

# Gibraltar

## Fifth Round Mutual Evaluation Report

### Executive Summary

1. This report provides a summary of the anti-money laundering and combating financing of terrorism (AML/CFT) measures in place in the British Overseas Territory of Gibraltar (hereinafter Gibraltar) as at the date of the on-site visit from 1 to 12 April 2019. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Gibraltar's AML/CFT system and provides recommendations on how the system could be strengthened.

#### Key Findings

- Gibraltar has a varied understanding of its money laundering (ML) and financing of terrorism (FT) risks. Whilst the key supervisors (the Gibraltar Financial Services Commission (GFSC) and the Gibraltar Gambling Commissioner (GGC)) have a robust understanding of risks at sectoral level underpinned by the collection of comprehensive data, the jurisdiction's understanding of the ML risk is affected by several shortcomings related to the NRA analysis, in particular by the limited analysis of quantitative and qualitative data and by underestimating the cross-border threat which Gibraltar faces as an international financial centre. The authorities demonstrated a good understanding of the risk of terrorism and FT typologies, whilst the assessment and understanding of the FT risk are affected by insufficient consideration of data available on transactions to/from conflict zones and high-risk jurisdictions. The risk related to cross-border transportation of cash is also insufficiently understood. Significant effort has been devoted by the authorities to raise awareness about the 2018 NRA findings, although the understanding of the results of the NRA and, in general, of the ML and FT risks by FIs and DNFBPs diverges. The authorities have acted upon the majority of the findings identified by the NRAs, implementing strategy and action plans, including following up on the findings of the most recent NRA. While several actions appear commensurate to some of the risks identified, the comprehensiveness of these strategies and action plans is affected by shortcomings concerning the assessment of risks. Cooperation and coordination with regard to both development and implementation of policies and at an operational level is one of the strengths of the overall AML/CFT system in Gibraltar. There are a number of exceptions to CDD requirements that are not predicated on an assessment of the risks.
- The Gibraltar Financial Intelligence Unit (GFIU) has increased its capacities in recent years and has extended cooperation with the LEAs and supervisory authorities, thus increasing its role in generating financial intelligence. However, the GFIU's analytical products were used by law enforcement agencies (LEAs) only to a limited extent and therefore did not have a significant impact upon developing investigations into ML and predicate offences. Better results were

achieved with regard to FT investigations. LEAs did not prioritise cases concerned with the GFIU disseminations in their work. The suspicious transactions reports (STRs) which the GFIU receives are not of sufficient quality to assist them in performing their functions. The authorities have so far developed one strategic analysis which was not made available either to the oversight and supervisory agencies GFSC, GGC or to the private sector. Specific protective measures are in place to ensure the confidentiality of information exchanged, accessed or used.

- Since 2015 Gibraltar's AML/CFT legal framework has improved significantly and provides a solid basis for the authorities to detect, investigate and prosecute the ML/FT offence. Whilst this was followed by improvements in inter-agency cooperation and information exchange, the effective investigation and prosecution of ML offences remain undemonstrated. By the time of the on-site visit there have only been four ML convictions for self-laundering involving domestic predicates. There have been no successful third party and standalone prosecutions over the relevant period. Financial investigations are conducted regularly but these are often limited to providing further evidence in support of the prosecution of domestic predicate crime or pursuant to possible confiscation proceedings. Parallel financial investigations targeting ML are not pursued in cases where the associated predicate offences occur outside Gibraltar, thus not reflecting the risks the jurisdiction has in its role as a financial centre. The judiciary applies the guidance of the sentencing guidelines council of England and Wales and the principles underpinning the sanctioning regime are well developed.
- Gibraltar's legislation provides all that is necessary for the detection, restraint and confiscation of the proceeds and forfeiture of the instrumentalities of crime, whether from domestic or international offending. It also provides non-conviction based civil recovery and cash seizure regimes as an alternative means of disrupting economic crime. Although confiscation is a policy objective, it has not been effectively pursued and the amount confiscated is low. There have been only two conviction-based confiscation orders, and these arose from crimes committed in Gibraltar. On the other hand, forfeitures of tobacco and instrumentalities used to smuggle (based on the 1997 Tobacco Act) were applied by Her Majesty's Customs (HMC) throughout the reporting period. Assets deriving from foreign predicates in complex and international cases remain undetected and therefore the benefit of that crime is neither restrained nor confiscated. Whilst LEAs have achieved results from cash seizures, the civil recovery regime has not yet been applied. The statistics on the confiscation of cross border movements of currency and bearer negotiable instruments (BNIs) suggest that this element in the overall confiscation regime has been underused.
- Gibraltar has recently updated its CFT legislation (predominantly the Terrorism Act 2018) and has equipped LEAs with tools and mechanisms to counter the financing of terrorism (FT). There has not yet been a T/FT prosecution in Gibraltar. Although the LEAs demonstrated an understanding of potential FT pathways that may occur in a financial centre, the relative lack of FT related STRs considered against the backdrop of transactions with conflict zones and high risk jurisdictions raises concerns as to whether the absence of FT prosecution is in line with the jurisdiction's risk profile. The LEAs have carried out several FT related investigations, all except one of which were triggered by STRs. FT investigations are given priority and the authorities observed that if there were to be a CT investigation it would always be accompanied by a parallel financial investigation. Gibraltar's investigation of suspected FT adopts and is integrated with the United Kingdom (UK) national CT strategy. It draws upon the close working relationship with the UK's law enforcement and security services and the experience, specialism, resources and expertise they provide in considering any FT related SARs, incoming FT mutual legal assistance (MLA) requests and activity in respect of high-risk jurisdictions. Any sentence

