostly meets all criteria but criterion 37.6. In particular, there is a discretion in the law which makes it unclear whether the jurisdiction shall (i.e. is obliged to) render assistance when coercive measures are not involved, and the condition of dual criminality is not met. **R.37 is rated LC**.

Recommendation 38 – Mutual legal assistance: freezing and confiscation

The HS/VCS was rated LC for the former R.38 in the 2012 evaluation. The main deficiency was that there were no measures then in place for determining the best venue for prosecuting defendants in

the interests of justice in cases that were subject to prosecution in more than one country (other than Italy). There were also effectiveness concerns.

As has been noted, the HS has been a full party to the Vienna, Palermo and TF Conventions since 2012, and now is party to the Merida Convention. Art. 37 of the Law on Amendments to the CC and the CCP replaced Art. 635 CCP with new text which ensures that the provisions on judicial cooperation in ratified Conventions to which the HS is a party should be given full force and effect. The detailed provisions on judicial cooperation set out now in the Law on Amendments to the CC and the CCP (which were drafted using the Vienna and Palermo Conventions as a basis) are applicable to judicial cooperation in the absence of a treaty nexus.

Criterion 38.1 – Under Art. 636(g) CCP, the HS is authorised to provide the widest possible measure of legal assistance related to judicial investigations and proceedings within the limits and conditions set by law for the purpose of identifying or tracing proceeds of crime, property, instrumentalities or other goods for confiscation or for evidentiary purposes". Art. 636 is not authority for the taking of such action expeditiously.

Art. 41 of the Law on Amendments to the CC and the CCP replaced Art. 639 CCP with new text which ensures that all goods that may be subject of seizure and confiscation in a domestic procedure may also be subject of seizure and confiscation as a result of an MLA request. Thus Art. 639 CCP permits MLA requests directed at:

a) confiscation or execution of a confiscation order regarding goods referred to in Art. 36 CC.

b) identifying or seizing of goods referred to in Art. 36 CC with a view to their eventual confiscation.

The aforementioned confirms that sub-criteria b), c), d) and e) are met. The only concern in the MLA context is the basis for MLA in relation to laundered property and issues discussed under Rec.3 and C.3.4 on extension of laundered property (i.e. indirect proceeds not been fully covered).

Criterion 38.2 - Decree CCLXXVII of the President of the Governorate of VCS, containing urgent provisions on matters of asset prevention (converted within the necessary timescale into Law CCLXXXI of 8/2/19), envisages the use of outgoing international cooperation where feasible in domestic investigations. Whereas it is not specifically regulated in the Decree or legislation whether this provision is also intended for use by other jurisdictions in respect of incoming MLA requests for tracing, freezing, seizing and confiscation in foreign cases where non conviction-based confiscation is being pursued, it is understood that this can be effectuated by virtue of Art. 636(g) CCP which requires '*the widest possible measure of legal assistance in….. identifying or tracing proceeds of crime, property, instrumentalities or other goods, for confiscation or for evidentiary purposes…*'

There have been no applications to HS/VCS for measures contemplated by 38.2 (and the minimum requirements of para 2 of the IN to R.38) since the decree and 2019 Law were introduced.

Criterion 38.3 –

(a) There are no arrangements presently for coordinating seizure and confiscation measures with foreign countries. This would be done on an ad hoc basis as and when necessary.

(b) Art. 242 CC introduced by Law CCCXXIX of 1 October 2019 on the management of frozen or seized assets has been enacted. It allows for the possibility to entrust the custody and management of assets under seizure to an administrator. Authorities would apply this provision to any related MLA request.

Criterion 38.4 – The CCP provides that as a rule confiscated assets become the assets of the HS (and are usually applied to charitable causes). However, it is noted that Art. 421 bis CC para 7, provides that confiscated funds are acquired and used by the HS/VCS, bearing in mind any international agreements on sharing of assets, thus foreseeing the possibility of entering into asset sharing agreements. While this is a possibility, none have been entered into yet.

Weighting and Conclusion

The legislation does now specify how technically freezing of laundered property on behalf of other countries would occur. The authorities consider that if such a request was made, it can be given effect as if it were an instrumentality.

Coordinating seizure and confiscation with other countries has not been an issue so far. Neither has management of assets for foreign jurisdictions nor asset sharing: both of these would be possible in theory. All criteria seem capable of being mostly met with a purposive approach to MLA. **R.38 is rated LC.**

Recommendation 39 – Extradition

In the last evaluation, the HS was rated LC for the former R.39 (on extradition for ML offences) and for R.37 (which, at that time, in part covered dual criminality for extradition proceedings) and for SR V (which applied the relevant parts of R.39 and 37 to extradition for TF offences, and for other offences connected with terrorist acts and organisations). The main factors underlying the ratings related to deficiencies in the criminalisation of TF and some predicate offences which limited the possibilities for extradition (for lack of dual criminality).

On the extradition system, the 2012 report noted that it distinguishes between relations with Italy and relations with other countries. Art. 22 of the Lateran Treaty 1929 (enhanced cooperation with Italy) governs the former. An Italian request for extradition from the HS requires a judicial determination which involves the satisfaction of the double criminality requirement before surrender.

The HS does not have bilateral extradition treaties. It has, however, ratified the Vienna, Palermo, TF and the Merida Conventions. Thus, with regard to other jurisdictions which are parties to these instruments, the HS can avail itself of their extradition provisions. Otherwise, the Italian CCP 1913 is applied, as it stood in 1929 (specifically Arts. 640-650) and, notably as now amended by the Law on Amendments to the CC and the CCP, which significantly improved the criminal and criminal procedural legislative base.

