

# Anti-money laundering and counter-terrorist financing measures

# Hungary

## 2<sup>nd</sup> Enhanced Follow-up Report & Technical Compliance Re-Rating

December 2018

Follow-up report



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

The 1st Enhanced Follow-up Report and Compliance Re-Rating on Hungary was adopted by the MONEYVAL Committee at its 57<sup>th</sup> Plenary Session (Strasbourg, 3 – 7 December 2018).

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## Table of Contents

I. INTRODUCTION .....	4
II. FINDINGS OF THE MUTUAL EVALUATION REPORT.....	4
III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE .....	5
3.1. Progress to address technical compliance deficiencies identified in the MER.....	5
3.2. Progress on Recommendations which have changed since adoption of the 1st enhanced follow-up report.....	7
IV. CONCLUSION .....	8
GLOSSARY OF ACRONYMS.....	10

## *Hungary: 2<sup>nd</sup> Enhanced Follow-up Report and Technical Compliance Re-Ratings*

### I. INTRODUCTION

1. The mutual evaluation report (MER) of Hungary was adopted in September 2016. This follow-up report analyses the progress of Hungary in addressing the technical compliance deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. This report also analyses progress made in implementing new requirements relating to FATF Recommendations which have changed since the 1<sup>st</sup> enhanced follow-up report was adopted: Recommendations 7, 18 and 21. Overall, the expectation is that countries will have addressed most if not all technical compliance deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Hungary has made to improve its effectiveness. Progress on improving effectiveness will be analysed as part of a later follow-up assessment and, if found to be sufficient, may result in re-ratings of Immediate Outcomes at that time.

### II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. The MER and 1<sup>st</sup> enhanced follow-up rated<sup>1</sup> Hungary as follows:

IO 1	IO 2	IO 3	IO 4	IO 5	IO 6	IO 7	IO 8	IO 9	IO 10	IO 11
LE	SE	ME	ME	LE	SE	LE	LE	ME	ME	ME

#### *Technical Compliance Ratings*

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	LC	LC	C	PC	LC	LC	PC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
LC	PC	PC	LC	C	LC	LC	PC	LC	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
LC	LC	LC	PC	LC	LC	LC	PC	C	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	PC	PC	LC	LC	LC	LC	LC	LC	LC

3. Given these results, Hungary was placed in enhanced follow-up. The first follow-up report submitted by Hungary was discussed at the 55<sup>th</sup> Plenary meeting in December 2017. The Plenary invited Hungary to submit a second follow-up report for the 57<sup>th</sup> MONEYVAL Plenary in December 2018.

4. The assessment of Hungary's request for technical compliance re-ratings and the preparation of this report were undertaken by the following Rapporteur teams (together with the MONEYVAL Secretariat):

- Armenia
- The United Kingdom Crown Dependency of Jersey

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<sup>1</sup> There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

5. Section III of this report summarises the progress made to improve technical compliance. Section IV sets out the conclusion and a table showing which Recommendations have been re-rated.

### III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

6. This section summarises the progress made by Hungary to improve its technical compliance by:

- a) Addressing the technical compliance deficiencies identified in the MER, and
- b) Implementing new requirements where the FATF Recommendations have changed since the 1<sup>st</sup> enhanced follow-up report was adopted (R.7, R.18 and R.21).

#### 3.1. Progress to address technical compliance deficiencies identified in the MER

7. Hungary has made progress to address the technical compliance deficiencies identified in the MER. As a result of this progress, Hungary has been re-rated on Recommendation 5.

#### *Recommendation 5 [R.5] (Originally rated PC – re-rated as LC)*

8. In its 5<sup>th</sup> round MER, Hungary was rated PC with R.5. The identified deficiencies related to an undue merging of the financing of the “specific treaty terrorist activity” (Art. 2.1a FT Convention) with the generic terrorist financing (FT) offence (Art. 2.1b FT Convention) while requiring a specific purpose for both aspects of the offence; the non-criminalisation of the offences provided in Article 2 (a) and (c) of the “1988 Protocol for the suppression of unlawful acts against the safety of fixed platforms on the continental shelf”; the absence from the FT offence to criminalise the *collection* of funds to finance an individual terrorist or a terrorist organisation; as well as the absence of criminalisation of the financing of the travel of individuals to other States for perpetrating, planning of, or participation in, terrorist acts or for receiving or providing terrorist training.

