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

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EU Supranational Measures in MONEYVAL 5th Round Mutual Evaluation Reports

December 2024

Horizontal review

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

The present analysis was drafted by a working group composed of one delegation and several Secretariat members and was adopted by the MONEYVAL Committee at its 68th plenary meeting (2-6 December 2024)

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I EXECUTIVE SUMMARY

1. The European Union (EU) is a supra-national organisation with international legal personality where various initiatives have been taken to enact common rules and standards to counteract money laundering (ML) and the financing of terrorism (FT), in a bid to ensure that the EU's internal market and financial system are not misused for criminal purposes. These initiatives have contributed to the harmonisation of national anti-money laundering and countering financing of terrorism (AML/CFT) laws and regimes, and the creation of specific EU mechanisms (supranational measures) for facilitating EU-wide cooperation in detecting and combatting crime. EU legal and institutional framework is constantly evolving, and it is to be expected that in the near future, there will be more directly applicable EU regulations which no longer require national transposition.
2. The Financial Action Task Force (FATF), as the standard setting body, is responsible for the interpretation of the FATF standards. The revised FATF Methodology and procedures for the next round of mutual evaluations, adopted in March 2022, define how supra-nationality should be treated in evaluations. Universal Procedures for the next round of FATF and FATF-style regional bodies (FSRB) reviews will complete the framework, setting out how supranational mechanisms should be considered in the Global Network.
3. More than a third of *The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism* (MONEYVAL) member countries are EU member states (EU-MONEYVAL member states) and, as such, subject to the EU's legal order, while a number of other MONEYVAL members committed to harmonize their legislation with the EU's AML/CFT acquis[1].
4. During MONEYVAL's 5th round of mutual evaluations, discussions have often raised the question of how EU supranational measures should be interpreted and weighted when evaluating EU member states (EU MS). For this reason, MONEYVAL's Strategy 2023 – 2027, adopted in April 2023, includes the Development Objective 2.2. aimed at developing a consistent understanding for the assessment of supranational mechanisms.
5. To implement the Development Objective, MONEYVAL decided to conduct a '*Supranationality analysis project*' (horizontal study) based on the scope and methodology agreed in the concept note, adopted by the 65th MONEYVAL plenary in May 2023 (Concept Note).
6. The study aims to analyse how EU supra-national legislation, mechanisms and other initiatives have been considered and weighted in MONEYVAL's 5th round assessments. The review is limited to EU-MONEYVAL member states only (see part III). It should be noted that the current horizontal study is not intended to analyse any legislative and operational developments resulting from the new EU's AML/CFT package that may impact evaluations throughout MONEYVAL's 6th round of assessments.

[1] 14 EU and EEA member states subject to the EU framework are evaluated by the FATF.

7. As a main finding of this study, it can be summarized that some ambiguities have been identified in 5th round MERs of EU-MONEYVAL member states with respect to EU supranational mechanisms sometimes being described in diverse or inconsistent manner (see part II – Key Findings).

II KEY FINDINGS

The current horizontal study has identified the following key findings:

Immediate Outcome 1; Recommendation 1

1. The majority of mutual evaluation reports (MERs) analysed do not give much weight to the EU supranational risk assessment (SNRA) when evaluating national efforts to understand and analyse ML/TF national risks. The focus is almost exclusively confined to national initiatives.
2. With respect to exemptions from AML/CFT obligations and application of enhanced due diligence and simplified due diligence (EDD/SDD) measures, MONEYVAL MERs have been consistent in expecting these measures to be aligned with the national ML/TF risks, even when concessions or requirements originate from EU AML Directives.

Immediate Outcome 2

3. EU legal instruments and EU-wide cooperation channels, fora and networks lead to stronger cooperation between EU member states. This is clearly recognised under all MERs. Reference and appreciation of the various EU-wide legislative and other measures are however not consistent. This analysis sought to map out all the mentioned EU-wide instruments as such a consolidation would be a useful tool for future evaluations, to ensure more consistency.

Immediate Outcome 5

4. In many of the reviewed MERs, the establishment of beneficial ownership (BO) registers (BO Registers) was at an incipient stage and thus did not yet yield results in terms of effectiveness under Immediate Outcome (IO) 5.
5. On the other hand, the MER where EU-MONEYVAL member states had implemented measures to ensure that the data held is accurate, adequate and up-to-date, showed that BO registers are a key feature of ensuring transparency of legal entities and arrangements.

Immediate Outcome 7

6. Assessors consider and give credit under IO.7 to the cases with the involvement of EUROPOL/ EUROJUST. Such cases have been described in the reports as positive examples of identifying, investigating, and prosecuting complex ML cases. At the same time, some reports noted that such cooperation is used in ML cases only to a limited extent.
7. It is possible that not all EU-MONEYVAL member states have put forward cases of cooperation with relevant EU authorities, and instead have relied on presenting mostly domestic cases because some reports are silent on such examples.
8. While the MERs analysed did not cover the cooperation with EPPO, it remains to be seen how much weight would be given to EPPO cases in future evaluations.

Immediate Outcome 8; Recommendation 32

9. The majority of EU member states evaluated by MONEYVAL applied cross-border

cash controls, only at EU external borders. MERs have been clear in the expectation that countries should apply border controls for all cash movements and not only for movements in or out of the EU. Regulation EU 2018/1672 addressed the deficiencies of the precursor Regulation (EC) No. 1889/2005. Nonetheless, the Regulation on its own does not suffice to ensure compliance with R.32. This is because a number of aspects need to be implemented or complemented at the national level. These aspects are identified and discussed in MERs.

10. EU instruments or information exchange channels are useful to ensure effectiveness in tracing, seizing, and confiscating foreign proceeds of crime or proceeds of crime generated in an EU MS that have been moved abroad. Those instruments featured in the MERs are identified and their usefulness is explained.

Immediate Outcome 9

11. Some reports mentioned cases where terrorism suspicions were investigated with the help of EUROPOL, which later led to a TF investigation.

Immediate Outcome 3; Recommendations 15 and 26

12. A range of EU instruments address FATF recommendations. Aside from binding legislation, guidelines are also commonly applied, but cause issues when they are relied upon as standalone proof of compliance due to their non-binding nature.

13. In many instances, the references to EU instruments under IO.3 are informative and contextual in nature, not having a clear weight on the assessment of the level of effectiveness. This notwithstanding, some reports highlight cases that have a positive impact, such as cooperation between domestic authorities and the European Central Bank (ECB) or other member state's authorities in relation to the authorisation of operations of credit institutions.