Criterion 39.1 –

(a) ML and TF are extraditable offences. An internal circular requires the Judicial Offices to treat all requests related to ML/TF rapidly and on a priority basis.

Some potential dual criminality issues could arise in the context of extradition due to some potential problems with the financing of individual terrorists for legitimate purposes and with the financing of travel for providing of terrorist training (see R.5).

Under Art. 9 of the CC 1888 extradition "is not permitted for political crimes or related offences". At the time of the 2012 evaluation it was noted that the HS, as a full party to the Vienna Convention,

could avail itself of the provision in Art. 3(10) of that Convention designed to limit the possibility that the political offence exception could be raised as a bar to extradition. UNCAC is now received into HS Law and arguably the similar provision in Art. 44(4) UNCAC could also limit the possibility of the political offence exception being raised as a bar to extradition. Additionally, Art. 46 of the Law on Amendments to the CC and the CCP (specifically dealing with extradition) now provides: "None of the crimes referred to in this law can be considered as a tax offence or as a political offence or connected to a political offence or inspired by political reasons in order to deny extradition."

TF cannot be considered as a political offence as Art. 52 of the Law on Supplementary Norms on Criminal Law Matters, which introduced the crime of TF and other forms of terrorism into the HS/VCS legal order, specifically states that "None of the offences set out in this Law shall be deemed a fiscal offence, a political offence, an offence connected with a political offence, or an offence inspired by political motive for the purposes of refusing an extradition request".

(b) Art. 35 of the Law on Amendments to the CC and the CCP introduced Art. 350 bis in the CCP. This provides that the entire criminal process (including extradition) must respect the principles of a "fair trial" and the presumption of innocence. A fair trial in HS/VCS implies rapidity of process, and this also applies to extradition. The OPJ has introduced an IT case management system for all ongoing investigations (and extradition applications).

(c) Art. 6 of the Law on Amendments to the CC and the CCP has added 2 new paragraphs to Art. 9 of the 1888 Italian CC received into HS/VCS Law, restricting extradition:

> *"Extradition is not admitted when there are serious reasons to believe that:*
>
> > *a) The request is submitted in order to prosecute, punish or harm a person on the ground of race, religion, nationality, ethnic origin or political views;*
> >
> > *b) In the requesting state the person risks being subjected to torture or to the death penalty;*
> >
> > *c) It is contrary to State or Holy See fundamental interests.*
>
> *All relevant considerations are taken into account in order to verify the conditions referred to in letters a) and b) of the previous paragraph have been fulfilled, including the existence, in the requesting state, of a set of systematic, serious, continuing or massive violations of human rights."*

A9 a) and b) cannot be considered as "unreasonable or unduly restrictive". The authorities advised that Art. 9c applies only to those cases where the person whose extradition is requested is being prosecuted for acts performed on behalf of the HS or VCS. Such acts are considered as attributable to the Sovereign and are thus covered by functional immunity under international law.

Criterion 39.2 a and b –

The HS does not extradite its own citizens (Art. 9 CC). In such cases reliance is placed on Art. 5 CC which addresses c.39.2b: "*Outside of the cases provided for in the previous article, a citizen who commits a crime in a foreign territory for which Vatican Law establishes the penalty of imprisonment for not less than 3 years, is punished according to the same law, provided that he is in the territory of the State. For the purposes of this Article, a stateless person who has habitual residence in the State is equivalent to a citizen."*

In cases where the Vienna, Palermo and Merida Conventions are relevant the "extradite or prosecute" provisions of these instruments also apply (see Art. 6(9), 16(10) and 44(11) respectively).

Criterion 39.3 – The CCP (Art. 641(2)) requires extradition to satisfy the condition of double criminality. This requirement is satisfied regardless of whether the HS/VCS and the country place the offence in the same category or offence or denominate it by the same terminology, so long as the underlying conduct is criminalised in both jurisdictions.

Criterion 39.4 – As parties to the Vienna Convention and UNCAC, the HS can apply Art. 6(8) and Art. 44 (10) respectively. Under these provisions a requested State Party may, upon being satisfied that the circumstances so warrant and are urgent, take a person into custody or take other appropriate measures to ensure his or her presence at the extradition proceedings. The revised Art. 643 CCP applies these provisions generally to the HS. There are, however, no simplified extradition measures for those who wish to waive formal extradition procedures.

Weighting and Conclusion

Some potential dual criminality issues could arise in the context of extradition due to potential problems with the financing of individual terrorists for legitimate purposes (R.5). There are no simplified extradition mechanisms. The latter does not seem to be material in the context of a jurisdiction (i.e. HS has never received an extradition request – see IO.2). **R.39 is rated LC**.

Recommendation 40 – Other forms of international cooperation

In its 2012 MER, the HS/VCS was rated PC with the former R.40 as the ASIF did not have the explicit authority to share supervisory information, and it was limited in its ability to exchange information by existence of an MOU and no MOUs had been signed, the latter having been considered as an effectiveness issue. Problems were also noted in the ASIF's ability to exchange TF-related information.

Criterion 40.1 – The HS/VCS competent authorities can rapidly provide the widest range of international co-operation in relation to ML/TF and associated predicate offences. According to the AML/CFT law (Art. 69 bis) the competent authorities actively cooperate and exchange AML/CFT information, including with foreign competent bodies, in the way and within the limits established by the Law.

Art. 8(1-6) provides a list of the competent authorities: (1) the SoS; (2) the President of the Governorate; (3) the FSC; (4) the ASIF, including the FIU; (5) the CdG; and (6) the OPJ. Of them, the ASIF (in its supervisory role), the FIU, the CdG and the SoS are the HS/VCS competent authorities engaged in forms of international cooperation other than MLA.

