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(MONEYVAL)

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4th ROUND MUTUAL EVALUATION OF LATVIA

EXIT FOLLOW-UP REPORT SUBMITTED TO MONEYVAL

**WRITTEN ANALYSIS ON PROGRESS IN RESPECT OF THE CORE AND
KEY RECOMMENDATIONS**

22 SEPTEMBER 2016

Latvia is a member of MONEYVAL. This progress report was adopted at MONEYVAL's 51st plenary meeting (27-29 September 2016, Strasbourg). For further information on the examination and adoption of this report, please refer to the Meeting Report of the 51st plenary at <http://www.coe.int/moneyval>.

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List of acronyms used

AML/CFT	Anti-Money Laundering/Countering Financing of Terrorism
BoL	Bank of Latvia
BNI	Bearer Negotiable Instrument
CDD	Customer Due Diligence
CSNL	Council of Sworn Notaries of Latvia
IT	Information Technology
LEA	Law Enforcement Agency
LGSi	Lottery and Gambling Supervision Inspection
MER	Mutual evaluation report
MLA	Mutual Legal Assistance
MoT	Ministry of Transport
MOU	Memorandum of Understanding
MVT	Money Value Transfer
NC	Non-compliant
NPO	Non-Profit Organisation
PC	Partially compliant
PEP	Politically Exposed Person
PO	Prosecutor's Office
SRO	Self-Regulatory Organisation
SRS	State Revenue Service
STR	Suspicious Transaction Report
TCSP	Trust and Company Service Provider
TFS	Targeted Financial Sanctions
UBO	Ultimate Beneficial Ownership
UN	United Nations
UNSCR	United Nations Security Council Resolution
UTR	Unusual transaction report

Mutual evaluation of Latvia: 2nd follow-up report

Application to be removed from the regular follow-up process

Note by the Secretariat

I. Introduction

1. The purpose of this paper is to introduce Latvia's second follow-up report to the Plenary concerning the progress that it has made to remedy the deficiencies identified in the 4th round mutual evaluation report (MER) on selected FATF Recommendations.
2. Latvia considers that it has made sufficient progress to be considered for removal from the regular follow-up process and has applied to be removed from the process.
3. The Rules of Procedure require that the country has an effective anti-money laundering and combating the financing of terrorism (AML/CFT) system in force, under which the State or territory has implemented the core and key recommendations at a level essentially equivalent to a C or LC. According to the Rules of Procedure, the Plenary may retain some limited flexibility with regard to those recommendations listed in paragraph 3 that are not core recommendations if substantial progress has also been made on the overall set of recommendations that have been rated PC or NC (Rule 13, paragraph 17 (ii)).

Background information

4. The on-site visit to Latvia took place from 9 to 13 May 2011. MONEYVAL adopted the MER of Latvia under the fourth round of assessment visits at its 39th plenary in July 2012. As a result of the evaluation process 4 core and key and 10 other FATF Recommendations were rated as "partially compliant".

<i>4 core and key Recommendations rated PC</i>
Recommendation 5 (Customer due diligence)
Recommendation 13 (Suspicious transaction reporting)
Special Recommendation III (Freeze and confiscate terrorist assets)
Special Recommendation IV (Suspicious transaction reporting)
<i>14 other Recommendations rated PC</i>
Recommendation 9 (Third parties and introducers)
Recommendation 12 (DNFBP (R.5, 6, 8-11)
Recommendation 16 (DNFBP – R.13-15 and 21)
Recommendation 17 (Sanctions)
Recommendation 21 (Special attention for higher risk countries)
Recommendation 24 (Regulation, supervision and monitoring)
Recommendation 32 (Statistics)
Recommendation 38 (MLA on confiscation and freezing)
Special Recommendation VI (Money or value transfer services)
Special Recommendation IX (Cross Border Declaration & Disclosure)

5. Following the adoption of the 4th Round MER, Latvia was placed in regular follow-up and requested to report back to the plenary after two years. The first progress report was adopted at MONEYVAL's 45th plenary in September 2014. The Plenary agreed that satisfactory progress was achieved on the law enforcement (R13 and SRIV) and financial (R5) sections. However, it

was underlined that no significant development was reported on the technical side of SR.III. The plenary encouraged Latvia to address the remaining deficiencies under SR.III and seek removal from the follow-up process in September 2015 or very soon thereafter.

6. At the 48th Plenary in September 2015, Latvia was not in the position to seek removal from the follow-up due to remaining deficiencies under SR.III. Latvia was therefore requested to inform the Plenary on further steps that have been taken on SR.III in December 2015 and to seek removal from the regular follow-up process once the deficiencies under SR.III are rectified, but no later than September 2016.
7. In July 2016, Latvia provided the Secretariat with the second follow-up report on its progress made in relation to the FATF Recommendations rated PC. The Secretariat has drafted the present analysis on progress made by Latvia with regard to 1 key (SR.III) and 10 other Recommendations rated PC.¹ The findings of the analysis are set out in Sections II and III, respectively.
8. On a general note concerning all applications for removal from regular follow-up: the procedure is a paper desk-based review, and thus by its nature less detailed and thorough than a mutual evaluation report. Effectiveness aspects can be taken into account only through consideration of data and information provided by the authorities. It is also important to note that the conclusions in this analysis do not prejudice the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in all cases, as comprehensive as it would have been during a mutual evaluation.

