



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

MONEYVAL(2015)13

# Lithuania

## 3<sup>rd</sup> Compliance Report

9 April 2015

Lithuania is a member of MONEYVAL. This Report from Lithuania under step 1 of the Compliance Enhancing Procedures was adopted at MONEYVAL's 47<sup>th</sup> Plenary Meeting (Strasbourg, 14-17 April 2014). For further information, please refer to MONEYVAL website: <http://www.coe.int/moneyval>.

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# Third Compliance Report

Note by the Secretariat

## I. Introduction

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

1. The 4<sup>th</sup> round mutual evaluation visit of Lithuania took place in April 2012. MONEYVAL adopted the mutual evaluation report (MER) 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 FATF Recommendations<sup>1</sup>, including on several core<sup>2</sup> and key<sup>3</sup> recommendations, as indicated in the table below:

<b>Core Recommendations rated PC</b>
R.1 , SR.II, R.5, R.13 , SR.IV
<b>Key Recommendations rated PC</b>
R.26, R.35, SR.I , SR.III
<b>Other Recommendations rated PC</b>
R.12, R.16, R.17, R.24, R.31, R.33, SR.VIII, SR.IX

2. At the time of adoption of the report, considering the lack of progress since the 3<sup>rd</sup> round, MONEYVAL decided that Lithuania should report under regular follow-up in an expedited manner (first report due in April 2014) and that, in addition, compliance enhancing procedures (CEPs) would be applied, as additional peer pressure measures, at step (ii).<sup>4</sup> The issues of particular concern under the CEPs process, as set out in the letter of the Chairman addressed to the Secretary General of the Council of Europe, included 5 out of the 6 core FATF Recommendations (R1, SR.II, R.5, R.13 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), second compliance report (19 September 2014), third compliance report (March 2014)*

3. Lithuania reported back under MONEYVAL's Rules of Procedure at the 44<sup>th</sup> and 45<sup>th</sup> plenary meetings, in April and respectively September 2014, providing updated information on measures taken to address the identified deficiencies. The information submitted was taken into account for the purpose of the analysis of the secretariat reviewing of progress made under the compliance enhancing procedures process.<sup>5</sup>

4. MONEYVAL discussed in April 2014 the progress made by Lithuania and noted that Lithuania had taken a number of measures to address the issues of concern. In respect of R.1 and SR.II, it concluded that the new ML and TF offences were broadly in line with the international standards. Regarding R.5, R.13 and SR.IV, draft legislation was pending adoption before Parliament. Considering the developments underway, Lithuania remained at

<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".

<sup>5</sup> See MONEYVAL(2014)11

[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)

step 1 of the CEPs (Rules of Procedure as revised) and was invited to report back in September 2014.

5. At the time of the second compliance report, Lithuania had adopted amendments to the AML/CFT Law, and was in the process of finalising secondary implementing legislation and guidelines. The amendments, which were in force starting May 2014, remedied part of the deficiencies related to R.5, R.13 and SR.IV. Lithuania was therefore invited to present an additional report in April 2015 and remained subject to Step 1 of the compliance procedures.

6. Lithuania submitted its third compliance report on 9 March 2015 for discussion at the 47<sup>th</sup> MONEYVAL Plenary. According to Rule 14(3) § 9 of the Rules of Procedure the Secretariat prepared a written analysis on the basis of the information provided by Lithuania and related annexes. 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. Summary of Lithuania's progress in relation to core Recommendations**

7. For R.1 (criminalisation of money laundering), Lithuania has resolved the large majority of technical deficiencies identified in the 4<sup>th</sup> round MER, with the amendments made in December 2013 to the ML offence. There remain minor technical concerns as set out in the first and second compliance report (i.e. the conversion or transfer of property for the **purpose of helping another to evade the legal consequences of his action** is not fully covered, the scope of one designated category of predicate offence - terrorism, including terrorist financing which is not yet sufficient, although it has been broadened since the on-site visit). In the three-year period since the on-site visit, the number of investigations and prosecutions has increased, though the number of convictions remains low.

8. For SR II (Criminalisation of terrorist financing), Lithuania has now a stand-alone offence<sup>6</sup> criminalising financing and support of terrorist offences, offences linked to terrorist activities as well as support of one or several terrorists. The Criminal Code was amended by Law No. XII-497 amending the Criminal Code, in force from 13 July 2013. These developments have been analysed in the first and second compliance reports and show that Lithuania has substantially improved its level of compliance with SR.II when comparing with the situation at the time of the 4<sup>th</sup> round MER.

