



# Anti-money laundering and counter-terrorist financing measures

# Ukraine

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

June 2020

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.

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The 2<sup>nd</sup> Enhanced Follow-up Report and Compliance Re-Rating on Ukraine was adopted by the MONEYVAL Committee in the course of its 2<sup>nd</sup> Intersessional consultation (Strasbourg, 22 May – 10 July 2020).

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

### I. INTRODUCTION

1. The mutual evaluation report (MER) of Ukraine was adopted in December 2017. The report analyses the progress of Ukraine 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 Ukraine's 1st enhanced follow-up report (hereinafter, 1st enhanced FUR) was adopted. This concerns changes to Recommendations 15. The expectation is that countries will have addressed most if not all TC deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Ukraine 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 the 1<sup>st</sup> enhanced follow-up report rated<sup>1</sup> Ukraine as follows:

*Technical Compliance Ratings, July 2019*

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

Source: The 5<sup>th</sup> Round Mutual Evaluation Report of Ukraine, December 2017, [link](#), The 1<sup>st</sup> Enhanced Follow-up Report of Ukraine 2019, [link](#).

3. Given the results of the MER, Ukraine was placed in enhanced follow-up<sup>2</sup>. Given the postponement of the 60<sup>th</sup> MONEYVAL Plenary, the report is being considered by MONEYVAL members in the framework of their 2<sup>nd</sup> Intersessional Consultation via written procedure in accordance with Rule 21, paragraph 9 of the MONEYVAL Rules of Procedure for the 5<sup>th</sup> Round of Mutual Evaluations.

4. The assessment of Ukraine'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):

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

<sup>2</sup> Enhanced follow-up is based on the FATF's traditional policy that deals with members with significant deficiencies (for technical compliance or effectiveness) in their AML/CFT systems and involves a more intensive process of follow-up.

- Cyprus
- Isle of Man

5. Section III of this report summarises Ukraine’s progress made in improving 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 Ukraine to improve its technical compliance by:

- a) Addressing technical compliance deficiencies identified in the MER for which the authorities have requested a re-rating (R.5, R.6, R.7, R.28, R.33, R.35); and
- b) Implementing new requirements where the FATF Recommendations have changed since the MER was adopted (R.15).

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

7. Ukraine has made progress to address the technical compliance deficiencies identified in the MER. As a result of this progress, Ukraine has been re-rated on **Recommendations 5 and 35**.

##### *Recommendation 5 (Originally rated PC, re-rated to LC)*

8. In its 5<sup>th</sup> round MER Ukraine was rated PC with R.5, based on the following deficiencies: the FT offence does not clearly cover direct and indirect provision or collection of funds; FT offences based on Art. 2(1)(a)TFC do not include a purposive element; some offences contained in the conventions and protocols listed in the annex to the TF Convention are not clearly subject to prosecution; FT offence does not cover “direct” and “indirect” provision or collection of funds; international organisations which are not legal persons are not covered under the FT offence; incomplete criminalisation of all financing of travel for terrorist purposes under UNSCR 2178; FT offence does not expressly specify whether the financial or material support extends to any funds coming from a legitimate or illegitimate source.

9. Ukraine has addressed the major deficiencies identified in the MER. In particular, through an amendment of the Criminal Code of Ukraine (hereinafter - CCU) by the new Law on “On Preventing and Countering to Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction” <sup>3</sup>(hereinafter - Law No 361).

10. The amended article 258-5 of CCU by Paragraph 6(2)(K) of Section X of Law No 361 extends the definition of TF offence to direct or indirect provision or collection of any assets, with a purpose of their use or awareness of the probability that they will be used for any purpose related to TF. However, it is not clear if the term will be interpreted as extending to any funds coming from a

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<sup>3</sup> The Law of Ukraine “On Preventing and Countering Legalization (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction” (hereinafter – Law No 361) adopted by the Parliament on 6 December 2019 came into force on 28 April 2020. It has been considered for the purposes of this Follow-up report and subsequent re-ratings based on footnote 21 to Rule 21, paragraph 7(a) of MONEYVAL Rules of Procedure for the 5th Round of Mutual Evaluations.

legitimate or illegitimate source. There are some other outstanding deficiencies remaining, namely, not all offences contained in the conventions and protocols listed in the annex to TF Convention are criminalised. Also, UNSCR 2178 collection and provision of assets in Ukraine to fund traveling of foreign citizens for terrorist purposes outside of Ukraine is not criminalised pursuant to UNSCR 2178.