imposed for FT in Gibraltar would follow the sentencing guidelines in England and Wales. The sentencing principles in FT cases in England and Wales are well developed and the sentences imposed in the UK are effective and proportionate. Some cases of FT investigations which did not result in prosecution due to what the authorities determined to be an insufficiency of evidence were pursued through disruptive procedures.

- Gibraltar currently has a comprehensive legal framework governing targeted financial sanctions (TFS) for FT and proliferation financing (PF). However, the new regime came into force only before the on-site visit, rectifying a number of identified deficiencies hampering the effectiveness of Gibraltar's TFS regime throughout the reporting period. Although the new legislation has introduced the legal gateway for many new mechanisms, standard operating procedures have not yet been introduced. Awareness of FT-related TFS in large financial institutions (FIs) is higher compared to the non-financial sector which has a less developed understanding of its obligations. In comparison to the FT-related TFS the awareness of PF related TFS within the private sector is low, particularly among DNFBPs. Most of FIs screen against all UN lists on automatic or semi-automatic checks for UNSCR updates, relying on commercial databases.
- No funds or other assets have been frozen in relation to designated persons or entities under the FT and PF-related TFS regime. Nevertheless, the GFIU has received STRs concerning potential matches with the UN-sanctions lists, which adds to the effectiveness of the FT-related TFS regime. The authorities have classified the vast majority of these STRs to be false – positives.
- Reporting Entities' (REs) understanding of the ML risk is overall satisfactory albeit it varies across and within the sectors. Unlike ML risk, the FT risk is not properly understood by FIs (in particularly by banks, e-money providers, and MVTSSs). FIs focus almost exclusively on sanction screening, without proper consideration of transactions to high-risk countries, as evidenced by the low numbers of FT-related STRs. Some FIs (e.g. some banks) and TCSPs did not always demonstrate that they are taking measures that are commensurate to specific risk factors inherent to their businesses. The application of CDD measures varies across the FIs and DNFBPs. While TCSPs have a good understanding of the concept of beneficial owner (BO), this is not always the case for some other REs, including banks, particularly when complex ownership structures or trusts are involved. FIs and DNFBPs tend to overly focus on thresholds for identifying the BOs, which is an issue of concern particularly for the identification of targets for the implementation of TFS requirements. The quality of STRs can be questioned given the near absence of STR-triggered investigations, and their number is not commensurate to the risks that certain sectors are facing (particularly banks, e-money and TCSPs).
- All supervisory authorities apply licencing/registration and screening measures to prevent criminals and their associates from abusing FIs and DNFBPs. However, they target only new applications and not already licenced individuals. Although legal requirements do not extend to checking BOs and their source of funds, and there is no legal requirement to reject applicants with criminal background relevant for fit and proper, this is generally done in practice. The GFSC and the GGC have a robust understanding of risk. OFT is in its nascent stage, although it is developing fast. The other supervisors have an insufficient understanding of ML and TF risks. The GFSC primarily uses its Thematic Reviews for AML/CFT supervision which so far have been completed for the TCSPs and e-money sectors. On-site supervisory plans in the gambling sector are based primarily on the size of the entities concerned. Supervision for the rest of the FIs and DNFBPs is either triggered by events or is based on the general risk score that includes, but does not focus on, financial crime risk. In majority of cases sanctions are not proportionate and

dissuasive. Communication between REs and supervisors is good whilst with regard to TFS, there is a need for better outreach to REs.