9. For R.5 (Customer due diligence), Lithuania has resolved the large majority of legal deficiencies and has taken additional steps to enhance the effectiveness of implementation, although this is difficult to confirm through a paper based off-site desk review.

10. For R.13 (Suspicious transaction reporting) and SR.IV (Suspicious transaction reporting related to terrorist financing), Lithuania has modified the AML/CFT law and simplified its reporting regime by separating the reporting obligation for suspicious and unusual transactions. This clarification in the legislation supported by additional implementing acts and training activities, should assist reporting entities in better understanding the threshold for reporting a subjectively suspicious transaction, thereby improving implementation of the reporting obligation. There have been no FT related suspicious reports filed to date. Although a paper-based, off-site desk review is limited in its ability to assess effectiveness, the absolute lack of FT related reports triggers questions on

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<sup>6</sup> **Article 250-4. Financing and support of terrorism** - 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.

the reasons of non-application of the FT related reporting obligation by reporting entities. Lithuania should consider taking additional measures in this respect.

11. Annex I to this report sets out for information only a summary of key developments and a preliminary assessment of progress in relation to the other recommendations which are relevant in the context of Lithuania's process of moving from expedited to regular follow up.

### **III. Overall conclusion and next steps**

12. Pursuant to Rule 14 (13) of the Rules of procedure, Lithuania should demonstrate that it has achieved satisfactory progress on the issues that brought them into compliance enhancing procedures. The following factors are also relevant and were taken into account when deciding upon the next course of action in this context :

- a) Three years have passed since the mutual evaluation visit;
- b) Lithuania is currently in an expedited regular follow-up process from the time of its mutual evaluation and has submitted to date three compliance reports under the CEPs process;
- c) 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) or shortly after.
- d) The 5<sup>th</sup> round evaluation of Lithuania is currently scheduled for May 2017. The experience of countries which have already been evaluated or are being in the process of preparing for the evaluation, shows that the authorities' preparation and action for the evaluation should be initiated at a minimum one to two years before the actual dates of the evaluation. Therefore, Lithuania should strive to take all necessary measures with a view to exiting the regular follow-up process as soon as possible, in order to focus its efforts on the implementation of the revised standards.

13. The Plenary concluded that since its mutual evaluation, Lithuania has worked to address the deficiencies identified in the MER. Legislative action has been taken and substantial progress has been made with regard to the criminalisation of ML and TF, as well as in respect of preventive measures. Overall, given the progress achieved in the key areas of concern, the CEPs procedures at step 1 are lifted from Lithuania at this stage. The Plenary however recommended that the authorities focus on addressing the remaining deficiencies in a promptly manner, with a view to meeting the criteria for exiting regular follow-up procedures by December 2015 or early 2016 and being in the position to demonstrate an improved level of effectiveness.

#### **IV. Overview of developments since the previous compliance report and review of measures taken to address identified deficiencies in relation to the core Recommendations**

##### ***Developments reported since the second compliance report (19 September 2014)***

14. Lithuania reported the following actions which are relevant in the context of the implementation of the standards set out in the FATF core recommendations:

- On 3 December 2014, the Government of the Republic of Lithuania adopted Resolution No. 1351 *“on Amendment of the Resolution No. 677 of the Government of the Republic of Lithuania of 9 July 2008 On the Approval of the List of Criteria on the Basis whereof a Monetary Operation or Transaction is to Be Regarded as Suspicious or Unusual and the Description of the Procedure for Suspending an Unusual Monetary Operation and Transaction and Reporting the Information about Suspicious or Unusual Monetary Operations or Transactions to the Financial Crime Investigation Service under the Ministry of the Interior”*;
- On 3 December 2014, the Government of the Republic of Lithuania adopted Resolution No. 1352 *“on Amendment of the Resolution No. 562 of the Government of the Republic of Lithuania of 5 June 2008 On the approval of the Rules for Keeping the Registers of Monetary Operations Conducted by the Client as well as Suspicious and Unusual Operations and Transactions and on Establishing the Criterion Characterizing Major Continuous and Regular Monetary Operations Typical of Client Activities”*;
- On 4 December 2014, the Director of FIU issued Order No. V-240 *“on Approval of Criteria for Identifying Possible Money Laundering Suspicious Monetary Operations or Transactions”*;
- On 12 February 2015, the Board of the Bank of Lithuania approved the *“Money Laundering and Terrorist Financing Prevention Guidelines for Financial Market Participants”*;
- On 12 February 2015, the Chamber of Notaries approved the *“Money Laundering and Terrorist Financing Prevention Guidelines for Notaries”* (Resolution No. 12);
- On 23 February 2015, the Culture Heritage Department under the Ministry of Culture of the Republic of Lithuania approved guidelines, intended for prevention of ML and/or TF for persons, who conduct commercial activity related to the trade of movable culture values and/or antiquities (Order No. Į-38)
- On 26 February 2015, the Director of the FIU issued Orders Nos. V-53, V-54 and V-55, which approved guidelines intended for prevention of ML and/or TF for:
  - persons engaged in economic-commercial activities related to trade in real estate or other property, the value of which exceeds EUR 15 000 or an equivalent sum in foreign currency, where payment is made in cash;
  - accounting undertakings or undertakings providing tax advice services;
  - providers of the services of trust or company forming;
- On 4 March 2015, the Chamber of Auditors approved the *“Money Laundering and Terrorist Financing Prevention Guidelines for Auditors”* (Order No. 1.4-16.1.1);
- On 4 March 2015, the Chamber of Bailiffs approved guidelines intended for prevention of ML and/or TF for bailiffs or persons authorised to perform bailiff’s activities (Order No. 336);