11. Overall, c.5.1 is mostly met, c.5.2 met, c.5.2bis mostly met and 5.3 partly met. As majority of deficiencies have been addressed **R.5 is re-rated as LC**.

#### *Recommendation 6 (Originally rated PC – no re-rating)*

12. In its 5<sup>th</sup> round MER Ukraine was rated PC with R.6. The primary gaps identified in the MER concerned: a) the freezing obligation not applying to all natural and legal persons in Ukraine; b) the freezing obligation does not extend to all funds or other assets referred to under c.6.5 (b)(i) to (iv); c) nationals, or any persons and entities (except for reporting entities) are not prohibited from making any funds or other assets, economic resources, or financial or other related services, available for the benefit of designated persons and entities.

13. Article 22(1) of the new Law No 361 creates obligations for reporting entities to immediately, without prior notice to a customer, freeze the assets related to terrorism and terrorism financing but only for reporting entities. Ukrainian authorities intend to discuss this at the Interagency Working Group, but this has not yet taken place.

14. The new Article 1, part 1, paragraph 3 of Law No 36 defines that the freezing obligation now applies to all assets directly or indirectly owned by the designated person and assets generated from those assets. It also covers assets of persons who are acting on behalf of the designated person. However, this definition is limited to ownership and does not cover assets that are controlled by the designated person.

15. The remaining deficiency identified in c.6.5(c) has not been addressed as there is no explicit prohibition for nationals, or any persons and entities (except for reporting entities), to refrain from making any funds or other assets, economic resources, or financial or other related services, available for the benefit of designated persons and entities.

16. Due to the limited application of freezing obligations that are fundamental to R.6 and other remaining deficiencies, the rating for **R.6 remains at PC**.

#### *Recommendation 7 (originally rated PC, no re-rating)*

17. In its 5<sup>th</sup> round MER Ukraine was rated PC with R.7. The 1st enhanced FUR of Ukraine concluded that only the revised criteria 7.1 is met and c.7.4 and c.7.5 have not been addressed. Regarding other deficiencies identified in the 2017 MER, in relation to criteria 7.2, 7.3, 7.4 and 7.5, the Authorities presented a draft of Law No 361 that was analysed on a provisional basis but not considered for the purposes of the report and ratings. Since the 1st enhanced FUR, Ukraine has passed the Law No 361 that came into force on 28 April 2020.

18. Deficiencies identified under Article 22 of the Law No 361 apply for both regimes of targeted financial sanctions in relation to financing of terrorism and financing of proliferation of weapons of mass destruction. The analysis and deficiencies of c.6.5(a)-(b) apply to c.7.2(a)-(c) (see R.6 above). The rating of these sub-criteria remains the same. With regard to deficiencies under c.7.2(d), website

of Ukrainian FIU provides information on the actual lists and freezing obligations for TF and PF related TFS. However, in relation to Iran, it appears that no specific mechanism to communicate the changes in the lists is in place (e.g. newsletter or automatic email sent to all RE, etc.). Guidance for reporting entities on complying with international sanctions has not been provided. Deficiencies identified in c.7.2(f) are not addressed as in relation to Iran, on the basis of the Law on Sanctions, no such provision is in place. Ukraine is in the process to amend their legislation to bring under the monitoring of National Bank of Ukraine reporting entities that were not monitored for compliance with TFS related to Iran. The amended legislation will come into force on 01 July 2020 and therefore cannot be considered for the purpose of this report. However, it is still not cleared who monitors TFS compliance with sanctions for Iran for DNFBPs. The deficiency identified in c.7.3 has not been fully addressed.