As regards other forms of international cooperation and the SoS's competence in this regard, please refer to C.8.6.

The AT is informed that the OPJ, in case of an urgent need and for purposes of investigation, may contact foreign judicial authorities for mutual exchange of information. However, the main actors concerning other forms of international cooperation are the FIU and the CdG.

With regard to financial intelligence, the ASIF exchanges, spontaneously or upon request, information with its foreign counterparts in accordance with the AML/CFT law (Art. 48 1 bis and 69 bis) in relation to cases of potential ML/TF and predicate offences. Additionally, the ASIF is an Egmont Group member since July 2013. Further information on this is provided under c.40.9, c.40.10 and c.40.11.

The CdG signs MoUs with foreign competent bodies for the prevention and countering of criminal activities, including ML/TF and predicate offences. It is also an Interpol member since October 2008 (see also c. 40.17, c.40.18 and c.40.19.)

The ASIF and the CdG adopt adequate procedures, measures and controls for the purposes of active cooperation and exchange of information at international level, in particular in the case of a false or missing declaration of cross-border currency transportation (see R.32).

The law does not provide for the possibility of spontaneous exchange of information for competent authorities engaged in other forms of international cooperation, except for the ASIF.

Criterion 40.2 –

(a) Generally, the HS/VCS competent authorities have a legal basis for providing international cooperation (Art. 69 bis). See c.40.1.

(b) The law is silent with regard to means of cooperation exchange information. Nevertheless, nothing hinders the competent authorities from using the most efficient means of cooperation.

(c) As a member of Egmont Group, the FIU uses on a regular basis the secure channel of electronic post Egmont Secure Web (ESW).

The CdG use various channels of information exchange, including Interpol. The cooperation with the Italian Police Forces represents the main activity in the context of cooperation, while on a broader spectrum, the CdG use on a regular basis the Interpol portal named "I-24/7". This platform guarantees high criteria and safety standards. The CdG has also a liaison officer in Rome. The HS/VCS competent authorities use also the link with the liaison officers' network who reside in Italy (e.g. FBI, CIA, NCIA, DHS) via the CdG.

Prior to MLAs, the OPJ engages to informal communication using the close ties it retains with its main counterparts. At times, the OPJ uses police channels via the CdG to resolve urgent issues.

(d) The FIU Circular on Operational Analysis (2019) defines the workflow in case of request from foreign counterparts.

Reference to international cooperation in the Circular is only made within the context of the possible outcomes recommended by the operational analyst, which include the recommendation to send an international request for cooperation or the recommendation to send a spontaneous international exchange of information through the ESW.

With regard to prioritisation and timely execution of international requests by the other competent authorities, including the CdG, the approach followed in MLA is also valid when engaging in other forms of international cooperation (see C.37.2). ML/TF related requests always take priority.

Overall, requests of international cooperation are a priority for each competent authority and are executed in line with their respective internal regulations or service orders in a timely manner.

(e) The FIU has in place formalised Circulars, including the Circular on Internal Organisation, the Circular on Operational Analysis, and the Information Technology Security Policy, which establish principles, rules, duties and responsibilities in handling and disseminating sensitive and confidential information. These ensures limited access to its facilities and information held, including information technology systems.

With regard to the Circular on Internal Organisation and the Circular of Operational Analysis, as mentioned in c.29.6, these are not detailed enough and do not provide sufficient coverage to address the ASIF's confidentiality obligations.

The Information Technology Security Policy (see c.29.6) regulates the user access rights.

As for the CdG, the processes for safeguarding the information received are regulated by the Conditions of Services, which qualify all the documents treated in different sections of the CdG as confidential. This internal procedure also provides that all the documents, data and information possessed by the CdG should be used exclusively for the purposes established by the law, protected to guarantee their safety, integrity and confidentiality, covered by professional secrecy. The obligation of the personnel to observe the terms of professional secrecy remains even after the termination of the service at the CdG and, more generally, the end of the working relations with the State.

Criterion 40.3 – The HS/VCS competent authorities (including the ASIF and the CdG), actively cooperate and exchange AML/CFT information, including with foreign competent bodies, in the way and within the limits established by the Law (AML/CFT law, Art. 69 bis).

The ASIF cooperates and exchanges information with its foreign counterparts, on the condition of reciprocity and on the basis of MoUs. The ASIF does not need any *nihil obstat* of any governmental authority to enter into MoUs, although the SoS is informed when MoUs are signed. The ASIF has signed MoUs with a wide range of foreign counterparts. The type of FIU (administrative, law enforcement, judicial or other in nature) does not have a bearing on the ASIF's ability to enter into a MoU with a foreign counterpart. Thus, MoUs have been signed with all types of FIUs.

Art. 8(5)(c) of the AML/CFT law states that with the *nihil obstat* of the SoS, the CdG signs MoUs with foreign competent authorities for the prevention and countering of criminal activities, including ML/TF and predicate offences.

At the time of the on-site visit, the CdG had in place a MoU with Italian LEAs for strategic purposes.

Criterion 40.4 – In the context of the provisions on cooperation and exchange of information at international level, competent authorities can provide and receive feedback (e.g. via email, or liaison officers) in a timely manner as there is no legal impediment. The AML/CFT law (Art. 69 bis (2)) stipulates that the FIU should cooperate and exchange information foreign competent authorities, on the condition of reciprocity and on the basis of a MoU.

The MoUs signed by the ASIF, including the FIU, are based upon the FAFT Recommendations and the Egmont Group Principles for Exchange of Information.

As for the CdG, the legal basis to provide feedback is set out in its signed MoUs.