Overview of Latvia's Progress

Action Plan and National Risk Assessment (NRA)

9. Latvia conducted its first NRA in 2011. The second NRA was launched in September 2014. The work on the second NRA is planned to be finalised by the end of 2016. Based on the results of the NRA an action plan on ML/TF risks mitigation will be developed and submitted to the Cabinet of Ministers by 31 March 2017. The more detailed information on the NRA process and methodology could be found in the follow-up report provided by Latvia (p.4-6).

Legislative developments

10. Since the 4th MER Latvia adopted important amendments to the AML/CFT Law on PEPs, adopted the Law on International Sanctions and National Sanctions of the Republic of Latvia and issued relevant regulations in order to address the deficiencies under SR.III. A set of other important amendments to existing laws as well as new regulations and guidelines (including on enhanced CDD, risk management, enforcement of the AML/CFT measures) were adopted and issued recently. The more detailed information on the legislative developments is set out in the follow-up report submitted by Latvia (p.7-9).

Other developments

11. To continue strengthening the AML/CFT regulatory base and increasing the efficiency of the supervisory activities, in April 2016 the Financial Integrity Division of the FCMC was restructured into a Compliance Control Department (CCD). The CCD is formed of 5 divisions: Banking supervision, Non-banking supervision, Sanctions and Compliance, Transactions monitoring, and Legislative and Regulatory division. The number of employees in the CCD was increased to 15, and by the second quarter of 2017 it is planned to increase the CCD up to 20 employees.

¹ The 45th Plenary concluded that the progress on R5, R13 and SR.IV was achieved to a satisfactory level and therefore these Recommendations are not subject to Secretariat's analysis.

Measures planned

12. The authorities have further measures planned to strengthen its AML/CFT framework beyond the MONEYVAL recommendations. The planned measures include: approval of the national Financial Strategy which will incorporate the findings of the NRA, adoption of legislative amendments to create a centralized bank account register, adoption of legislative amendments to establish Company Register with information on BO, improvement of the efficiency of reporting and the quality of suspicious transaction reports (STRs) and some other measures. The more detailed information on the planned measures is set out in the follow-up report submitted by Latvia (p.71-75).

Main conclusions and recommendations to the plenary on progress made since the on-site visit in May 2011

Core Recommendations

13. As indicated above, the 45th MONEYVAL plenary during the discussion on the first follow-up report of Latvia came to the conclusion that the progress on the core Recommendations 5, 13 and SR.IV was achieved to a satisfactory level.

Key Recommendations

14. With regard to SR.III, the present Secretariat's analysis of the follow-up report provided by the authorities has shown that Latvia has further strengthen its legal framework for applying TFS as a result of adoption of the new legislation on sanctions. The effectiveness of this framework, however, could not be assessed as no assets have been frozen up to date either on foreign requests or designations at Latvia's own motion. The fact that the new powers which could potentially be used to apply asset freezing measures to EU internal terrorists have not been used in practice raises concerns. There is also no specific provision on procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities. Nonetheless, it would appear that the technical compliance with SR.III is now equivalent to largely compliant.

Other Recommendations

15. The authorities have rectified most of the shortcomings on many of the non-key and core Recommendations which is commendable, although the effectiveness of the measures taken in many instances could not be assessed due to the desk-based nature of the review.

Conclusion

16. **Since the on-site visit in May 2011, Latvia made notable progress in addressing many of the deficiencies identified in the 4th round MER. The most serious remaining concern on the lack of progress in relation to SR.III has been largely addressed with the adoption of the new legislation on sanctions.**
17. **It should be noted that Latvia will undergo its 5th round mutual evaluation in the second half of 2017 and it is assumed that many of the effectiveness issues which could not be fully tested within the scope of this desk-based analysis will be assessed during the upcoming evaluation. Overall, it is the view of the MONEYVAL Secretariat that Latvia has taken sufficient steps to be removed from the regular follow-up procedure.**

II. Review of the measures taken in relation to SR.III

Special Recommendation III – Freezing and confiscation of terrorist assets (rating PC)

Deficiencies

- *Within the context of UNSCR 1373, Latvia does not have a national mechanism to consider requests for freezing from other countries (outside the EU mechanisms) or to freeze the funds of EU internals (citizens or residents). No evidence that designation of EU internals have been converted into the Latvian legal framework;*
- *The scope of EU Regulation 881/2002 does not extend to funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or entities;*
- *Concerns over effectiveness of freezing system at the request of another party that relies on judicial proceedings;*
- *There is not any clear and publicly known procedure for de-listing and unfreezing;*
- *Lack of awareness in a part of DNFBP sector of the UN and EU lists raise effectiveness concerns;*
- *There is no specific national legislation to meet the requirements in relation to access to frozen funds for basic expenses and other purposes;*
- *National freezing system which has not yet been tested in practice relies only on judicial-based mechanism to ensure freezing of assets of designated persons;*