- On 5 March 2015, the Gaming Supervisory Service under the Ministry of Finance approved guidelines, intended for prevention of ML and/or TF for gaming companies (Order No. DI-189)
- Several steps of the National Risk Assessment have been implemented and it is retained that its conclusion will be achieved in the foreseen timeframe (by the end of 2015);
- The FIU and the Bank of Lithuania continued to provide trainings on AML/CFT issues to reporting entities.

### **Recommendation 1 (Money Laundering Offence)**

15. 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. These amendments entered into force on 8 January 2014. The reader is thus referred to the secretariat's analysis in the first compliance report<sup>7</sup>, which concluded that the large majority of the deficiencies identified in the MER have been addressed.

16. The information and data provided by the authorities, including on the number of ML investigations, prosecutions, convictions and penalties, do not enable to have a clear picture of Lithuania's ability to effectively investigate and prosecute ML.

	<i>Cases investigated</i>	<i>Cases prosecuted</i>	<i>Convictions (first instance)</i>	<i>Convictions (final)</i>
<b>2008</b>	11	2		1
<b>2009</b>	14	2		1
<b>2010</b>	37	2		1
<b>2011</b>	34 (18) <sup>8</sup>	7	3	1
<b>2012</b>	29 (15)	8	2	0
<b>2013</b>	56(20)	12	4	1
<b>2014</b>	60	22	4	4

<i>Year/ Persons convicted</i>	<i>Total number of ML convictions</i>	<i>Number of convictions for self laundering</i>	<i>Number of convictions for third party laundering<sup>+</sup></i>	<i>Number of convictions for laundering proceeds of crime committed abroad</i>	<i>Number of convictions for fiscal predicate offences</i>	<i>Number of convictions for non-fiscal predicate offences</i>
<b>2011</b>	15	13	0	2	7	8
<b>2012</b>	3	3	0	0	0	3
<b>2013</b>	6	6	0	0	2	4
<b>2014</b>	4	4	2	0	2	2

17. The data provided shows that the number of cases investigated and prosecuted has increased significantly in 2013 and 2014; however there are few (final) convictions

<sup>7</sup> [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)

<sup>8</sup> The number in brackets shows the number of investigations initiated by the FIU.

achieved. Lithuania has provided excerpts showing that the autonomy of the money laundering offence is supported not only by legal theory<sup>9</sup>, but also by jurisprudence of its higher courts<sup>10</sup>. Lithuania should continue, under the regular follow up process to provide detailed information demonstrating that ML offences are being effectively investigated and prosecuted and that convictions are achieved in a reasonable timeframe.

## **Special Recommendation II (Criminalisation of TF)**

18. Lithuania has introduced a stand-alone offence<sup>11</sup> criminalising financing and support of terrorist offences, offences linked to terrorist activities as well as support of one or several terrorists. The Criminal Code was amended by Law No. XII-497 amending the Criminal Code, in force from 13 July 2013. These developments have been analysed in the first and second compliance reports and show that Lithuania has substantially improved its level of compliance with SR.II when comparing with the situation at the time of the 4<sup>th</sup> round MER.