Criterion 40.5 – Based on the AML/CFT law (Art. 69 bis and 70) the "authorities shall not prohibit or place unreasonable or unduly restrictive conditions on exchanging information or providing assistance. In particular, the authorities shall not refuse a request for assistance on the grounds that:

(a) The request is also considered to involve fiscal matters; (b) Laws and regulations require FIs and DNFBPs (except where the relevant information that is sought is held under circumstances where legal privilege or legal professional secrecy applies) to maintain secrecy or confidentiality; (c) There is an inquiry, investigation or proceeding underway in the Jurisdiction receiving the request, unless the assistance would impede that inquiry, investigation or proceedings; (d) The nature or status (civil, administrative, law enforcement etc.) of the requesting counterpart authority is different to its foreign Authority".

Criterion 40.6 – According to the ASIF's MoUs (Art. 16), in the section on Data Protection and Confidentiality, "exchange of information shall be used only for the purpose for which the information is sought or provided. Any dissemination of the information to other authorities or third parties, or any use of this information for administrative, investigative, prosecutorial or judicial purposes, beyond those originally approved, shall be subject to prior authorisation by the requested authority".

By way of practice, the ASIF asks for consent before disseminating the information received to competent domestic authorities, including law enforcement. Such information is used for intelligence purpose only.

With regard to this Criterion, please also refer to the text under C.40.2.

Criterion 40.7 – According to the Law on Amendments to the CC and the CCP (Art. 10), it is an offence to disclose information the disclosure of which is prohibited, and it shall be punishable with imprisonment from six months to eight years or with a fine from EUR 1 000 to EUR 5 000.

With regard to the ASIF, the AML/CFT law (Art. 67(1)) states that all documents, data and information possessed by the ASIF in the exercise of its functions shall be a) used exclusively for the purposes established by Law; b) protected for the purposes of ensuring their security, integrity and confidentiality; c) under official secret. Art. 67(2) of the Law imposes the condition to observe office secret also on staff after the end of their service with the ASIF. Given the wording of the Law, it implies that the legal provisions also cover documents, data and information which the ASIF acquires in the performance of international exchanges of information. The confidentiality and security of information, including data and documents, exchanged with foreign counterparts, is therefore guaranteed at legislative level.

In addition to the legislative framework, MoUs signed by the ASIF (AML/CFT law, Art. 12 to 17), establish, inter alia, that at a minimum, information exchange must be treated and protected by the same confidentiality provisions that apply to similar information from domestic sources obtained by the authority receiving the request.

As for the CdG, please refer to the text under C.40.2.

Criterion 40.8 – The authorities explained that the MoUs signed by the ASIF require the FIU to exchange (1) all information which is required to be accessible or obtainable directly or indirectly by the Authority under the FATF Recommendations, in particular under Recommendation 29; and (2) any other information which can be obtained or accessed in its power, directly or indirectly, at the domestic level, subject to the principle of reciprocity (see also Rec. 29).

As for the ASIF and the CdG, there is no legal impediment in conducting inquiries on behalf of foreign counterparts.

Criterion 40.9 – The AML/CFT law (Art. 69 bis (2), 86 and 87) provides the basis for FIU to FIU exchange of information on ML/TF and associated predicate offences. The Law not only covers the exchange of information by the ASIF in executing its functions as an FIU, but also as a competent authority receiving declarations of cross-border transportation of currency (including BNIs), gold, and precious metals and stones.

Criterion 40.10 – The AML/CFT law (Art. 69 bis (2)) provides the basis for cooperation and information exchange with the ASIF's foreign counterparts, on the condition of reciprocity and on the basis of a MoU. The general wording used in this provision seems to provide the ASIF with a wide scope of information exchange possibilities, including, inter alia, the provision of feedback.

The MoUs signed by the ASIF provide that upon request and whenever possible, the FIU shall provide feedback to its foreign counterparts on the use of the information provided, and the outcome of the analysis conducted.

Criterion 40.11 – The powers of the ASIF to obtain or access information are addressed under Rec. 29, as well as under EC 40.8.

Criterion 40.12 – The AML/CFT law (Art. 69 bis) provides for cooperation between the ASIF and its foreign counterparts (even with those having a different nature or status to the ASIF). The Law provides for the ASIF to cooperate and exchange information with its foreign counterparts, on the condition of reciprocity and on the basis of a MoU. This includes exchanging supervisory information for AML/CFT purposes.

Criterion 40.13 – The ASIF is able to cooperate and exchange information with its foreign counterparts, on the condition of reciprocity and on the basis of a MoU. At present, the ASIF has concluded MoUs with the supervisory authorities of eight jurisdictions (i.e. Brazil, Germany, Italy, Luxembourg, Malta, Panama, Poland and the United States). This includes the exchange of information that is held domestically by FIs, even though exchange of information on the basis of the MoUs with supervisors in Brazil and Panama may be limited since the exchange is limited to information that is kept by cross-border establishments.

Criterion 40.14 – As mentioned under c.40.13, the ASIF exchanges information on the basis of MoUs. This exchange of information includes any type of relevant information for AML/CFT purposes – regulatory, prudential and AML/CFT specific.

Criterion 40.15 – On the basis of concluded MoUs (see c.40.13 above), the ASIF may conduct inquiries on behalf of its foreign counterparts, and exchange with them all information obtained. However, restrictions exist in relation to the information exchange with supervisors in the Brazil, Panama, and the United States. The underlying MoUs do not foresee the possibility for the ASIF to obtain information from FIs for the purpose to assist foreign counterparts or are limited to the exchange of information being kept by cross-border establishments.

Apart from that, none of the concluded MoUs authorises or facilitates the ability of foreign counterparts to conduct inquiries themselves in the HS/VCS for the purpose of facilitating effective group supervision. Since the only FI in the HS/VCS has not established any cross-border establishments abroad and foreign FIs have not established any such operations in the HS/VCS, there is no need for implementation of this specific requirement.

