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

MONEYVAL(2019)13-ANALYSIS

4th ROUND MUTUAL EVALUATION OF ESTONIA

EXIT FOLLOW-UP REPORT SUBMITTED TO MONEYVAL

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

11 JULY 2019

This progress report was adopted at MONEYVAL's 58th Plenary meeting (Strasbourg, 15-19 July 2019). For further information on the examination and adoption of this report, please refer to the Meeting Report of the 58th plenary at http://www.coe.int/moneyval.

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GLOSSARY OF ACRONYMS

AML/TF Law	Anti-Money Laundering and Financing of Terrorism law
C	Compliant
CC	Criminal Code
CDD	Customer Due Diligence
CEPs	Compliance Enhancing Procedures
CIA	Credit Institutions Act
CNB	Croatian National Bank
CPC	Criminal Procedure Code
DNFBP	Designated Non-Financial Businesses and Professions
EDD	Enhanced Due Diligence
EFSA	Estonian Financial Supervision Authority
EU	European Union
FATF	Financial Action Task Force
FT	Financing of Terrorism
PC	Partially Compliant
PEP	Politically exposed person
LC	Largely Compliant
MER	Mutual Evaluation Report
ML	Money laundering
MLTFPA	Money Laundering and Terrorist Financing Prevention Act
NRA	National Risk Assessment
NC	Non-Compliant
R	Recommendation
SR	Special Recommendation
STR	Suspicious Transaction Report
UNSCR	United nations Security Council Resolution
WUPSIL	Western Union Payment Services Ireland Limited

Analysis by the Secretariat

I. INTRODUCTION

1. The purpose of this paper is to analyse the progress that Estonia has made to remedy the deficiencies identified in its Fourth Round Mutual Evaluation Report (MER), which was adopted at MONEYVAL's 45th Plenary in September 2014. Estonia was then asked to submit a follow-up report (FUR) on actions taken to address certain shortcomings by September 2016.

2. At the 51st Plenary Meeting in September 2016, Estonia submitted its 1st Fourth Round FUR. The Secretariat highlighted the progress made by the country, noting in particular that Estonia had put forward amendments to the Penal Code to address technical deficiencies with respect to Recommendation 3. The draft law was expected to enter into force after the Plenary. Moreover, the first financing of terrorism (FT) conviction had been handed down by the courts. The Plenary agreed that Estonia had made satisfactory progress and adopted the FUR. Estonia submitted its 2nd Fourth Round FUR to the MONEYVAL Secretariat on 16 May 2019 with a view to seeking exit from the regular follow-up process.

3. As per the Fourth Round Rules of Procedure[1], countries must have implemented those FATF Recommendations that are considered to be Core[2] and Key[3] at a level essentially equivalent to a "compliant" (C) or "largely compliant" (LC) level. The Plenary may retain some limited flexibility with regard to Key Recommendations if substantial progress has been made on the overall set of recommendations that were rated "partially compliant" (PC) or "non-compliant" (NC).

4. In its Fourth Round MER, Estonia obtained the following PC/NC ratings:

Core Recommendations rated PC (no Core Recommendations were rated NC)
Special Recommendation II (Criminalisation of terrorist financing)
Key Recommendations rated PC (no Key Recommendations were rated NC)
Recommendation 3 (Confiscation and provisional measures)
Recommendation 35 (Conventions)
Special Recommendation I (Implementation of United Nations instruments)
Special Recommendation III (Freezing and confiscation of terrorist assets)
Other Recommendations rated PC (no other Recommendations were rated NC)
Recommendation 11 (Unusual transactions)
Recommendation 12 (DNFBPS – R.5, 6, 8-11)
Recommendation 16 (DNFBPs – R.13-15 and 21)
Recommendation 17 (Sanctions)
Recommendation 21 (Special attention for higher risk countries)
Recommendation 24 (DNFBPS - Regulation, supervision and monitoring)
Recommendation 33 (Legal persons)

1 MONEYVAL, *Rules of Procedure for the Fourth Round of Mutual Evaluations and for Follow-up as a Result of the Third Evaluation Round*, as revised in September 2017, available at https://rm.coe.int/rules-of-procedure-for-the-4th-round-of-mutual-evaluations-and-for-fol/1680760775

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

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

5. Based on the report provided by Estonia, the Secretariat prepared the present analysis of the progress made in relation to all the Recommendations rated PC in the MER.

