



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

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# Lithuania

## 2<sup>nd</sup> Compliance report

19 September 2014

Lithuania is a member of MONEYVAL. This compliance report was adopted at MONEYVAL's 45<sup>th</sup> Plenary Meeting (Strasbourg, 15–19 September 2014). For further information, please refer to MONEYVAL website: <http://www.coe.int/moneyval>.

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## SECOND COMPLIANCE REPORT

### SECRETARIAT ANALYSIS

#### I. Introduction

##### *Evaluation of Lithuania under the fourth follow-up round*

1. MONEYVAL adopted the 4<sup>th</sup> round mutual evaluation report (MER) of Lithuania at its 40<sup>th</sup> plenary meeting (3 -7 December 2012). As a result of the 4<sup>th</sup> 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> None
<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> None
<b>Other Recommendations</b> 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> None

2. Upon adoption of the report, MONEYVAL concluded that overall, there had been a lack of progress since the 3<sup>rd</sup> round. It was decided that Lithuania should report under regular follow-up in an expedited manner (by April 2014) and that, in addition, compliance enhancing procedures would be applied, as additional pressure measures, at step (ii).<sup>4</sup>

##### *Application of Compliance Enhancing Procedures in respect of Lithuania*

3. Lithuania was required to report back under step (ii) of the Compliance Enhancing Procedures given that significant deficiencies in the country's AML/CFT system had persisted since the previous evaluation report of 2006. The issues of particular concern, as set out in the letter of the Chairman addressed to the Secretary General of the Council of Europe,

<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> Step (ii) of the procedures in force at that time 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".

included 5 out of the 6 so-called core FATF Recommendations (R1, SR.II, R.5, R13 and SR.IV).

*First (expedited) follow-up report under the 4<sup>th</sup> round and first compliance report (31<sup>st</sup> March 2014)*

4. Lithuania reported back under MONEYVAL's Rules of Procedure at MONEYVAL's 4<sup>th</sup> plenary meeting in April 2014, providing updated information on measures taken to address the identified deficiencies. The information provided served also as a basis for the Secretariat analysis for the purpose of the review of progress under the compliance enhancing procedures.<sup>5</sup>
5. MONEYVAL concluded at that Plenary that Lithuania had taken a number of essential measures to address the issues of concern. As regards the regular follow-up process, Lithuania is expected to request exiting the regular follow-up process within 3 years from adoption of the mutual evaluation report (i.e. by December 2015).
6. MONEYVAL discussed the progress made by Lithuania and especially developments in respect of the core recommendations. The new criminalisation of ML and TF was considered to be broadly in line with the international standards. Regarding the other issues of particular concern, namely R.5, R.13 and SR.IV, the Plenary took note of the draft legislation, which was pending adoption before Parliament. Considering the developments underway, it decided to maintain Lithuania at step 1 of the CEPs (Rules of Procedure as revised) and invited it to provide a further interim progress report at its 45<sup>th</sup> Plenary meeting in September 2014, to be satisfied that progress on the deficiencies identified remained on track.
7. Lithuania submitted its second compliance report on 1 August 2014 for discussion at the 45<sup>th</sup> MONEYVAL Plenary. According to Rule 14(3) § 9 of the Rules of Procedure the Secretariat shall 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 make a recommendation regarding the next step in the compliance enhancing procedures. In preparing this analysis, the secretariat has taken into consideration the detailed report on progress and related annexes provided by Lithuania. It should be noted that effectiveness aspects could be taken into account only through consideration of data and information provided by the authorities and as such, not all effectiveness aspects can be covered. Thus, this paper does not form a definite opinion on the level of implementation of the standards, as this could only be objectively and thoroughly undertaken through a verification of the information received in the context of an on-site visit.