Criterion 40.16 – The MoUs signed by the ASIF with its foreign counterparts require that the requesting financial supervisor treats exchanged information as confidential. They also require the prior consent of the requested financial supervisor before exchanged information is disseminated to a third party. If disclosure of received information is legally compelled or necessary to carry out its lawful supervisory responsibilities, the requesting financial supervisor will inform the requested financial supervisor of this obligation and will use its best efforts to protect confidentiality of the exchanged information.

Furthermore, exchanged information shall only be used by the requesting financial supervisor for the purposes as set out in the request and to carry out its lawful functions. If the requesting supervisor intends to use the information for any purposes other than agreed with the requested supervisor, it must obtain the prior consent of the requested supervisor.

Criterion 40.17 – The AML/CFT law (Art. 8(6)) stipulates that the HS/VCS competent authorities, including the CdG, actively cooperate and exchange AML/CFT information with their foreign counterparts, in the way and within the limits established by the Law.

Furthermore, Art. 8(5)(c) states that with the *nihil obstat* of the SoS, the CdG concludes MoUs with foreign competent authorities for the prevention and countering of criminal activities, including ML/TF and predicate offences.

Although the CdG requires the *nihil obstat* of the SoS to enter into a MoU with foreign competent authorities, there are no requirements emanating from the Law requiring the CdG to have a MoU in place to exchange information with a foreign counterpart.

Criterion 40.18 – See Criterion 40.17. According to the Law, the CdG can cooperate and exchange information with foreign competent authorities and enter into MoUs with such authorities. Please refer also to EC- 40.8.

Criterion 40.19 – The CdG signed bilateral MoUs with the GdiF (see Criterion 30.2), for international cooperation in the prosecution of criminal offences. However, the authorities did not provide information on legal basis to conduct joint investigation based on the MoUs signed or by the membership in Interpol. The MoU with the GdiF states that "each of the parties undertakes to promote collaboration between the two institutions also through: b) joint initiatives for the external promotion of institutional activities: c) any other joint action that may be useful for achieving the purposes of this technical agreement."

The MoU with Carabinieri states that: "in the presence of converging institutional interests and the possibility of developing further synergies, the parties undertake to provide mutual collaboration in order to pursue and realise the common institutional interests".

In addition, the Carabinieri agrees for the inclusion of an officer in the staff of the CdG in order to enhance collaboration (Art. 3.1 of the MoU). Also, "in the event of specific needs that see the common interest of the parties, the temporary secondment of a member of the CdG to Carabinieri departments may be envisaged in order to create a direct channel of collaboration and facilitate information exchanges" (Art. 3.2).

Criterion 40.20 – The MoUs signed by the ASIF establish that the authorities may decide to exchange information indirectly with non-counterparts in response to requests from competent authorities.

In this respect, the authorities shall ensure that the competent authority requesting the information indirectly always makes clear originator and purpose of a request.

The AML/CFT law (Art. 69 bis) provides the legal basis for the ASIF to exchange information with its foreign counterparts.

The wording of the law appears to restrict the type of authorities with whom it exchanges information as 'similar authorities', and therefore counterpart FIUs or LEAs only. On the basis of this, one may challenge that the ASIF or the CdG have the legal authority to provide their consent to a counterpart FIU or LEA for the onward dissemination of information originating from the ASIF or the CdG to a non-counterpart foreign competent authority.

Weighting and Conclusion

The HS/VCS meets 16 out of 20 essential criteria. However, restrictions exist in relation to: (i) the possibility of spontaneous exchange of information for competent authorities engaged in other forms of international cooperation, except for the ASIF; (ii) the information exchange with supervisors in Brazil, Panama and the United States; and (iii) the absence of information on the legal basis to conduct joint investigations based on the MoUs signed or by membership of Interpol. Also, regarding the requirement to exchange information indirectly with foreign non-counterparts, there is a restriction in the law concerning the type of authorities with whom the FIU or the CdG exchange information. Other minor shortcomings were also identified. **R.40 is rated LC.**

Summary of Technical Compliance – Key Deficiencies

Annex Table 1. Compliance with FATF Recommendations

Recommendations	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	LC	• The GRA does not articulate residual risks (including likelihood and consequences). • The risk assessment for public authorities has not been completed. • Not all domestic risks are addressed within the GRA. • It is not entirely clear that the exemption for MVTS can be used only in strictly limited circumstances. • EDD is required in cases of high (rather than higher) ML/TF risk. • There is no explicit prohibition on allowing simplified measures where the FATF Recommendations identify higher risk activities for which enhanced or specific measures are required. • Annex 2 to ASIF Regulation No. 4 (CDD) (simplified CDD) may not be in line with the risk profile of the HS/VCS. • Shortcomings identified under R.26 impact on compliance with c.1.9. • There is no express requirement for FIs to consider all relevant risk factors when determining the level of overall risk. • There is no explicit requirement for the application of simplified CDD to be conditional upon the application of risk mitigation measures.
2. National cooperation and coordination	LC	• The responsibility of the FSC does not always clearly extend to PF. • The policy/procedure relating to cooperation and coordination in relation to compatibility of AML/CFT requirements with data protection requirements has not been explained.
3. Money laundering offences	LC	Financial sanctions for some legal persons are not considered to be proportionate and dissuasive.
4. Confiscation and provisional measures	LC	• The application of value confiscation to instrumentalities is not clear on the face of the legislation.
5. Terrorist financing offence	LC	• General financing for (otherwise) legitimate purposes to an individual terrorist has not been clearly covered in the legislation. • Some potential problems may appear when interpreting the legislation since it does not provide provisions which directly concern financing of travel for providing of terrorist training.
6. Targeted financial sanctions related to terrorism & TF	PC	• Whilst the authorities advised that standard procedures and forms for listing would be followed, there is no such requirement in legislation. • There is no requirement for the authorities to provide a statement of case, as well as of release of such statement, upon request, with details concerning the basis for the listing. • There are no requirements to make a prompt determination of whether the authorities are satisfied that a request is supported by reasonable grounds, or a reasonable basis, to suspect or believe that the proposed designee meets the designation criteria set in UNSCR 1373. • There are no procedures for soliciting information which is of relevance for potential designations. • There is no legal provision which states that designations pursuant to the UN sanctions regimes are immediately effective in HS/VCS. The AML/CFT law only provides that such