6. On a general note, concerning all applications for removal from regular follow-up: the procedure is a paper desk-based review, and thus by nature less detailed and thorough than a MER. Effectiveness aspects can be taken into account only through consideration of data and information provided by the authorities. It is also important to note that the conclusions in this analysis do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in all cases, as comprehensive as it would have been during a mutual evaluation.

II. OVERVIEW OF PROGRESS MADE BY ESTONIA SINCE THE ADOPTION OF THE MER

Policy developments

7. Estonia conducted a national risk assessment (NRA) in 2015 which was followed by an action plan adopted in the same year. On the basis of the action plan, a new anti-money laundering/counter financing of terrorism (AML/CFT) law was adopted in 2017. In 2018, the process for updating the NRA was initiated by the AML/CFT Committee based on a more comprehensive risk assessment methodology, which also provides for risk management measures.

8. The authorities, in co-operation with non-governmental organisations, continued implementing the Anti-Corruption Strategy, 2013-2020, which was adopted in October 2013.

9. The Supervisory Board of the Estonian Financial Supervision Authority (EFSA) approved two strategies: Strategy 2016–2018 and 2019–2021. These strategies have as a focus the compliance assessment of internal monitoring systems of financial intermediaries on the basis of their business models, especially their AML/CFT controls. Where necessary, it will make recommendations to supervised entities or require them to bring their actions in line with the law or to reduce risks.

10. Repressive measures for AML/CFT are set out in the Internal Security Development Plan 2015-2020 (ISDP), which also includes the prevention, combating and detection of organised crime. The ISDP provides an overview of the present crime situation, the future aims in order to combat ML/FT and organised crime and the roles of all relevant competent authorities. The 2020-2030 ISDP is currently being prepared.

Legislation, regulations and guidance

11. Important legislative reforms have taken place since the adoption of the MER. In addition to amendments to the Money Laundering and Terrorist Financing Prevention Act (MLTFPA) (July 2016), Penal Code (January 2015), and Credit Institutions Act (CIA) (July 2016) mentioned in the previous FUR, Estonia has adopted the following laws:

    - amendments to the Penal Code and Code of Criminal Procedure (related to seizure and confiscation of instrumentalities, objects and proceeds of crime), adopted 15.12.2016, entered into force 01.01.2017

    - new version of MLTFPA adopted 26.10.2017, entered into force on 27.11. 2017.

    - amendments to the to the Penal Code, MLTFPA and other acts (related to combating terrorism) adopted 19.12.2018, entered into force 14.01.2019

- amendments to Credit Institutions Act (related to data protection), adopted 20.02.2019, entered into force 15.03.2019

- new version of International Sanctions Act, adopted 20.02.2019, coming into force on 1st of January 2020.

III. REVIEW OF MEASURES TAKEN IN RELATION TO CORE AND KEY RECOMMENDATIONS

SR.II – Criminalise terrorist financing

Deficiency (1): The collection of funds with the intention that they should be used/in the knowledge that they are to be used by an individual terrorist for any purpose other than terrorist purposes is not unequivocally covered.

Deficiency (2) TF offence does not fully criminalise the financing of all terrorist acts required by the TF Convention in its Art. 2 (1) (a) since these acts are not criminalised in the Penal Code.

Deficiency (3) For conducts addressed in the specific UN treaties referred to by Art. 2 of the TF Convention which are covered by Art. 237, an additional purposive element is required which limits the application of TF offence.

Deficiency (4): TF offence does not cover all situations where a person finances a terrorist act committed abroad.

12. Since the adoption of the 4th Round MER, Estonia has made some legislative amendments to the Penal Code provisions dealing with terrorism and TF. In particular, new provisions have been included to criminalise travelling for terrorist purposes and the organisation, funding and support of travelling for terrorist purposes. However, none of the amendments address the deficiencies identified in the 4th Round MER. The authorities pointed out that, despite the fact that the TF offence has not been amended, a Supreme Court ruling issued on 12 April 2017 has clarified that Art. 237[3] (Financing and support of act of terrorism and activities directed at it) is to be interpreted broadly such that the financing of an individual terrorist for any purpose (deficiency 1) and the financing of a terrorist act committed abroad (deficiency 4) would be covered. In fact, a TF conviction was achieved in relation to the financing of an individual terrorist who had not committed a terrorism act and whose activities took place outside of Estonia[4]. The authorities agree that, while the offence of acts of terrorism under Art. 237 is couched in broad terms and is therefore capable of capturing all the treaty offences, they are considering expressly extending the offence of acts of terrorism (deficiency 2) and removing the additional purposive element (deficiency 4) to ensure that the TF offence is aligned more closely with the Standards.