Recommended actions

- *Latvian legislation should provide clear procedures for freezing of funds and other assets held by listed EU-internals in all instances set forth by SR.III;*
- *The scope of SR.III related measures should be extended to cover funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or entities;*
- *Assess the effectiveness of the freezing system at the request of another country which relies on judicial procedures;*
- *Clarify what measures can be taken by authorities in cases of funds and other assets that are simply held by listed persons, without any transaction involved;*
- *Authorities should provide an effective and publicly known national procedure for the purposes of delisting and un-freezing in appropriate cases in a timely manner;*
- *Specific national legislation should be adopted to meet the requirements in relation on access to frozen funds for expenses and other purposes;*
- *A national mechanism should be put in place to consider freezing requests under UNSCR 1373 or by third country request that are outside the EU and NATO;*
- *The competence of all supervisory and control authorities on monitoring effectively the compliance of persons subject to the AML/CFT Law and imposing sanctions for failure to comply with the relevant requirements should be made clear in the AML/CFT Law;*
- *Take additional steps in order to raise the awareness on the obligations deriving from UNSCRs amongst DNFBP.*

Measures adopted and implemented

Deficiency No.1 – *Within the context of UNSCR 1373, Latvia does not have a national mechanism to consider requests for freezing from other countries (outside the EU mechanisms) or to freeze the funds of EU internals (citizens or residents). No evidence that designation of EU internals have been converted into the Latvian legal framework.*

18. In order to address the shortcomings on targeted financial sanctions the authorities have adopted the Law on International Sanctions and National Sanctions of the Republic of Latvia. The Law introduced a national mechanism to consider requests for freezing from other countries (outside the EU, UN and NATO member states) as stipulated in Section 3 of the Law on Sanctions and Section 63 of the amended AML/CFT law. The Cabinet of Ministers is responsible for deciding on the adoption of national sanctions, which may be proposed by the Minister of Foreign Affairs on the basis of requests made by foreign countries.

19. The new Law on sanctions and Regulation No 468 of the Cabinet of Ministers “Procedures for the Execution of the International and National Sanctions” give the authorities powers to impose national targeted financial sanctions (including to freeze funds of EU internals), in addition to the sanctions of international organizations implemented in Latvia. However, no EU internals have been designated by national sanctions to date.

Deficiency No.2 – *The scope of EU Regulation 881/2002 does not extend to funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or entities.*

20. The deficiency has been fully addressed with the adoption of the new EU Regulation 2016/363 amending the previous EU Regulation 881/2002 as well as through the amendments made to the AML/CFT law which now cover all forms of possession and control of funds or other assets belonging to designated persons or entities.

Deficiency No.3 – *Concerns over effectiveness of freezing system at the request of another party that relies on judicial proceedings.*

21. There have been no cases of asset freezing in Latvia belonging to designated persons/entities under UNSCR 1373 at the request of another country which relies on judicial proceedings to date. Therefore, the concerns of the 4th round evaluation team remain valid and should be addressed during the 5th round evaluation of Latvia.

Deficiency No.4 – *There is no any clear and publicly known procedure for de-listing and unfreezing.*

22. The new Law on Sanctions (Section 14 and 15) now provides a publicly known procedure for de-listing and unfreezing the funds or other assets of persons or entities which do not, or no longer meet the criteria for designation. The Law on Sanctions, however, does not have any specific provision on procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities who were inadvertently affected by a freezing mechanism (as per Criterion 6.6 (f)). The authorities claim that this issue would be addressed case by case by competent authorities. Up until now, there had not been any cases in Latvia requesting unfreezing in the context of SR.III.

Deficiency No.5 – *Lack of awareness in a part of DNFBP sector of the UN and EU lists raise effectiveness concerns.*

23. A specific outreach to DNFBPs including on TF issues has been provided by the authorities as underlined under R.24, paragraph 58 below.

Deficiency No.6 – *There is no specific national legislation to meet the requirements in relation to access to frozen funds for basic expenses and other purposes;*

24. The new Law on Sanctions now provides establishes the possibility of exceptions for release of frozen funds to ensure basic expenses and the Cabinet of Ministers Regulation “Procedures for the Execution of the International and National Sanctions” (Regulation No 468 of 22 July 2016) lays down the procedure how the exceptions are implemented.
25. Section 10 of the Law on Sanctions prescribes that if international or national sanctions provide for specific exceptional cases in execution of sanctions, the competent authority may take a decision to apply such exceptions to the subject of sanctions upon request by the subject of sanctions. The practice of the EU is to prescribe concrete exceptions in the each legal act for each sanctions regime. The authorities claim that this approach would be mirrored in the Cabinet of Ministers Regulation imposing national sanctions as well.
26. The detailed information on the procedure in relation to access to frozen funds for basic expenses and other purposes is provided under Section 10 of the Law on Sanctions and Chapter III of the Cabinet of Ministers Regulation No 468.

Deficiency No.7 – *National freezing system which has not yet been tested in practice relies only on judicial-based mechanism to ensure freezing of assets of designated persons.*

27. Indeed, the national freezing system of Latvia relies on judicial-based mechanism to ensure freezing of assets of designated persons indefinitely, as required by SR.III. According to the AML/CFT Law, funds belonging to a designated entity are considered to be proceeds of crime. Such funds can therefore be frozen indefinitely (in accordance with the criminal procedure law) by a court decision where LEAs must provide evidence that 1) person is the part of list and 2) person is owner of concrete assets. Overall, it appears, that Latvia has a sound framework for applying TFS pursuant to UNSCR 1373, however, this mechanism has not yet been tested in practice.