19. The definition of “terrorist offences or offences related to terrorism”, to which the TF offence applies, is included in Article 252-1 and covers the following offences:

- Terrorist offences
  - Article 250 (Act of Terrorism<sup>12</sup>)

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<sup>9</sup> Section 8 of “the Commentary on the Penal Code” ((Part III, Articles 213-330) by A. Abramavicius et al, Registru centras, 2010, pages 44-45) states that application of Article 216 is not dependant on the fact whether any person was convicted for a predicate offence. A court does not establish anyone’s guilt for a predicate offence. A court is obliged only to establish the criminal origin of the money or property. For example, a culprit of a predicate offence may die in a meantime, but it does not release another person from criminal liability for money laundering.

<sup>10</sup> The Court of Appeal of Lithuania in its judgement of 2013, July 5<sup>th</sup>, in criminal case No. 1A-84/2013 has elaborated on the criminal origin of the laundered proceeds. In particular, it confirmed that a conviction is not needed for a predicate offence. The judgement states that “<...> the most important aspect of criminal origin of a property is the commission of the criminal offence, from which such property has been obtained. However, the conclusion that property has been obtained by criminal means is not dependent on adoption of a judgement [conviction] in respect of such criminal offence. In order to acknowledge that property has been obtained by criminal means, it is enough to build on the evidence of the case, clearly proving the criminal origin of the property.” Reference has also been made to a judgment by Šiauliai regional court on 9 May 2013 (Case No. 1-60-316/2013), and a judgment of Kaunas regional court on 9 October 2014 (Case No. 1-29-290/2014).

<sup>11</sup> **Article 250-4. Financing and support of terrorism** - 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.

<sup>12</sup> **Article 250. Act of Terrorism**

1. A person who produces, acquires, stores, transports, transfers or otherwise uses of a firearm, ammunition, explosives, explosive, nuclear or radioactive materials for terrorist purposes, other sources of ionising radiation, as well as a person who creates, produces, acquires, stores, transports, transfers or otherwise uses of a chemical or biological weapon or chemical substances or their precursors, micro-organisms, other biological materials or toxins for terrorist purposes shall be punished by imprisonment for a term of up to 8 years.

2. A person who for terrorist purposes causes a flood or disrupts the supply of water, power or any other resources, or explodes, sets on fire or otherwise destroys or damages property on a large scale, violates the safety of an information system or electronic data of major importance for state government, the economy or the financial system, or disperses radioactive materials, biological or chemical hazardous substances, preparations or micro-organisms where this has caused or was likely to cause serious consequences as well as a person who for terrorist purposes causes a non-severe health impairment to one or more persons or poses threat to the life or health of many persons shall be punished by imprisonment for a term of up to 10 years.

3. A person who causes a serious health impairment to one or more persons for terrorist purposes shall be punished by imprisonment for a term of 3 up to 15 years.

4. A person who kills one or more persons for terrorist purposes shall be punished by imprisonment for a term of 8 up to 20 years or by life imprisonment.

- Article 251 (Seizure of an Aircraft, Ship or Other Means of Public or Goods Transport or a Fixed Platform on a Continental Shelf) when committed for terrorist purposes
  - Article 252 (Hostage Taking) when committed for terrorist purposes
  - Crimes linked to terrorism
    - Articles 249-1 (Creation of Groups to Commit Terrorist Crimes and Participation in Activities Thereof)
    - Article 250-1 (Incitement of Terrorist Crimes);
    - Article 250-2 (Recruitment for Terrorism);
    - Article 250-3 (Threatening to Commit a Terrorist Crime),
    - Article 250-4 (Financing of Terrorism)
    - Article 250-5 (Training for Terrorism)
    - Articles 178 (Theft), 180 (Robbery), 181 (Extortion) and 300 (Falsification of Document) if they aim at obtaining funds, instruments or means to commit terrorist crimes or support activities of a terrorist group
20. Lithuania's Criminal code contains several offences which broadly correspond to the large majority of terrorist offences referred to in article 2(a) of the Terrorist Financing Convention (see annex 3). Overall there are at least 2 offences which are not explicitly criminalised and, in respect of other, not all elements are adequately criminalised, in line with the relevant international conventions. All the "terrorist offences" (as opposed to "crimes linked to terrorism") are subject to an additional purposive element "when committed for terrorist purposes" (as defined in Article 252-1(3)<sup>13</sup>). This additional condition is not in line with the requirements of the TF Convention and Special Recommendation II. The financing of terrorist organisations is not explicitly covered by the new offence, though the authorities consider that this would be covered through the incrimination of financing of offences linked to terrorist activities which includes article 249-1 (creation of groups to commit terrorist crimes and participation in activities thereof). It should be noted that 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) thus the simple funding of a terrorist organisation in the absence of the specific purposes set out in article 250/4 is not criminalised.
21. The legal changes are relatively recent. There have been no investigations or prosecutions in Lithuania for TF in the period under assessment, thus the offence has not been tested in practice.