19. Article 31(4) of the Law No 361 establishes requirements and identifies authorities that are responsible for submitting proposals to the UN Security Council Committees regarding the exclusion of individuals, legal entities and organisations from the relevant lists. The Ministry of Foreign Affairs of Ukraine is required to develop procedures for filing a motion for the exclusion of individuals and organisations included on the UN list and publish this list on its official website. Some information on petitioning for de-listing either through the relevant Focal Point procedures or through country of residence or nationality of listed person, is available on the Ukrainian FIU's official website. However, no information was provided whether the Ministry of Foreign Affairs has developed detailed procedures for filing a motion for exclusion of individuals and organizations included in the relevant lists of the UN Security Council and publish them on their website.

20. In relation to unfreezing assets of persons or entities inadvertently affected by a freezing mechanism Article 11-2 of the Law "On Combating Terrorism" by Section X paragraph (6)(11)(c) of the Law No 361 provides for an obligation for reporting entities to unfreeze the assets upon review by the Security Services of Ukraine. However, it is still unclear what procedure should be followed by: (i) the listed person or entity; or (ii) person freezing funds or other assets, in order to trigger a review by the Security Services of Ukraine to unfreeze their assets.

21. No measures, legislative or otherwise, were taken to rectify the deficiency under c.7.4(d).

22. Article 22(2) of the Law No 361 allows for all "credit transactions" onto the customer's account to proceed and amounts deposited to be frozen. There is no reference to transactions pursuant to contract, agreements or obligations that arose prior to the freezing of accounts. Overall, the deficiency identified in the MER at c.7.5(a) has not been addressed.

23. For criterion 7.5(b) article 11(2) of the Law "On Combating Terrorism" sets out provisions for authorizing access to funds or other assets, where countries have determined that the exemption conditions set out in UNSCRs 1718 and 2231 are met. However, the law makes no mention of transferring or receiving funds with regard to contracts, agreements or obligations that arose prior to the freezing of accounts.

Overall, as analysed in 1<sup>st</sup> FUR of Ukraine c.7.1 is met. Deficiencies identified in the 2017 MER in relation to criteria 7.2 (a-d and f) are not addressed and the ratings of sub-criteria stay the same. Criteria 7.3, 7.4(a), (b),(d) stay the same, with c.7.5 being partly met. In view of the aforementioned, the rating of **R.7 remains PC**.

### *Recommendation 28 (Originally rated PC – no re-rating)*

24. In its 5<sup>th</sup> round MER Ukraine was rated PC with R.28. The report identified several outstanding deficiencies i.e., limited measures to prevent associates of criminals from controlling or managing DNFBPs; sanctions framework not being sufficiently robust; no requirements covering risk-sensitive approaches to on-site and off-site supervision and no requirements for supervisory authorities to take into account the degree of discretion allowed to DNFBPs under the RBA.

25. Article 32(5)(7) addresses remaining deficiency in c.28(4)(a) by increasing level of fines for failure to submit, late submission or incomplete submission or submission of false or inaccurate information to a state financial monitoring entity. A minor deficiency remains in relation the method of calculating the amount of penalty for more than one violation.

26. In order to address deficiencies in c.28(4)(c) and improve availability of robust sanctions to DNFBP supervisory authorities, Ukraine has amended Article 32 of the Law No 361. Article 32 applies a range of sanction powers and corresponding fines and has increased the level of applicable fines for violation of AML/CFT obligations by DNFBPs (see Table 1). Only one enforcement action can be applied to one violation; that is a limiting factor for application of sanctions for DNFBPs. This deficiency could inhibit both the implementation of the risk-based approach and restrict the ability of the supervisor to apply gradual sanctions. For mitigating measures please refer to analysis of c.35.1. Additionally, for DNFBPs the sum of maximum penalty is limited to “twice the amount of the benefit received by a reporting entity as a result of committing the violation, and if such benefit cannot be determined, – 908’052 EUR”. No information was provided on how “twice the amount of the benefit received by a reporting entity as a result of committing the violation” will be determined. Therefore, this still can be a limiting factor for application of sanctions for DNFBPs.