Conclusion on SR.II

13. Despite the fact that some changes to the terrorism and TF offences are required to achieve broader compliance with the Standards, Estonia has demonstrated with case-law that its TF offence can be applied in practice in those areas in which technical deficiencies had been previously identified in the 2014 MER. Therefore, Estonia has meanwhile achived a level of compliance equivalent to LC with SR II. However, it is recommended that the above issues are expressly laid down in the TF offence.

4 This had also been subject to a case-study at the 56th MONEYVAL Plenary in July 2018.

14.

R.3 – Confiscation and provisional measures

Deficiencies:

(1) Confiscation of property of corresponding value to instrumentalities is not fully provided for.

(2) Confiscation of property of corresponding value to laundered property is not fully provided for.

15. As a result of amendments to the Penal Code and Criminal Procedure Code (CPC) (1 January 2017), particularly § 84 of the Penal Code, the corresponding value of an instrument used in, or the direct object of, a criminal offence can be confiscated.

Deficiency (3): Unclear whether confiscation of property can be applied where the owner or possessor has not been identified.

16. Pursuant to an amendment to the CPC (1 January, 2017), particularly § 126, physical evidence of commercial value or property obtained through a criminal offence shall be transferred into state ownership if either the owner or lawful possessor are not identified.

Deficiency (4): The confiscation of instrumentalities intended to be used in the commission of financing of terrorism offence is not fully provided for under Estonian law.

17. § 83 (Confiscation of the object used to commit an offence and the direct object of the offence) in subsection 1 covers confiscation of the "object which was used or intended to be used to commit an intentional offence [including TF]".

Deficiency (5): The deficiency identified in the criminalisation of the TF may limit the ability to freeze and confiscate property.

18. Please refer to SR II.

Deficiency (6): Technical limitations in relation to confiscation of instrumentalities and value confiscation extend to seizure.

19. Please refer to deficiencies (1), (2), (3), and (4).

Effectiveness: Low number of confiscation orders with respect to proceeds-generating crime; and

Low volume of confiscated assets overall.

20. According to information provided by the authorities, the volume of confiscated assets has increased largely as a result of training and enhanced cooperation between all relevant stakeholders. The total amount of confiscated assets for the period 2015-2018 was 21,064,374 Euro.

Conclusion on R.3

21. Estonia has addressed most of the deficiencies and now has a level of compliance that is essentially equivalent to an LC with R. 3.

R.35 – Conventions

Deficiency (1): The physical elements of money laundering offence do not fully correspond to the Vienna and Palermo Conventions, in particular purposive elements of concealing and disguising the illicit origin of the property narrows the scope of use in self-laundering cases (R.1).

22. The new definition of ML in the MLTFPA fully corresponds to the Vienna and Palermo Conventions.

Deficiency (2): The collection of funds with the intention that they should be used/in the knowledge that they are to be used by an individual terrorist for any purpose other than terrorist purposes is not unequivocally covered (SR.II).

Deficiency (3): The TF offence does not fully criminalise the financing of all terrorist acts required by the TF Convention in its Art p 2 (1) (a) since these acts are not criminalised in the Penal Code.

Deficiency (4): For conducts addressed in the specific UN treaties referred to by Art. 2 of the FT Convention which are covered by Art. 237, an additional purposive element is required which limits the application of TF offence.

Deficiency (5): FT offence does not cover all situations where a person finances a terrorist act committed abroad.

23. Please refer to SR II.

Deficiency (6): The confiscation of instrumentalities intended to be used in the commission of financing of terrorism offence is not fully provided for under Estonian law (R.3).

Deficiency (7): The deficiency identified in the criminalisation of the FT may limit the ability to freeze and confiscate property (R.3).

24. Please refer to R.3

Conclusion on R.35

25. Estonia has addressed most of the deficiencies and now has a level of compliance that is essentially equivalent to an LC with R. 35.