- Gibraltar has taken a number of measures to prevent the misuse of legal persons and arrangements for ML/FT purposes, including establishing the Register of Ultimate Beneficial Owners (RUBO). The risk of legal persons and arrangements' misuse for ML/FT purposes is understood only to some extent. Competent authorities can to obtain generally accurate and current basic information on all types of legal persons created in Gibraltar through the Companies House (CHG) and can obtain BO information directly from REs or rely on the RUBO. However, there are a number of factors that can affect the completeness and accuracy of the information as well as the timely access to such information.
- Gibraltar exchanges information and cooperate with its foreign counterparts (primarily from the UK and Spain) in relation to ML, associated predicate offences and FT. Competent authorities engage in all forms of international cooperation, including diagonal cooperation. An overall decrease in the number of outgoing requests for information has been observed in recent years whilst the timeliness of the information exchange is hindered by the shortage in human resources and the lack of clear guidelines in relation to incoming Mutual Legal Assistance (MLA) requests. The assistance provided by the GFIU has generally been commended by the global network. LEAs are active in the sphere of formal and informal cooperation using direct communication (police to police, customs cooperation), via liaison officers, Interpol, CARIN and other cooperation platforms. Competent authorities exchange basic and BO information on legal persons.

### Risks and General Situation

1. The financial sector in Gibraltar accounts for approximately 20% of Gibraltar's GDP and consists primarily of branches or subsidiaries of international firms. The financial services provided by the Sector include banking, insurance, asset management, fund management as well as trust and company services. The Sector provides services primarily to non-resident clients, including clients from high-risk jurisdictions. Most of Gibraltar's banks offer and provide private banking to high-net worth individuals.

2. The NRAs conducted by Gibraltar identify organised crime as a threat due to the geographic proximity of the jurisdiction to areas where organised crime is active. According to the 2018 NRA over the last few years organised crime groups (OCGs) operating in the area of Spain's Campo de Gibraltar have increased their influence. Such OCG's are active in tobacco smuggling, particularly between Gibraltar and Spain and drugs trafficking, which create further high cash volumes. The main sources of criminal proceeds generated domestically are fraud, tobacco smuggling, tax crimes, drug trafficking and robbery/theft.

3. Electronic money (e-money) where the significant volumes of products and services offered in Gibraltar may facilitate speedy or anonymous transactions (including anonymous payments across borders), the Trust and Corporate Service Providers (TCSPs) sector, the MVTs and private banking (wealth management), have been identified in the 2018 NRA among the most vulnerable areas.

4. The authorities assess the FT risk as low to medium in Gibraltar. No cases of FT have been reached the prosecution phase so far, although several investigations have commenced during the period under review (2014-2018). According to the 2018 NRA there is no proof that this risk has

materialised. The assessment team (AT) did not come across any evidence that there is a FT risk arising from links to OCGs operating in neighbouring countries.

### Overall Level of Compliance and Effectiveness

5. Since the last evaluation, Gibraltar has taken steps to improve the AML/CFT framework. New legislation was introduced to strengthen the overall AML/CFT framework, which includes 2015 Proceeds of Crime Act, 2018 Terrorism Act, 2019 Sanctions Act, the 2014 European Freezing and Confiscation Orders Regulations (EFCO Reg.), and the 2017 European Investigation Orders Regulations (EIO Rags). The Proceeds of Crime Act has undergone significant changes and has been amended in part to transpose provisions of EU Directive 2015/849 and in part to further clarify and strengthen the national AML/CFT and confiscation of proceeds of crime regimes. Subsidiary legislation was also introduced to establish the ultimate beneficial ownership (UBO) registers for companies, trusts and foundations incorporated in Gibraltar. However, some deficiencies remain in Gibraltar's technical compliance framework.