Recommended action No. 1 – *Latvian legislation should provide clear procedures for freezing of funds and other assets held by listed EU-internals in all instances set forth by SR.III.*

28. See Deficiency No.1 above.

Recommended action No. 2 – *The scope of SR.III related measures should be extended to cover funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or entities.*

29. See Deficiency No.2 above.

Recommended action No. 3 – *Assess the effectiveness of the freezing system at the request of another country which relies on judicial procedures.*

30. See Deficiency No.3 above.

Recommended action No. 4 – *Clarify what measures can be taken by authorities in cases of funds and other assets that are simply held by listed persons, without any transaction involved.*

31. As it follows from the Section 32 and Clause 19 to Section 1 of the AML/CFT Law the amendments made to the AML/CFT Law impose obligation for the reporting entities to freeze the funds irrespectively of whether they are involved in a transaction or not. The authorities also refer to the provisions of the Section 361 and Section 355(2) of the “Criminal Procedure Law” under which funds and other assets that are held by listed persons could be seized or arrested, should the Prosecution Office receive information on allegedly committed criminal offence.

Recommended action No. 5 – *Authorities should provide an effective and publicly known national procedure for the purposes of delisting and un-freezing in appropriate cases in a timely manner.*

32. See Deficiency No.4 above.

Recommended action No. 6 – *Specific national legislation should be adopted to meet the requirements in relation on access to frozen funds for expenses and other purposes.*

33. See Deficiency No.6 above.

Recommended action No. 7 – *A national mechanism should be put in place to consider freezing requests under UNSCR 1373 or by third country request that are outside the EU and NATO.*

34. See Deficiency No.1 above.

Recommended action No. 8 – *The competence of all supervisory and control authorities on monitoring effectively the compliance of persons subject to the AML/CFT Law and imposing sanctions for failure to comply with the relevant requirements should be made clear in the AML/CFT Law.*

35. It appears that this recommended action has been addressed by the relevant provisions in the AML/CFT Law (Articles 45 and 46) and Section 13 (Competent authorities) of the Law on Sanctions.

Recommended action No. 9 – *Take additional steps in order to raise the awareness on the obligations deriving from UNSCRs amongst DNFBP*

Overall conclusion

36. Overall, it has to be concluded that Latvia has further strengthen its legal framework for applying TFS with the adoption of the legislation on sanctions. The effectiveness of this framework, however, could not be assessed as no assets have been frozen on foreign requests or on designations at Latvia’s own motion up to date. The fact that the new powers which could potentially be used to apply asset freezing measures to EU internal terrorists have not been used in practice raises concerns. There is also no specific legal provision on procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities. Nonetheless, it would appear that the technical compliance with SR.III is now equivalent to largely compliant.

III. Review of the measures taken in relation to other Recommendations rated PC

Recommendation 9 – Third parties and introducers (rating PC)

Deficiencies

1. *A direct referral to the equivalent countries should be provided in legal act. The Latvian authorities should amend legislation to eliminate any doubt with regard to the reference in Article 29 (1) in relation to the Article 26 (4);*
2. *The AML/CFT Law does not provide unconditional and immediate access to the necessary information from the third party related to the CDD process;*
3. *Lack of provisions to obtain upon request, without delay, from third parties, the CDD documentation.*

Recommended actions

1. *Legislation should be amended to ensure that financial institutions shall be provided with information and documents from the third party “without delay” and without conditioning this process by the customers’ agreement;*
2. *Legislation should be amended to clearly reflect that no reliance can be placed on third party for ongoing monitoring.*

Measures adopted and implemented

37. *The first deficiency has been rectified through amendments made to the Section 29 (1) of the AML/CFT Law (came into force on 16.09.2014) which now contains a direct referral to the equivalent countries.*
38. *The second and the third deficiencies as well as the first recommended action have not been addressed by the authorities, given that the mandatory provisions regarding the necessary steps to satisfy the subject persons that copies of the relevant data will be made available from the third party upon request, without delay, are not fully addressed by Art 29 (4) of the AML/CFT Law. This requirement is limited by need to receive the consent of the customer which might delay the process.*
39. *The second recommended action has been fulfilled through amendments made to the AML/CFT Law (Section 29 (5)) which now provides that no reliance can be placed on third party for ongoing monitoring.*

Overall conclusion

40. *It would appear that one deficiency and one recommended action under R.9 have been fully addressed. However, the other two deficiencies and one recommended action are still pending.*

Recommendation 12 – DNFBP - R.5, 6, 8-11 (rating PC)

Deficiencies

1. *Lack of licensed real estate brokerage agents hinders effectiveness;*
2. *Uneven application of AML/CFT requirements across the entire field of organizers of lotteries and gambling houses;*
3. *Lack of awareness on the importance of customer identification across the dealers in precious metals & stones sector;*
4. *Lack of awareness of PEPs requirements for some DNFBP, especially the real estate and casinos.*

Recommended actions

1. *Latvia should amend legislation to ensure that all persons providing real estate services are registered and licensed so that the level of compliance on the proper application of the CDD*

measures and other AML/CFT requirements of both parties in a transaction could be monitored and supervised;

