

Anti-money laundering and counter-terrorist financing measures

Lithuania

3rd Enhanced Follow-up Report & Technical Compliance Re-Rating

December 2022

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 3rd Enhanced Follow-up Report and Compliance Re-Rating on Lithuania was adopted by the MONEYVAL Committee at its 64th Plenary Session (5-9 December 2022)

Lithuania: Third Enhanced Follow-up Report

1. INTRODUCTION

1. The mutual evaluation report (MER) of Lithuania was adopted in December 2018 and its 1st and 2nd Enhanced Follow-up Reports in June 2020 and November 2021 respectively. The reports analyse the progress of Lithuania in addressing the technical compliance (TC) deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. Overall, 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 Lithuania has made to improve its effectiveness.

2. FINDINGS OF THE MUTUAL EVALUATION REPORT AND SUBSEQUENT FUR

2. The MER and subsequent Enhanced FUR rated Lithuania as follows for technical compliance:

Table 1. Technical compliance ratings, November 2021

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	PC	LC	LC	LC	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	C	LC	LC	PC	LC	C	LC	LC	LC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	LC	LC	PC	LC	LC	C	PC	LC	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	PC	LC	LC	LC	C	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).

Source: Lithuanian Mutual Evaluation Report, December 2018, <https://rm.coe.int/committee-of-experts-on-the-evaluation-of-anti-money-laundering-measur/16809247ed>. Lithuanian 1st Enhanced Follow-up Report, June 2020, <https://rm.coe.int/moneyval-2020-7-sr-5th-round-fur-mer-lithuania/16809ef774>. Lithuanian 2nd Enhanced Follow-up Report, November 2021, <https://rm.coe.int/moneyval-2021-30-fur-lithuania/1680a4b585>.

3. Given the results of the MER, Lithuania was placed in enhanced follow-up¹. The first enhanced follow-up report submitted by Lithuania was adopted via written procedure in June 2020 and the country was invited to submit its 2nd Enhanced FUR in one year's time. The FUR acknowledged that overall, Lithuania had made some progress in addressing the TC deficiencies identified in its 5th Round MER and was re-rated on one Recommendation: Recommendation 1 (initially rated as PC) was re-rated as LC. Measures taken by the Lithuanian authorities with respect to VAs and VASPs were not sufficiently in compliance with the revised requirements of R.15. Therefore, Lithuania was re-rated as PC (initially rated as C).

4. The second enhanced follow-up report submitted by Lithuania was adopted via written procedure in November 2021. Overall, Lithuania had made some progress in addressing the TC deficiencies identified in its MER and was re-rated on one Recommendation: R.26 initially rated as PC was re-rated as LC. Following the adoption of the 2nd Enhanced FUR, the country was invited to submit its 3rd Enhanced FUR in one year's time.

¹ Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up involves a more intensive process of follow-up. This is intended to be a targeted but more comprehensive report on the countries/territories' progress, with the main focus being on areas in which there have been changes, high risk areas identified in the MER or subsequently and on the priority areas for action.

5. The assessment of Lithuania'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):

- Albania
- Azerbaijan

6. Section III of this report summarises Lithuania progress made in improving technical compliance. Section IV sets out the conclusion and a table showing which Recommendations have been re-rated.

3. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

7. This section summarises the progress made by Lithuania to improve its technical compliance by:

- Addressing the technical compliance deficiencies identified in the MER and subsequent enhanced FURs for which the authorities have requested a re-rating (R.24, R.28 and R.32).

8. For the rest of the Recommendations rated as PC (R.2, 6, 7 and 15) the authorities did not request a re-rating.

9. This report takes into consideration only relevant laws, regulations or other AML/CFT measures that are in force and effect at the time that Lithuania submitted its country update report – at least six months before the FUR is due to be discussed by MONEYVAL².

III.1 Progress to address technical compliance deficiencies identified in the MER and applicable subsequent FURs

10. Lithuania has made some progress to address the technical compliance deficiencies identified in the MER and in subsequent Enhanced FURs. As a result of this progress, Lithuania has been re-rated on Recommendations 24 and 32. The country asked for a re-rating for R.28 which is also analysed but no re-rating has been provided.