14. From a technical standpoint, while the references under R.26 are similar in nature to those in IO.3, compliance with R.15 very often presents issues arising from a more limited VASP definition under EU legislation than that of the FATF, with the current EU framework (Regulation (EU) 2023/1114) not having been yet assessed.

Immediate Outcome 4; Recommendations 13, 16 and 19

15. The EU legal framework is highly significant when assessing compliance with the requirements of R.13, 16 and 19 (having an impact on IO.4).

16. Regulation (EU) 2015/847 is broadly in line with R.16. Therefore, EU member states whose assessment took place with the Regulation already in force achieved a level of compliance of at least largely compliant, deficiencies being noted only in relation to other aspects not covered by the EU legislation (MVTS obligations).

17. Regarding R.13, the application of enhanced measures only to respondent institutions based on third countries (non-EU/EEA members), unless increased risks are identified, is stated as a deficiency in most reports. In a few instances, materiality of correspondent relationships was considered when weighing the deficiency.

18. The approach adopted in relation to R.19 is more inconsistent. Some reports

consider the '*EU list of high-risk third countries with strategic deficiencies*' (which does not include EU member states) and additional requirements to consider relevant evaluations by international organisations as sufficient to reach a largely compliant level, while others require a more direct reference in the legislation to the FATF list of high-risk and other monitored jurisdictions.

Immediate Outcome 10 and 11; Recommendations 6 and 7

19. EU member states mainly rely on the EU legal framework implementing targeted financial sanctions (TFS), supplemented by national measures. The EU supranational mechanisms are described in a diverse and inconsistent manner, including references used incoherently.

20. Not all MERs list every possible supranational instrument that helps to meet the FATF criteria under R.6/7. Some reports include an overall assessment of a given recommendation, while some include an assessment of each sub-criterion, indicating the level of compliance at the EU and national levels.

III BACKROUND

1. *MONEYVAL's Strategy 2023 – 2027*, adopted in Warsaw in April 2023, includes amongst its objectives, Development Objective 2.2., aimed at developing a consistent understanding of the assessment of supranational mechanisms. During MONEYVAL's 5th round of mutual evaluations, discussions have often raised the question of how EU supranational measures should be interpreted and weighted when evaluating EU member states[2].
2. To implement this development objective, a *Concept Note* was adopted during the 65th MONEYVAL Plenary (Strasbourg, 24 - 26 May 2023) to initiate a horizontal study to analyse how EU supranational legislation, mechanisms and other initiatives have been considered and weighted in the ongoing mutual evaluation processes[3].
3. The Concept Note adopted a timeline according to which the working group would analyse the reports from May 2023 to May 2024, and circulate the first draft analysis for comments on May 2024, with the aim to present the final version of the analysis in the December 2024 MONEYVAL plenary for its adoption. The first draft analysis was presented during the May 2024 MONEYVAL plenary. The consultation round took place in between the first and final draft. In particular, delegations were invited to review and provide any comments and further suggestions on the first draft report by 1st July 2024. MONEYVAL received comments from 3 delegations[4] and revised the draft accordingly. In addition, several editorial changes were introduced.

[2] More than a third of MONEYVAL members are European Union members and as such subject to the EU's legal order.
[3] "Supranationality analysis project: project concept note" as adopted by MONEYVAL at its 65th plenary (24 – 26 May 2023).
[4] European Commission, Bulgaria and Slovenia.

IV SCOPE and METHODOLOGY

4. The current horizontal study is limited in scope and only concerns EU member states that are also MONEYVAL members (hereafter "EU-MONEYVAL member states"). The analysis is based on MONEYVAL 5th round of MERs (from May 2023 to May 2024), including where appropriate, any reports from follow-up processes which covered identified areas of interest.
5. The analysis involves a horizontal study of how the main Immediate Outcomes (IOs) and Recommendations (R./Recs) that are impacted by supra-national elements have been evaluated, and how supranational aspects have been considered by the assessors, where relevant and available. In particular, the following IOs and Recs were reviewed: IOs 1, 2, 3, 4, 5, 7, 8, 9, 10, 11 and R. 6, 7, 13, 15, 16, 19, 26, 32 (see Annex A).
6. The current study is not intended to analyse any legislative and operational developments resulting from the new EU's AML/CFT package that may impact evaluations in MONEYVAL's 6th round.
7. The present study was drafted by a working group composed of one delegation and several Secretariat members[5].

[5] Ms Magdalena Kurowska, Chief Specialist, Ministry of Finance of Poland, and from the MONEYVAL Secretariat, Ms Veronika Mets, Mr Alexander Mangion and Mr Gerard Prast.

ANNEX A - ANALYSIS OF MONEYVAL REPORTS

1. Immediate Outcome 1: Recommendation 1

1.1. Introduction

1. This section examines the analysis of FATF Recommendations 1 and 2, as well as Immediate Outcome 1 for EU-MONEYVAL member states. MONEYVAL has under this cycle reviewed all the 13 EU member states that fall under its evaluation remit.

2. This part of the report will analyse the weight given by evaluators to the EU-wide approach for identifying supra-national risks, which is based on the input and risk data of national member states. The application of simplified due diligence (SDD)/enhanced due diligence (EDD) and costumer due diligence (CDD) exemptions is another area which is heavily influenced by EU laws. This is featured regularly in the MERs of EU-MONEYVAL member states.

1.2. The Supra-National Risk Assessment (SNRA)

3. Following the enactment of the 4th EU Anti-Money Laundering Directive (EU) 2015/849)[6] (AMLD), the European Commission was tasked with assessing the ML/TF risks affecting the EU's internal market and relating to cross-border activities. The European Commission is also responsible for making recommendations to member states to address identified risks. Since the publication of the 4th AMLD, the European Commission issued three iterations of the SNRA in 2017, 2019 and 2022.

4. EU member states are also bound by the 4th AMLD to indicate in their own national risk assessments, how they took into account any relevant findings of the SNRA. Where member states decide not to heed the Commission's recommendations, they are bound to notify the Commission and provide justification.

5. The on-site evaluations for three EU-MONEYVAL member states took place prior to the issuance of the first SNRA, and hence include no reference thereto. For the rest of the ten evaluations; in two cases there was no consideration of the SNRA at all by the assessment team (AT), while in the other eight, the SNRA was referenced under the IO.1 evaluation, mostly as a source of information for conducting national risk assessments or sectorial risk assessments, particularly risk assessments covering the banking sector for supervisory purposes. It is clear that the majority of MERs did not give much weight to the SNRA when analysing core issue 1.1 (i.e. the national efforts to understand and analyse ML/TF risks). The focus was almost exclusively on national initiatives, notwithstanding the fact that the EU SNRA itself was a project in which the national member states participated, and which involved input of data and analysis from their end.