- 2. The Latvian authorities should ensure uniform application of AML/CFT requirements across the entire field of organisers of lotteries and gambling houses;*
- 3. Additional sector specific outreach is needed to the auditors, real estate, and tax advisor/accountancy sectors to explain in the AML/CFT requirements;*
- 4. Guidance and quick reference tools to assist reporting entities would also be helpful in getting entities to first remember and ultimately implement due diligence measures;*
- 5. Authorities should raise awareness on the importance of customer identification and verification with dealers in the precious metals/stones sector;*
- 6. Efforts should be made to integrate both the used and new automobile sectors into the AML/CFT regime, given the identified money laundering threat;*
- 7. The State Inspection for Heritage Protection's cooperation with the Ministry of Interior to register all cultural monuments should be encouraged and strengthened;*
- 8. Consider strengthening AML/CFT controls over Latvian Residency Law;*
- 9. Given the unique modalities of tax crimes with money laundering, the lack of specialized AML/CFT legal guidelines for tax consultants should be considered. Consideration should be given to creating an SRO for tax advisors, given the level of activity in the sector and recent inclusion into the AML/CFT obliged entity;*
- 10. The evaluators recommend conducting outreach to casinos and real estate sector to raise awareness of PEP;*
- 11. The Latvian authorities should enact legal provision to ensure a more stringent control on unlicensed internet gambling sites;*
- 12. The Latvian authorities should clarify the ability for authorities to ask obligors to hold records beyond five years or longer, as required by the FATF standard.*

Measures adopted and implemented

41. The Latvian authorities have taken initial steps to impose licensing requirements on real estate agents/brokers to improve the level of compliance on the proper application of the CDD measures and other AML/CFT requirements. However, the measures taken so far do not fully address the concerns raised by the evaluation team in the 4th MER with regard to the first deficiency and the first recommended action.
42. To address the second deficiency and the recommended action the authorities issued (in force since November 2014) special guidelines on application of the AML/CFT requirements in lotteries and gambling companies. The effectiveness of this measure, however, could not be assessed due to the desk-based nature of the review.
43. In order to address the third deficiency point and the fifth recommended action the authorities have taken measures to raise awareness among across the dealers in precious metals and stones sector on application of the CDD measures. Guidelines have been issued and training seminars organized. The effectiveness of this measure, however, could not be tested due to the desk-based nature of the review.
44. As above, some steps have been taken to conduct outreach to casinos and real estate sector to raise awareness of PEPs requirements (deficiency 4 and recommended action 10), the effectiveness of those, however, could not be tested.
45. As per recommended actions 3, 4, 6, 7 the authorities have taken a number of measures to conduct outreach and improve the level of application of the AML/CFT requirements in the DNFBP sector. The measures include creation of a specialised unit for DNFBPs supervision, organisation of regular seminars and trainings, development of sector-specific guidelines and introduction of amendments to the AML/CFT Law. Also, a special subgroup on DNFBPs was

established in October 2015 within the NRA project to assess the actual national ML/FT risks within the sector.

46. In order to address the recommended action 7 the authorities are in the process of developing information systems, including online links between the register of protected cultural monuments and the relevant information systems of the Ministry of Interior which should further improve cooperation.
47. In order to address the recommended action 8, the authorities have introduced procedures in the Immigration Law on regular provision of information to the FIU with regard to the persons who have applied for residence permits and amended the AML/CFT Law.
48. To address the recommended action 11, the authorities have introduced amendments to the relevant laws which prohibit making payments to unlicensed gambling company's account and oblige Internet service providers to restrict access to unlicensed gambling operator's webpage.
49. As per recommended action 12 the authorities amended the AML/CFT law which now stipulated that documents and information should be maintained for at least five years after the end of a business relationship. In certain cases, at the request of the FIU, this term may be extended. The outreach to LEAs on the new provision of the law has been conducted.

Overall conclusion

50. Overall, it would appear that the authorities have taken important steps to address the deficiencies under R.12, although the effectiveness of the measures taken in some instances could not be assessed due to the desk-based nature of the review. Nonetheless, it can be concluded that compliance with Recommendation 12 is now equivalent to largely compliant.

Recommendation 16 – DNFBP - R.13 - 15 & 21 (rating PC)

Deficiencies

- *Difficulties identified in distinguishing between UTRs (threshold based) and STRs, undermines criterion 13.3 in practice;*
- *The reporting obligation does not refer to funds that are proceeds of criminal offenses but to suspicion of laundering of proceeds;*
- *Reporting obligation not covering funds suspected to be linked or related to or to be used for terrorism, terrorist acts or by terrorist organizations;*
- *Deficiencies in the incrimination of TF might limit the reporting obligations;*
- *General lack of sector specific guidance and low notion of "suspicion";*
- *Closed list of indicators for suspicion limits the possibilities for reporting;*
- *Effectiveness concerns in connection to the unclear distinction between unusual transaction reports and suspicious transaction reports;*
- *Low level of reporting in general; no reports from real estate agents (effectiveness issue);*
- *No requirements for special attention to transaction with no apparent economic or lawful purpose;*
- *Not enough awareness of DNFBP on recognizing the high risk jurisdictions (effectiveness issue).*

Recommended actions

- *Awareness raising programs should be put in place to address the difficulties identified in distinguishing between UTRs (threshold based) and STRs;*
- *Actions under Recommendation 13 apply;*
- *Requirements for special attention to transaction with no apparent economic or lawful purpose should be implemented;*
- *Awareness programs should be available for DNFBP to recognise the high risk jurisdictions (effectiveness issue).*

51. The Latvian authorities have taken a number of measures since the previous evaluation to address the deficiencies revealed and recommendations made under R.16. In particular, a significant number of activities have been undertaken over the recent years, including trainings and seminars undertaken, sector specific guidelines and methodological materials issued in order to address the difficulties identified in distinguishing between UTRs and STRs throughout different sectors as well as to raise general awareness on reporting requirements and on recognising the high risk jurisdictions (in particular among DNFBP sector).
52. The AML/CFT Law has been amended to lay down the definition of terrorism financing in accordance with the international requirements and to extend the reporting obligation requirements on financing of terrorism to cover transfer funds that are obtained in any way at the disposal of a terrorist group or an individual terrorist. Additional efforts have been taken to raise awareness of the reporting entities to give more attention to transactions with no apparent economic or lawful purpose.

