



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

MONEYVAL(2014)1\_ANALYSIS

# Lithuania

## 1st Compliance report

31 March 2014

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# I. SECRETARIAT ANALYSIS

## FIRST COMPLIANCE REPORT

### 1. Introduction

#### *Evaluation of Lithuania under the fourth round*

1. MONEYVAL adopted the mutual evaluation report (MER) of Lithuania under the fourth round of evaluations at its 40th plenary meeting (3 - 7 December 2012). As a result of the 4th round evaluation process, Lithuania was rated Partially compliant (PC) on 19 Recommendations<sup>1</sup>, including on several core<sup>2</sup> and key<sup>3</sup> recommendations, as indicated in the table below:

Partially compliant (PC)	Non-compliant (NC)
<b>Core Recommendations</b> R.1 - Money laundering offence SR.II - Criminalisation of terrorist financing R.5- Customer due diligence R.13 – Suspicious transaction reporting SR.IV - Suspicious transaction reporting	<b>Core Recommendations</b>
<b>Key Recommendations</b> R.26 – The FIU R.35 - Conventions SR.I - Implementation of United Nations instruments SR.III - Freezing and confiscating terrorist assets	<b>Key Recommendations</b>
<b>Other Recommendations</b> R.6 - Politically exposed persons R.12 – DNFBPS – R.5,6,8-11 R.16 – DNFBPS – R.13-15&21 R.17 – Sanctions R.24 – Regulation, Supervision and monitoring R.31 - National co-operation R.33 - Legal persons SR.VIII - Non-profit organisations SR.IX - Cross Border Declaration & Disclosure	<b>Other Recommendations</b>

#### *Background information of the application of Compliance Enhancing Procedures in respect of Lithuania*

2. At its 40th plenary, MONEYVAL examined and adopted the 4th Round Evaluation Report on Lithuania<sup>4</sup>. It concluded that overall, there had been a lack of progress since the 3rd round. Moreover, with the exception of R.10 (rated LC), all recommendations listed in paragraph 48 item a) of the Rules of Procedures in force at that time, received a “PC” rating. MONEYVAL therefore decided in the context of its follow-up procedures to request Lithuania to provide a follow-up report in an expedited manner and also to apply compliance enhancing procedures.

<sup>1</sup> It should be pointed out that the FATF Recommendations were revised in 2012 and that there have been various changes, including their numbering. Therefore, all references to the FATF Recommendations in the present report concern the version of these standards before their revision in 2012.

<sup>2</sup> The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

<sup>3</sup> The key Recommendations as defined in the FATF procedures are R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III and SR.V.

<sup>4</sup> MONEYVAL(2012)29 available on [www.coe.int/MONEYVAL](http://www.coe.int/MONEYVAL).

3. MONEYVAL decided to apply step (ii) of the Compliance Enhancing Procedures (as the Rules of procedures provided at that time) given the significant deficiencies in the country's AML/CFT system, which have persisted since the previous evaluation report of 2006. Step (ii) of the applicable procedures envisaged *"the Chairman of MONEYVAL sending a letter with a copy to the Head of Delegation concerned to the Secretary General of the Council of Europe, drawing his/her attention to non-compliance by a MONEYVAL participating State with the reference documents"*.
4. As indicated by the MONEYVAL Chairman to the Secretary General of the Council of Europe in its letter dated 14 January 2013, the issues of particular concern related to 5 out of the 6 so-called "Core" FATF Recommendations of 2003 which were all rated "partially compliant" (PC).
5. Lithuania was required to submit its first 4th round follow report in an expedited manner in the first plenary of 2014. The Plenary had then agreed to the request of the authorities to consider delaying the submission of the first report until the Lithuanian presidency of the European Union was over (January-December 2013).
6. According to Rule 14 (3) para 9 of the text of the Rules of Procedure then in force, the Secretariat is required to prepare a written analysis on the basis of the information provided by the non-complying State and any other reliable sources of information, outlining the main areas of concern, the action taken by the non-complying State and a recommendation regarding the next step in the compliance enhancing procedures.
7. As a result of the decision taken by the Plenary and also of the letter of the Chairman of MONEYVAL addressed to the Secretary General of the Council of Europe, the main areas of concern which actually affected the decision to trigger the compliance enhancing procedures were issues related to those five core Recommendations rated PC, namely R1, 5 and 13 respectively SR II and SRIV.
8. Therefore, the analysis of the Secretariat related to Enhancing Compliance Procedure focuses on the progress achieved by Lithuania with respect to those recommendations.
9. Lithuania submitted its 4th round follow-up expedited report on 3<sup>rd</sup> of February 2014 for discussion at the 44th Plenary. The current analysis of the Secretariat is based on the information provided in this report.