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

8. This section summarises the measures taken by Lithuania since the adoption of the first compliance report (31 March 2014) and includes updated information reported by the authorities. The following developments have occurred since February 2014:
  - The law on amendments to the AML/CFT Law was adopted on 15 May 2014. Most notable changes relate to the STR reporting system, CDD obligations, and record keeping. A meeting has been organised with financial institutions by the Bank of Lithuania and the FIU in order to discuss the implementation of the new requirements, and others are scheduled later in 2014;
  - Changes to the FIU's structure were implemented, involving a re-organisation into an autonomous Money Laundering Prevention Board, granting decision-making and signature rights to the Head of the Board;

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<sup>5</sup> See MONEYVAL(2014)11 at [http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL\(2014\)11\\_LTH\\_1CEPs.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/Compliance/MONEYVAL(2014)11_LTH_1CEPs.pdf)

- The national risk assessment process has started and is expected to be concluded in 2015;
- On 13 March 2014, the parliament adopted the Law for the ratification of the Council of Europe Convention on the Prevention of Terrorism (in force as of 1 September 2014); and
- Instructions on the proper implementation of international sanctions in the regulatory field of the Lithuanian FIU have been adopted on 24 February 2014.

#### *Legal system and related institutional measures*

9. **Recommendation 1 (Money Laundering Offence).** As reported previously, Lithuania amended its Criminal Code in December 2013, introducing several changes which are relevant in the context of compliance with R.1 (article 216 – Legalisation of property obtained by criminal means; article 224 – defining property obtained by criminal means) and which is in force from 8 February 2014. The reader is thus referred to the secretariat’s analysis in the first compliance report, which concluded that the large majority of deficiencies identified appeared to be addressed. Considering the recent entry into force of the new provision, it is too early to verify whether the changes have been confirmed by judicial practice. The reported information relating to ML investigations, prosecutions, convictions and penalties, including the updated data (for the period 2012-2013), continues to call into question the effectiveness of the implementation of the ML offence. While the number of cases investigated has increased significantly in 2013, the number of cases prosecuted and convictions achieved cannot still be considered to represent effective implementation of R.1, particularly when taking into account other contextual factors, as set out in the MER. Lithuania needs to provide more contextual information under the regular follow-up process in order for it to demonstrate that effectiveness of the implementation has improved sufficiently.

	Cases investigated	Cases prosecuted	Convictions (first instance)	Convictions (final)
2008	11	2		1
2009	14	2		1
2010	37	2		1
2011	34(18)*	7	3	1
2012	29(15)*	8	2	0
2013	56(20)*	12	4	1

10. **Special Recommendation II (Criminalisation of TF).** The reader is referred to the secretariat’s analysis in the first compliance report, analysing the changes introduced by Law No. XII-497 amending the Criminal Code (dated 2 July 2013) and the new article 250/4<sup>6</sup> criminalising TF. The authorities have additionally provided other relevant provisions of the Criminal Code (e.g. article 250 (acts of terrorism) and new article 252(1) defining “terrorist crimes”, “crimes linked to terrorist activities” and “terrorist purpose”). The changes introduced substantially improve Lithuania’s compliance with SR.II, though it appears that some deficiencies persist. For instance, it remains yet to be confirmed whether the term “funds” would be interpreted consistent with the definition in the International Convention for the Suppression of Terrorist Financing (the Terrorist Financing Convention).

11. The financing of a terrorist organisation does not appear to be fully covered. The Lithuanian authorities have indicated that Article 250/4 of the CC covers also the financing of a terrorist organisation as far as these provisions are referring to those who provide funds or other

<sup>6</sup> Article 250/4 CC: “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.”

property or render 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. The secretariat considers that according to the relevant provisions of the CC (art. 250/4 and following), the funding of a terrorist organisation is conditioned by a particular mental element related to the commission of an offence (i.e. terrorist offence or offences linked to terrorism) and thus, the simple funding of a terrorist organisation, in the absence of the particular purposes set out in Article 250/4, is not criminalised. It is also considered that the funding of “several terrorist” instead of a “terrorist organisation” is not in line with the international standards.