### ***Recommendation 5 (Customer due diligence)***

22. The 4<sup>th</sup> round MER identified several deficiencies related to the implementation of CDD requirements, together with a number of effectiveness concerns. In order to remedy these shortcomings, Lithuania adopted on 15 May 2014 amendments to the AML/CFT Law. These amendments have been discussed in further detail in the 2<sup>nd</sup> compliance report and the reader is therefore referred for additional information therein. On the

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5. A person who commits the act provided for in paragraph 2, 3 or 4 of this Article where it was directed against an object of strategic importance to national security or where it has led to very serious consequences shall be punished by imprisonment for a term of 10 up to 20 years or by life imprisonment.

6. A legal entity shall also be liable for the criminal acts provided for in this Article."

<sup>13</sup> "Terrorist purposes mean the intention to seriously intimidate population or part of it or to unlawfully demand that an international organisation, the State or institutions thereof carry out certain actions or refrain from them, or to destabilise or destruct the main constitutional, political, economic or social formations of the State or an international public organisation."

technical side, there remain a few minor shortcomings (as identified in the 2<sup>nd</sup> compliance report). Overall, it can be concluded that significant progress has been achieved and the CDD requirements are now broadly in line with the FATF standards.

23. The authorities have strengthened CDD requirements and reported having promoted compliance through guidelines and training. On 12 February 2015, the Board of the Bank of Lithuania approved the “Money Laundering and Terrorist Financing Prevention Guidelines for Financial Market Participants” and repealed the previously valid guidelines, which were specific to the different sectors of the financial market. The Guidelines currently in force therefore apply to credit institutions, electronic money institutions, payment institutions, currency exchange operators, insurance companies engaged in life insurance activities, insurance brokerage firms engaged in insurance mediation activities related to life insurance, financial brokerage firms, management companies, investment companies, the depository and branches of the above-named foreign entities established in the Republic of Lithuania. These develop in further detail the provisions of the AML/CFT Law with regard to CDD requirements, the reporting and record keeping obligations; they also provide guidance for the preparation of internal procedures of the reporting entities. The Guidelines emphasise on a number of occasions the need for financial institutions to apply a risk-based approach with regard to their business activities.
24. The FIU has provided trainings on AML/CFT issues to reporting entities (including DNFBPs), whereby 250 and 300 persons have been trained in 2013 and 2014 respectively. Furthermore, the Bank of Lithuania provided trainings in 2014 and 2015 for representatives of trade unions and life insurance companies.

***Recommendation 13 (Suspicious transaction reports) & Special Recommendation IV (Reporting of TF suspicions)***

25. At the time of the 4<sup>th</sup> MER, the compliance level with these recommendations was rated PC due firstly to the limited scope of the reporting obligation and secondly due to the lack of consistency and clarity of rules, on the basis of which unusual and suspicious transactions and operations were reported. Serious effectiveness issues were also raised in the report and additional measures were proposed to be taken to raise awareness of reporting entities on the matter and address the under-reporting of certain sectors.
26. Following the recommendations from the 4<sup>th</sup> round MER, Lithuania re-organised the reporting regime within the amendments to the AML/CFT Law, adopted on 15 May 2014. The main changes consisted of the simplification of the reporting obligation by separating the reporting obligation for suspicious and unusual transactions. Furthermore, the suspicion is now connected to “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”; the link to the ML offence was therefore deleted. For further detail on the changes to the reporting framework introduced by the amendments the reader is referred to the 2<sup>nd</sup> compliance report.
27. The above-mentioned amendments are a welcomed development and improved the compliance of the reporting obligation with international standards.
28. There remain nevertheless two deficiencies with regard to the reporting obligation. Firstly, the reporting obligation is connected to a suspicious monetary operation<sup>14</sup> or

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<sup>14</sup> Monetary transaction is defined in Article 2(16) of the AML/CFT Law 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”

transaction<sup>15</sup>. Whilst this is a positive step compared to the 3<sup>rd</sup> round MER, where the reporting obligation was limited to “financial transactions”, the obligation under c.13.1 connects the suspicion with the funds and does not require any activity to be undertaken. The current wording may thus not cover all the situations foreseen by the standards. In addition, as previously indicated in the 2<sup>nd</sup> compliance report with regard to c.13.2, a transaction is considered suspicious when it is “related to terrorist financing”, this being considered more restrictive than the FATF requirements, as it does not comprise funds linked to terrorist organisations or individual terrorists in all cases.