6. The authorities' understanding of Gibraltar ML and FT risks is of varying degrees. They demonstrated a good understanding of the risk of terrorism and FT typologies, and a good understanding of some of the ML threats. However, the understanding of the ML risk is affected by several shortcomings related to the analysis of the cross-border threat that Gibraltar is facing as an international financial centre. In relation to tax crimes, Gibraltar authorities undertook a number of measures at policy level as shown by the number of agreements signed in the past years for the exchange of information for tax-enforcement purposes. On the other hand, the ML related risks that Gibraltar is facing concerning the laundering of these proceeds and the proceeds of other financial crimes committed abroad has not yet percolated at the GFIU and law enforcement level.

7. A moderate level of effectiveness has been achieved in identifying, understanding and assessing ML/FT risks, investigating and prosecuting FT, applying AML/CFT preventive measures by FIs and DNFBPs, implementation of FT-related TFS, on supervision of the financial and DNFBP sector, transparency of legal persons and arrangements and international cooperation. A low level of effectiveness has been achieved in all other areas covered by the FATF standards.

### ***Assessment of risk, coordination and policy setting (Chapter 2; IO.1, R.1, 2, 33 & 34)***

8. Gibraltar has made efforts to understand its ML/FT risks. The jurisdiction has a long-standing experience in ML risk assessment. Prior to 2016, when Gibraltar conducted its first NRA, a national threat assessment was conducted by the GFSC (2012 threat matrix) assessing the products and services which presented a ML risk to the jurisdiction. In September 2018, Gibraltar adapted the EUSNRA to Gibraltar's framework, assessing the products and services analysis of threats and vulnerabilities in the EUSNRA with the aims of both - contextualising it to Gibraltar and building on the findings of the 2016 NRA. This notwithstanding, the assessment of the ML/TF threat and of the ML/TF vulnerabilities was not always comprehensive.

9. Gibraltar has a varied understanding of its ML and FT risks. The authorities demonstrated a good understanding of the risk of terrorism, FT typologies and of some of the ML threats. The GFSC and the GGC have a robust understanding of risks at sectoral level, which is underpinned by the collection of comprehensive data. The jurisdiction's understanding of the ML risk is, however, affected by several shortcomings related to the NRA analysis, by the limited analysis of quantitative and qualitative data and in particular by underestimating the cross-border threat which Gibraltar faces as an international

financial centre. The risk related to cross-border transportation of cash is also insufficiently understood.

10. The assessment and understanding of the FT risk are affected by insufficient consideration of data available on transactions to/from conflict zones and high-risk jurisdictions.

11. Significant effort has been devoted by the authorities to raise awareness about the 2018 NRA findings. Nonetheless, the understanding of the results of the NRA and, in general, of the ML and FT risks by FIs and DNFBPs varies.

12. The authorities have acted upon the majority of the findings identified by the NRAs, implementing strategy and action plans, including following up on the findings of the most recent NRA. While several actions appear commensurate to some of the risks identified, the comprehensiveness of these strategies and action plans is affected by shortcomings concerning the assessment of risks; the strategies and action plans were not revised and adapted to tackle new risks identified by the 2018 NRA.

13. Cooperation and coordination with regard to both development and implementation of policies and at an operational level is one of the strengths of the overall AML/CFT system in Gibraltar.

14. There are a number of exceptions to CDD requirements that are not predicated on an assessment of the risks.

***Financial intelligence, ML investigations, prosecutions and confiscation (Chapter 3; IO.6, 7, 8; R.1, 3, 4, 29–32)***

15. The GFIU has increased its capacities in recent years and has extended cooperation with the LEAs and supervisory authorities, thus increasing its role in generating financial intelligence. However, the GFIU's analytical products were used by LEAs only to a limited extent and therefore did not have a significant impact upon developing investigations into ML and predicate offences. This has partially been a consequence of the fact that LEAs did not prioritise cases concerned with the GFIU disseminations in their work. Better results were achieved with regard to FT investigations which all except one were triggered by STRs. There are also some concerns in relation to the quality of STRs which the GFIU receives. The authorities have so far developed one strategic analysis which was not, by the time of the on-site visit, made available either to the oversight and supervisory agencies (GFSC, GGC) or to the private sector.

16. There is no evidence to indicate that the GFIU's analysis and dissemination functions have ever come under any political, government or industry pressure. Specific protective measures are in place to ensure the confidentiality of information exchanged, accessed or used. This notwithstanding, further improvements in the GFIU's specialist software are required, particularly the analytical software program.