## 2. Overview of Lithuania's progress and review of the measures taken to address identified deficiencies

### *Recommendation 1 - Money Laundering Offence*

10. On December 19, 2013, the Lithuanian Parliament adopted Law No. XII-702 amending the Criminal Code. As the authorities informed in their follow-up report, the amendments have been made in the light of the MONEYVAL recommendations.

11. The Law provides for a new version of Article 216<sup>5</sup> on money laundering. The amended Article 216 extends the list of activities which are punishable as money laundering. In particular, it includes **acquisition, possession, use of, transfer to another person** or any other **conversion of property**, knowing that it has been obtained by criminal means, if it is committed with a purpose of concealing

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<sup>5</sup> LAW NO. XII-702 AMENDING THE CRIMINAL CODE (Unofficial translation into English):

#### **Article 216 of the Criminal Code, Legalisation of Property Obtained by Criminal Means**

1. A person who, seeking to conceal or legalise the property of his own or another person while being aware that it has been obtained by criminal means, acquires, possesses, uses, transfers it to other persons, performs financial operations with this property, enters into transactions, uses it in economic, commercial activities, otherwise converts [transforms] it or makes a false declaration that it has been obtained lawfully, also a person who, conceals the true nature, source, location, disposition, movement or ownership of or rights with respect to his or another person's property, while being aware that such property has been obtained by criminal means, shall be punished by imprisonment for a term of up to seven years.

A legal entity shall also be held liable for the acts provided for in this Article.

or legalising the property of his own or another person. In addition, it criminalizes **the concealment** of the true nature, source, location, disposition, movement or ownership of or rights with respect to his or another person's property, knowing that such property has been obtained by criminal means.

12. The Law also introduces new article 224/1<sup>6</sup> which provides for a definition of property in respect of Article 216. It prescribes that “*property obtained by criminal means*” is a property of every kind which has been directly or indirectly obtained from a criminal offence.

13. The Article 189 has remained unchanged. The Law entered into force as of January 8<sup>th</sup>, 2014.

14. The authorities consider that with these amendments the Criminal Code, in principle, is in conformity with international requirements related to the money laundering offence definition.

15. In the context of this desk review, some comments should be made related to the compliance of the new provision with the standards, as follows:

- the conversion or transfer of property for the **purpose of helping another to evade the legal consequences of his action** does not appear to be covered. The only purpose that is considered by the criminalization is that of “*seeking to conceal or legalise the property of his own or another person*” which is narrower than the purposes envisaged by the Vienna and Palermo Conventions. It should be noted that the Lithuanian authorities have indicated during the Plenary that in their view, the purpose of “*helping any person (...) to evade the legal consequences of his or her action*” is largely covered by the wording “*seeking to conceal or to legalise(legitimize) the property of his own or another person*”. They consider that the legislation deals with a similar phenomenon, but targets another aspect of it – “*what and for what purpose is being done with the assets*” rather than “*why it is done/what is the motivation behind*”. If somebody wanted to help another person he/she will try either to hide his assets, or he will try to give them a legitimate appearance, and thus there are almost no situations that would not be covered by this wording. Furthermore, the authorities expressed their concern not to endanger the positive jurisprudence on the money laundering offence (based on the previous version of article 216 of the CC) which was starting to build up in recent years. This led them to keep the part of the previous wording of Article 216 on the special purpose of the money laundering activities unchanged.
- **disguising** of the true nature, source, location, disposition, movement, or ownership of or rights with respect to property, is not expressly provided. There are doubts as to whether the material elements of the ML offence as defined in the current version apply to disguise. The unofficial translated version of the new Article 216 that has been provided to the Secretariat contains modalities which might cover, at least partially, the scope of “disguising” (i.e. “*otherwise converts [transforms] it or make a false declaration*”). It is difficult to finally conclude on this on the basis of a desk review, as the different semantic issues would need to be clarified within the context of discussions with practitioners.  
The Lithuanian authorities have mentioned in this context that both the word “concealment” and “disguise”, which are used in the Vienna and Palermo Conventions, are covered by one word “*slėpti*” (in Lithuanian) of Article 216 of the Criminal Code (translated as “also a person who conceals”). The word “slėpti” in Lithuanian has a very broad scope and meaning<sup>7</sup>. Therefore, the

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<sup>6</sup> Article 224-1. Interpretation of Concepts

Property obtained by criminal means provided for in Article 216 of this Chapter is a property of every kind, which has been directly or indirectly obtained from a criminal offence.