27. Although there has been increase of the amount of criminal and administrative sanctions available, the level of fines for directors and senior managers remains low (for detailed analysis refer to c.35.2).

28. For c.28(4)(b) there are no legal requirements that preclude associates of criminals from owning or controlling or managing reporting entities. Deficiencies in relation to coverage gap for DPMS, accountants and real estate brokers has been addressed.

29. The MER of Ukraine in c.28.5(a) described the supervisory approach of DNFBPs as “*partial risk sensitive*”<sup>4</sup>. This meant that systems were in place to apply risk-based supervision to entities but a rigid timeframe for corresponding on-site and off-site visits was imposed. Consequently, only one visit could take place for a high-risk entity per annum. The measures implemented by Ukraine remove the annual limits for visits and allow *ad hoc* visits according to the risks assessed for some DNFBPs (real estate agents and brokers, notaries, attorneys, law offices and associations and business entities providing legal services). However, for other DNFBPs supervised by the Ministry of Finance (lotteries, gambling service providers, DPMS, auditors, audit firms, and accountants) limits for on-site and off-site visits remain.

30. In relation to deficiency in c.28.5(b), Article 18(2) of Law No 361 imposes requirements for supervisory authorities to take into account the degree of discretion allowed to DNFBPs under the RBA. This meets criterion 28.5(b).

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<sup>4</sup> Paragraph 295 of the Mutual Evaluation Report of Ukraine (2017).



31. Ukraine has made limited progress with R28. The remaining deficiencies in c.28.4(b),(c) and c.28.5(a) are material and affect the rating of this recommendation. **R.28 remains PC.**

***Recommendation 33 (Originally rated PC - no re-rating)***

32. The 2017 MER found that the statistics provided to the evaluation team was inconsistent in particular on investigation of ML/TF maintained by LEAs; the register of pretrial investigations maintained by the Prosecutor General's Office was not reliable; TF confiscations were not available; no systems to keep statistics on international requests for cooperation were in place for Prosecutor General's Office and the National Bank.

33. In relation to maintaining statistics on effectiveness and efficiency of their AML/CFT system, Ukraine has made amendments to the Law No 361. Article 19(1) obliges state financial monitoring entities, law enforcement agencies and judicial authorities to ensure comprehensive administrative reporting in order to monitor the effectiveness of the whole AML/CFT system. According to paragraph 3 of Article 19 the Cabinet of Ministers of Ukraine is responsible to establish procedures for AML/CFT administrative reporting across the relevant institutions. The implementation period for Law 361 is 3 months until 29 July 2020 and the Ukrainian Authorities have informed that a draft regulation of the Cabinet of Ministers of Ukraine on the approval of the procedure for the formation and publication of the comprehensive administrative reporting has been developed and is being agreed with the relevant state bodies.

34. Ukraine introduced new legislative measures to ensure that comprehensive data and statistics will be maintained in the future. However, implementation of the new AML/CFT administrative reporting is not yet finished. For this reason, the rating of **R.33 remains PC.**

***Recommendation 35 (Originally rated PC -re-rated as LC)***

35. In its 5<sup>th</sup> round MER Ukraine was rated PC with R.35. The report found that the sanctions for AML/CFT breaches were not proportionate and dissuasive and that sanctions for breaches of AML/CFT requirements by directors and senior managements were too narrow.

36. Ukraine has addressed the deficiency identified in c.35.1 for banking sector by removing the limit of the monetary penalty of 1% of the bank's statutory capital and has increased the maximum fine for violations of the AML/CFT legislation to 135 150 000,00 UAH (4 540 262,71 EUR).

37. In relation to Non-bank FIs and DNFBPs, the MER noted various deficiencies. Amended Article 32 of the Law No 361 applies a range of sanction powers and corresponding fines. The low levels of fines for non-bank FIs and DNFBPs was noted as a deficiency. The new amendments increase the level of monetary penalty for different AML/CFT breaches considerably (see table below).