17. Since 2015 Gibraltar's AML/CFT legal framework has improved significantly and provides a solid basis for the authorities to detect, investigate and prosecute the ML/FT offence. Although this was followed by improvements in inter-agency cooperation and information exchange, the effective investigation and prosecution of ML offences remain undemonstrated. By the time of the on-site visit there have only been four ML convictions for self-laundering involving domestic predicates. There have been no successful third party and standalone prosecutions over the relevant period indicating that insufficient emphasis is placed by the LEAs on the detection, investigation and prosecution of cases potentially involving Gibraltar's FIs and intermediaries, targeting criminal property deriving

from foreign predicates. Financial investigations are conducted regularly but these are often limited to providing further evidence in support of the prosecution of domestic predicate crime or pursuant to possible confiscation proceedings. Parallel financial investigations targeting ML are not pursued in cases where the associated predicate offences occur outside Gibraltar, thus not reflecting the risks the jurisdiction has in its role as a financial centre.

18. Gibraltar judiciary applies the guidance of the sentencing guidelines council of England and Wales and the principles underpinning the sanctioning regime are well developed. The judiciary also confirmed that they were entitled to depart from the guidelines and might, for example, impose higher sentences where the offending might have a tendency to undermine confidence in Gibraltar as a financial centre.

19. Gibraltar's legislation provides all that is necessary for the detection, restraint and confiscation of the proceeds and forfeiture of the instrumentalities of crime, whether from domestic or international offending. It also provides non-conviction based civil recovery and cash seizure regimes as an alternative means of disrupting economic crime. Although confiscation is a policy objective, it has not been effectively pursued and the amount confiscated is low. There have been only two conviction-based confiscation orders, and these arose from crimes committed in Gibraltar. On the other hand, forfeitures of tobacco and instrumentalities used to smuggle it (based on the 1997 Tobacco Act) were applied by HMC throughout the reporting period. Assets deriving from foreign predicates in complex and international cases remain undetected and therefore the benefit of that crime is neither restrained nor confiscated. Whilst LEAs have achieved results from cash seizures, the civil recovery regime has not yet been applied.

20. The statistics on the confiscation of cross border movements of currency and BNIs suggest that this element in the overall confiscation regime has been underused. The assessment team is of the opinion that a more in-depth analysis of the risks posed by the cross-border movement of cash is needed since the results of the seizure/confiscation of cash/BNIs transported across borders is only partially in line with the risks.

#### ***Terrorist and proliferation financing (Chapter 4; IO.9, 10, 11; R. 1, 4, 5-8, 30, 31 & 39.)***

21. Gibraltar has recently updated its CFT legislation (predominantly the Terrorism Act 2018) and has equipped LEAs with tools and mechanisms to counter the financing of terrorism. There has not yet been a T/FT prosecution in Gibraltar. Although the LEAs demonstrated an understanding of potential FT pathways that may occur in a financial centre, the relative lack of FT related STRs considered against the backdrop of transactions with conflict zones and high risk jurisdictions raises concerns as to whether the absence of FT prosecution is in line with the jurisdiction's risk profile.

22. The LEAs have carried out several FT related investigations, all except one of which were triggered by STRs. FT investigations are given priority and the authorities observed that if there were to be a CT investigation it would always be accompanied by a parallel financial investigation. Gibraltar's investigation of suspected FT adopts and is integrated with the UK's national CT strategy. It draws upon the close working relationship with the UK's law enforcement and security services and

the experience, specialism, resources and expertise they provide in considering any FT related SARs, incoming FT MLA requests and activity in respect of high-risk jurisdictions.

23. Any sentence imposed for FT in Gibraltar would follow the sentencing guidelines in England and Wales. The sentencing principles in FT cases in England and Wales are well developed and the sentences imposed in the UK are effective and proportionate. Some cases of FT investigations which did not result in prosecution due to what the authorities determined to be an insufficiency of evidence were pursued through disruptive procedures.

24. Gibraltar currently has a comprehensive legal framework governing TFS for FT and PF. However, the new regime came into force only before the on-site visit, rectifying a number of identified deficiencies hampering the effectiveness of Gibraltar's TFS regime throughout the reporting period. The relevant UN sanctions are now automatically applied in Gibraltar and the private sector is obliged to screen the UN designation lists. Awareness of FT-related TFS in large FIs is higher compared to the non-financial sector which has a less developed understanding of its obligations. Although the new legislation has introduced the legal gateway for many new mechanisms, standard operating procedures have not yet been introduced.