#### *Preventive measures*

12. The mutual evaluation identified important deficiencies related to the implementation of CDD requirements and the reporting system together with a number of effectiveness concerns. Since the first compliance report, Lithuania adopted amendments to the AML/CFT Law (dated 15 May 2014) aimed at addressing the recommendations of the 4<sup>th</sup> round evaluation report.
13. **Recommendation 5.** Lithuania has taken action to resolve the technical deficiencies that were identified in the MER by enacting amendments to article 9 (Customers and beneficial owner’s due diligence) and 19 (Duties of Financial institutions and other entities) of the AML/CFT Law.
14. The following requirements have been introduced or revised:
  - Financial institutions and other entities are now required during the establishment of the identity of customers and beneficial owners to request from them the documents and other data which would enable them to understand the ownership and control structure of the customer and the nature of the business (article 9(6));
  - Insurance companies and brokerage firms are now required to establish that in all cases the identity of the beneficial owner when paying the amount or when the beneficiary states wish to avail himself of the rights provided for in the insurance certificate to receive the insurance benefit (article 9(3));
  - On-going monitoring covers in all cases the source of funds (article 9(9));
  - Documents or information collected during CDD from customers and beneficial owners should be regularly reviewed and kept up to date (article 9(10));
  - When the financial institutions are unable to complete CDD (i.e. lack of data proving identity, lack of complete data, or incorrect data submitted, or if there is reluctance to provide information necessary for identification or if the identity of the beneficial owner is concealed or if there is reluctance to present the information necessary for the identification of the beneficial owner; or the data is insufficient or incorrect, [...]) financial institutions are prohibited to conclude business relationships and perform transactions. They should consider in such cases the ML and TF risks and inform immediately the FIU (article 9(11)); and
  - FI are required to re-evaluate the customer risk and upon the determination that they pose a serious risk of ML and/or TF, they should apply enhanced CDD when the law comes into force (article 9(15)).
15. Amended article 19 requires obliged entities to establish internal control procedures regarding the application of the RB that must be consistent with the specified guidelines issued by competent authorities. However, no updated information has been provided in relation to instructions issued or updated by those authorities since the changes introduced in the law. The National Bank pointed out, in this context, to the existing National Bank Resolution covering AML/CFT guidelines (including risk based aspects) issued in May 2008 that is in force.

16. Finally, there is no information suggesting that the effectiveness of implementation has been enhanced, though this is difficult to confirm through a paper based, off-site desk review.
17. **Recommendation 13 & Special Recommendation IV.** The main weaknesses of the reporting system in Lithuania at the time of the 4<sup>th</sup> MER were related firstly to the limited scope of the reporting obligation and secondly to the lack of consistency and clarity of the rules on the basis of which unusual and suspicious transactions and operations should be reported. To reach this conclusion, the evaluators of the 4<sup>th</sup> round have considered the legal framework established through the AML Law and Government Resolution No 677<sup>7</sup> on the basis of Article 14 of the AML Law. Serious effectiveness issues were also raised by the evaluators. The 4<sup>th</sup> round MER has recommended to review the reporting obligation “so as to ensure that the reporting duties refer to situations where one suspects or has reasonable grounds to suspect that funds a) are the proceeds of a criminal activity or b) that they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by a terrorist organisation or those who finance terrorism”. It also recommended reviewing the complex arrangements and risks of inconsistencies in relation to the reporting of unusual and suspicious transactions. Additional measures were also required to raise awareness of reporting entities and address under-reporting of certain sectors.
18. Lithuania reported having re-organised the reporting regime. Article 14 of the AML/CFT Law has been modified and covers exclusively the reporting of suspicious monetary operations and transactions. A separate article 14(1) covers now complex or unusually large transactions and unusual transactions. The FIU has been empowered to approve the criteria for identifying suspicious operations and transactions, a task previously undertaken through Government resolution.
19. Article 2(9) of the AML/CFT Law was also modified and defines “suspicious monetary operation or transaction” as a *monetary operation or transaction performed with the property, which is suspected, directly or indirectly obtained from the criminal activity or participation in such an activity and/or is related to terrorist financing*. A “monetary operation”, is defined, according to Article 2(16) of the AML/CFT Law, which has remained unchanged, as “*any payment, transfer or receipt of money, other than payments to state and municipal institutions, other budgetary institutions, the Bank of Lithuania, state or municipal funds, diplomatic representative or consular offices of foreign countries or settlement with these entities*.” While “monetary operation” is defined in the AML/CFT law, “transaction” is defined in the Civil Code as “*the actions of persons intended to create, modify or extinguish civil rights and duties*” (Article 1.63 Civil Code). They have mentioned that this is unanimously accepted by the practitioners as the only definition of the concept of “transaction” in Lithuanian legal system, applicable also in the field of AML/CFT Law.
20. It should be noted that the definition contained in article 2(9) refers only to property directly or indirectly **obtained** from the criminal activity or participation in such an activity. It is not clear if the property **derived from** criminal activities would be covered. The authorities have explained that both concepts are covered by the word “*gautas*”. This matter can only be verified in the context of an on-site assessment.
21. The definition of “property” is in line with the scope of “funds” as defined in the FATF Glossary. It was also noticed that there are some minor remaining inconsistencies in the law; for instance, within Article 14, there are provisions referring to “funds” and “property” (i.e. Article 14 § 4, 7) despite the fact that the definition of “property” provided by Article 2 (23) comprises also “funds”.