Overall conclusion

53. The authorities have clearly taken steps to address the deficiencies under R.16 in order to bring it to a satisfactory level of compliance. The effectiveness of implementation of the measures taken could not be adequately assessed due to the desk-based nature of the review.

Recommendation 17 – Sanctions (rating PC)

Deficiencies

- *The BoL has no sanctioning powers over natural persons; range of sanctions under the BoL act are not effective, proportionate and dissuasive;*
- *The MoT is not invested with adequate legal sanctioning powers;*
- *No sanctioning regime for unsupervised financial institutions;*
- *Limited effectiveness of the sanctioning regime (i.e. no sanctions on management of the supervised entities);*
- *No specific AML/CFT sanctioning regime for DNFBP;*
- *General sanctions of DNFBP are not dissuasive for AML/CFT violations;*
- *Low incidence of sanctions imposed in practice using general sanctioning regime (DNFBP).*

Recommended actions

- *Legal provisions should be amended in order to provide the BoL with adequate sanctioning powers over the natural persons;*
 - *The range of sanctions under the BoL act, should be broaden to become more effective, proportionate and dissuasive;*
 - *The MoT should be invested with adequate legal sanctioning powers or the supervision of the Latvian Post as money remitter should be entrusted to FCMC.*
-
54. Since the previous evaluation the authorities have clearly taken measures to increase the effectiveness of sanctioning regime especially with regard to the management of financial institutions. Administrative sanctions were applied against board members of a number of banks and the amount of fines imposed on banks have increased significantly during the recent years as legal and regulatory provisions concerning administrative sanctions have been amended in 2014 and 2016 to increase the amount of penalty for non-compliance with the AML/CFT requirements. Some improvements in effectiveness of the sanctioning regime have also been noted within the DNFBP sector.
 55. At the same time some deficiencies under R.17 have not yet been resolved. For example, the authorities have not yet decided on the most appropriate competent authority to become

supervisor for the cash collecting companies. The sanctioning power over natural persons has not yet been allocated within the Bank of Latvia. This is expected to be done through amendments in AML/CFT law upon implementation of EU 4th AML/CFT directive. The supervision over the post has not yet been entrusted to FCMC, however, the authorities stated that this is a planned measure for the near future.

Overall conclusion

56. Although measures are taken to increase the effectiveness of the sanctioning regime further steps are needed to address the remaining deficiencies.

Recommendation 21 – Special attention for higher risk countries (rating PC)

Deficiencies

- *No supervision on the implementation of the sanctioning mechanism for Latvian Post;*
- *No requirements for special attention to transaction without any apparent economic or lawful purpose for financial institutions that are not subject to FCMC supervision;*
- *The ECDD requirements for clients from countries that do not sufficiently apply FATF Recommendations still do not apply to financial institutions that are not subject to FCMC supervision, including without being limitative Latvian Posts.*

Recommended actions

- *The Latvian authorities should adopt legislation empowering the competent authorities to take countermeasures in relation to countries that do not apply or insufficiently apply FATF Recommendations;*
- *Regulation on ECDD should be issued to cover all financial institutions, not only the ones supervised by FCMC;*
- *The lists of countries with AML/CFT weaknesses in their systems should be updated in a timely fashion.*

Measures adopted and implemented

57. It appears that deficiencies identified under R.21 in the previous MER still remain pending as well as the recommended actions (except for the last recommended action). The major issue is the lack of requirements on ECDD (for higher-risk countries) and on special attention to transactions that have no apparent economic or lawful purpose for financial institutions that are not subject to FCMC supervision. The same issue relates to the requirement to apply counter measures to countries that do not apply or insufficiently apply FATF Recommendations.

Overall conclusion

58. It would appear that no progress has been achieved and the identified deficiencies/ recommended action points remain outstanding.

Recommendation 24 – DNFBP – regulation, supervision and monitoring (rating PC)

Deficiencies

- *On-site supervision performed by the SRS is weak;*
- *No procedures for off-site supervision performed by the SRS;*
- *Sanctions imposed in practice not sufficiently dissuasive, effective and proportionate;*
- *Weak supervision performed by the SROs;*
- *Confusion in performing supervisory powers between Council of Sworn Notaries and the FIU.*

Recommended actions

- *The evaluators encourage the SRS to increase the onsite supervision;*
- *The SRS should introduce clear distinction between procedures for off-site and on-site supervision;*
- *Authorities should consider implementing an AML/CFT specific dissuasive, effective and proportionate sanctioning regime for DNFBP;*
- *The supervision performed by SRO should be enhanced on AML/CFT issues;*
- *The Latvian authorities should issuing sector specific guidance for all DNFBP;*
- *Existing guidance for auditors and notaries should include grounds for suspicion for FT and ML cases;*
- *Similarly, as in the case of FIs, the Latvian authorities should issue guidance on TF indicators.*

Measures adopted and implemented

59. As mentioned above under paragraph 44, some improvements have been noted with regard to the number of inspections provided and sanctions applied within the DNFBP sector. The authorities also refer to a separate AML Department established within the SRS in 2013 to improve the effectiveness of the off-site and on-site supervision over DNFBPs.
60. Over the recent years, the authorities and SROs (in particular the SRS, CSNL and LGSI) issued a set of comprehensive sector specific guidance on meeting the requirements of the AML/CFT Law covering all DNFBPs. Also, a specific letter concerning various measures to prevent TF and a set of guidance documents (the key normative acts, information on the sanction lists, indicators and codes of suspicious transactions, guidelines for the detection of cases of TF, certain case studies that feature serious indications of being related to TF and other documents) were sent to all supervisory and control authorities and made publicly available on the FIU website.