SR.I – Implementation of United Nations instruments

Deficiency (1): The collection of funds with the intention that they should be used/in the knowledge that they are to be used by an individual terrorist for any purpose other than terrorist purposes is not unequivocally covered (SR.II).

Deficiency (2): The TF offence does not fully criminalise the financing of all terrorist acts required by the TF Convention in its Art. 2 (1) (a) since these acts are not criminalised in the Penal Code.

Deficiency (3): For conducts addressed in the specific UN treaties referred to by Art. 2 of the TF Convention which are covered by Art. 237, an additional purposive element is required which limits the application of TF offence.

Deficiency (4): TF offence does not cover all situations where a person finances a terrorist act committed abroad.

26. Please refer to SR II

Deficiency (5): The confiscation of instrumentalities intended to be used in the commission of financing of terrorism offence is not fully provided for under Estonian law (R.3).

Deficiency (6): The deficiency identified in the criminalisation of the TF may limit the ability to freeze and confiscate property (R.3).

27. Please refer to R.3.

Deficiency (7): Deficiencies under SR.III.

28. Please refer to SR.III.

Conclusion on SR.I

29. Estonia has addressed most of the deficiencies and now has a level of compliance that is essentially equivalent to an LC with SR I.

SR.III – Freezing and confiscating terrorist assets

Deficiency (1): The requirement to apply freezing measures under UNSCR 1267 and 1373 without delay is not met.

30. On 26 October 2017, the Estonian Government adopted a regulation which in § 2 (1) states that "until the Council of the EU adopts or updates its corresponding regulation, sanctions adopted by the UN Security Council are implemented based on the UN sanctions committees' lists". Further, § 2 (2) provides for the sanctions to be applied, such as asset freezing, prohibition on technical consultation, aid and training for military activities and transactions related to arms embargoes. This deficiency has therefore been addressed.

Deficiency (2): There is no obligation for the purposes of UNSCR 1267 to freeze funds derived from funds or other assets owned or controlled; directly or indirectly by persons or entities included in the UN list or by persons acting on their behalf or at their direction.

31. As an EU member state, Estonia is bound by the EU legal instruments which implement UNSCRS: Reg. 881/2002 (UNSCR 1267/1989), Reg. 753/2011 (UNSCR 1988) and Reg. 2580/2001 and Common Position 2001/931/CFSP (UNSCR 1373). These EU instruments fully cover funds derived from funds or other assets owned or controlled; directly or indirectly by persons or entities included in the UN list or by persons acting on their behalf or at their direction.

Deficiency (3): No measures have been taken to freeze funds of persons formerly known as "EU internals".

32. Estonia adopted the International Sanctions Act (ISA) which will enter into force on 1 of January 2020. The ISA has a full chapter (Chapter 4) dedicated to the adoption of sanctions domestically. This chapter provides the legal basis for the adoption of government regulations or orders for the implementation of UN or EU measures domestically where it is impossible to implement these measures on the basis of the Council of EU regulations (new ISA § 9 (2)). It is expected that EU internals will be covered under such government regulation or order.

Deficiency (4): No legislative framework to examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions.

33. The same provisions in the ISA referred to under deficiency 3 provide the mechanism for examining and giving effect to the actions initiated under the freezing mechanisms of other jurisdictions.

Deficiency (5): No clear publicly-known procedures for un-freezing in a timely manner funds and assets.

34. Upon the revocation of financial sanctions (i.e. de-listing of a designated person or entity), the Ministry of Foreign Affairs as the coordinator for the implementation of international sanctions (ISA § 9 (21)/new ISA § 10 (1)) immediately informs the relevant authorities (FIU, Ministry of Finance) and credit institutions through the Estonian Banking Association. According to ISA § 18 (1)/new ISA § 16 (1), the FIU immediately publishes a notification and makes it available on its webpage. Moreover, according to ISA § 19 /new ISA § 17, a person whose funds have been frozen has the right to request the Financial Intelligence Unit to verify immediately if the measures have been taken lawfully. Upon receiving such a request, the FIU shall verify if the person is (still) a designated person and if measures have been taken lawfully (ISA § 18 (3)/new ISA § 18).

Conclusion on SR.III

35. Estonia has addressed the most severe deficiency and now has a system in place to implement sanctions without delay. It has a level of compliance that is essentially equivalent to an LC with SR.III.