Table 1: Changes in the level of fines between Law 1072 and Law 361

Type of violation	Sanction of the Law 1702 <sup>5</sup> (different fines for RE that are legal persons and other)	Sanction of the Law 361 <sup>6</sup> (the same fine for RE that are legal persons and other)
For violating the requirements for due diligence (Article 32(3)(1))	up to 285 EUR (legal persons) up to 59 EUR (other than legal persons)	up to 6 853 EUR
For failure to submit, late submission, violation of the procedure for submission of information to FIU (Article 32(3)(6))	up to 1 142 EUR (legal persons) up to 118 EUR (other than legal persons)	up to 11 422 EUR
For non-detection, untimely detection of financial transactions subject to financial monitoring (Article 32(3)(10))	up to 456 EUR (legal persons) up to 59 EUR (other than legal persons)	up to 11 422 EUR
Failure to comply with the procedure of suspension of a financial operation (Article 32(3)(2))	up to 1170 EUR (legal persons) up to 118 EUR for (other than legal persons)	up to 11 422 EUR
Failure to submit information, submission of incomplete, inaccurate information (including STRs), submission of copies of documents with some detail illegible, that are requested by supervisor to perform its functions (Article 32(3)(6) and (7))	up to 1179 EUR (legal persons) up to 118 (other than legal persons)	up to 11 422 EUR

38. The new amendments also addressed this deficiency by removing the cap of maximum amount of penalty for 2 or more violations being equivalent only to the most severe detected violation. The maximum fine for the AML/CFT violations for financial institutions is EUR 4 505 000 (Article 32 (6)(2)). In event of multiple violations penalties are added up. In relation to DNFBPs the sum of maximum penalty is limited to “twice the amount of the benefit received by a reporting entity as a result of committing the violation, and if such benefit cannot be determined, – 908’052 EUR”. No information was provided on how “twice the amount of the benefit received by a reporting entity as a result of committing the violation” will be determined. Therefore, this still can be a limiting factor for application of sanctions for DNFBPs.

39. Article 32(1)(2) sets no restrictions for the supervisor to revoke the license for non-fulfilment of requirements of AML/CFT Law.

40. A limiting factor for application of sanctions for non-bank FIs and DNFBPs is that only one enforcement action can be applied to one violation. This deficiency could inhibit both the implementation of the risk-based approach and restrict the ability of the supervisor to apply gradual sanctions. This is to some extent mitigated as supervisors can: 1) apply monetary penalty for repeated violation up to 57 110 EUR (Article 32(3)(9)); 2) when determining appropriate enforcement action and/or the amount of the fine consider systemic violations (Article 32(7)(1)); 3) enter into an agreement with reporting entity to remedy the violation and issue a monetary penalty (Article 32(1)(5)). In event of non-compliance with the terms of agreement supervisor can

<sup>5</sup> The amounts of fines from Law 1702 have been taken from the MER of Ukraine.

<sup>6</sup> All fines in Law No 361, Ukrainian Criminal Code and Code of Administrative offence are recorded in “untaxed minimums of citizen’s income”. According to Section XX (subsection 1(5) of Tax Code of Ukraine defines the term “untaxed minimums of citizen’s income” is UAH 17. For the ease of understanding all of the amounts have been either recorded in UAH and then converted into EUR or directly reflected in EUR. For amounts reflected in Law No 361 exchange rate UAH – EUR is as of 29 May 2020.

repeatedly issue a monetary penalty of the same amount (Article 32(3)(8)). Ukrainian Authorities noted that during on-site inspection always more than one violation is detected. Therefore, supervisors could apply broader range of sanctions for the same type of violations. Taking into consideration mitigating factors, inability to apply more than one non-monetary enforcement measure is still considered as deficiency.

41. In case of banks the deficiencies in relation to sanction regime have been mitigated. For non-bank FIs and DNFBPs, Ukraine has resolved most of the deficiencies identified in the MER under the AML/CFT Law in relation to availability of supervisory sanctions. Ukrainian financial sector is bank-centric, with banks comprising roughly 80% of the total financial system assets. For the purpose of re-rating c.35.1 as mostly met, banking sector has been weighted heavier as non-bank FIs and DNFBPs.