6. One MER was particularly interesting. In this report the country was criticised for not considering, in its NRA, the ML/TF threats arising from the country's context and geographical location, and this despite some relevant information being readily available from sources such as EUROPOL and the European Commission. This in a way sets the expectation (when assessing Core Issue 1.1 for EU member states) to determine whether and to what extent the country considered the SNRA's outcomes when assessing its national ML/TF risks. In the mentioned case, this was deemed necessary to evaluate the adequacy and robustness of the country's national risk understanding and assessment framework.

[6] Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, as amended by Directive (EU) 2018/843 of 30 May 2018, see Directive - 2015/849 - EN - aml directive - EUR-Lex

7. Other MERs mentioned the fact that, when conducting outreach on ML/TF risks with the private sector, this would include both national and supranational identified risks emanating from the SNRA.

8. From a technical analysis point of view, in the analysis of criterion 1.7(b) and 1.8 for one EU Country, the AT concluded that the country had only partly met this criterion since reporting entities (REs) were not obliged to consider the outcomes of the NRA and the SNRA in their entity level risk assessments. Thus, the EU's SNRA (besides the country's NRA) was interpreted to constitute a component of the country's ML/TF risk analysis outcomes.

1.3. Transposition of EU AML/CFT directive requirements on EDD/SDD

9. MONEYVAL MERs have been consistent in their approach that any exemptions from AML/CFT obligations or application of EDD/SDD requirements must be consistent with the national ML/TF risks, even when such concessions or requirements may originate from EU AML Directives.

Customer Due Diligence (CDD) Exemptions

10. A number of MERs analysed the CDD exemptions for the issuance of e-money products throughout EU-MONEYVAL countries based on AMLDs (criterion 1.6 and core-issue 1.3). Article 12 of the AMLD enables member states to allow REs not to apply CDD when issuing e-money instruments that: (i) cannot be reloaded, (ii) are subject to transaction/credit storage limits (i.e. €150), (iii) cannot be funded through anonymous e-money, and (iv) are subject to cash withdrawal and remote payment limitations of €50. The EU Directives clearly establish that these exemptions are to be introduced "based on an appropriate risk assessment which demonstrates a low risk".

11. In two reports this exemption was deemed to be justified since the AT considered that the NRA had identified the risks posed by e-money in the country to be low.

Analysis of Criterion 1.6 / Core Issue 1.3 – CDD Exemptions – E-Money

Compliant Approach

Cyprus MER (2019) – "While the exemption has been directly transposed from the 4th AML Directive, the NRA includes some consideration of the risk of electronic money and concludes that it presents a low risk in Cyprus. No financial intelligence such as STRs or other information suggests that the limited exemption is other than low risk." (p. 32)

Czechia MER (2018) – "Article 13A of the AML/CFT Law provides exemptions from identification and CDD, in relation to e-money and mobile payment services within value limits. Unlike the simplified CDD, the exemptions do result from the analysis described in Chapter 3.1.5 of the NRA, which revealed no or very limited ML/FT exposure for the e-money and mobile payment services." (p. 40)

Criticised Approach

Slovenia MER (2017) - "However, these exceptions appear to be mostly based on presumption, rather than on proven low risk of ML/FT. The NRA has identified some of these entities/activities as low risk (e.g. electronic money, financial leasing, granting credit or loans, including consumer credit, mortgage credit, factoring, and the financing of commercial transactions, including forfeiture) but the NRA's limited analysis makes these results questionable." (p. 139)

Croatia MER (2021) - "There is a conditional limited exemption in relation to the e-money sector. They are permitted not to apply certain CDD requirements based on an appropriate risk assessment indicating that the risk is low provided that certain mitigating conditions are met (e.g., limited re-loading ability, maximum limit of HRK equivalent to 150 Euro, use only in Croatia and absence of anonymity) (AMLTFL, Art.18). The exemption has been directly transposed from the 5th AML Directive. However, the NRA concludes that the risk posed by e-money providers is medium in Croatia." (p. 54)

12. This interpretation was re-affirmed in three other MERs that criticised the respective EU-MONEYVAL member states for directly transposing these exemptions from EU directives without considering beforehand whether they were justified in the national context and risks. In one MER, the AT observed that the country still went ahead with permitting these exemptions even though the country's NRA concluded that the ML/TF risk posed by e-money providers was medium.

13. In another MER, the AT took a divergent approach, although still consistent with the general interpretation that any exemptions emanating from EU law cannot be automatically transposed by national member states without any risk consideration. In the case of Bulgaria, the AT held that the application of the exemption for e-money issuers, on the basis of a RE-wide risk assessment indicating a low risk, was enough to justify the CDD exemptions and meet the requirements of criteria 1.6. The AT did not seek to assess whether these exemptions were backed by the NRA findings but considered it sufficient to put the onus on the FI to ensure that the exemptions are only applied in low-risk cases. This approach was however not considered sufficient in Croatia's MER (see case box for core issue 1.3).

Enhanced & Simplified Due Diligence (EDD/SDD)

14. Articles 16 and 18 of the 4th AMLD dealing with SDD and EDD, state that when assessing the risks of ML/TF, member states and REs shall at least take into account the factors of potentially lower-risk/higher-risk situations set out in Annexes II/III. These Annexes list examples of customer, product, service, transaction or delivery channel, and country scenarios that are potentially low and high risk respectively. The 4th AMLD limits itself to only requiring that these factors are considered, without mandating the application of either SDD or EDD in such scenarios.

15. The 4th AMLD also entrusted the European Supervisory Authorities (ESAs) to issue joint guidelines for financial institutions (FIs) regarding risk factors applicable to these sectors, and guidance on the application of SDD and EDD[7]. These joint guidelines and risk factors are implemented into national AML/CFT laws and systems. Member states were also required to notify the ESAs as to whether they comply or intend to comply with the guidelines. More information is provided on these guidelines under the part of this report covering IO.4.