Recommendations	Rating	Factor(s) underlying the rating
		designations may constitute, even on their own, sufficient grounds for designation. • Natural persons and legal persons, other than obliged subjects, are not required to freeze funds and other assets. • The lack of a direct requirement for obliged entities to freeze funds without delay excludes the possibility to sanction them when they fail to do so. • No specific procedures are available for informing designated persons and entities of the availability of the UN Office of the Ombudsperson, pursuant to UNSCRs 1904, 1989, and 2083 to accept delisting petitions. • There are no specific procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), upon verification that the person or entity involved is not a designated person or entity. • There is no requirement to ensure the absence of a negative decision by the Committee established pursuant to UNSCR 1267 (1999) when authorising access to frozen funds or other assets.
7. Targeted financial sanctions related to proliferation	PC	• There is no requirement to automatically incorporate designations made by UN Security Council resolutions, adopted under Chapter VII of the Charter of the UN, relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and financing. • Natural persons and legal persons, other than obliged subjects, are not required to freeze funds and other assets. • The lack of a direct requirement for obliged entities to freeze funds without delay excludes the possibility to sanction them when they fail to do so. • There is no legal framework enabling listed persons and entities to petition a request for de-listing at the Focal Point established pursuant to UNSCR 1730 or informing designated persons or entities to petition designated person directly. • There are no legal provisions regulating unfreezing of funds or other assets of persons or entities with the same or similar name as designated persons or entities, who are inadvertently affected by a freezing mechanism (i.e. a false positive), upon verification that the person or entity involved is not a designated person or entity. • There is no requirement to ensure the absence of the negative decision by the Committee established pursuant to the UNSCR 1718 and 2231 when authorising access to frozen funds or other assets. • There is no procedure for providing guidance to FIs that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action. • When determining whether a designated person or entity is prevented from making a payment due under a contract entered into prior to the listing of such person or entity, prior notification is not given to the Security Council.
8. Non-profit organisations	PC	• The HS/VCS has identified the subset of organisations falling within the FATF definition of NPO to some extent. • The conclusions of the GRA are of general nature, without fully identifying the features and types of NPOs which by virtue of

Recommendations	Rating	Factor(s) underlying the rating
		their characteristics are likely to be at risk of TF abuse. Overall, it is not identified how terrorist actors may abuse the identified NPOs with high TF risk. • While there are requirements under the Law on NPOs for filing managerial and statutory documents in the register, as well as requirements for the President of the Governorate to check those documents, this procedure is purposed to understand the completeness rather than the credibility of the information provided. • While there are sanctions available, the sanctioning regime on NPOs is unclear and provisions do not apply to requirements linked to the content of the act of incorporation/statute or to registration itself. • Co-operation, co-ordination and information-sharing amongst appropriate authorities or organisations that hold relevant information on NPOs does not cover wider coordination and cooperation matters beyond criminal activities. • There are no specific mechanisms to ensure that, when there is suspicion or reasonable grounds to suspect that a particular NPO: (i) is involved in TF abuse and/or is a front for fundraising by a terrorist organisation; or (ii) is concealing or obscuring the clandestine diversion of funds intended for legitimate purposes, but redirected for the benefit of terrorists or terrorist organisations, this information is promptly shared with competent authorities, in order to take preventive or investigative action. • It is unclear whether international cooperation, or information regarding particular NPOs suspected of TF or involvement in other forms of terrorist support, is provided by the SoS as a central MLA authority or as the NPO supervisory authority, acting through the Section of General Affairs.
9. Financial institution secrecy laws	C	
10. Customer due diligence	LC	• It is not explained for what purpose, documents, data and information must be collected (i.e. to be satisfied that the BO is known). • There is no explicit requirement to understand the purpose and intended nature of a business relationship. • There is no requirement for documents, data or information collected to be kept relevant. • Several enhanced requirements are triggered by high risk categories of customer rather than higher risk (c.10.7, c.10.13, c.10.17, c.10.18). The latter term covers a wider group. • The definition of BO for a company appears to allow a senior managing official to be treated as the BO even where there is a person controlling through means other than ownership. • There is no prohibition on proceeding with occasional transactions when unable to comply with initial identification and verification requirements.
11. Record keeping	LC	• The record-keeping requirement for CDD-related documents, data and information may be interpreted in a way that links retention to a particular transaction within the course of a business relationship rather than termination of that business relationship.