9. Hungary has adopted amendments to its Criminal Code which entered into force in January 2018.

10. These amendments are addressing a number of the above-mentioned deficiencies. A newly-introduced provision (Article 318/A of the Criminal Code) ensures that the financing of “terrorist-like criminal offences” is criminalised without requiring any specific purposive element. However, the list of such offences in paragraph 2 of the new provision does still not cover the offences in Article 2 (a) and (c) of the “1988 Protocol for the suppression of unlawful acts against the safety of fixed platforms on the continental shelf”. Moreover, while the provision/collection of funds to individual terrorists and terrorist organisations will be criminalised by the newly-adopted legislation with regard to the purpose-bound generic FT offence, the financing of the “terrorist-like criminal offences” are criminalised with regard to the provision/collection of funds to individual terrorists only (i.e. not with regard to terrorist organisations). These now separately-regulated “terrorist-like criminal offences” are punishable with imprisonment of a maximum of three years (while the purpose-bound generic FT offence provides for imprisonment between two and eight years), which may not be sufficiently dissuasive.

11. As for the requirements under criterion 5.2<sup>bis</sup> the formulation under Article 316/A is sufficiently broad to also include the providing or receiving of terrorist trainings. For reasons of coherence, the definition of “financial assets” as laid down in Article 318/B of the Criminal Code

(“[f]or the purposes of Article 318 and Article 318/A, ‘financial assets’ shall mean ...”) would benefit from a direct reference also to the newly-introduced provision of Article 316/A.

**12. The majority of deficiencies identified in the MER have been addressed, notably with regard to criteria 5.1, 5.2 and 5.2<sup>bis</sup>. Some minor deficiencies remain or have been newly-created by the legislative changes. However, this does not preclude the overall conclusion that the level of compliance with R.5 is brought to a level of LC.**

***Recommendation 28 [R.28] (Originally rated PC - re-rated as LC)***

13. In its 5<sup>th</sup> MER, Hungary was rated PC with R.28. The deficiencies were the following: the lack of legal requirements to avoid the presence of criminals and their associates among designated non-financial business and professions (DNFBPs) (and prevent them from holding, being the beneficial owner of or managing a DNFBP); an absence of measures and widespread practices among supervisors on risk-basis AML/CFT supervision; and legal gaps on the AML/CFT sanctions regime limited its dissuasiveness.

14. The deficiencies related to the lack of legal requirements to avoid the presence of criminals and their associates among DNFBPs (and prevent them from holding, being the beneficial owner of or managing a DNFBP) still remain.

15. As noted in the analysis of the 1<sup>st</sup> enhanced follow-up report, the deficiencies related to the limited dissuasiveness of the AML/CFT sanctions regime have been adequately remedied.

16. Progress was reported by the Hungarian authorities and, according to the information provided; all AML/CFT supervisors of DNFBPs are performing supervision based on a risk-sensitive approach.

**17. Hungary has covered most of the deficiencies identified in the 5<sup>th</sup> MER. While some deficiencies remain, this does not preclude the overall conclusion that the level of compliance with R.28 has been brought to a level of LC.**

***Recommendation 33 [R.33] (Originally rated PC - no re-rating)***

18. In its 5<sup>th</sup> MER, Hungary was rated PC with R.33. the deficiencies were that significant shortcomings were identified in relation to collection and maintenance of relevant statistical information and data on matters relevant to the effectiveness and efficiency of its AML/CFT system.