16. The majority of MERs that refer to the 4th AMLD Annexes/ESAs' risk factors (six MERs), seek to determine whether any permissible SDD scenarios or mandated EDD measures are aligned with national outcomes or understanding of ML/TF risk. They also ensure they are not merely a result of the direct transposition of EU instruments. In one of these MERs, the AT analysed the practical implementation of SDD in the funds industry with respect to investments held under nominee. The AT recognised that while this approach was aligned with the ESA's Risk Factor Guidelines, the national authorities were asked to consider whether these SDD measures were based on a consideration of risk.

[7] https://www.eiopa.europa.eu/publications/joint-guidelines-risk-factors_en#files

Analysis of EU Risk Factors Guidelines' Consistency with National Risk

Romania MER (2023) - "Enhanced measures are further detailed in various other regulations, such as the NBR Regulation which also makes a reference to the recent EBA risk factor guidelines of 2022, and NOPCML guidelines on criteria and rules for recognising high or low risk ML/TF. The situations of high-risk scenarios that trigger enhanced CDD measures (EDD measures) are in line with the findings of the NRA report and the AT's findings." (p. 45)

Slovenia MER (2017) - "At the time of the on-site visit, no clear policies in that regard based on the NRA had yet been developed. In general, it appears that the new AML/CFT legislation in Slovenia on exemptions, enhanced and simplified CDD measures is not based on NRA risk scenarios, but is the result of the transposition of the EU Directive 2015/849." (p. 40)

Poland MER (2021) - "Obligated institutions are required to apply enhanced CDD measures in cases when a higher risk of ML or TF is present, with specific examples of possible higher risk scenarios set out under Article 43 of the AML/CFT Act. These examples, in essence, are a replication of the non-exhaustive list of factors and types of evidence of potentially higher risk set out in Annex III of the Directive (EU) 2015/849, thus unrelated to the findings of the NRA." (p. 41-42)

17. Two other MERs simply remarked that non-exhaustive and potential risk factors are directly transposed from EU instruments as a mere point of fact and without questioning whether such transposition took due consideration of the relevant national risks or not. Another MER criticized the direct transposition of SDD/EDD measures without proper consideration of national risks. However, this criticism was directed at an AML/CFT law that was still based on the 3rd AMLD that expressly permitted the application of SDD in particular scenarios.

1.4. The EU General Data Protection Regulation (GDPR)

18. Regulation (EU) 2016/679 (the GDPR), sets out common EU-wide standards on privacy and processing of personal data. Being a regulation, it is directly applicable without the need for transposition, although some parts do allow for national flexibility in implementation. The GDPR was featured in five MERs throughout the analysis of criterion 1.8. This criterion requires cooperation and coordination between relevant authorities to ensure that AML/CFT requirements are compatible with data protection rules.

19. These MERs merely highlighted that, according to the GDPR, the processing of personal data for AML/CFT purposes is considered a matter of public interest, constituting a permissible ground for the processing of personal data. In addition, one MER highlighted that the co-operation and coordination mechanisms envisaged under criterion 1.8 are ensured through the application of the EU GDPR, without any further elaboration.

2. Immediate Outcome 2: Recommendations 37 - 40

2.1. Introduction

20. This section analyses the evaluation of Recommendations 37-40 and Immediate Outcome 2 in respect of the 13 EU-MONEYVAL members. The stronger ties and connections between EU member states resulting from the numerous EU legal instruments and EU-wide cooperation channels, fora and networks, are clearly manifested under these sections of the MERs dealing with international cooperation.

21. The EU legal instruments and cooperation mechanisms referred to under these sections are numerous. This part of the report will seek to identify them and provide brief background information to define their relevance when evaluating the international cooperation efforts of EU member states. This is not meant to serve as an exclusive list of all relevant EU instruments facilitating international cooperation, or as a source of official information thereon, but is merely a consolidated list of all such instruments which are referred in MERs, and which future ATs may find useful.

2.2. EU Legal Instruments

2.2.1. EU Legal Instruments on Mutual Legal Assistance – R.37 / IO.2

Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union – July 2000

22. This Convention builds upon the provisions of the Council of Europe Convention in Criminal Matters of April 1959 and the additional protocol thereto of 1978. Parties to these conventions bind themselves to afford each other the widest measure of mutual assistance for the purpose of gathering evidence and hearing witnesses, experts, and prosecuted individuals.

23. The July 2000 EU Convention supplements the Council of Europe Convention and protocols by extending mutual legal assistance in proceedings initiated by administrative authorities which may lead to criminal proceedings, and by providing for the possibility of spontaneous exchanges of information. It also lays down formalities and procedures that are to be complied with when requesting and providing assistance, including the requirement to ensure the execution of requests in a timely manner. Furthermore, under the 2000 Convention, EU member states agree (subject to certain criteria) to provide additional specific forms of mutual assistance, including (i) the restitution of articles obtained by criminal means to rightful owners, (ii) the transfer of persons for investigations, (iii) the hearing of witnesses by video/telephone conferencing, (iv) the conduct of controlled deliveries, (v) the setting up of joint investigative teams, (vi) the conduct of under covert investigations, and (vii) the interception of telecommunications.

Directive 2014/41/EU of the European Parliament and of the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

24. A European Investigation Order (EIO) is a judicial decision sent by a judicial authority of one member state to have one or several specific investigative measure(s) carried out in another member state to obtain evidence. The EIO may also be used to obtain evidence that is already possessed by another EU judicial authority. This Directive requires the carrying out of any investigative measure to collect evidence, other than Joint Investigation Teams (JITs) which are regulated by the Convention and in more detail by Council Decision 2002/465/JHA. It seeks to remove additional formalities to give effect to EIOs.

25. EIOs may be issued in respect of all criminal proceedings, administrative or other judicial proceedings which may lead to proceedings in courts of criminal judicature. The Directive also

provides a form to be used for issuing EIOs and which stipulates the information that it ought to contain.

26. Of relevance for the evaluation of c.37.4(a) is the fact that this Directive prohibits the refusal to recognise or execute EIOs related to fiscal matters on the ground that the law of the executing State does not impose the same kind of tax or duty, or does not contain a tax, duty, customs and exchange regulation of the same kind as the law of the issuing State.

27. Member states are expected to decide on the execution of an EIO without delay and within not more than 30 days. In exceptional cases, this may be extended by an additional 30 days. The related investigative measures must be carried out within 90 days following the determination. These timeframes are considered compliant with c.37.1, requiring mutual legal assistances (MLAs) to be handled rapidly.

28. Furthermore, the Directive also includes circumstances in which an EIO may be refused, which are considered not to pose unreasonable or unduly restrictive measures.