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<sup>7</sup> Resolution 677 on approval of the list of criteria on the basis whereof a monetary operation or transaction is considered suspicious or unusual and of the practice statement for suspending suspicious monetary operations and transactions and submitting information about the suspicious or unusual monetary operations or transactions to the Financial Crime Investigation Service under the ministry of the interior, dated 9 July 2008 (see <http://www.fntt.lt/uploads/docs/Resolution%20No%20677.pdf>)

22. Considering the Essential criterion 13.2 of the FATF Methodology and, accordingly, the Essential criterion **SR.IV.1**, it should be mentioned that the obligation to report a monetary operation or transaction performed with property which is related to terrorist financing should be read in conjunction with the amended version of Article 2(21) of the AML Law which defines terrorist financing as an act which is considered an offence according to article 2 of the FT Convention. This approach leaves outside of the scope of the reporting requirements some of the situations envisaged by Essential criterion 13.2, namely when funds are suspected to be linked or related to, or to be used by terrorist organisations without any connection with an offence. Furthermore, it is not entirely clear from the definition of the suspicious monetary operation or transaction (i.e. Article 2(9)), though this may be a translation issue, if the obligation to report is related to the suspicions of relations between property and terrorist financing or to the fact that the property is related to the terrorist financing.<sup>8</sup> This issue would be checked further in a context of an on-site assessment.
23. Article 14(1) of the AML Law, providing financial institutions and other entities with specifications about the way in which suspicious monetary operations and transactions shall be objectively established, refers also to the criteria of recognition of such operations, approved by the Financial Crime Investigation Service. The FIU has not yet issued the criteria of recognition of suspicious monetary operations and transactions and it was indicated that the 2008 Government Resolution 677 is considered to remain in force and effect until the enactment of a new Government decision. This is questionable, considering that Government Resolution 677 was adopted on the basis of Article 14 § 16 of the AML/CFT Law which has been repealed by the Law amending the AML/CFT Law, and in the absence of any transitional provisions in the amended AML/CFT Law in this respect.
24. Furthermore, it was not demonstrated that additional measures have been taken to assist reporting entities to implement their obligation to report suspicious monetary operations or transactions related to terrorist financing (as revised). In application of article 6 of the AML/CFT Law, the State Security Department issued in 2010 TF identification criteria for all obliged entities.
25. The following actions have been taken to date or are being planned in the forthcoming months to enhance the effectiveness of the system, as follows:
- an AML questionnaire has been distributed to financial market participants (total 154). Collection of feedback was in progress until 1 September. The results of the future analysis which will be performed on the basis of the information provided by financial market participants will be available in October and are planned to be used for on-site inspection planning;
  - a meeting with financial market participants has been organised by the Bank of Lithuania and the Lithuanian FIU, in order to discuss the fulfilment of the requirements and establishment of consistent practice as regards the AML Law amendments;
  - a second meeting is planned in October 2014 addressing financial market participants on suspicious activities (operations) detection and reporting. At the same meeting, a brief summary of the results of the analysis undertaken on the basis of the answers to the AML questionnaire will be presented;
  - several meetings for different categories of financial market participants (e.g. credit unions, banks, life insurance companies, securities, management companies, e-money and payment institutions) are planned to be held in 2015 in order to educate supervised entities on the implementation of AML standards and good practice. The outcome (results) of the analysis of information provided by financial market participants on the basis of the AML questionnaire will work as a guide in choosing an