Overall conclusion

61. Clearly, the authorities have undertaken a significant outreach to the DNFBP sector in order to further improve the regulation, supervision and monitoring of the sector. Given the more effectiveness nature of the deficiencies and recommended actions under R.24, it is assumed that the effectiveness of the measures taken will be assessed during the upcoming 5th round mutual evaluation of Latvia.

Recommendation 32 – Statistics (rating PC)

Deficiencies

- *Statistics do not contain sufficient information on the number of police/prosecution generated cases, FIU generated cases and autonomous laundering cases;*
- *Lack of detailed statistics on confiscations;*
- *Statistics received on confiscations from different authorities inconsistent;*
- *No statistics on STRs and UTRs;*
- *No statistics on the relation FIUs disseminations – LEA investigations/prosecutions/convictions are routinely maintained;*
- *No detailed statistics are available on the number of cases regarding the failure to comply with the obligation to declare and no statistics are available on information exchange with foreign counterparts regarding SR.IX;*
- *Insufficient scrutiny of the collected statistics in the light of assessing AML/CFT system as a whole;*
- *No comprehensive central database for MLA requests;*
- *No statistics on the average time of response for MLA requests;*
- *No statistics on time to reply to international requests under Recommendation 40.*

Recommended actions

- *In order to effectively assess the implementation of ML legal provisions, authorities should maintain and develop more comprehensive statistics in order to cover: underlying criminal offences, number of police/prosecution generated cases, FIU generated cases, self-laundering and third party laundering and autonomous laundering cases;*
- *The Latvian authorities should routinely maintain statistics on STRs resulting in prosecution and conviction for ML;*
- *Improving the system of maintained statistics to include the number of STRs and UTRs is recommended;*
- *The evaluation team encourages the Latvian authorities to keep comprehensive statistics on off-site supervision as well;*
- *The Latvian authorities are encouraged to review the effectiveness of the AML/CFT system as a whole on a regular basis and scrutinise the collected statistics in the light of the effectiveness;*
- *It is recommended to further exploit the Finance Sector Development Council and the Advisory Board of the FIU in the national risk assessment and in the analyses of the effectiveness of the AML/CFT system as a whole.*
- *Statistics on the average time of dealing with the foreign requests should be also kept by the Latvian authorities.*

Measures adopted and implemented

62. Having analysed the information provided by the authorities in the follow-up report it has to be concluded that since the previous MER, Latvia has taken a set of important measures to address the significant deficiencies identified throughout the R.32. Action plan was adopted by the authorities to improve the overall statistical system throughout different competent authorities. In 2014, the FIU's staffing was increased by 5 positions, including an IT specialist (leading information system analyst who has been working since 6 March 2014 and is responsible also for the accumulation of statistical information and computerisation of the analysis process) and a statistician. The ability to prepare the required statistical data is demonstrated by the existence of statistical tables in the statistical annex provided to the follow-up report.

63. Starting from 2012 the FIU established a special correspondence log to register and control the speed at which international responses are provided and received. Since January 2015 the international correspondence log has been integrated in the FIU's database. Also, in 2015 the authorities completed the "Infrastructure and services" project for the Prosecutor's Office of Latvia which enables electronic registration of criminal proceedings, court judgments and many other matters, and make it possible to trace and make statistical records from the date of the report in the FIU to the judgment and confiscation.

Overall conclusion

64. Overall, it would appear that the authorities have taken sufficient measures to address most of the deficiencies and bring the compliance with R.32 to a satisfactory level.

Recommendation 38 – MLA on confiscation and freezing (rating PC)

Deficiencies

- *Enforcement of foreign confiscation orders for property, other than instrumentalities and property obtained illegally is only available if confiscation is a penalty for the same offence in Latvia;*

- *It is unclear whether request for confiscation of property can extend to enforcement of confiscation of all proceeds of crime, intended instrumentalities and terrorist property due to deficiencies already identified;*
- *No provisions to meet the requirements of the essential criterion 38.4.*

Recommended actions

- *The Latvian authorities should take measures to ensure the enforcement of foreign confiscation orders for property, other than instrumentalities and property obtained illegally, in all cases;*
- *The Latvian authorities should maintain centralized annual statistics on all MLA requests, including requests relating to freezing, seizing and confiscation that are sent or received, relating to ML, the predicate offences and TF, including the nature of the request, whether it was granted or refused and the time required to respond;*
- *The Latvian authorities should consider establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes.*

Measures adopted and implemented

65. To address the deficiencies identified under R.38 the authorities have launched a new database – “Information system of judicial cooperation in criminal matters” which became operational since October 2013. Data registered in the system includes information about receiving, sending and progress of requests, as well as data on persons concerned by a request. The system also provides the possibility to collect statistical information. The authorities also reported that they are in the process of establishing an asset forfeiture fund and have to decide on the responsible ministry for establishing the asset forfeiture fund.
66. However, although the authorities reported that amendments have been provided to Criminal Procedure Law to ensure the enforcement of foreign confiscation orders for property, other than instrumentalities and property obtained illegally, in all cases, it appears that this deficiency has not been resolved. The current provision of the Criminal Procedure Law Section 791 para 1, still stipulates that the confiscation of property to be executed in Latvia shall be determined, if such confiscation has been imposed in a foreign state and if for such an offence property would be confiscated in Latvia.