Compliance with R.37 through the implementation of the EIO Directive

Lithuania MER (2018) - Law No XII-1322 gives time limits for the decision to recognise an EIO received from another EU member state, in line with the EIO Directive. The decision shall be taken without delay but not later than 30 days from its receipt or within the shorter time indicated in the specific order. If the order relates to secure evidence from destruction or other conveyance, the decision shall be taken within 24 hours from its receipt if possible.

However, the EIO Directive (Art. 11) outlines optional grounds for refusing to recognise or execute an EIO. Art. 3653 CPC implements the grounds for refusing to recognize a confiscation order under the EU framework as mandatory grounds, which include situations where the enforcement of confiscation shall infringe fundamental human rights and/or freedoms or violate the prohibition to sentence a person for the same criminal offence for the second time. These conditions are not unreasonable or unduly restrictive.

Bilateral Agreements between the EU and third countries on MLA and Extradition

29. Some of the reviewed MERs also referred to bilateral agreements signed by the EU with third countries, namely the USA (25 June 2003) and the UK (1 January 2021).

30. The bilateral agreement with the USA sets out conditions relating to the provision of mutual legal assistance in criminal matters between the EU and the US and seeks to complement other bilateral treaties concluded between individual EU countries and the US. Where any other bilateral arrangements entered into by individual member states conflict with the EU-US Bilateral Agreement, this latter agreement prevails and is binding on all member states. This agreement and a similar bilateral agreement on extradition between the EU and the US entered into force on 1 February 2010, meaning that all EU member states had ratified the agreement.

31. The UK and the EU entered a bilateral agreement which allows for streamlined extradition warrant-based arrangements between all 27 EU countries and the UK. This agreement came into effect on 1 January 2021.

Bilateral Agreements between the EU and Third Countries

Cyprus MER (2019) - Cyprus cooperates with the USA on the basis of a bilateral treaty on MLA in penal matters with Cyprus and an agreement on MLA between the EU and the USA. Part IV A deals with the registration and enforcement of freezing, seizure, and confiscation requests from the member states of the EU.

Bulgaria MER (2022) - Surrender of Bulgarian nationals to other EU member states is possible by means of a European Arrest Warrant. Based on an international treaty concluded by the EU and the UK, Bulgaria can extradite its citizens to the UK.

2.3. EU Legal Instruments on Mutual Legal Assistance: Freezing and Confiscation – R.38/IO.2

Council Framework Decision 2003/577/JHA on the execution in the European Union of orders freezing property or evidence

32. This Framework Decision sets out rules for all EU member states to recognise freezing orders issued throughout criminal proceedings by judicial authorities of other member states. It thus ensures that freezing orders issued in one member state are given effect all throughout the EU without any further formalities. Mutual recognition is required in respect of freezing orders connected to a list of 32 offences (punishable by more than 3 years), irrespective of dual criminality. For other offences, member states may invoke dual criminality.

33. As a general rule, freezing order execution requests are allowed to be submitted directly between judicial authorities.

Council Framework Decision 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders

34. The purpose of this Council Framework Decision 2006/783/JHA is to ensure mutual recognition and enforcement of confiscation orders issued by criminal courts across the entire EU, without any further formalities by the receiving state. Member states are required to designate a competent authority responsible to receive and transmit assistance requests but may also permit direct contact between counterpart judicial authorities to enforce confiscation orders.

35. The Decision includes a list of offences in respect of which confiscation orders are required to be recognised and enforced. With the requirement that, in respect of offences punishable by more than 3 years imprisonment, there is no need to verify dual criminality.

Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders)

36. This Regulation replaced Decisions 2003/577/JHA and 2006/783/JHA on the mutual recognition of freezing orders and confiscation orders respectively and entered into force in December 2020. Unlike the Decisions, the Regulation is directly applicable in each EU country and does not necessitate national transposition. The Decision applies to the same list of 32 offences irrespective of dual criminality.

37. It also establishes time frames for the consideration and execution of freezing and confiscation orders. Member states are required to take a decision on the recognition of a freezing order without delay and with the same speed and priority as domestic cases. Urgent cases are to be handled within 48 hours of receipt. In the case of confiscation orders, a decision on the recognition must take place without delay and in no longer than 45 days. The execution is then to take place without delay and with the same speed and priority as for domestic cases.

Council Decision 2007/845/JHA concerning cooperation between Asset Recovery Offices in the field of tracing and identification of proceeds from, or property related to crime[8]

38. Some of the MERs analysed referred to this Council Decision which requires EU member states to establish national asset recovery offices to serve as national contact points for the exchange of information (upon request or spontaneously) to assist in the recovery, tracing and identification of proceeds of crime as part of both civil and criminal investigations.

2.4. EU Legal Instruments on Extradition – R.39/IO.2

Council Framework Decision 2002/584/JHA on the European arrest warrant and the surrender procedures between member states

39. The European Arrest Warrant (EAW) is a judicial decision issued by an EU member state requesting the arrest and surrender by another member state of a requested person, for the purpose of conducting a criminal prosecution or executing a custodial sentence or detention order. The EAW may be issued in respect of offences punishable by detention of at least 12 months or in respect of custodial sentences for a minimum of four months. The Framework Decisions lists 32 offences, in respect of which an EAW must be complied with, where such offences are punishable by at least 3 years imprisonment, irrespective of the existence of dual criminality.

40. Of particular relevance is the requirement posed on EU countries to ensure that EAWs are dealt with and executed as a matter of urgency. The Decision requires the implementation of a simplified extradition process of not more than 10 days for consenting suspects, and a 60-day maximum timeframe for other individuals. Member states are also required to ensure that suspects are surrendered within 10 days after a final decision is taken on the EAW.

41. This Framework Decision superseded and replaced the Convention on simplified extradition procedure between the member states of the European Union, which was still mentioned in some MERs.

Petruhhin Case - Case C-182/15

42. The Grand Chamber of the Court of Justice of the European Union (CJEU) gave a decision on a preliminary ruling where it established that when an EU member state receives a request from a non-EU country to extradite an individual who is a national of another member state, it is obliged to consult the authorities of that other member state. This aims to enable the other member state to determine whether it intends to prosecute its national itself and hence request an EAW. Preliminary rulings are binding on the national court requesting it, and other courts across the EU should the same matter arise again.

The Petruhhin Case – Case C-182/15

Latvia MER (2018) - In October 2014, the Russian Federation requested the extradition of an Estonian national to the Latvian authorities based on criminal proceedings on a drug trafficking offence. The Estonian national had been the subject of a priority Red Notice on Interpol's website since 2010 and had been arrested by the Latvian authorities in September 2014. The Latvian General Prosecution office authorised the extradition to Russia.