IV. REVIEW OF MEASURES TAKEN IN RELATION TO OTHER RECOMMENDATIONS

R.11 – Unusual transactions

Deficiencies:

(1) The requirement to pay special attention to complex, unusual large transactions does not apply to "patterns of transactions" as required by the criterion;

(2) The requirement to pay special attention does not apply to transactions which have "no apparent or visible lawful purpose" as required by the criterion;

(3) No clear requirement to examine the nature, purpose or background when discovering a complex or unusual transaction during transaction monitoring.

(4) No clear obligation to keep records of findings that do not lead to STR.

36. The authorities report that the new MLTFPA aligns the requirement to pay special attention to complex, unusual large transactions and patterns of transactions with the criterion. In particular, § 23 (2) (4) of the MLTFPA requires obliged entities to pay more attention to "complex, high-value and unusual transactions and transaction patterns that do not have a reasonable or visible economic or lawful purpose or that are not characteristic of the given business specifics". § 23 (3) of the same Act requires also that "the nature, reason and background of the transactions as well as other information that allows for understanding the substance of the transactions must be identified".

37. Regarding Deficiency (4), § 47 (2) of the MLTFPA requires obliged entities to "retain all the data on suspicious or unusual transactions or circumstances which the Financial Intelligence Unit was not notified of" for a period of 5 years.

38. Moreover, the Advisory Guidance of the EFSA requires obliged entities to investigate the background of high-risk transactions and keep records of their findings.

Conclusion on R.11

39. Estonia appears to have addressed all the deficiencies and has a level of compliance that is essentially equivalent to an LC with R.11.

R.12 - DNFBPs (R.5, 6, 8-11)

Deficiency (1): No clear requirement to determine whether the customer is acting on behalf of another person.

40. According to the authorities § 20 (1) 3) an obliged entity applies the following due diligence measures: identification of the beneficial owner and, for the purpose of verifying their identity, taking measures to the extent that allows the obliged entity to make certain that it knows who the beneficial owner is, and understands the ownership and control structure of the customer or of the person participating in an occasional transaction." With the implementation of the new MTLFPA, the definition of the beneficial owner according to § 9 (1) reads as follows: "For the purposes of this Act, 'beneficial owner' means a natural person who, taking advantage of their influence, makes a transaction, act, action, operation or step or otherwise exercises control over a transaction, act, action, operation or step or over another person and in whose interests or favour or on whose account a transaction or act, action, operation or step is made."

    The explanatory report on the MLTFPA on page 33 also clarifies the above-mentioned concept. It reads as follows: "Private individuals might also have beneficial owners (see section 1), thus when applying the [beneficial owner] definition one needs to take this possibility into account."

    While this review takes note of this explanation, it is still of the view that there is no clear requirement to determine whether the customer is acting on behalf of another person.

Deficiency (2): No requirement to apply CDD requirements to existing customers.

41. With the implementation of the new MLTFPA, Estonia has enacted an obligation to apply CDD to existing customers. § 100 of the MLTFPA requires that "Where necessary, the obliged entity applies the due diligence measures specified in Chapter 3 MLTFPA[5] to the existing customers over a period of one year from the entry into force of the Act. Upon assessment of the need to apply the due diligence measures, the obliged entity relies on, inter alia, the importance of the customer and the risk profile as well as the time that has passed from the previous application of the due diligence measures or the scope of their application." With that Estonia addresses the deficiency No 2.

Effectiveness (3): Weakness in the implementation of the identification and verification of source of funds, especially in case of higher risk customers and PEPs.

42. The new MLTFPA addresses this deficiency in a number of Articles. Besides above-mentioned § 23 which covers the requirement to identify "the source and origin of the funds used in a transaction" as part of the monitoring of a business relationship, § 41 (1) (2) requires that in case of transactions with politically exposed persons, the obliged entity should "apply measures to establish the origin of the wealth of the person and the sources of the funds that are used in the business relationship or upon making occasional transactions".

5 The heading of Chapter 3 is Due Diligence Measures and there all CDD application obligations are enacted.

43. Moreover, § 38 (2) (4) of the MLTFPA requires the collection of additional information and documents "for the purpose of identifying the source and origin of the funds used in a transaction" in order to rule out the fictitious nature of the transactions. The same measure must be taken in case of contact of the obliged entity with a high-risk third country via a person participating in a transaction, professional act, using professional service or a customer, as it described in § 39 (1) (3) of the MLTFPA.