Overall conclusion

67. Although the authorities have taken some measures to improve its compliance with R.38, the major deficiencies and the related recommended action appear to remain outstanding.

Special Recommendation VI – AML/CFT requirements for money/value transfer services (rating PC)

Deficiencies

- *Lack of a consolidated list of agents;*
- *Lack of complete customer verification and record keeping being conducted by the Latvian Post;*
- *The MoT lacks effective supervisory powers, authorities and resources to supervise the Post.*

Recommended actions

- *The Latvian authorities should maintain a consolidated and complete list of agents providing MVT services;*

- *The Latvian authorities should ensure that the complete customer identification and verification mechanisms are in place within the Latvian Post, and that adequate records are maintained for the appropriate period;*
- *Authorities should reconsider the oversight mechanisms in place for the Latvian Post's MVT services, and consider transferring the Latvian Post's MVT services in to the FCMC obliged entities, or expanding the legal remit and resources of the Ministry of Transport to conduct supervision.*

Measures adopted and implemented

68. The major concerns under SR.VI are related to the Latvian Post as money/value transfer services provider. In 2013, the authorities have amended the Law on Post and the internal acts of the Latvian Post to ensure that appropriate mechanisms of customer identification and verification are in place and that adequate records are being maintained. Also, as was mentioned above, following the recommended action given, the Latvian authorities have agreed to pass over the supervision of the Latvian Post to FCMC.
69. As for the consolidated list of agents providing MVT services, the authorities are of the view that this deficiency is addressed by the already existing legal provisions in the Law on payment services and electronic money (Section 10, para.1) and Licencing regulations of FCMC (No. 64, paragraphs 8.2.3 and 9.2.4).

Overall conclusion

70. Overall, some measures have already been taken to address the identified deficiencies; some measures are in the implementation stage.

Special Recommendation IX – Cross-border declaration and disclosure (rating PC)

Deficiencies

- *No provision to request and obtain further information in case of a false declaration/disclosure;*
- *Limited freezing capabilities of the Customs Authority;*
- *Low extend of practical enforcement on SR.IX measures in general (effectiveness issue).*

Recommended actions

- *Legal provisions should be adopted in order to allow Custom authorities to request and obtain further information in case of false declaration/disclosure;*
- *The Customs authority should increase its capacity to detect (such as a more appropriate risk matrix for performing random checks), freeze and sanction the non-declared amounts. Increasing the level of the administrative sanctions is recommended;*
- *In order to be able to evaluate the overall effectiveness of the system, the Latvian authorities should maintain more detailed statistics;*
- *The authorities are encouraged to initiate a thorough review of effectiveness SR.IX measures, including a risk assessment. That review should also aim in identifying grounds for establishment of an operational system to targeting illicit cash couriers;*
- *The Latvian authorities should pay more attention on the unusual cross-border movement of gold, precious metals or precious stones;*
- *The Latvian authorities should take steps to increase the awareness on the declaration of cash obligations for arriving and departing travellers by making SR.IX requirements at border point more visible.*

Measures adopted and implemented

71. It appears that the first technical deficiency under SR.IX still remain pending as no further legal amendments have been made since the last MER to enable the customs authorities to request and obtain information on the origin of currency or BNI and their intended use.
72. The other deficiencies and the recommended actions are more of an effectiveness nature. Given the information provided by the authorities, including statistics on the number cash declarations, the number of cases regarding the failure to comply with the obligation to declare cash on EU external borders, as well as the statistics on cases of detected cash by sniffer dogs, it would appear that the overall effectiveness of the cross-border declaration system and the capacity of the Customs has increased over the recent years. The authorities now actively use sniffer dogs to detect cash and additional efforts have been take to raise the awareness on the declaration of cash obligations for arriving and departing travellers.
73. In addition to that, in 2016 the level of sanctions for cash non-declaration or incomplete declaration was further increased. The new SRS internal regulations No 23 stipulates that criminal investigations shall be initiated and non-declared cash shall be detained and seized for future investigations in all detected cases. As an exception, cases can be treated as administrative offence if documents of cash origin are enclosed at the moment of infringement and there is no doubt of any illegal activities. During the year 2015 the National Customs Board in close cooperation with Tax Control Board of SRS also performed intensive physical controls on precious metals, mainly on gold export cargos from EU to third countries.
74. As for the overall assessment of the effectiveness of the system, this assessment is to be conducted by the authorities as a part of the national risk assessment.

Overall conclusion

75. It appears that the authorities have strengthened its cross-border declaration system over the recent years. However, given a more effectiveness nature of the deficiencies and recommended actions under SR.IX, it is assumed that the effectiveness of the measures taken will be assessed in full during the upcoming 5th round mutual evaluation of Latvia.

MONEYVAL Secretariat