Following an appeal of the Estonian citizen, the competent Latvian court observed that neither Latvian national law nor any of the international agreements signed by Latvia, including with the Russian Federation or the other Baltic countries, would restrict the extradition of an

[8] Planned to be replaced by a new EU Directive on Asset Recovery and Confiscation.

Estonian national to Russia. Latvia can only refuse the extradition of a Latvian national. However, according to the same court, the lack of protection of EU citizens against extradition, when they have moved to a member state other than the one of which they are nationals, is contrary to the essence of EU citizenship, which includes the right to receive the same protection as that of a member state's own nationals.

For that reason, on 26 March 2015, the Supreme Court of Latvia annulled the decision to detain the Estonian person, decided to suspend proceedings and referred the question to the CJEU for a preliminary ruling.

On 6 September 2016, the CJEU concluded that, when a member state to which a national of another EU member state has moved, is subject to an extradition request from a third state with which the first EU member state has concluded an extradition agreement, it must inform the member state of the citizen and, should that second member state so request, surrender that citizen to it, provided that it has jurisdiction, pursuant to its national law, to prosecute that person for offences committed outside its national territory.

43. The Latvian MER highlighted that the Petruhhin Case introduced an unreasonable or unduly restrictive condition (which is forbidden under c.39.1(c)) with respect to the execution of extradition requests and might entail the application of the reciprocity principle. The Latvia Enhanced Follow-Up Report of 2019 however subsequently held that, in view of amendments introduced which clarified the procedure (including the setting of a specific deadline for the submission of a European Arrest Warrant) and the fact that the Petruhhin Case stems from basic principles of the EU, there was no further deficiency under sub-criterion 39.1(c).

44. Moreover, the Latvian MER remarked that it is unclear if the requirement established by the Petruhhin Case would also apply to simplified extradition procedures where the person concerned consents to his/her extradition or when the extradition request concerns EU citizens from countries that allow extradition of their nationals.

2.5. EU Legal Instruments on Other Forms of International Cooperation – R.40/IO.2

Council Framework Decision 2002/465/JHA of 13 June 2002 on joint investigation teams

45. This Council Decision was initially promulgated to facilitate the setting up of joint investigation teams (JITs) exclusively in relation to drug trafficking, human trafficking, and terrorism offences. It has been amended multiple times with the most recent one being in 2022 and has been widened to cover all offences linked to other member states that require difficult and demanding investigations.

46. The Decision also lays down general rules for the operation of JITs throughout the EU.

Council Framework Decision 2006/960/JHA – on simplifying the exchange of information and intelligence between law enforcement authorities of the member states of the European Union – "Swedish Initiative"

47. This Framework Decision establishes rules under which member states' law enforcement authorities (LEAs) may exchange existing information and intelligence effectively and expeditiously for the purpose of conducting criminal investigations or criminal intelligence operations. Given that it relates to the exchange of intelligence and information, this Decision does not regulate or oblige member states to provide information and intelligence for the purpose of being used as evidence. It also does not oblige member states to obtain requested intelligence and information through coercive measures. Like other Decisions mentioned in this part of the report, it is limited in scope to a series of criminal offences (see EAW Framework Decision).

48. Member states are also obliged to ensure that directly accessible information or intelligence is provided within 8 hours (in case of urgent requests) or 1 week (for other requests). It also obliges EU LEAs to be empowered to exchange relevant information and intelligence on a spontaneous basis.

Regulation (EC) 515/97 & Convention on mutual assistance and cooperation between customs authorities (Naples II Convention)

49. Regulation (EC) 515/97 regulates cooperation between administrative authorities responsible for customs legislation. It requires customs authorities to cooperate by (i) exchanging information upon request or spontaneously, (ii) obtaining information on request of other EU customs authorities, and (iii) monitoring the movements of persons and goods and means of transport upon request on the basis of suspected infringements of customs law.

50. This Regulation also establishes the Customs Information System (CIS), a central database facility to which the customs authority of each EU member state is connected and uses it to share and obtain customs-relevant data, including data on cross-border cash movements and declarations.

51. The Naples II Convention supplements the Regulation requiring mutual assistance between EU customs authorities with regard to the prevention and detection of infringements of national customs laws and the prosecution and sanctioning of infringements of EU and national customs laws.

Multilateral agreement on the practical modalities for exchange of information pursuant to Article 57a(2) of Directive EU 2015/849.

52. The 5th AMLD introduced Article 57a(2) which called on national AML/CFT supervisors, the European Central Bank (ECB) and the ESAs to conclude an agreement defining the modalities for the exchange of information between national AML/CFT authorities and the ECB. The agreement was signed by the ECB in January 2019 and had been endorsed by around 50 national AML/CFT competent authorities in the European Economic Area by June 2022[9].

53. The Agreement regulates the exchange of information between individual national supervisors and the ECB, upon request and on a spontaneous basis. This includes the obligation to exchange with the ECB information on: (i) AML/CFT sanctions and measures imposed on supervised entities, (ii) material weaknesses in a supervised entity's AML/CFT governance, systems and controls framework, (iii) entities' exposure to ML/TF risks, and (iv) other information necessary for the ECB to exercise its functions related to the authorisation of supervised entities and acquisition of qualifying holdings within such entities.

54. Additionally, the Agreement allows national authorities to request information gathered by the ECB in the exercise of its direct supervisory functions, that is relevant for AML/CFT supervision, such as information on sanctions imposed or breaches identified.

55. The Agreement also lays down the modalities that need to be observed for the exchange of information, including the establishment of contact points for handling such exchanges and the format to be used for requests amongst others.

56. It should be noted that this agreement is not intended to regulate the exchange of information between AML/CFT supervisors. The latter are bound to introduce the necessary provisions in their law to permit the exchange of information with other EU and third-country AML/CFT supervisors in accordance with the provisions of Article 48(4) (covering cooperation

[9] Speeches (europa.eu) – Elizabeth McCaul: ECB Banking Supervision's role in AML/CFT – 22 June 2022

between home and host supervisors for group entities) and Article 50a of the 4th AMLD (as amended by the 5th AMLD), as well as to adhere to the ESA's joint guidelines on supervisory cooperation (see immediately below).

Joint guidelines on cooperation and information exchange for the purpose of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions.