Recommendation 24 (Originally rated PC –re-rated as LC)

11. In its 5th round MER, Lithuania was rated PC with R.24 based on the following deficiencies: there is no direct data available with regard to the beneficial owners of the different types of Lithuanian legal persons (c.24.1(b)); JADIS does not contain information on shareholders of some types of legal persons and information on shareholders, owners, members of some types of legal persons is not available; Lithuania did not assess the ML/FT risks posed by the different types of legal persons that can be created in the country (c.24.2); no information has been provided to the evaluation team on c.24.4; there is no Authority responsible for verifying the update of the information disclosed to the Register by legal persons (c.24.5); the requirement under c.24.5 in relation to shareholder information applies only to some legal persons; there are no requirements in the Civil Code or in the Laws on Companies for an individual to be authorised as the accountable person to provide the authorities with basic and BO information and to give further assistance (c.24.8(a)); there are no requirements in the Civil Code or in the Laws on Companies for a DNFBP to be authorised as the accountable person to provide the authorities with basic and BO information

² This rule may be relaxed in the exceptional case where legislation is not yet in force at the six-month deadline, but the text will not change and will be in force by the time that written comments are due. In other words, the legislation has been enacted, but it is awaiting the expiry of an implementation or transitional period before it is enforceable. In all other cases the procedural deadlines should be strictly followed to ensure that experts have sufficient time to do their analysis.

and to give further assistance (c.24.8(b)); the authorities did not provide information on any other comparable measures identified by the country in order to cooperate with competent authorities to the fullest extent possible in determining the beneficial owner (c.24.8(c)); it is not clear how long legal persons are required to retain basic and beneficial ownership information (c.24.9); there are no mechanisms in place to ensure that nominee shares and nominee directors are not misused for ML/FT (c.24.12); the range of the monetary fine is neither proportionate nor dissuasive (c.24.13); the Centre of Register indicated that no sanctions have been applied yet in cases foreseen by the law (c.24.13); Lithuania does not have any mechanism in place which would monitor the quality of assistance rendered from other countries and related to exchange of BO information (c.24.15).

12. Lithuania has taken some steps to address some of the deficiencies identified in the 5th round MER. In particular, Lithuania has developed a BO Sub-system (hereinafter “JANGIS”) of the Information System of Legal Persons (hereinafter “JADIS”) which is functional as of August 1, 2022. It includes a wide range of data, namely, personal information, ownership/control rights of a beneficiary, direct and indirect owners of the legal person, information regarding controlling ownership, the volume of ownership rights and etc. Pursuant to Article 21 of the Regulation of the Information System of the Participants of Legal Entities (hereinafter “Regulation”), all data shall be publicly available. According to Article 5.2 of the Regulations, JANGIS is not required to collect information on beneficial owners of legal persons where the State of municipality is the sole participant. However, this approach is not fully in line with the FATF Standards but consider this deficiency of minor nature. (c.24.1).

13. Pursuant to the JADIS Regulation information on shareholders is collected in relation to private limited liability companies (Article 15.6) and public institutions (Article 15.7). With regard to other forms of legal entities, JADIS collects data on members and owners of small communities (Article 15.5 of the Regulation), agricultural companies (Article 15.8 of the Regulation); data on members of cooperative societies (Article 15.9 of the Regulation); and data on participants of general and limited partnership (Article 15.10 of the Regulation) and charity and support funds (Article 15.11 of the Regulation). The authorities explained that according to Article 2.45 of the Civil Code of the Republic of Lithuania a “shareholder” is just one form of participants of a legal person. Other two forms “members” and “owners” also fall under the chapeau of “participants”

14. Lithuania has not yet taken any steps to carry out a ML/TF risk assessment of legal persons (c.24.2).

15. Article 41 of the Law on Companies of the Republic of Lithuania establish the procedure for managing the shareholders’ personal securities accounts. According to para 1 of Article 41 of the Law on Companies, companies (joint and closed stock companies) intangible shares are recorded in the shareholders’ personal securities accounts. Moreover, para 4 of Article 41 of the Law on Companies indicates that the companies are maintaining information on the number of shares held by shareholders. However, there is no requirement to maintain information on categories of shares. Also, it is unclear whether companies can issue tangible shares. In relation to private limited liability companies (PLLC), for intangible and tangible shares such companies should maintain this information (para 3 of Article 41 of the Law on Companies). According to the same para, PLLC can delegate management of shareholders’ personal securities accounts to other legal persons. Moreover, para 4 of Article 41 of the Law on Companies indicates that PLLC are maintaining information on the number of shares held by shareholders. However, there is no requirement to maintain information on categories of shares. The requirement on maintaining the BO information “at a location notified to the company registry” is addressed by establishment of the BO register. (c.24.4).