Effectiveness (2): Some shortcomings in the implementation of risk-based approach (extent of CDD measures).

44. The authorities report that the FIU has issued guidelines on managing risks and conducted a number of training seminars with the purpose of explaining the risk-based approach and the obligations for the application of due diligence measures.

Deficiency (5): Weakness in the implementation of CDD measures by real estate agents.

45. On February 2019, the FIU and the association of Estonian Real Estate Companies (Eesti Kinnisvarafirmade Liit) conducted training for real estate companies which was attended by approximately 100 participants. The authorities report that the main purpose of that training was to strengthen the implementation of KYC and other CDD measures in the sector, and explain other obligations under the MLTFPA.

Deficiency (6): Some deficiencies in the implementation of CDD measures of dealers in precious metals and dealers in precious stones.

46. No relevant explanation was provided in the FUR. However, the authorities are of the view that the ML risks in the sector have to some extent been reduced since 2014 and VAT-fraud schemes using transactions in precious metals have not been observed in recent years. Therefore, the FIU has not focused its supervisory resources on this sector. However, 3 on-site inspections (2016-2017) of dealers in precious metals were conducted.

Deficiency (7): No provision in law or regulation to ensure that the mandatory record-keeping period may be extended in specific cases upon request of competent authorities (as preventive measures).

47. According to § 47 of the MLTFPA, data of importance for prevention, detection or investigation of ML/TF may be retained for a longer period on the basis of a precept of the competent supervisory authority but not for more than five years after the expiry of the first time limit, which is also five years.

Deficiency (8): Lack of effective implementation of the record-keeping requirements with regard to real estate agents.

48. The information provided in the FUR relates to car-dealers. However, the authorities have explained that since the submission of the FUR, the FIU has initiated 4 on-site supervisions of real-estate agents, which includes assessing whether record-keeping requirements are complied with.

Conclusion on R.12

49. Some progress has been demonstrated in relation to all deficiencies. However, no relevant information was provided in relation to deficiencies (1) and (2).

R.16 – DNFBP (R.13-15 & 21)

Deficiency (1) Applying Recommendation 13: No requirement to report suspicions on funds linked or related to, or to be used for, terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.

50. The reporting obligation has been significantly widened by amendments to the MLTFPA, specifically § 49 which requires that where an obliged entity identifies an activity, facts or has a suspicion, or knows that proceeds are related to terrorist financing or the commission of related offences, the obliged entity must report to the FIU immediately.

Effectiveness (1): Leaving the initial postponement decision to the reporting entity may negatively impact on the effectiveness.

51. On 6 May 2019 the FIU published guidelines which encourage reporting entities to refrain from carrying out suspicious transactions before reporting to the FIU. This issue was also emphasised during training sessions.

Effectiveness (2): Underreporting by certain DNFBPs.

52. The authorities report that, during on-site visits and training workshops, the FIU continues to provide guidance on reporting. This has resulted in an increased number of STRs since 2016. Training was also provided by self-regulatory bodies to increase awareness on AML/CFT requirements, including reporting.

Deficiency (2) Applying Recommendation 21: Technical deficiency in relation to the application of the obligation to a customer or person from one of the stipulated countries.

53. Please refer to R. 21.

Deficiency (3) Applying Recommendation 21: No clear requirement to examine the nature, purpose or background when discovering a transaction with no apparent economic or visible lawful involving higher risk countries.

54. Please refer to R. 21.

Deficiency (4) Applying Recommendation 21: No clear requirement to keep records of findings that do not lead to STR;

55. Please refer to R.11.

Effectiveness (3): No awareness-raising by the authorities to DNFBPs on jurisdictions which do not or insufficiently apply FATF Recommendations.

56. The authorities report that all relevant information is published on the FIU's web-site. Moreover, during the last two years a number of training events provided by the FIU included a focus on measures to be taken in relation to FATF high-risk jurisdictions.

Effectiveness (4): Weak awareness of R.16 requirement by certain DNFBPs.

57. According to the authorities, the FIU continues to increase DNFBP awareness of preventive measures by conducting on-site/off-site inspections, as well as training.

Conclusion on R.16

58. Estonia appears to have addressed all the deficiencies and has a level of compliance that is essentially equivalent to an LC with R.16

R.17 – Sanctions

Deficiency (1): Range of available sanctions is neither effective nor proportionate for certain categories of financial institutions.