57. These joint guidelines were issued by the three ESAs (EBA, EIOPA and ESMA) in December 2019 to complement the EU-wide AML/CFT supervision cooperation obligations set out under the 5th AMLD. They set out a common framework and modalities for cooperation with respect to cross-border groups from an AML/CFT perspective through AML/CFT colleges. The guidelines also define the process for bilateral exchanges between AML/CFT supervisory authorities.

58. The EBA provides regular updates on the status of implementation of these guidelines by the national AML/CFT supervisors across the EU[10]. This is a useful source for evaluators to understand the level of international AML/CFT supervisory cooperation afforded by an evaluated country.

59. There are also other relevant guidelines issued by the ESAs that AML/CFT supervisors across the EU are expected to adhere to. These have not been analysed since they have not been referred to in the 13 analysed MERs, and this study is not meant to provide an exhaustive list of EU-wide binding rules in the AML/CFT sphere. One such set of guidelines that are particularly relevant are those covering cooperation and information exchange between prudential supervisors, AML/CFT supervisors and FIUs[11].

60. The provisions of EU Conventions, Decisions (when not directly addressed to a member state), and Directives need to be transposed into national laws to be given effect and need to be followed up by practical implementation and adherence. It is also possible for member states to adopt more favourable provisions on mutual legal assistance via bilateral or multilateral agreements. Some EU countries also made reservations to specific provisions of EU Conventions (e.g. reserving the right to refuse cooperation when the dual criminality principle is not respected).

2.6. EU Channels for Exchange of Information

61. The evaluations of the 13 EU-MONEYVAL member states refer to various networks and platforms that enable competent authorities to exchange information with their EU counterpart authorities. These platforms were deemed to be secure gateways for the efficient exchange of information throughout these MERs. While the existence of these networks/platforms enables various competent authorities to fulfil their technical obligations under R.40, naturally the IO.2 results depend on the use (volume and nature) thereof, and to what extent this corresponds with the ML/TF risks to which the country is exposed.

62. This sub-section lists the most relevant networks and platforms in respect to international cooperation of AML/CFT relevance, and provides a brief background, including the type of competent authorities that make use thereof.

[10] Joint Committee Guidelines on cooperation and information exchange for AML/CFT supervision purposes | European Banking Authority (europa.eu)
[11] Guidelines on cooperation and information exchange between prudential supervisors, AML/CFT supervisors and financial intelligence units | European Banking Authority (europa.eu)

Networks

- **Camden Asset Recovery Inter-agency Network (CARIN)** - An informal network of law enforcement and judicial practitioners contact points which assist each other in the tracing, freezing, seizure and confiscation of proceeds of crime. Apart from the agencies of the 27 EU member states, it connects other non-EU agencies, international organisations and regional asset recovery networks across the globe. CARIN currently has 61 registered member jurisdictions, including 27 EU member states and 13 international organisations.

- **European Agency for Law Enforcement Cooperation (EUROPOL)** - EUROPOL's function is that of supporting LEAs across EU member states in preventing and combatting serious international and organised crime (including money laundering), cybercrime and terrorism. It has also dedicated networks on asset recovery (ARO) and anti-money laundering (AMON) bringing together law enforcement contact points from across the EU and beyond. EUROPOL also operates EMPACT (European Multidisciplinary Platform Against Criminal Threats) bringing together border, customs, intelligence and law enforcement agents across the EU, EU Agencies, and third-country agencies to set and implement priorities in fighting organised and serious international crime.

- **European Judicial Network (EJN)** - Created in 1998, it is a network of national contact points whose main role is to facilitate judicial cooperation in criminal matters between the EU member states, particularly in actions to combat forms of serious crime. To this end, they assist with establishing direct contacts between competent authorities and by providing legal and practical information necessary to prepare an effective MLA request or to improve judicial cooperation in general.

- **European Public Prosecutor's Office (EPPO)** - The EPPO is responsible for investigating, prosecuting and bringing to judgment crimes against the financial interests of the EU. These include several types of fraud, value-added tax (VAT) fraud (with damages above EUR 10 million), money laundering and corruption, amongst others. Prior to commencing its operations in June 2021, these crimes were previously under the jurisdiction of national LEAs and prosecutors and were then transferred to the EPPO. Nonetheless, the EPPO still prosecutes such cases in the competent courts of the respective EU member states, which retains jurisdiction to determine such cases.

- **European Supervisory Colleges** - These colleges are set up with the aim of facilitating cooperation between EU supervisors in respect of group financial institutions that are present in multiple EU jurisdictions. These colleges are facilitated by the relevant ESA and are led by the home EU supervisor of the respective entity to which the college relates. The modalities for the setting up and operation of these colleges are set out under the Joint guidelines on cooperation and information exchange for the purpose of Directive (EU) 2015/849 between competent authorities supervising credit and financial institutions (see explanation above).

- **European Union Agency for Criminal Justice Cooperation (EUROJUST)** - Eurojust works with national authorities to combat a wide range of serious and complex cross-border crimes involving multiple EU member states. It provides assistance by coordinating parallel investigations, organising coordination meetings, setting up and funding JITs between EU judicial and law enforcement authorities, and steering operational actions such as arrests of suspects and seizures of assets.

- **Gambling Regulators European Forum (GREF)** - A non-profit organisation that brings together gambling regulators from various EU member states and beyond. It offers a forum for

the exchange of views and discussions on regulation and supervision of gambling operators, and to establish contacts for the sharing of relevant operational information.

- **Supplementary Information Request at the National Entries (SIRENE)** - Each EU country making use of the Schengen Information System (SIS) has set up a national SIRENE Bureau that is operational round the clock. These Bureaus are responsible for exchanging information and coordinating activities connected to SIS alerts. Europol has also set up a SIRENE Bureau.

Information Exchange Platforms

- **Anti-Fraud Information System (AFIS)** - This system consists of a set of anti-fraud applications operated by OLAF (European Anti-Fraud Office) under a common technical infrastructure aiming at the timely and secure exchange of fraud-related information between the competent national and EU administrations, as well as storage and analysis of relevant data. AFIS supports Mutual Assistance in Customs Matters with collaboration tools such as VOCU (Virtual Operations Coordination Unit) used for Joint Customs Operations secure webmail (AFIS Mail), and specific information exchange modules and databases like CIS+ (Customs Information System), FIDE (Customs Investigation Files Identification Database), and IET (Import, Export and Transit Databases).

- **Common Communication Network / Common Systems Interface (CCN/CSI)** - A system operated by the European Commission which allows EU Tax and Customs Authorities to exchange information (including through the connection of national databases) related to trade and taxation.