25. Gibraltar has identified the subset of NPOs falling under the FATF definition. The outcomes of the NPO specific NRA have been communicated to the sector. Most of the mitigating actions related to the risks faced by the NPO sector have been finalised. The NPO statutory bodies have a limited engagement with the GFIU, the GCID, LEAs and other state agencies, which does not allow them to appropriately assess new applicants and monitor activities. Some of the NPOs interviewed appeared to be unaware of the CFT measures in place and potential ways of NPOs' abuse for FT purposes.

26. No funds or other assets have been frozen in relation to designated persons or entities under the FT-related TFS regime. Nevertheless, the GFIU has received STRs concerning potential matches with the UN-sanctions lists, which adds to the effectiveness of the FT-related TFS regime. The authorities have classified the vast majority of these STRs to be false – positives.

27. The measures undertaken by the competent authorities of Gibraltar are consistent with the jurisdiction's overall FT risk profile. The relevant NPO statutory bodies did not reveal any indications of abuse of the NPO sector for FT purposes. There have been no NPO-related information requests by foreign competent authorities, or STRs filed. The authorities have not received a MLA request concerning FT matters within the review period. There have been no FT prosecutions or convictions.

28. Gibraltar has not frozen any assets or transactions as a result of PF-related TFS. In comparison to the FT-related TFS the awareness of PF related TFS within the private sector is low, particularly among DNFBPs. Most of FIs screen against all UN lists on automatic or semi-automatic checks for UNSCR updates, relying on commercial databases.

29. The authorities have indicated that the PF risk in Gibraltar is relatively low. This is also supported by the fact that Gibraltar is not a weapons or dual use goods producer and its port mainly serves as a transit point. HMC oversees the movement of dual use goods over the borders and provides and monitors export licenses. Among supervisory authorities, only the GFSC has taken some concrete actions in regard to the supervision of PF-related TFS.

### ***Preventive measures (Chapter 5; IO.4; R.9–23)***

30. Reporting Entities' (REs) understanding of the ML risk is overall satisfactory albeit it varies across and within the sectors. On the other hand, FT risks are not properly understood by FIs (in



particularly by banks, e-money providers, and MVTs). FIs focus almost exclusively on sanction screening, without proper consideration of transactions to high risk countries.

31. FIs and DNFBPs that fall under the purview of the GFSC apply mitigating measures that are overall commensurate to their risks. However, risk assessment often is referred to as risk classification of the clients and not of all relevant risk factors. Some FIs (e.g. some banks) and TCSPs, did not always demonstrate that they are taking measures that are commensurate to these specific risk factors of their businesses.

32. Different degrees in applying CDD measures were exhibited by FIs and DNFBPs. While TCSPs have a good understanding of the concept of BO, this is not always the case for some other REs, including banks, particularly when complex ownership structures or trusts are involved. FIs and DNFBPs tend to overly focus on thresholds for identifying the BOs, which is an issue of concern particularly for the identification of targets for the implementation of TFS requirements.

33. FIs and TCSPs have a good understanding of the STRs legal requirements and of tipping off measures. However, there are certain concerns about the number of STRs filed by material sectors, their quality, and defensive reporting in the e-money and online gambling providers sectors. The understanding of TFS and their operational implications needs considerable improvement across all sectors, and particularly for smaller FIs and most types of DNFBPs. The understanding of TFS and their operational implications needs considerable improvement across all sectors, and particularly for smaller FIs and most types of DNFBPs.

### ***Supervision (Chapter 6; IO.3; R.14, R.26–28, 34, 35)***

34. All FIs established in Gibraltar, TCSPs, DLTs, auditors and insolvency practitioners, are licenced by the GFSC. Although legal requirements do not extend to checking BOs and their source of funds, and there is no legal requirement to reject applicants with criminal background relevant for fit and proper, this is generally done in practice. The screening measures consist in making inquiries to determine whether applicants have a criminal record, by way of obtaining criminal records and requiring applicant to declare through individual questionnaire any sanctions/convictions and investigations, both criminal and administrative imposed to them.