Recommendations	Rating	Factor(s) underlying the rating
		• FIs are required to ensure that CDD information and transaction records are available on a timely basis rather than swiftly.
12. Politically exposed persons	LC	• Definitions for "family member" and "close associate" of PEPs are not in line with FATF Guidance. • Measures in relation to life or other investment-related policies are triggered by high risk categories of customer rather than higher risk. The latter term covers a wider group.
13. Correspondent banking	NC	• The definition of "correspondent relationship" does not apply where an obliged subject has a relationship with a foreign bank. • There is no explicit requirement to determine whether a respondent FI has been subject to an AML/CFT investigation or regulatory action. • There is no direct requirement for FIs to clearly understand respective responsibilities.
14. Money or value transfer services	LC	There are no requirements for agents of MVTS providers.
15. New technologies	LC	• There is no explicit requirement for FIs to identify and assess risks arising from new business practices. No requirement is placed on the country's competent authorities to do so. • The GRA does not contain any information or findings on potential risks from illegal VA activities or from VASPs operating illegally from within the HS/VCS or providing their services remotely to customers in the HS/VCS. • There is a lack of a fully developed understanding of VA/VASP risks.
16. Wire transfers	PC	• Where all FIs involved in a cross-border wire transfer are part of SEPA, it is not necessary for transfers to be accompanied by the name of the originator and beneficiary. • The requirement of Art. 14(1) of ASIF Regulation No. 2 (wire transfers), creates confusion as it allows FIs themselves to decide under which circumstances to keep information for 10 years. • There are no requirements for MVTSs to comply with the relevant requirements of R.16. • FIs are not able to take freezing action under TFS immediately and upon their own motion.
17. Reliance on third parties	N/A	
18. Internal controls and foreign branches and subsidiaries	LC	• There is no explicit requirement for the appointed compliance officer to be at management level. • There is no explicit reference to the prevention of tipping-off in the application of group wide AML/CFT programmes. • Subsidiaries incorporated outside the HS/VCS must also comply with HS/VCS requirements – which may be difficult in practice.
19. Higher-risk countries	LC	• FIs are required to apply the same EDD to countries for which this is called for by the FATF, irrespective of the risk of ML/TF. • It is unclear: (i) whether the ASIF can apply countermeasures (as opposed to requiring obliged subjects to carry out additional measures) when called to do so by the FATF; and (ii) other than the application of EDD measures, what those countermeasures may be.
20. Reporting of suspicious transaction	C	
21. Tipping-off and confidentiality	LC	• There is no explicit prohibition of disclosure of 'related information' in the broader sense, such as an information

Recommendations	Rating	Factor(s) underlying the rating
		(which generally may be understood to be SAR-related information) which has been requested by and then transmitted to the ASIF and which is not necessarily sent in a form of a report.
22. DNFBPs: Customer due diligence	LC	• Real estate agents need not carry out CDD in transactions worth less than EUR 10 000. All shortcomings identified under R.10, R.11, R.12 and c.15.1 and c.15.2 apply.
23. DNFBPs: Other measures	LC	• Real estate agents need not carry out CDD in transactions worth less than EUR 10 000. All shortcomings identified under R.18, R.19 and R.21 apply.
24. Transparency and beneficial ownership of legal persons	PC	• Information on the basic features and processes for the creation of the different types of legal persons can be extracted from the relevant laws only to a limited extent and guidance in this regard is not available. • ML/TF risk assessments for voluntary organisations and charitable legal persons have not been concluded. • There is no direct registration requirement for some legal persons or recording information thereon with the Governorate. • The public has a right only to access the register of NPOs. • There is no clear legal obligation for legal persons to maintain basic information with the VCS at a location notified to the Governorate. • It is not clear that changes to basic information for voluntary organisations and other charitable legal persons must be updated on a timely basis. • There is no clear legal obligation for legal persons to maintain BO information at a specified location within the VCS. • It is not clear that the combined effect of mechanisms used to obtain BO information is that information will be adequate and kept as up-to-date as possible. • The starting point of the ten-year period for legal persons and the Governorate to maintain basic and BO information is undefined. • It is not clear what the legal position for maintaining information on basic and BO information is when a legal person is dissolved. • The range of sanctions available to punish serious failure to comply with requirements regarding voluntary organisations and other charitable legal persons is insufficient. • The mechanisms foreseen to ensure access by foreign authorities to basic information on voluntary organisations and other charitable legal persons are not deemed efficient. • Gaps relating to use of investigative powers by the ASIF may restrict information exchange between the ASIF and foreign authorities. • It is not clear how the quality of assistance received from other countries is monitored.
25. Transparency and beneficial ownership of legal arrangements	LC	• Professional trustees are not required to maintain (or subsequently update) information on other regulated agents of, and service providers to, the trust. This could restrict international cooperation. • A requirement for trustees to actively disclose their status could not be identified.

Recommendations	Rating	Factor(s) underlying the rating
		• Gaps relating to use of investigative powers by the ASIF may restrict information exchange between the ASIF and foreign authorities. • There are no sanctions or liabilities for non-professional trustees as they are not subject to any legal obligations.
26. Regulation and supervision of financial institutions	LC	• The definition of BO for a company appears to allow a senior managing official to be treated as the BO even where there is a person controlling through means other than ownership. • It is not clear what, if any, additional measures have been adopted to deal with associates of criminals. • It has not been demonstrated that regulation and supervision is in line with BCBS and IOSCO Core Principles. • Not all major events and developments would trigger a review of the ML/TF risk profile of a FI.
27. Powers of supervisors	PC	• It is not possible for the supervisor to withdraw, restrict or suspend a FI's licence for the most serious cases.
28. Regulation and supervision of DNFBPs	LC	• Real estate agents need not carry out CDD in transactions worth less than EUR 10 000. • It is not clear what measures would be applied to holders of significant or controlling interests. • It is not clear what, if any, additional measures would be adopted to deal with associates of criminals.
29. Financial intelligence units	LC	• There are no explicit provisions in the law which make it clear that the ASIF retains discretion on whether to disseminate information after having received a request from a competent authority.
30. Responsibilities of law enforcement and investigative authorities	LC	Apart from general provision embedded in Art. 163 of the CCP (see under c.30.1) there are no other regulatory references or internal provisions governing the assignment of the parallel investigation.
31. Powers of law enforcement and investigative authorities	LC	• Use of undercover officers and controlled delivery are strictly permissible in associated predicate offences, without a linkage to ML or TF.
32. Cash couriers	LC	• Legislation does not provide specific procedures that address the retention of information concerning detected cases of undeclared cross-border transportation of currency, or suspicions of ML/TF. • There is no requirement to record the fact that an initial declaration, prior to being rectified, was incomplete.
33. Statistics	C	
34. Guidance and feedback	LC	• Information had not been provided on feedback provided to obliged subjects by competent authorities, other than the ASIF.
35. Sanctions	LC	• The application of sanctions under R.6 is limited to obliged subjects. • Gaps identified under c. 8.4(b) are relevant.
36. International instruments	C	
37. Mutual legal assistance	LC	• It is unclear whether MLA requests from non-signatory counterparts would be refused on the ground of banking secrecy. The wording of the law suggests that the decision to render assistance remains discretionary, and the jurisdiction may provide assistance in cases where no coercive measures