16. Although, Lithuania has taken steps to enhance accuracy of information submitted by legal persons upon registration and when updating their data in the system, still JADIS is not vested with the responsibility to verify the update of the information disclosed to it by legal persons (c.24.5).

17. Lithuania has established other comparable measures to ensure that legal persons cooperate with competent authorities in determining basic and BO information. The responsibility for the submission of data on beneficial owners to JANGIS and their updates is assigned to the manager/managing body of legal entity pursuant to Article 25 of the LPMLTF. Under the Civil Code, Article 2.81(1), legal persons achieve civil rights, assume civil duties and implement them through their bodies which are formed and act in accordance with laws and documents of incorporation of legal persons. Moreover, according to Article 2.67 of the Civil Code, managing body of a legal person shall be responsible for the timely submission of documents, data and other requested information to the Register of legal entities except as otherwise is provided by the law or incorporation documents. JADIS Regulations specify that the management body of the legal entity, or another natural person authorised to provide data to the JADIS on behalf of the legal entity, shall provide data to the JADIS.

18. The legislation of Lithuania, currently, has the provisions in place for maintaining BO information in JANGIS for 8 years once a legal person is de-registered (Article 44 of the JADIS Regulation) and basic information is stored in the system for 50 years (Article 136 of the RLE Regulation) (c.24.9).

19. Lithuania has introduced amendments to the Code of Administrative offences, however they will only come into force in 2024. With respect to the deficiency concerning the Centre of Register that has not imposed any sanctions foreseen by the law, it is not applicable due to its effectiveness nature. The follow-up reports analyse the progress of jurisdictions in addressing the TC deficiencies identified in its MER. The follow-up reports do not address what progress jurisdictions are making to improve their effectiveness (c.24.13).

20. Concerning c.24.12 and c.24.15 Lithuania has not taken any measures to address deficiencies under these criteria.

21. Overall, since the adoption of the 5th round MER of Lithuania, the country has taken some important steps to enhance transparency of legal persons. In particular, Lithuania has established a BO register called "JANGIS". Moreover, the JADIS system is collecting information on shareholders, members and owners of legal persons. Also, the country has introduced a legal framework to ensure smooth cooperation of legal persons and registers. Lithuania has taken some important steps to remedy deficiencies under R.24, there are still some minor and outstanding shortcomings remain. The outstanding deficiencies remain in relation to a risk assessment of legal persons and sanctioning regime. **Therefore, R.24 is re-rated as "LC".**

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

22. In its 5th round MER, Lithuania was rated PC with R.28. Following the adoption of the 2nd Enhanced FUR the remaining deficiencies are: the definition of controller does not cover all potential beneficial owners in practice. Associates of criminal are also not covered (c.28.1(b)); the evaluation team does not consider the 5/30 day timeframe before notification to the GCA and the lack of ability of the supervisor to address problems by itself as fully meeting the criterion (c.28.1(b)); a registration framework for accountants and real estate agents is not in place (c.28.3); while there are statutory powers to prevent criminal control of DNFBPs, the coverage of this is not clear except in relation to advocates (c.28.4(a)); is not clear that the provisions of Art.25 of the AML/CFT law would cover all relevant criminality (c.28.4(b)); the provisions for DNFBPs do not cover associates of criminals (c.28.4(b)); the Bar Association and the Chamber of Notaries do not have complete statutory powers in relation to supervision and sanctions (c.28.4(c)); the inability of the supervisory

authorities for legal professionals and auditors to impose fines for AML/CFT breaches is a gap (c.28.4(c)). Lithuania: has improved its AML/CFT risk-based supervision of casinos, but there is a remaining flaw since an entity can end up in a category not reflecting its real ML risk; has provisions that significantly limit the risk-based orientation of supervision of notaries; lacks risk-based supervision of TCSPs, accountants and auditors; has not yet finalised the promising processes concerning the Bar Association and FCIS; has established supervision of advocates and judicial officers, which nonetheless is not risk-sensitive and lacks rules governing its frequency; has established risk-based supervision of dealers in precious metals and stones, which however lacks rules governing its frequency (c.28.5(a)). The approaches of the DNFBP supervisors take into account ML/FT profiles of individual DNFBPs to the extent mentioned under c.28.5(a) (c.28.5(b)).