35. The GFSC and the GGC have a robust understanding of ML/FT risks. OFT is in its nascent stage, although it is developing fast. The other supervisors have an insufficient understanding of ML/FT risks. In case of accountants and tax advisors this shortcoming derives from the fact that they do not have a dedicated supervisor.

36. The GFSC uses primarily its Thematic Reviews for AML/CFT supervision. At the time of the onsite visit such reviews have been completed for the TCSPs and e-money sectors. Supervision for the rest of the FIs and DNFBPs that are licensed by the GFSC is either triggered by events or is based on the general risk score which, inter alia, includes financial crime risk. The number of inspections based on this approach, compared with those based on thematic reviews, is low. On-site supervisory plans

in the gambling sector are informed primarily by the size of the entities concerned. Up until the end of 2018 the supervisory plans were also based on the number of SARs submitted.

37. In majority of cases sanctions imposed were not proportionate and dissuasive. Communication between REs and supervisors is good. This notwithstanding, there is a need for better outreach to REs.

### ***Transparency and beneficial ownership (Chapter 7; IO.5; R.24, 25)***

38. A number of measures to prevent the misuse of legal persons and arrangements for ML/FT purposes have been taken by Gibraltar (i.e. establishing the Register of Ultimate Beneficial Owners (RUBO), prohibiting bearer share warrants and subjecting TCSPs, which are used for setting up legal persons and arrangements, and subjecting TCSPs to licensing and to a comprehensive regulatory regime), however, important issues remain, which pose an inherent vulnerability to ML and FT of legal persons and arrangements that can be established in or managed from Gibraltar.

39. The 2018 NRA acknowledges the inherent risk to TCSPs in their creation and management of legal persons and arrangements, although the risk of their misuse for ML/FT purposes is understood only to some extent by Gibraltar.

40. Gibraltar has a robust system that allows relevant competent authorities to obtain through the CHG on timely manner and generally accurate and current basic information on all types of legal persons created in Gibraltar. However, legal ownership information that is registered refers primarily to TCSPs acting as nominee shareholders or directors.

41. BO information can be obtained by the authorities directly from REs (including TCSPs) or the RUBO in a timely manner. However, there are a number of factors that can affect the accuracy and adequacy of the BO information held by REs or in the RUBO (e.g. lack of an explicit record keeping requirement for BO information and the limited scope of information required to be filed in the RUBO concerning trusts, or to be kept by the companies).

42. Sanctions for non-compliance with the information filing requirements are available but limited (i.e. only in the case of late submissions and they are not proportionate or dissuasive).

### ***International cooperation (Chapter 8; IO.2; R.36–40)***

43. Gibraltar has a sound legal framework to exchange information and cooperate with its foreign counterparts in relation to ML, associated predicate offences and FT. Nevertheless, the timeliness of the information exchange is hindered by the shortage in human resources and the lack of clear guidelines in relation to incoming Mutual Legal Assistance (MLA) requests.

44. Legal assistance has been sought, primarily from the UK and Spain. However, the low number of outgoing requests in the period 2014-2018 raises concerns as to whether Gibraltar authorities proactively seek assistance. The indicated delays in receiving replies to requests for assistance and the limited resources that law enforcement agencies have at their disposal to pursue evidence abroad impede their capacity to investigate and disrupt transnational criminal networks involved in ML, drugs trafficking and tobacco smuggling. There have been no outgoing requests related to confiscation during the review period.

45. While extradition figures show that the vast majority of extradition requests is executed, in the case of non-EU countries, where the 1870 Extradition Act or the 2002 Fugitive Offenders Act (accessed via the TOCA) were applied, resulted into limitations on the extent of assistance Gibraltar could

provide. Despite these complexities, Gibraltar recently executed such a request from Norway. The limitations in executing extradition requests from non-EU countries were recently mitigated with the introduction of the 2018 Extradition Act. Overall, deficiencies in the warrant can inevitably result in the non-execution of a request.

46. Competent authorities engage in all forms of international cooperation, including diagonal cooperation. An overall decrease in the number of outgoing requests for information has been observed in recent years. The GFIU rarely seeks information exchange for the purposes of its own analysis. The timeliness of its responses has generally been commended by the global network.