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<sup>8</sup> The Lithuanian authorities provided the Secretariat with another unofficial English version of this paragraph after discussions on this issue. The new version is read as follows: "*Suspicious monetary operation or transaction performed with the property, which is suspected, directly or indirectly obtained from the criminal activity or participation in such an activity and/or suspected to be related to terrorist financing.*"



aspect and a topic for future trainings and seminars for different categories of supervised entities; and

- instructions intended for the prevention of money laundering and/or terrorist financing for credit institutions, payment institutions, e-money institutions, insurance undertakings and insurance broking undertakings, financial broker, investment companies with variable capital, management companies and the depository are planned to be approved by the Board of the Bank of Lithuania in the last quarter of 2014.

26. In conclusion, Lithuania appears to be making progress, having amended its legislation to improve compliance with R.13 and SR.IV and having corrected some of the deficiencies identified in the MER. However, the information reported does not enable the secretariat to conclude that all deficiencies have been fully addressed and there is a clear need to take additional measures and prepare the secondary by-laws and instructions to clarify and enhance the effectiveness of implementation of the revised reporting requirements. The reporting system in respect of the financing of terrorism has been changed but there are still uncertainties about the full scope of the provisions in place and the adequate functionality of the system. There are no statistics on the implementation of the STR reporting obligation in the FT context, while previously expressed concerns are reiterated in relation to the absence and/or low levels of reporting by a number of relevant sectors of ML suspicions, as evidenced by the updated statistics provided by the authorities (though reflecting the previous reporting obligations). It is too early to assess whether the changes introduced have impacted positively on the types and levels of reporting.

### **III. Conclusions**

27. Since Lithuania was placed in expedited follow-up and Compliance Enhancing Procedures, Lithuania has taken legislative action and steps to address deficiencies identified in the mutual evaluation report, particularly in relation to R.1, R.5 and SR.II, and, to a more limited extent, on R.13 and SR.IV.

28. Progress appears to be slower than expected, considering that almost 2 years have passed since the adoption of the MER and despite the initial extended timeline for reporting under expedited follow-up. Most of the measures taken, in line with MONEYVAL recommendations, have only recently entered into force. As these measures have recently been implemented or enforced, it is too early to address effectiveness of their implementation. Additional measures are underway or planned.

29. Lithuania has indicated that work is being carried out currently at Government level and by competent authorities to elaborate and issue relevant implementing norms to ensure consistency and clarity as far as the revised requirements are concerned. Following the adoption by the Government of a decision that the authorities have indicated is scheduled to take place in the course of October 2014, the competent institutions will update and/or issue several instructions and/or methodological norms.<sup>9</sup>

30. Considering that any action under CEPs should be consistent with action taken with regard to other countries under these procedures, it appears premature to lift the current procedures before ascertaining that the additional implementing norms have been issued in a timely manner and that the progress is in line with what has been recommended in the mutual evaluation report. It is thus reasonable to expect that Lithuania would have issued the relevant implementing norms before MONEYVAL could consider that the issues of concern

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<sup>9</sup> Ex. as regards aspects covered in the Core Recommendation, in application of Article 4(1) (for relevant instructions of the National Bank), article 4.9 (for instructions to be issued the FIU), article 14(7) (for the decision of the Government covering the procedure and for submitting information about the suspicious monetary operations or transactions to the FIU and for suspending such operations and transactions).

have been addressed and that further progress remains to be monitored under the follow-up procedures.

31. It is thus proposed that Lithuania be given an additional period of time, that is until April 2015, to pursue the implementation of the corrective measures so as to be in a position to demonstrate that all identified deficiencies scrutinised under the CEPs procedures have been adequately addressed, including effectiveness issues. No additional steps in the Compliance Enhancing Procedures are being proposed at this time.
32. Bearing in mind that pursuant to the 4<sup>th</sup> round processes, Lithuania is expected to demonstrate progress at an adequate level on the majority of recommendations in order to request exiting follow-up procedures in December 2015, it is also proposed to invite it to provide a comprehensive interim report on measures taken to implement all core and key recommendations, which will be subject to a full analysis by MONEYVAL at its 47<sup>th</sup> Plenary meeting in 2015.