23. According to Article 10 of the Law on the Audit of Financial statements an auditor shall not be considered to be of good repute where she/he was found guilty of a serious or grave crime against property, property rights, property interests, security of electronic data or information systems, the economy, the order of business, the financial system, civil service or public interests and his conviction has not expired or has not been expunged. However, it is not clear whether this would cover all relevant criminality. In relation to accounting firms, pursuant to Article 14 of the Law on the Audit of Financial statements CEO cannot be a person who was found guilty of a serious or grave crime against property, property rights, property interests, security of electronic data or information systems, the economy, the order of business, the financial system, civil service or public interests and his conviction has not expired or has not been expunged. However, it is not clear whether this would cover all relevant criminality. Moreover, there is no requirement to prevent criminal from holding (or being the beneficial owner of) a significant or controlling interest. No new measures have been taken in relation to other types of DNFBPs (c.28.4(b)).

24. To address these deficiencies Lithuania has taken measures. Regarding casinos, although Lithuania has amended the Methodology for evaluating and controlling the risk of economic entities monitored by GCA, there is still a possibility that an entity with high ML risk ends up – overall – in a risk category that does not reflect its real ML risks. With respect to notaries, trust and company service providers, accountants, auditors, advocates and DPMSs, in 2021, a dedicated division for the AML/CFT supervision of the financial institutions and Designated Non-Financial Businesses and Professions (DNFBP) has been established within Money Laundering Prevention Board of the Financial Crime Investigation Service (Lithuanian FIU). This Unit is responsible for the AML/CFT supervision (including a risk sensitive approach). The newly updated order for selection for inspections which aims at applying an RBA and managing the ML/TF risks. This order determines a comprehensive list of criteria that should be considered when establishing an annual inspections plan. In particular, the FIU should consider ML/TF risk exposure of sectors and products, risks posed by different REs, considering their business profile and etc. Lithuania has established the risk-based supervision in relation to DNFBPs, however there are no rules governing its frequency (c.28.5(a)).

25. Moreover, Para 7.8 of Order V-233 requires the FIU to consider ML/FT profiles of individual DNFBPs to the extent mentioned under c.28.5(a).

26. As for deficiencies under c.28.1(b), Lithuania introduced amendments to the Gambling Law (to define the ultimate beneficial owner as it provided for in the Lithuanian AML law) in order to remedy the deficiencies. However, these amendments are not yet adopted nor in force.

27. Lithuania has not taken any new measures to address identified deficiencies under c.28.3 and c.28.4(a-c).

28. Overall, Lithuania has taken some steps to address the deficiencies c.28.5(a) and 28.5(b). Nevertheless, deficiencies under other criteria have not been remedied. Moreover, under c.28.5(a)

Lithuania has not established any rules governing the frequency of supervision. **Therefore, R.28 remains “PC”.**

Recommendation 32 (Originally rated PC – re-rated as LC)

29. In its 5th round MER, Lithuania was rated PC with R.32. Following the adoption of the 2nd Enhanced FUR the remaining deficiencies are: no declaration requirements for EU internal borders (c.32.2); customs does not have the authority to request and obtain further information where a false declaration or disclosure, or failure to declare, has been detected (c.32.4); no information was provided co-ordination mechanisms among customs, immigration and other related authorities (c.32.7); there is no power to stop or restrain currency for a reasonable period of time in order to ascertain whether evidence of ML/FT may be found where there is a suspicion of ML/FT or predicate offences or when there is a false/non-declaration/ disclosure (c.32.8).

30. The Lithuanian authorities have taken measures to address some outstanding deficiencies.

31. In the second FUR (2021) it was indicated that Lithuania had taken actions to largely address the deficiency identified in the 5th round MER. Nevertheless, the 2nd FUR already considered Order No 1B-371 of the Director General of the Ministry of Finance of the Republic of Lithuania of 31 May 2021 and noted that these requirements only apply to transportation of cash by mail and cargo for EU external borders. It's worth noting that according to para 1 of Article of the said Order, it lays down the description of the procedure for submission and customs clearance of cash declarations and cash disclosure declarations determines the procedure for declaring and customs clearance of cash entering or leaving the European Union. This clearly shows that the requirements do not cover transportation of cash by mail and cargo. (c.32.2).

32. Regarding c.32.4, Lithuania has established the necessary legal framework to empower the customs authorities to request and obtain further information where a false declaration or disclosure, or failure to declare, has been detected. In particular these powers are provided to the customs pursuant to the following provisions: para 2 of Article 19 of the Law on Customs, Orders No 1B-368 and 1B-371. Both these Orders (para 19 of 1B-368 and para 17 of 1B-371).