47. In terms of informal co-operation, the GFIU has a legal basis for the exchange of information with its foreign counterparts. This includes exchange of spontaneous information. Timeliness of its responses has improved since 2016. LEAs are also active in the sphere of informal cooperation using direct communication (police to police, customs cooperation), via liaison officers, Interpol, CARIN and other cooperation platforms. Supervisors reply to requests for information from foreign counterparts, although limited statistics were made available. The GGC exchanges information primarily with its UK counterpart. Competent authorities also exchange basic and BO information on legal persons with foreign counterparts.

### Priority Actions

- Gibraltar should conduct a more comprehensive assessment of the ML external threats and vulnerabilities at national level. The assessment should particularly focus on i) the ML threat posed by proceeds generated by crimes committed abroad; and ii) inherent vulnerabilities which may be present at national (e.g. capacity/resource issues) and sectoral and products levels.
- Gibraltar should revise the FT risk assessment considering the GFSC's analysis of data concerning the geographic origin/destination of inflows and outflows of funds into/from the jurisdiction (both cash and wires) as well as a more robust and comprehensive analysis of the product-related FT vulnerabilities.
- Gibraltar should address the deficiencies identified in Technical Compliance Annex under R.26.
- Gibraltar should amend the POCA to extend the record keeping requirements to BOs and all CDD measures.
- Gibraltar should strengthen its STR regime by taking the following actions:
  - i. provide sector-specific training on indicators and typologies to increase the quality of STRs and to increase the level of reporting of ML and FT-related transactions, in a way that is commensurate to the threat that Gibraltar is facing.
  - ii. ensure, by way of outreach and enforcement during the inspections that gambling firms report only to the FIU and not also to the GGC, and that firms' internal procedures are aligned accordingly.
  - iii. increase awareness across all sectors on the legal framework applicable for the provision of additional information to the FIU.

- Gibraltar should assess the specific ML and FT risks related to legal persons and arrangements, including how the legal persons and legal arrangements may have been used to disguise ownership or to launder the proceeds of crime and assess the specific inherent vulnerabilities to all types of legal persons that can be created in Gibraltar.
- The GFIU should carry out a review of the use of its analytical products by LEAs and based on this review streamline the intelligence gathering and subsequent reporting to LEAs with a view to improving the relevance of and impact of its products for triggering ML investigations.
- The GFIU's and LEAs' expertise as well as the already established inter-agency cooperation should be further developed to be able to focus more effectively on the sophisticated forms of ML in Gibraltar where predicates have been committed abroad.
- The LEAs should refine and apply a clear policy/strategy on ML investigations, setting out the range of circumstances in which a ML investigation should be commenced which reflects the risks of ML in Gibraltar, paying particular attention to the laundering of criminal property by elements within the financial sector and deriving from foreign predicates.
- The MLIU should treat each incoming MLA request in conjunction with the GFIU and with advice from the OCP&L as valuable intelligence that might be developed into a Gibraltar ML investigation, particularly into the possible ML by Gibraltar intermediaries and FIs.
- The LEAs and prosecutors should make better use of other criminal justice measures (such as civil recovery) where it is not possible to secure a ML conviction.
- LEAs should consistently carry out parallel financial investigations aimed at the detection of criminal property laundered in Gibraltar and that the results achieved are commensurate with the risk and context of Gibraltar.
- HMC should systematically apply its powers to detain falsely declared or undeclared cash or BNIs in order to determine whether there is a link with ML/FT or the associate predicate offences.
- The authorities (both LEAs and prosecuting authority) should formulate and/or further refine their policies and/or guidance documents on FT investigations and prosecutions, setting out the range of circumstances in which a FT investigation should be commenced and types of evidence likely to be required in a FT prosecution, reflecting the full range of FT risks likely to be encountered in Gibraltar.
- Sector specific FT guidance should be provided by the authorities to different FIs and DNFBPs to include risks /potential risks in transactions with conflict zones and other high-risk jurisdictions.
- The competent authorities should conduct further outreach to FIs and DNFBPs in relation to their compliance with obligations under the FT and the PF-related TFS regime and their applicability to BOs. In this context, further steps should be taken to ensure that designations and amendments to the FT and PF TFS regime are immediately communicated to all RES.
- Ensure that all supervisors adequately supervise and monitor PF-related TFS.

## Effectiveness & Technical Compliance Ratings

### Effectiveness Ratings<sup>1</sup>

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


### Technical Compliance Ratings<sup>2</sup>

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

<sup>1</sup> Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

<sup>2</sup> Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – noncompliant.

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