59. Pursuant to amendments to the MLTFPA, there is now a suitable range of monetary sanctions for AML/CFT breaches. These are set out under § 65.

Deficiency (2): Maximum financial penalties do not appear dissuasive.

60. The maximum sanction that can now be imposed is EUR 5 million or up to 10 per cent of the annual turnover of the obliged entity.

Deficiency (3): Sanctions available for legal persons that are financial institutions are not available for their directors and senior management.

61. No progress has been made to address this deficiency.

Effectiveness: Narrow range of sanctions applied in practice.

62. The EFSA has imposed a range of sanctions such as: prohibition to provide payment services to non-resident clients, revocation of operating permits, or change of managers and members of the supervisory board. These measures were taken in relation to major financial institutions in highly-publicised cases.

63. In case of the FIU, please refer to R.24, Effectiveness (2).

Conclusion on R.17

64. The country has made progress in addressing a number of deficiencies. Deficiency (3) is not covered at all. Moreover, there are still doubts about the FIU's range of sanctions.

R.21 – Special attention for higher risk countries

Deficiency (1): Technical deficiency in relation to the application of the obligation to a customer or person from one of the stipulated countries.

65. § 23 (2) (5) of the MLTFPA requires obliged entities to pay "attention to the business relationship or transaction" if the customer is from a high-risk third country or a country or territory specified in subsection 4 of § 37" of the MLTFPA, or if he is a citizen or the resident of such country or territory, or "the seat of the payment service provider of the payee is in such country or territory". Further, § 37 subsection 4 of the MLTFPA provides that absence of an effective AML/CFT system, availability of credible information on significant levels of corruption or other criminal activity, existence of EU/UN sanctions, or information that country or jurisdiction provides funding or support for terrorist activities are factors that indicate a higher risk linked to such a country or jurisdiction.

Deficiencies:

(2) No clear requirement to examine the nature, purpose or background when discovering a transaction with no apparent economic or visible lawful involving higher risk countries.

(3) No clear requirement to keep records of findings that do not lead to STR.

66. According to § 23 (2) (4) of the MLTFPA obliged entities should monitor transactions "that do not have a reasonable or visible economic or lawful purpose or that are not characteristic of the given business specifics". Subsection 5 of the same paragraph covers the involvement of the higher risk countries (as noted under the analysis of the deficiency (1), R.21). Also, refer to R.11.

67. Regarding deficiency (3) the authorities refer to § 47 (2) of the MLTFPA and the Advisory Guidelines established by the EFSA which oblige entities to keep all the records and findings "on suspicious or unusual transactions or circumstances which the Financial Intelligence Unit was not notified of".

Effectiveness: Circular letters not distributed to all financial institutions.

68. According to the authorities, in addition to the publication of the list of high-risk and non-cooperative jurisdictions on the FIU's website, the FIU draws obliged entities' attention to the list during training events.

Conclusion on R.21

69. It appears that overall Estonia now has a level of compliance that is essentially equivalent to an LC with R.21.

R.24 - DNFBP (regulation, supervision and monitoring)

Deficiency (1): Sanctions available for legal persons do not extend to directors and senior management.

70. No progress has been made to address this deficiency.

Effectiveness (1): Insufficient supervisory resources at the FIU.

71. The authorities report that since last FUR in 2016, the number of staff in the supervisory division has increased by two persons. However, most of these resources are allocated to issuing licenses.

Effectiveness (2): In practice only misdemeanour proceedings are used by FIU.

72. According to information from the authorities, the FIU uses a wide variety of sanctions, in particular, precepts to ensure that obliged entities remedy deficiencies or misdemeanour proceedings for imposing fines. The FIU, on one occasion, requested a gambling company to change the compliance officer. In addition, the authorities stated that the first publication of a breach of AML obligations under FIU supervision took place in December 2018. As of end of June 2019, 5 cases of breaches were published on the FIU's website (2 corporate service providers, 2 fund managers, 1 virtual currency service provider).

73. Moreover, according to § 67 (Duties of supervisory authority) of the MLTFPA, the FIU has an obligation to publish the final decision made in a misdemeanour case on its website. The so-called "naming and shaming procedure" can be also rated as an additional type of sanction.

74. In addition, the authorities have provided a table with statistics on sanctions by the FIU to DNFBP's that demonstrates that the FIU has issued a range of sanctions, in addition to misdemeanours.