19. Hungarian authorities have undertaken a comprehensive review of the criminal statistics system by complementing ENyÜBS with statistics on initiated criminal procedures. Accordingly, since 1 July 2018 the data collected by the ENyÜBS follows the case from the criminal complaint (or FIU dissemination) to the end of the proceeding (except legally binding decisions).

20. However, further measures still need to be applied to ensure maintenance of complete or adequate statistical data on. This concerns the number of ML/TF convictions as well as mutual legal assistance or other international requests for co-operation made and received.

**21. Hungary has addressed some deficiencies identified in the MER. However, moderate deficiencies remain. On that basis, R.33 remains PC.**



### 3.2. Progress on Recommendations which have changed since adoption of the 1st enhanced follow-up report

22. Since the adoption of Hungary's 1<sup>st</sup> enhanced follow-up report, Recommendations 7, 18 and 21 have been amended. This section considers Hungary's compliance with the new requirements in these three Recommendations. In addition, the analysis also covers Hungary's progress with regard to the deficiencies identified in the MER in respect of these recommendations.

#### *Recommendation 7 [R.7] (Rated LC - no re-rating)*

23. In its 1<sup>st</sup> enhanced follow-up report, Hungary was re-rated LC on R.7.

24. In its 5<sup>th</sup> MER, Hungary was rated PC with R.7. The deficiencies were that: targeted financial sanctions of United Nations Security Council Resolutions (UNSCRs) relating to the prevention, suppression and disruption of proliferation of mass destruction and its financing were not applied without delay; and the mechanisms for the implementation of the relevant UNSCRs did not cover all the requirements.

25. In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the proliferation financing-related UNSCRs since the FATF standards were issued in February 2012, in particular, the adoption of new UNSCRs.

26. In the analysis of the 1<sup>st</sup> enhanced follow-up report it was concluded that Hungary has addressed the majority of issues identified in the MER; only some minor deficiencies remain. On that basis, R.7 is re-rated to LC.

27. The measures in place in Hungary enable the application of the requirements of all the UNSCRs.

28. **On that basis, R.7 remains at the current level of LC.**

#### *Recommendation 18 [R.18] (Originally rated PC - no re-rating)*

29. In its 5<sup>th</sup> MER Hungary was rated PC with regard to R.18. The main technical deficiencies were the lack of requirements for: financial institutions (FIs) to appoint a compliance officer at a management level; to implement group-wide AML/CFT programmes; and to ensure that FIs' foreign branches and majority-owned subsidiaries apply at least measures equivalent to the requirements of Hungary.

30. In November 2017, the interpretative note to R.18 was revised to clarify the requirements on sharing of information related to unusual or suspicious transactions within financial groups. This also includes providing this information to branches and subsidiaries when necessary for AML/CFT risk management.

31. In the analysis of the 1<sup>st</sup> follow-up report it was concluded that all sub-criteria under c.18.1 are met except for (b) as there are no requirements to have in place screening procedures when hiring employees and that 18.1 may be considered to be at a level of 'mostly met'. c.18.2 is only 'partly met' since there are no requirements for group wide programmes which include the measures set out in c.18.1 and no measures implementing c.18.2(a) and (b). c.18.3 is met. On that basis, R.18 remained PC.

32. According to the information provided, there are no specific requirements for group wide programmes which include the measures set out in c.18.1 and no measures implementing c.18.2(a) and (b).

**33. Hungary has not covered the amendments for the recommendation and the deficiencies highlighted in the analysis of the 1<sup>st</sup> follow-up report remain, therefore the rating of R.18 remains PC.**

#### **Recommendation 21 [R.21] (Originally rated LC – no re-rating)**

34. In its 5<sup>th</sup> MER Hungary was rated LC. The main technical deficiency was: provision of the AML/CFT Act does not explicitly cover protection from criminal and civil liability nor does it specify the types of restriction breaches to which the protection applies. The exact application and extent of protections cannot thus be determined.

35. In November 2017, the interpretative note to R.21 was amended to clarify that tipping-off provisions under R.21 are not intended to prevent information sharing under R.18.