42. For c.35.2, Article 32(1)(2) allows supervisors to request reporting entity to remove an official. This amendment has addressed the deficiency in MER, where suspension of an official was only possible temporarily until corrective action has been taken.

43. The authorities have submitted that the amendments to the CCU by Section X paragraph 6(2)(i) of the Law No 361, increase the fine for criminal liability of managing officials or directors to UAH 51 000 (EUR 2 000). Although, the amount has increased by 50% in UAH, upon conversion it is lower than the maximum amount of penalty available under the old Article 2091 of the CCU prior to amendment. Section X(6)(1)(a) of the Law No. 361 amended the Code on Administrative Offenses and increased the range of available administrative penalty from 37-114 EUR to 200-1300 EUR for violating the AML/CFT obligations. Although there has been increase of the amount of criminal and administrative sanctions available to supervisors, the level of fines still remains low.

44. Overall, Ukraine has demonstrated progress with addressing most deficiencies identified in 35.1 and some for 35.2. When determining rating for c.35.1 of mostly met, the banking sector was weighted heavily in comparison to non-bank FIs and DNFBPs. In the context of rating R.35 when considering the materiality of the banking sector, the remaining deficiencies are minor. **R.35 is upgraded to LC.**

### **3.2. Progress on Recommendations which have changed since adoption of the MER**

45. Since the adoption of the Ukraine MER the FATF has amended R.15. This section considers Ukraine's compliance with the new requirements and progress in addressing deficiencies identified in the MER in relation to this Recommendation.

#### ***Recommendation 15 (Originally rated LC - re-rated as PC)***

46. In its 5<sup>th</sup> round MER, Ukraine was rated LC with R.15, based on the following deficiencies: that there were no formal requirements for financial institutions to undertake risk assessments prior to launching of new products, practices or technologies and no requirement to take appropriate measures to manage and mitigate the risks. Although, there are requirements for the financial institutions to undertake a risk assessment of new technologies and product, there was no requirement that it must be undertaken prior to the launch of the new product. The new Law No 361 requires FIs to manage the risk arising from new technologies, still there were no requirements to mitigate such risks. Ukraine's technical compliance with these items remains unchanged from its 5<sup>th</sup> round MER.

47. In June 2019, the FATF adopted the Interpretative Note to Recommendation 15 to address obligations related to virtual assets (VA) and virtual asset service providers (VASPs). These new requirements include: requirements on identifying, assessing and understanding ML/TF risk associated with VA activities or operations of VASPs; requirements for VASPs to be licensed or registered; requirements for countries to apply adequate risk-based AML/CFT supervision (including sanctions) to VASPs and that such supervision should be conducted by a competent authority; as well as requirements to apply measures related to preventive measures and international cooperation to VASPs.

48. Ukraine has taken steps to comply with the new requirements of Recommendation 15. The Law No 361 defines Virtual Asset as a digital value that can be digitally traded or transferred and that can be used for payment or investment purposes. In relation to definition of VASP Article 1(51) of the Law No 361 defines VASPs as “any individual or legal entity exercising one or more types of such activities and/or transactions for other individual and/or legal entity or on its behalf: virtual assets exchange; virtual assets transfer; storage and/or administering virtual assets or tools allowing to control virtual assets; participation and provision of financial services related to an issuer’s offer and/or sale of virtual assets”. These definitions are broad and cover the definitions of VAs and VASPs as per FATF Standards.

49. Regarding requirements related to c.15.3(a) Ukraine revised its NRA in 2019 that included a chapter on potential abuse of new technological developments including Virtual Currencies and Virtual Currency Service providers for ML/TF purposes. The NRA 2019 identified the risk as high and that the lack of proper legislative regulation, adequate supervision and control of the virtual assets market in Ukraine as vulnerability. Although, identified as high risk the NRA does not analyze what type of Virtual Asset activity is present in the country (except individual ownership of VAs) and how they are misused for ML/TF purposes. However, Ukrainian Authorities stated that as this sector was new for the next NRA a more in-depth assessment will be conducted.