33. Lithuania submitted information based on the practical examples of coordination among customs and other authorities in implementation of R.32. The Customs of the Republic of Lithuania is able to create risk profiles and perform controls at the borders on the basis of the information on risky companies and individuals received from the FIU. Moreover, Lithuanian customs and immigration authorities cooperate in a form of providing access to relevant data on passengers arriving in the Republic of Lithuania by air. However, no information has been submitted on coordination between customs and immigration authorities (c.32.7).

34. Concerning customs' power to stop or restrain cash, Lithuania has provided information that undeclared cash shall be detained in accordance with the provisions of Article 199 of the Criminal Code in cases where the amount of undeclared cash is equal to or greater than EUR 6 900. If the amount of undeclared cash is less than EUR 6 900 (for example, the person does not declare part of the cash), the provisions of the Code of Administrative Offences shall apply. This shows that when undeclared cash falls under the administrative provisions, customs are not empowered to stop or restrain currency for a reasonable period of time. In other words, in cases when the amount of undeclared cash is less than 6900 Euros, no provision applies to empower the customs to stop or restrain currency for a reasonable period of time in order to ascertain whether evidence of ML/FT may be found where there is a suspicion of ML/FT or predicate offences or when there is a false/disclosure (c.32.8).

35. Overall, Lithuania has taken some important steps to address several remaining deficiencies under R.32. The deficiency under c.32.2 remains but is of minor nature as highlighted in the 2nd FUR.

In relation to c.32.4 Lithuania has established the necessary legal framework to empower the customs authorities to request and obtain further information where a false declaration or disclosure, or failure to declare, has been detected. Lithuania has mostly addressed the shortcoming under c.32.7 regarding coordination mechanisms among customs, immigration and other related authorities and only partially addressed the deficiency identified under c.32.8. In a nutshell, the only remaining outstanding deficiency is related to lack of powers to stop or restrain currency for a reasonable period of time in order to ascertain whether evidence of ML/FT may be found where there is a suspicion of ML/FT or predicate offences or when there is a false/disclosure in cases when the amount of undeclared cash is less than 6900 Euros. **Therefore, R.32 is upgraded to “LC”.**

4. CONCLUSION

36. Overall, Lithuania has made some progress in addressing the TC deficiencies identified in its 5th Round MER and subsequent FURs and has been re-rated on two Recommendations (2 upgrades). Recommendations 24 and 32 initially rated as PC are re-rated as LC.

37. Lithuania is encouraged to continue its efforts to address the remaining deficiencies.

38. Overall, in light of the progress made by Lithuania since its MER and subsequent FURs were adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

Table 2. Technical compliance with re-ratings, November 2022

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	PC	LC	LC	LC	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	C	LC	LC	PC	LC	C	LC	LC	LC
R 21	R 22	R 23	R 24	R 25	R 26	R 27	R 28	R 29	R 30
C	LC	LC	LC	LC	LC	C	PC	LC	C
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
LC	LC	LC	LC	LC	C	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).

39. According to item 8 of Rule 21 of the MONEYVAL’s Rules of Procedure for the 5th round Mutual Evaluations the general expectation is for countries to address most if not all of the technical compliance deficiencies by the end of the 3rd year after the adoption of the MER.

40. The Lithuanian 5th round MER was adopted in December 2018. In line with item 8 of Rule 21 it was expected that Lithuania addresses most if not all of its technical compliance deficiencies by December 2022. Lithuania is therefore at the decision point for the Plenary as regards the next steps. At current, R.2, 6, 7, 15 and 28 are rated as PC. Bearing in mind the decision taken at the 63rd Plenary to set a transition phase for the implementation of CEPs throughout December 2022 and in line with Rule 25(1)³ under Title IV (Compliance Enhancing Procedures) of the Rules of Procedure, the

³ Rule 25 – General principles

1. MONEYVAL may take action at any time in respect of countries and territories subject to its evaluation procedures for failure to implement the reference documents or the recommendations in mutual evaluation reports. It should be guided by the following principles:

- a) flexibility in order to deal with situations which require urgent action by the Plenary when issues of non-compliance arise;
- b) equality of treatment for MONEYVAL countries/territories;
- c) a graduated approach for dealing with non-complying countries/territories;

Plenary is invited to issue a CEPs warning, and if progress is not made by the next FUR – to apply step 1 under CEPs.

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

d) approval by the Plenary of the steps to be taken, whilst allowing for some discretion regarding their application.

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