36. The amended sections 33 and 36 of the AML/CFT Act remedy the deficiencies highlighted in the MER and explicitly cover protection from criminal and civil liability and specify that the protection applies to any restriction posed by any law or contract in regards to data disclosure.

37. The provisions that prohibit disclosure of information concerning a suspicious transactions report (STR) or related information are set under Section 54 of the AML/CFT Act. The exemptions from this prohibition are provided under the same section and cover *inter alia* sharing of information within a financial group.

38. Although the AML/CFT Act contains some safeguards concerning the sharing of information it is not provided that the information shared should be used only for AML/CFT purposes and not for any other purpose.

**39. On that basis the level of compliance with R.21 remains LC.**

#### **IV. CONCLUSION**

40. Overall, Hungary has made good progress in addressing the technical compliance deficiencies identified in its 5<sup>th</sup> round MER of 2015 and has been re-rated on 2 recommendations (Recommendations 5 and 28) which were rated PC in the MER.

41. Recommendation 5 (rated PC in 2016) has been re-rated LC, after the amendments to the Criminal Code entered into force. These amendments are addressing a number of the deficiencies identified in the 5<sup>th</sup> MER.

42. Recommendation 7 remains at the level of LC. Country complies with the amendments to Recommendation 7 reflecting changes to the UNSCRs on proliferation financing.

43. Recommendation 18 remains at the level of PC. Hungary has not yet covered the amendments for the recommendation and the deficiencies highlighted in the analysis of the 1<sup>st</sup> follow-up report remain.

44. For Recommendation 21 (originally rated LC), which has been amended since the adoption of the 5<sup>th</sup> MER, while the country amended the AML/CFT Act to remedy the deficiencies highlighted in the MER, some deficiencies have been identified concerning the sharing of information.



45. While some progress has been achieved on Recommendations 33, which had been originally rated PC, moderate shortcomings remain.

46. Recommendation 28 (rated PC in 2016) has been re-rated LC, as most of the deficiencies identified in the 5th MER have been addressed. While some deficiencies remain, this does not preclude the overall conclusion that the level of compliance with R.28 is brought to a level of LC.

47. Bearing in mind that countries are expected to have addressed most if not all technical compliance deficiencies by the end of the third year from the adoption of their MER, Hungary is encouraged to address the remaining deficiencies within that time framework.

48. Overall, in light of the progress made by Hungary since its MER and 1<sup>st</sup> enhanced follow-up report were adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	LC	LC	C	<b>LC</b>	LC	LC	PC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	PC	PC	LC	C	LC	LC	PC	LC	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
LC	LC	LC	PC	LC	LC	LC	<b>LC</b>	C	LC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	PC	PC	LC	LC	LC	LC	LC	LC	LC

49. Hungary will remain in enhanced follow-up, and will continue to report back in December 2019 to MONEYVAL on further progress to strengthen its implementation of AML/CFT measures.

## GLOSSARY OF ACRONYMS

AML	Anti-money laundering
BO	Beneficial ownership
C	Criterion
CDD	Customer due diligence
CFT	Countering the financing of terrorism
DNFBP	Designated non-financial business and professions
FI	Financial institutions
FT	Financing of terrorism
HFIU	Hungarian Financial Intelligence Unit
LC	Largely compliant
ML	Money laundering
NRA	National risk assessment
PC	Partially compliant
PF	Proliferation financing
R	Recommendation
STR	Suspicious transaction report
TC	Technical Compliance
TFS	Targeted financial sanctions
UNSCR	United Nations Security Council Resolutions

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**December 2018**

## Anti-money laundering and counter-terrorist financing measures - **Hungary**

### **2<sup>nd</sup> Enhanced Follow-up Report & Technical Compliance Re-Rating**

This report analyses Hungary's progress in addressing the technical compliance deficiencies identified in the FSRB assessment of their measures to combat money laundering and terrorist financing of September 2016.

The report also looks at whether Hungary has implemented new measures to meet the requirements of FATF Recommendations that changed since the 2016 assessment.