Effectiveness (3): Low level of on-site visits for certain DNFBPs under FIU supervision.

75. After the last FUR in 2016, the number and range of on-site visits conducted in relation to DNFBPs has increased. However, according to the statistics provided by the country, the number of on-site visits has declined in the past year.

Effectiveness (4): Insufficient supervision undertaken by the Bar Association and Chamber of Notaries.

76. In relation to lawyers, the authorities state that all the supervisory guidelines are renewed on an ongoing basis. Moreover, in 2018 the Bar Association adopted new rules of procedure and internal control instructions on prevention of money laundering and terrorist financing and implementation of international sanctions. A risk assessment methodology for practitioners was also adopted. However, no statistics on the on-site inspections were provided.

77. In the case of notaries, as reported in the 2016 FUR, the Chamber of Notaries implemented a remote supervision system in the form of a questionnaire, which was planned to be rolled out in 2017. However, the process was postponed because of the adoption of the new MLTFPA on 26 October 2017, in order to give notaries time to implement the new legislation.

78. The authorities report that 10 on-site inspections were carried out over the period 2017-2018 (5 per year). The on-site inspections did not identify any high-risk notaries, breaches of the MLTFPA or the Rules of Procedures of the Chamber of Notaries.

79. On 8 March 2019, the Rules of Procedures of Notaries on Money Laundering and Terrorist Financing Prevention were amended by a decision of the General Meeting of the Chamber of Notaries. Moreover, in 2019, the Chamber of Notaries entered into an agreement with a commercial entity to provide access to a PEP database. Work on the necessary software is in progress.

Effectiveness (5): No sanctions imposed by either the Bar Association or Chamber of Notaries.

80. The Chamber of Notaries has not imposed any sanctions for AML/CFT breaches.

81. In relation to the Bar Association, it has no power to sanction law offices and advocates under the MLTFPA.

Conclusion on R.24

82. Some progress was made by the country. However, a number of deficiencies, especially those relating to effectiveness, have not been sufficiently addressed.

R.33 – Legal persons

Deficiencies:

(1) There is limited control over the obligations of legal persons to submit updated information on ownership and control to the register.

(2) Maintenance of share registers and shareholder registers by limited companies is not supervised.

(3) The legal framework does not ensure that information held in the Commercial Register is adequate, accurate and timely.

83. Estonia is in the process of revising its Company Law which will be completed in 2020. No other progress has been reported.

Deficiency (4): It is doubtful whether competent authorities are in a position to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal person.

84. According to the information from the authorities, a BO register was created on 1 September 2018 on the basis of the new MLTFPA. According to § 71 subsection 2 of the Act, shareholders or members of a legal person are required to provide information on beneficial ownership to the management of the company. Any persons who violates this obligation or knowingly reports falsified data incurs a fine. Additional guidance on these obligations was published on the webpage of the Ministry of Finance.

Conclusion on R.33

85. While the new MLTFPA has addressed the deficiency related to beneficial ownership, deficiencies (1), (2) and (3) will be addressed only after the adoption of amendments to the Company Law.

V. Overall conclusion

86. Since the adoption of its 4th Round MER in 2014, Estonia has made tangible progress in addressing the remaining deficiencies related to those core and key recommendations that were rated “partially compliant”.

87. By submitting the present follow-up report, Estonia has asked to be removed from the follow-up process of the 4th round of mutual evaluations. According to Rule 13, paragraph 4 of the 4th round rules of procedures, this requires that the State or territory has an effective AML/CFT system in force, under which it has implemented all core and key recommendations at the level of or at a level essentially equivalent to a “compliant” or “largely compliant”. The present analysis comes to the conclusion that the core recommendation (SR.II) and the key recommendations (R.3 and 35, SR.I and III) which were rated “partially compliant” in the 2014 MER have meanwhile been brought to a level equivalent to at least “largely compliant”.

88. Therefore, the MONEYVAL Secretariat considers that Estonia has taken sufficient steps to be removed from the regular follow-up process.

89. As far as outstanding efficiencies - also on the non-core/key recommendations – are not yet remedied as identified in the present analysis, the Plenary should strongly encourage Estonia to address these (including by completing on-going legislative processes) sufficiently ahead of the country’s 5th round mutual evaluation.

The MONEYVAL Secretariat

July 2019