50. Ukraine has taken measures to mitigate the risks arising from the use of VAs and VASPs by extending the definition of reporting entities to VASPs (8 paragraph, part 2, Article 6 of the Law No 361). In relation to other measures, the SFMS with other relevant participants of the AML/FT system, is currently developing an action plan of activities aimed to prevent the occurrence and/or reducing the negative consequences of the risks identified by the results of the second NRA.

51. In relation to risk mitigation by VASPs, Article 7(1) of the Law 361 requires reporting entities to apply a risk-based approach commensurate to the scale and nature of their activities. Analysis of the MER of Ukraine for c.1.10 and c.1.11 applies to VASPs as they are reporting entities, except where the requirements are implemented through sectoral regulation. As the Ministry of Digital Transformation has assumed the responsibility of regulating VASP sector recently, for the time being no sectoral regulations have been adopted.

52. The Ministry of Digital Transformation of Ukraine is designated as the state regulator for virtual assets service providers (paragraph 5 of Article 1 of the Law No 361). According to of Law 361, reporting entities shall be obliged to be registered with a specially authorized body as a reporting entity. According to Article 8 (2) (1) of the AML/CFT Law all reporting entities are required to be registered by a specialized authorized body. Although, VASPs are required to be registered, it is not clear if all VASPs that are: (i) legal persons created in Ukraine and (ii) natural persons with a place of business in Ukraine must be registered. As stated by the Ukrainian

Authorities the Ministry of Digital Transformation will further develop regulation on specific activities and types of VASPs and conditions for registration.

53. Based on Article 18(10) of the Law No 361 the Ministry of Digital Transformation of Ukraine is obliged to take measures to prevent criminals convicted of mercenary criminal offences or terrorism and accomplices in these criminal offences from management, or memberships in management or control of VASPs. The above provision does not preclude associates of criminals from owning or controlling or managing reporting entities. Therefore, criterion 15.4(b) is rated mostly met.

54. No evidence from Ukrainian authorities was provided in relation to compliance with criterion c.15.5.

55. The Ministry of Digital Transformation of Ukraine is responsible for regulation and supervision of VASPs. As provided in Article 18(2) of the Law No 361, it is within the powers of the state financial monitoring entities to ensure AML/CFT supervision over the activities of the relevant reporting entities, by means of conducting scheduled or unscheduled inspections on a risk-based approach. As VASPs were brought into the legal framework only recently by amendments to Law No 361, the Ministry of Digital Transformation currently is developing sector specific regulations for the purpose of implementing the requirements of Law 361 for risk-based supervision.

56. A variety of measures is available to the Ministry of Digital Transformation of Ukraine to sanction non-compliance of VASPs with AML/CFT obligations (Article 32(3) of Law No 361). According to paragraph 2 of Article 8, the procedure for application of enforcement measures provided in the Law as well as controls over their execution shall be determined by the state monitoring entities. As VASPs were brought into the legal framework only recently by amendments to Law No 361, The Ministry of Digital Transformation currently is developing sector specific regulations that would provide a framework for supervision.

57. Supervisory authorities need to issue guidance to all reporting entities (including VASPs) on application of AML/CTF obligations (Article 18(8) of the Law No 361). Reporting entities are required to take into account AML/CFT typological studies prepared and published by the FIU of Ukraine on its website as well as recommendations of state financial monitoring entities (paragraph 21(2) of the Law No 361). FIU has translated and published the FATF Guidance for a Risk-Based Approach to Virtual Assets and Virtual Asset Service Providers. However, no further guidance has been provided.

58. Regarding availability of proportionate and dissuasive sanctions to deal with VASPs that fail to comply with AML/CFT obligations, the same deficiencies and analysis applies as to c.35.1 (see above). Criterion 15.8(a) is partly met. Sanctions regarding breaches of AML/CFT obligations can be applied to directors and senior management of VASPs (Subparagraph 1(a) of paragraph 6 of Section X of the Law No 361). Supervisory authority also has the powers to remove an official from his duties (Article 32(3) of Law No 361). In relation to sanctions regime the same analysis and deficiencies as for c.35.2 are applicable for c.15.8(b).