<sup>7</sup> The Lithuanian – English dictionary sets out that the verb “slėpti” (in Lithuanian) means: to hide, to conceal, to stash, to dissemble, to secrete, to hoard, to harbour, to cloak, to bury, to shroud, to mask, to disguise, to screen, to keep, ie. it includes both “to conceal” and “to disguise”. The text of the Article 216 also utilizes word “nuslėpti” (translated as “a person, seeking to conceal”), which has these meanings according to the Lithuanian – English dictionary: to belie, to conceal, to suppress (information), to withhold, to smother, to whitewash, to disguise, ie. it again includes both “to conceal” and “to disguise”. Alternatively, English – Lithuanian dictionary provides for such meanings of word “disguise” (noun): maskavimas, slėpimas, persirengimas, where “slėpimas” is a noun deriving from a verb “slėpti”. It also translates “disguise” (verb) as: persirengti (to change clothes), maskuoti (to mask), nuslėpti. Even if we take alternative word in Lithuanian “maskuoti” (to mask), the

Lithuanian authorities are convinced that the word “slėpti” (“nuslėpti”) would fully cover both “concealment” and “disguise”, as required by the Vienna and Palermo Conventions.

- **Acquisition, possession and use** of proceeds are covered by the new Article 216 only if these activities are committed seeking to conceal or legalise the property of his own or another person. This criminalization is narrower than that envisaged by the Conventions which do not provide any purposive elements for these activities.

As long as the provisions of Article 189 of the CC have remained unchanged it seems to be indeed the legislator’s intention to narrow the scope of the ML offence committed through acquisition, possession and use in comparison to the scope of the international standards at this point.

The indicated jurisprudence (i.e. the Supreme Court in its ruling of 2012 April 17 in criminal case No. 2K-7-96/2012 and ruling of 2012 December 18 in criminal case No. 2K-636/2012 ) in respect of the previous Article 216 and of Article 189 of the CC reflects very clearly that the understanding of the ML offence, when it is committed through acquisition, possession and use, is as an offence characterized by a special purpose which is illegitimate by itself and should be considered every time when a ML offence has to be prosecuted.

It seems that this reasoning has influenced also the recent amendment of the CC.

The Lithuanian authorities have indicated that during the drafting of amendments to the Criminal Code, the academics and practitioners raised serious doubts on the proportionality of attributing mere acquisition, possession or use of proceeds of any criminal offence to money laundering. They argued, for instance, that mere acquisition, possession or use of proceeds of particular predicate offence cannot be punishable by more severe sanctions than the predicate offence from which these proceeds originated (e. g. theft and handling of stolen items). Therefore it was agreed that acquisition, possession and use of proceeds shall be considered as money laundering only when they are committed with a special purpose of seeking to conceal or legalise the property of his own or another person (following the established jurisprudence of the Supreme Court as mentioned above). Article 189 of the Criminal Code remained unchanged as they considered that acquisition, use of or transfer of the proceeds without this special purpose would be covered by this article.

16. Reference was made to a number of court decisions adopted in last two years, clarifying the interpretation adopted by the judges of different levels of jurisdiction of issues related to the prerequisite of a conviction for the predicate offence, the purposive element as an essential element of distinction between the ML offence and the offence provided by Article 189 of the CC, the possibility to infer the mental element of ML offence from objective factual circumstances.

17. The issue of the need for a conviction related to the predicate offence was tackled at the level of the Court of Appeal. According to the quoted judgment, the conclusion that property has been obtained by criminal means is not dependent on a conviction in respect of the criminal offence. This judgment was issued on the 5th of July 2013. It remains unclear whether this is a final judgment.

18. Commending the importance of these steps in the field of jurisprudence, the Secretariat is of the opinion that an isolated decision is not enough to eliminate the concerns expressed by the evaluators of the third and fourth round who have considered a period of more than 10 years of jurisprudence in which no indictment for autonomous ML has been issued. As long as the interpretation contained by this type of decision is not binding for further court decisions related to this matter (and it is not) the signs of an essential change of the jurisprudence should be much more consistent than a single judgment.

19. No other information has been provided about additional initiatives taken to support the development of appropriate case-law on the autonomy of the ML offence.

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Lithuanian – Lithuanian dictionary provides for such meanings of a verb “maskuoti”: slėpti po kauke (to hide behind the mask); daryti nepastebimą (to make invisible), slėpti (to hide); slėpti tikruosius ketinimus ar veiksmus (to hide/mask its real intentions or actions). All of these meanings are explained by using the same word “slėpti”.