Recommendations	Rating	Factor(s) underlying the rating
		are involved, irrespective of whether the condition of dual criminality is met or not.
38. Mutual legal assistance: freezing and confiscation	LC	• The legislation does not specify how technically freezing of laundered property on behalf of other countries would occur.
39. Extradition	LC	• Some potential dual criminality issues could arise in the context of extradition due to the incomplete reach of R.5 (potential problems with the financing of individual terrorists for legitimate purposes). • There are no simplified extradition measures for those who wish to waive formal extradition procedures.
40. Other forms of international cooperation	LC	• Restrictions exist in relation to the possibility of spontaneous exchange of information for competent authorities engaged in other forms of international cooperation, except for the ASIF. • Restrictions exist in relation to information exchanges with supervisors in Brazil, Panama, and the United States. The underlying MoUs do not foresee the possibility for the ASIF to obtain information from FIs for the purpose to assist foreign counterparts or are limited to the exchange of information being kept by cross-border establishments. • The authorities did not provide information on the legal basis for conducting joint investigations based on MoUs signed or through membership of Interpol. • The wording of the law appears to restrict the type of authorities with whom information may be exchanged to 'similar authorities', and therefore counterpart FIUs or LEAs only.

Glossary of Acronyms[54]

AML/CFT	Anti-Money Laundering/ Combatting the Financing of Terrorism
AML/CFT law	Law on Transparency, Supervision and Financial Intelligence (Law XVIII)
APSA	Administration of the Patrimony of the Apostolic See
The ASIF	Supervisory and Financial Information Authority
AT	Assessment Team
BCBS	Basel Committee on Banking Supervision
BNIs	Bearer Negotiable Instruments
BOs	Beneficial Owners/Ownership
CC	Criminal Code
CCP	Code of Criminal Procedure
CDD	Customer Due Diligence
CdG	The Corps of the Gendarmerie
CoE	Council of Europe
DNFBPs	Designated Non-Financial Businesses and Professions
ECO-FIN Unit	Economic and Financial Crime Unit of the CdG
ECPO	Law on the Economic, Commercial and Professional Order
EDD	Enhanced Due Diligence
EU	European Union
FATF	Financial Action Task Force
FIs	Financial Institutions
FIU	Financial Intelligence Unit of the ASIF
FSC	Financial Security Committee
GRA	General Risk Assessment
GdiF	Italian Guardia di Finanza
HS	Holy See
IOR	Institute for the Works of Religion (Istituto per le Opere di Religione)
IOSCO	International Organisation of Securities Commissions
Law on NPOs	Law on the Registration and Supervision of NPOs (Law CCXI)
LEAs	Law Enforcement Agencies
MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual Legal Assistance
Motu Proprio	A document issued by the Supreme Pontiff on his own initiative directed to the Roman Catholic Church.
MoU	Memorandum of Understanding
MVTS	Money or Value Transfer Services
Nihil obstat	Prior consent
NPOs	Non-Profit Organisations
Nulla osta	Permission
OPJ	The Office of the Promoter of Justice
Palermo Convention	UN Convention against Transnational Organised Crime 2000
Pastor Bonus	An Apostolic Constitution promulgated by the Supreme Pontiff on 28 June 1988. It instituted a number of reforms in the process of running the central government of the Roman Catholic Church and sets out the roles of the SoS, Congregations, Tribunals, Pontifical Councils, Administrative Services and Pontifical Commissions of the Roman Curia. It also establishes the norms for the *Ad limina* visits of bishops to Rome.
PF	Financing the Proliferation of Weapons of Mass Destruction

[54] Acronyms already defined in the Glossary in the FATF 40 Recommendations are not included in this Glossary.

Pontifical Commission for the VCS	The legislative body of the VCS.
R.	Recommendation
RBA	Risk-Based Approach
Roman Curia	The complex of Dicasteries and institutes through which the Roman Pontiff usually conducts the business of the universal Church in the exercise of his supreme pastoral office for the good and service of the whole Church and of the particular Churches. (can 360-361). The Curia, together with the Holy Father, represents the administrative apparatus of the HS and central governing body of the Catholic Church.
SAR	Suspicious Activity Report
SfE	Secretariat for the Economy
SoS	Secretariat of State
TF	Terrorist Financing
TF Convention	International Convention for the Suppression of the Financing of Terrorism 1999
TFS	Targeted financial sanctions
UN	United Nations
UNCAC/Merida Convention	United Nations Convention against Corruption 2003
UNSCR	United Nations Security Council Resolution
VA	Virtual Asset
VASPs	Virtual Asset Service Providers
VCS	Vatican City State
Vienna Convention	UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988