29. In order to assist reporting entities with the implementation of the reporting obligations, the authorities have adopted several implementing acts.
30. On 3 December 2014, the Government of the Republic of Lithuania adopted Resolution No. 1351<sup>16</sup>, which describes the procedure for suspending suspicious monetary transactions and operations, and the reporting thereof to the FIU, as well as the procedure for reporting of cash transactions above set threshold of EUR 15.000. FIU Order No. V-240 “on Approval of Criteria for Identifying Possible Money Laundering Suspicious Monetary Operations or Transactions” was issued on 4 December 201, which includes a non-exhaustive list of indicators. The list of indicators is intended to provide guidance for both suspicions of ML and TF and the Order states explicitly that the funds involved do not have to be connected to the commission of a specific terrorist offence. Furthermore, a number of indicators are related specifically to business relationships with NPOs. In this respect, the discussion under R.26 on the competency of the FIU to issue a list of criteria related to TF is relevant.
31. As mentioned above, the Board of the Bank of Lithuania also adopted on 12 February 2015 a Resolution by which it approved the “Money Laundering and Terrorist Financing Prevention Guidelines for Financial Market Participants” and repealed the guidelines previously in force for the individual parts of the financial sector.
32. One of the areas of concern raised in the 4<sup>th</sup> round MER was the strict application of the listed indicators for formulating a suspicion. The amendments to the AML/CFT Law clarify that those are for consideration only. The Order and Guidelines explicitly state that a lack of correspondence with the indicators provided shall not be an obstacle in reporting, as suspicion is a subjective perception of the employee of the reporting entity. This concern has thus been addressed. The authorities should nevertheless ensure that this change is understood and implemented in practice by the reporting entities.
33. The FIU and National Bank have conducted trainings for reporting entities. Given the recent issuance of the guidelines, the authorities should pursue the training activities in order to support an adequate understanding of the changes by reporting entities.
34. The 4<sup>th</sup> round report and subsequent compliances reports confirm that the levels of reporting are low or inexistent in certain sectors. The statistics provided do not enable to see any major changes in reporting trends, though the period under observation is rather limited given the recent entry into force of the changes.
35. The following table presents the numbers of STRs filed in the past years by financial institutions.

<sup>15</sup> The generally accepted definition of transaction is the one of Article 1.63 of the Civil Code, “*the actions of persons intended to create, modify or extinguish civil rights and duties*”.

<sup>16</sup> “On Amendment of the Resolution No. 677 of the Government of the Republic of Lithuania of 9 July 2008 On the Approval of the List of Criteria on the Basis whereof a Monetary Operation or Transaction is to Be Regarded as Suspicious or Unusual and the Description of the Procedure for Suspending an Unusual Monetary Operation and Transaction and Reporting the Information about Suspicious or Unusual Monetary Operations or Transactions to the Financial Crime Investigation Service under the Ministry of the Interior.

	2011	2012	2013	2014
Reporting entity	TOTAL STRs	TOTAL STRs	TOTAL STRs	TOTAL STRs
Banks	158	159	204	179
Insurance sector	1		2	2
Securities sector		1	1	
Investment firms		1		
Currency exchange				
Total	159	161	207	181

36. There have been no FT related STRs received to date.

37. In conclusion, with the enactment of the amendments and the additional secondary by-laws and instructions, and with the additional measures taken by the FIU and the National Bank, Lithuania has made clear progress in addressing shortcomings related to R.13 and SR.IV.

38. Additional measures and continued efforts in this area would need to be taken in order to be able to substantiate that the reporting obligation is more effective and to demonstrate an adequate level of improved compliance in the context of Lithuania's request to exit regular follow-up procedures.

## Annex I. Progress reported in respect of Key Recommendations

### Key recommendations rated PC

R.26, R.35, SR.I , SR.III

39. Since the adoption of the MER, steps have been taken to address deficiencies related to R 26, 35, SR I and SR III, as described below. Satisfactory progress is also noted in respect of its level of compliance with other core recommendations, though at this stage, the information available in respect of some of the actions taken would not enable to draw firm conclusions as to whether this would meet the criteria for exiting follow-up.

40. **Recommendation 26.** As described in the 4<sup>th</sup> round MER, the institution designated by law as the FIU is the Financial Crime Investigation Service (FCIS). The core FIU functions were carried out by the Money Laundering Prevention Division (MLPD), established within the Analysis and Prevention Board (APB). The final decision-making authority for all relevant documents for the MLPD was the Head of the APB. Both evaluation teams at the time of the 3<sup>rd</sup> and 4<sup>th</sup> evaluation round had recommended to strengthen the autonomy of the MLPD, to revise its powers and duties in legislation and provide it with adequate and independent technical resources (including its own IT system). Lithuania's position was that the body assessed as the FIU should not be the MLPD, but the FCIS.