20. The deficiency related to uncertainties as to whether the laundering offence actually extends to any type of property that directly or indirectly represents the proceeds of crime, has been addressed. The new Article 224/1 explicitly covers these two categories of property.

21. Regarding the effectiveness, the statistics provided contain data related to the investigations, prosecutions and convictions as follows:

	Cases investigated	Cases prosecuted	Convictions (first instance)	Convictions (final)
2011	34(18)*	7	3	1
2012	29(15)*	8	2	0
2013	56(20)*	12	4	1
<b>TOTAL</b>	<b>119(53)*</b>	<b>27</b>	<b>9</b>	<b>2</b>

22. A comparative sight of the figures for the period 2008-2010 is illustrative of the trend in the last years.

	Cases investigated	Cases prosecuted	Convictions (final)
2008	11	2	1
2009	14	2	1
2010	37	2	1
<b>TOTAL</b>	<b>62</b>	<b>6</b>	<b>3</b>

23. To conclude on the awaited developments in this area, the nature of the prosecuted cases and the main reasons for closing the investigations should be scrutinised, but at this stage there is no information in this regard.

### ***Special Recommendation II - Criminalise terrorist financing***

24. Lithuania has been a party to the 1999 TF Convention since 2003.

25. The third round report rated Lithuania partially compliant with SR II. At that time, the criminalisation of FT resulted from a combination of article 250 CC on the commission and preparation of a terrorist act and of ancillary offences such as Article 21 CC on the arrangement to commit a crime. The report pointed to: the fact that this approach was, per se, contrary to the methodology and the FATF's Interpretative Note to SR.II; the excessively narrow definition of a terrorist act (mostly defined by reference to the use of explosives), to the absence of a clear reference to the "financing" and to several other elements missing in the Lithuanian criminalisation.

26. At the time of the 4th round report, Lithuania did not amend Article 250 CC to reflect the various requirements of Article 2 of the convention. As a result, the criminalisation has continued to be affected by many loopholes. In consequence SR.II has been considered one of the issues of particular concern when the compliance enhancing procedure has been started.

27. On July 2, 2013 the Lithuanian Parliament adopted Law No. XII-497 amending the Criminal Code. In particular, the Law introduces a new Article 250/4 which explicitly criminalizes financing and support of terrorism as follows:

*1. A person who directly or indirectly collects, holds or provides for funds or other property or rendered other material support to other person, seeking or with knowledge that this property, support or part of it should be used to commit terrorist offence or offences linked to terrorism or to support one or several terrorists, shall be punishable by imprisonment for a term of up to 10 years.*

*2. A legal entity shall also be held liable for the acts provided for in this Article.*

28. In addition, the Lithuanian authorities have informed that the Law has also been comprehensively reviewed and modifications included, improvements made to the elements of terrorist offences, the introduction of new offences of public incitement to terrorism, recruitment for terrorism, training of terrorists, threatening to commit a terrorist offence, of definitions of "terrorist offences" and "offences linked to terrorism", etc. The Law entered into force on July 13, 2013. Except



for the English version of Article 250/4, the relevant texts have not been provided by the Lithuanian authorities.

29. The authorities have appreciated that the elements of the new criminal offence are in full conformity with requirements of International Convention for the Suppression of the Financing of Terrorism and they follow the recommendations of MONEYVAL.

30. In the context of this desk review some comments are made as follows:

- The information received was insufficient to assess if the funds are fully covered by the new offence
- There is no information about the new definitions of “terrorist offences” and “offences linked to terrorism” and in consequence it was impossible to understand if the offences within the scope of and as defined in one of the treaties listed in the annex to the TF Convention are covered. It was also impossible to compare the scope of the new offence with Article 2 para 1(b) of the TF Convention.
- There are no express provisions within the content of the new offence related to the financing of a terrorist organization.
- The new TF offence does not require that the funds or other property were actually used to carry out or attempt a terrorist act(s) or be linked to a specific terrorist act(s).
- Attempting to commit the offence provided by the new Article 250-4 is punishable according to the general rules of the CC
- There is not enough information provided by the Lithuanian authorities to assess if the terrorist financing offence should apply, regardless of whether the person alleged to have committed the offence(s) is in the same country or a different country from the one in which the terrorist(s)/ terrorist organisation(s) is located or the terrorist act(s) occurred/will occur.