59. With respect to the preventive measures, given that VASPs are considered reporting entities and therefore fall under the Law No 361 they have to comply with R.10 to 21. Legal requirements are in place that require reporting entities, including VASPs, to conduct CDD in the cases of occasional transactions above the threshold of USD/EUR 1150.

60. Article 14 of Law No 361 regulates information that needs to accompany money or virtual asset transfers for all reporting entities (VASP and FI). According to footnote 51 of the Methodology

all VA transfers should be treated as cross-border. The regime in Ukraine distinguishes between VA transfers initiated within Ukraine (Article 14(3)) and of initiating a transfer to abroad (Article 14(4)). Therefore, not in all cases originator and beneficiary VASPs and other reporting entities would obtain, hold and transfer required and accurate information on virtual asset transfers. MER of Ukraine rated R.16 as compliant, therefore other requirements of R.16 apply to VASPs in the same way.

61. For the TFS, by virtue of Article 6(2)(8) VASPs should apply all measures of TF and PF related TFS. Therefore, all the identified deficiencies in R.6 and R.7 (see above) equally apply to c.15.10.

62. Pursuant to Article 18, the Ministry of Digital Transformation is required to maintain international AML/CFT cooperation with the relevant bodies of foreign countries in accordance with international treaties of Ukraine (Article 31(8) of Law No 361). The deficiencies identified under R. 37- 40 apply to R.15.11.

63. Ukraine has taken steps to implement the new requirements of Recommendation 15, by introducing them into the AML/CFT legal framework. Overall, c.15.1, is rated as met, c.15.7, c.15.9 and c.15.11 are rated as mostly met, and c.15.2, c.15.3, c.15.4, c.15.6, c.15.8 and c.15.10 are rated as partly met and c.15.5 not met. On this basis, **R.15 is re-rated as PC.**

#### IV. CONCLUSION

64. Overall, Ukraine has made a progress in addressing the TC deficiencies identified in its 5th Round MER and has been re-rated on Recommendations (2 upgrades and 1 downgrade). Recommendations 5 and 35 initially rated as PC, are re-rated as LC. Recommendation 15 initially rated as LC, is re-rated as PC.

65. Further steps have been taken to improve compliance with the other Recommendations, including those Recommendations that have been revised since the adoption of the MER, but some gaps remain. Ukraine is encouraged to continue its efforts to address the remaining deficiencies.

66. Overall, in light of the progress made by Ukraine since its 1st enhanced FUR was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

**Table 2. Technical compliance with re-ratings, June-July 2020**

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	C	LC	LC	<b>LC</b>	PC	PC	LC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	LC	C	LC	<b>PC</b>	C	N/A	LC	C	C
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
LC	LC	LC	LC	PC	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
C	LC	PC	C	<b>LC</b>	LC	LC	LC	LC	LC

*Note:* There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

67. Ukraine will remain in enhanced follow-up and will continue to report back to MONEYVAL on progress to strengthen its implementation of AML/CFT measures. Ukraine is expected to report back in one year's time.

## GLOSSARY OF ACRONYMS

AML	Anti-money laundering
AML/CFT	Anti-money laundering and countering the financing of terrorism
BO	Beneficial ownership
C	Criterion
CC	Criminal Code
CDD	Customer due diligence
CFT	Countering the financing of terrorism
DNFBP	Designated non-financial business and professions
FATF	Financial Action Task Force
FIs	Financial institutions
FT	Financing of terrorism
LC	Largely compliant
MER	Mutual evaluation report
ML	Money laundering
NRA	National risk assessment
PC	Partially compliant
PF	Proliferation financing
R	Recommendation
RLE	Registrar of Legal Entities
STR	Suspicious transaction report
TC	Technical Compliance
VA	Virtual Assets
VASPs	Virtual asset service providers

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June 2020

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

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

This report analyses Ukraine's progress in addressing the technical compliance deficiencies identified in the FSRB assessment of their measures to combat money laundering and terrorist financing of December 2017.

The report also looks at whether Ukraine has implemented new measures to meet the requirements of FATF Recommendations that changed since its 1<sup>st</sup> enhanced follow-up report in July 2019 .