41. Lithuania reported that by order of the Ministry of Interior, a new specialised board was established within the FCIS on the 1<sup>st</sup> of December 2013 – the Money Laundering Prevention Board, with enhanced human and technical resources. The Head of the Board has been given the authority to take final decisions and sign documents regarding all STR analysis processes and dissemination of information, as well as regarding documents for the purposes of communication with other state institutions, Egmont Group members and other international partners. The Board consists of two units: an Analysis Unit and a Compliance Unit. The Board has been provided with a separate data-keeping system, where all data (including STRs, disclosures, foreign FIU requests) are kept in a secure autonomous database, which cannot be accessed or used by other

departments of the FCIS. Three persons are responsible for IT, statistics and registration of documents. The tasks performed by the Board remain the same as the ones undertaken previously (receipt of STRs/CTRs, collection of ML/TF related information, activities related to the prevention of ML/TF, drafting proposals for amendments of AML/CFT related legislation, cooperation with relevant foreign authorities and supervisory duties, including the investigation of cases of administrative violations of law in the area of prevention of ML and TF).

42. These changes are aimed at addressing the concerns of the previous evaluations in respect of the FIU model chosen and appear to go into the right direction. Nevertheless, in order to be able to assess fully the extent of changes made, further detailed information will have to be provided.
43. Since 2012, the FCIS issued on its website an annual report on its AML/CFT activities. These contain information about the FCIS and its role within the AML/CFT framework, statistical information, identified trends and typologies, as well as information related to the provision of trainings, undertaking of supervision, cooperation with other national authorities and activities in international fora. This recommendation is therefore considered as adequately implemented.
44. The evaluators were further concerned about the limitations of access to information by the FIU. Firstly, the FIU does not have full access to the information held by lawyers and assistant lawyers in all circumstances; this shortcoming appears not to have been remedied. In addition, the analysis function of the FIU was considered as hindered by the fact that the Register of Legal Entities did not allow for an automated search (for example in order to identify all legal persons connected to a natural person). The authorities reported that the Parliament adopted the Law amending and Supplementing Articles 11, 12, 41(1), 78 of the Law on Companies, which entered into force on 1 January 2014. According to the new provisions of Article 41(1) of the Law on Companies, private limited liability companies shall submit particulars of their shareholders to the Information System of Members of Legal Entities; this information shall be therefore communicated electronically, certified with electronic signatures, with the aim to hold the data in a more easily processable form. The authorities reported that the Information System was foreseen to start operating in June 2014, no information was however provided about the current status. Further inquiry will also have to be undertaken in order to see whether the system has remedied all the problems faced by the FIU.
45. The overlap of competencies between the FIU and the State Security Department (SSD) on TF matters was, according to the authorities, resolved by the amendments to the AML/CFT Law, adopted in May 2014. These provide that the information on monetary operations and transactions that may be related to TF shall be submitted by the FIU to the SSD when TF suspicions are raised after STR analysis (as opposed to within 24 hours from the receipt of the STR, as set out previously). The amended text of Art. 14(12) requires the FCIS to “report to the State Security Department not later than within 24 hours since the moment of the acknowledging information giving grounds to suspicion of possible connections of suspicious monetary operations or transactions to terrorist financing”. From the English translation it therefore remains unclear whether the “acknowledgement of the information” is considered as the receipt of the STR or the formulation of a suspicion after an analysis of the FIU.
46. Furthermore, the authorities maintain that the amendments to the AML/CFT Law clearly separated the competence to issue criteria for reporting of suspicions of ML (the responsible authority being the FCIS) and of TF (responsible authority being the SSD). Despite the fact that the reference to TF was deleted from Art. 5(6) of the AML/CFT Law, the FIU remains responsible for issuing guidance with regard to criteria on ML and

“suspicious monetary transactions” and therefore for transactions related to TF as well. It has been noted that the list of criteria for identifying suspicious transactions issued by the FIU in December 2014 includes references to TF.