31. Regarding the issue that knowledge can be inferred from objective factual circumstances, the Lithuanian authorities have indicated a court decision issued by the Supreme Court (criminal case No. 2K-7-96/2012 ) which provides that knowledge can be inferred from objective factual circumstances.

32. It would be welcome to see more examples from jurisprudence (not necessarily related to the TF offence) in order to be satisfied that the possibility to infer the mental element from objective factual circumstances is constantly accepted in practice. Furthermore, additional initiatives to disseminate this understanding of the law would be very welcome to support the development of appropriate case-law on this matter.

33. It is also worth mentioning that on 25<sup>th</sup> November 2013 , the President of the Republic of Lithuania has submitted to the Parliament a draft law for the ratification of the Council of Europe Convention on the Prevention of Terrorism. The draft law is now under discussion in the relevant committees of the Parliament and it is expected to be adopted soon.

34. It is clear that by adopting an autonomous offence of financing of terrorism, Lithuania has made an important step forward to address deficiencies related to SR II.

35. Whether the new offence of TF fully meets the requirements of the international standards remains to be assessed on the basis of additional information to be provided by Lithuania.

#### ***Recommendations 5, 13, Special Recommendation IV***

36. The 4<sup>th</sup> round MER identified important deficiencies related to CDD measures and the reporting system. The Lithuanian authorities have informed that when the 4th MER of Lithuania was presented to the Government, three AML/CFT major measures were immediately included in the Plan of Government on Fight against Shadow Economy.

37. One of them was to prepare draft laws improving the national AML/CFT legal system according to the recommendations of MONEYVAL and present it to the Parliament. Hence, as the Lithuanian authorities have reported, amendments of AML/CFT Law were drafted by the FIU, aimed to eliminate identified deficiencies related to: R5, 6, 10, 11, 12, 13, 16, 26 SR IV, SR V, and IX. After

a coordination process involving all responsible institutions, the amendments to the AML/CFT draft Law were provided to Parliament by the Government on 30.12.2013 to consider it urgently. The text was adopted by Parliament in the first reading in March 2013 and is expected to be finally adopted on 15<sup>th</sup> of April 2014.

38. No other measures taken to make the reporting regime more effective in respect of various business sectors concerned under the Recommendation 5 have been reported.

### **3. Overall conclusions and next steps**

39. Since the adoption of the 4<sup>th</sup> MER Lithuania has taken a number of essential measures to address the issues of concern related to the Core Recommendations.

40. Despite the fact that the new criminalization of ML and TF seems to be broadly in line with the international standards a number of technical issues related to the constitutive elements of the offences and the scope of the new wordings are still questionable.

41. As regards the core issues of CDD measures and the reporting system, work appears to be in progress though the deficiencies identified cannot be considered as having been addressed pending the enactment of legislation and subject to a thorough review of the adopted legislation to confirm that the measures taken adequately address the concerns of the evaluation team.

42. Therefore, with respect to the application of Compliance Enhancing Procedures, the Plenary decided to maintain Lithuania under these Procedures, and to require the authorities to report back on this issue at the 45<sup>th</sup> plenary in September 2014. No other additional steps are proposed to be applied at this stage.

43. With respect to the 4<sup>th</sup> round follow-up procedures to which Lithuania is subject:

- According to the most recent information provided to the Secretariat by the Lithuanian authorities, on 18<sup>th</sup> of March, the draft Law containing the amendments to the AML/CFT Law passed the 1<sup>st</sup> hearing in the Parliament with no votes against. Now the draft Law will be considered by the Parliament's National Security Committee and is expected to be adopted on 15<sup>th</sup> of April. As underlined above, this draft law is aimed at addressing the identified deficiencies related to: R5, 6, 10, 11, 12, 13, 16, 26, SR IV, SR V, and IX. After the adoption of the Law a thorough assessment of the implementation of the standards will need to be done by the Secretariat to see whether the changes implement satisfactorily the recommendations of the MER.
- Based on the information received, the other measures taken by Lithuania to remedy deficiencies underlined by the 4<sup>th</sup> MER do not appear to raise concerns about the progress made by the country, though additional information could be necessary on some of the issues.
- Lithuania is expected to request exiting the follow-up process within 3 years after the adoption of the MER (i.e. by December 2015), and if regular follow-up would have been applied it should have reported 2 years after the adoption of the MER (ie. December 2014).

44. The Plenary noted the progress achieved so far and invited Lithuania to provide an updating report at its next plenary meeting (45<sup>th</sup> plenary, September 2014), including additional detailed information on all the recommendations that have not yet been addressed.

MONEYVAL Secretariat