47. Regarding the effectiveness of the work of the FIU, one of the main concerns raised in the 4<sup>th</sup> round MER concerned the fact that the FCIS is in charge not only of the core FIU functions, but also for supervision of reporting entities, investigation of ML and other crimes against the financial system or related to taxes or other state contributions. It appears that the scope of the functions of the FIU has been revisited through several structural changes. Nevertheless, the Board continues to be responsible for a significant number of tasks and responsibilities. Lithuania shall be expected to provide more detailed information (in particular on human and other resources) in order to demonstrate that this concern has been fully addressed.
48. In conclusion, the organisational changes undertaken within the FCIS appear to address many of the concerns formulated in the 4<sup>th</sup> round MER. The issuance of a specific annual report, is also a welcomed development. Few technical issues remain to be addressed, such as the remaining limitations of access to information or the lack of guidance on the manner of reporting. Regarding the latter, it appears that there is no unified reporting form and doubts remain whether all entities file reports in an electronic and secure manner.
49. **Special Recommendation III.** At the time of the on-site visit, the evaluators appreciated that Lithuania had a sound basis for implementing financial sanctions under UNSCRs 1267 and 1373; this mainly based on the EU framework, but partially also supplemented by provisions on a national level. The variety of applicable provisions, nevertheless, led also to the formulation of a recommendation to ensure a clear harmonisation and prioritisation of these provisions, in order to avoid doubts as to which provision should be applied in each situation.
50. An additional area of concern stressed in the MER was the lack of activity of the responsible authorities to ensure the publicity and awareness on the sanctioning regime and corresponding procedures amongst the reporting entities, as well as general public. This was further emphasised by the low awareness of the reporting entities about their obligations in this respect encountered on-site.
51. Since the time of the on-site visit, the authorities have put forth significant efforts in the respect of the above mentioned. Firstly, the Ministry of Foreign Affairs has prepared a new section of the Ministry’s website dedicated purely to provide information on international sanctions<sup>17</sup> and related procedures. The authorities stated<sup>18</sup> that it contains essential information about the sanctioning regime, as well as information on the possibility for persons affected by a freezing measure to challenge the freezing order, procedures for de-listing, and details of the unfreezing procedures. It appears also that it provides several contact details, which possibly serve as contact points for the purposes of obtaining more information on the relevant procedures.
52. Furthermore, “Instructions on the Proper Implementation of International Sanctions in the Regulatory Field of the Financial Crime Investigation Service for the purposes of establishing the procedure for the implementation of legal acts regulating proper implementation of international sanctions” were adopted by Order No. V-52 of the Director of the FCIS on 24 February 2014. The Instructions provide a comprehensive review of the actions to be taken by reporting entities in case a client is identified as a person subject to international sanctions<sup>19</sup>. They further suggest to reporting entities to

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<sup>17</sup> <http://www.urm.lt/sankcijos>

<sup>18</sup> The website in question is available only in Lithuanian and it was therefore not possible to fully assess its content.

<sup>19</sup> As defined by the Law on the Implementation of Economic and other International Sanctions

develop their own internal procedures in this respect, internal control procedures, as well as to appoint an employee responsible for the implementation of the sanctions. It is unclear, whether the Instructions apply equally to persons included on the national list, as they require reporting entities to verify whether a customer is “included on the consolidated list of entities and their groups which are subject to financial sanctions of the European Union and United Nation Organization”. Furthermore, no reference is made to beneficial owner, as opposed to client. Finally, the Instruction merely requires the reporting entities to verify whether the client is listed, further specification could be provided as to the timing of the verification. Notwithstanding these minor details, the guidance is considered as comprehensive and in general as a significant development.

53. The authorities reported that financial sanctions are a recurrent topic at the trainings provided by the FIU to reporting entities. Information was not provided as to whether other sectors not included in the FIU trainings, such as lawyers, notaries and insurance providers, are also trained in this matter.
54. The legislation has never been applied in practice.
55. In conclusion, significant steps have been taken with regard to raising awareness about financial sanctions amongst reporting entities, as well as with regard to the provision of more comprehensive guidance on related obligations. Information on the procedures governing the sanctioning regime was also made more accessible for the public due to the new dedicated website. The remaining technical deficiencies identified in the MER have however not been addressed, in particular the recommendation to consider harmonising the framework for the application of financial sanctions to ensure that clear procedures are followed, and introducing procedures implementing c.III.7, c.III.8 and c.III.9.
56. **Recommendation 35.** The majority of shortcomings identified previously as regards the implementation of R.35 have been addressed, as detailed above when analysing progress in respect of R.1 and SR.II.
57. **Special Recommendation I.** The implementation of SR.I depends on the full implementation of SR.II and SR.III. The reader is thus referred for detailed information in this respect to the analysis under these Recommendations. The level of compliance with SR.I has been improved.