- **European Banking Authority's (EBA) EuReCA & E-Gate** - EuReCA is the EBA's (AML/CFT) database, launched on 31 January 2022, containing information on serious deficiencies identified with respect to financial institutions' policies, procedures, and governance arrangements that make them vulnerable to ML/TF. It also contains information on the measures supervisors imposed on these institutions to correct those deficiencies. EU financial sector supervisors are bound to report their relevant inspection findings to EuReCA, which the EBA then uses to share relevant information with EU supervisors upon request or spontaneously. E-Gate on the other hand is a system which facilitates the exchange of information between national banking sector supervisors.

- **FIU.NET & Match Technology** – FIU.NET became operational in 2002 and offers a platform for EU FIUs to exchange information with each other for the analysis and subsequent investigation of ML/TF and associated predicate offences. It also enables the sharing of information with EUROPOL. FIU.NET also has a feature referred to as Match[3], which allows EU FIUs to identify common hits across their intelligence databases without the need to share specific personal information.

- **Schengen Information System (SIS)** - An information sharing system for security and border management in Europe. As there are no internal borders between Schengen countries in Europe, SIS compensates for border controls, by allowing immigration, police, customs and judicial authorities across the EU and the Schengen-associated countries to exchange alerts and information (e.g. photos, fingerprints etc) on individuals of interest. These include alerts related to terrorist offences and individuals refused entry or stay.

- **SIENA & CT-SIENA** - EUROPOL provides EU LEAs with an information exchange application (SIENA) enabling the swift and informal exchange of operational and strategic crime-related information. A specific SIENA framework has been developed to connect EU-Counter

terrorism units and enable the secure handling and exchange of intelligence of restricted content on counterterrorism (CT-SIENA).

3. Immediate Outcome 5

3.1. Introduction

63. The EU has been at the forefront in promoting legal entities and arrangements ownership transparency, and setting up of beneficial ownership registers. In 2015 the EU's 4th AMLD introduced a requirement for member states to hold beneficial ownership (BO) information on legal entities and domestic express trusts (which generate tax consequences) in central national registers. The 5th AMLD built further on this initiative expanding the BO registration requirements to more trusts (i.e. all express trusts administered in the country as well as trusts administered by non-EU trustees doing business in the country) as well as other legal arrangements and widening the access to these registers.

64. This study is being published at the end of MONEYVAL's 5th Round of Evaluations, with all 13 EU-MONEYVAL member states having been assessed and most having had multiple follow-up rounds. It is thus interesting to analyse the extent to which one of the EU's landmark initiatives (i.e. the Beneficial Ownership Registers) has contributed to improving effectiveness in compliance with IO.5 requirements. It is also valuable to outline the key conclusions and expectations regarding BO registers which emerge from MONEYVAL's 5th Round.

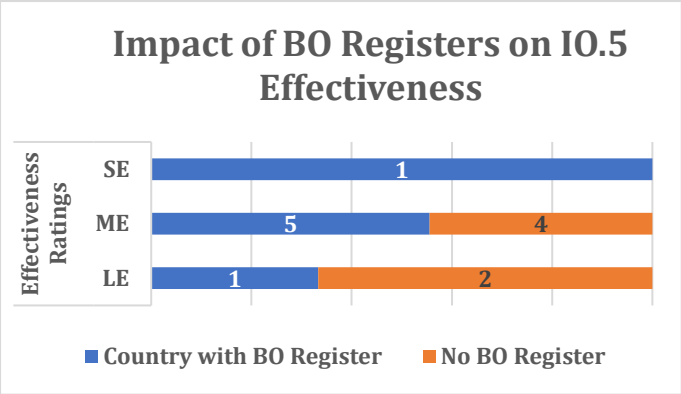
3.2. BO Registers within EU-MONEYVAL Members

65. Out of the 13 EU-MONEYVAL member states, two were evaluated and had their on-site mission prior to this transposition deadline and had not yet introduced a BO Register. The majority of the remaining 11 countries (i.e. seven countries) had operational BO Registers at the time of their evaluation, while the other four countries had passed legislation to set up BO registers, but these were not yet up and running.

66. As it is the case with all other parts of this study, the data was sourced from MERs and FURs that have been adopted until the 67th Plenary (May 2024). BO Registers have meanwhile improved in several EU-MONEYVAL member states. The analysis of these reports offers an initial overview of the impact of BO Registers on compliance with IO.5.

67. The 4th Round FATF Methodology enables countries to put in place various mechanisms to ensure the availability of BO data on legal persons and arrangements, and there is no requirement to have BO registers in place. Countries which had BO registers in place fared marginally better than those which relied on other mechanisms (see Table 3.1). The fact that there is only a marginal difference is not attributable to the relevance (or lack thereof) of BO registers but rather the fact that BO registers were not mature enough in almost all reviewed EU-MONEYVAL member states.

Table 3.1: Impact of BO Register on Effectiveness Rating



68. It emerges clearly from these reports that the setting up of BO registers to merely serve as a pool of BO data, without accompanying measures to ensure that the data held is accurate, adequate and up-to-date, does not achieve much in promoting BO transparency of legal entities and arrangements.

69. When it comes to the accessibility of BO Registers, none of the evaluated EU-MONEVAL member states had any concerns. Where BO Registers were in place, these were accessible to competent authorities and REs, and in some cases also accessible to the public.

3.3. Useful Takeaways on evaluation of BO Registers

70. More important for this study are the takeaways from the analysis of various ATs regarding the effectiveness of BO Registers in the evaluated EU-MONEYVAL member states. The deficiencies identified and good practices highlighted may be useful to better define expectations. This section will outline these main conclusions.

71. **BO Registers not fully populated** – BO Registers in the evaluated EU-MONEVAL member states that had put them in place were still in the process of being populated. One country had fully populated its BO Registers for legal persons and trusts, two evaluated member states had a population rate of between 86%-92% and another two had a rate of between 64%-72%. In the remaining two EU-MONEVAL member states, the BO Register for legal persons was in one case largely unpopulated (i.e. only 12% of legal persons covered) and in the other case, no statistical data was made available to the AT.

72. Four EU-MONEVAL member states have laws for the creation of trusts or similar legal arrangements. Two of these had operational BO Registers for these domestic trusts and legal arrangements. In one case this was fully populated, while in another case the registration of the fiduciary contract and BO data was mandatory to give effect to the fiduciary relationship. In the remaining two EU-MONEVAL member states the registry was not yet operational, or no relevant data was available in the report.

73. In line with the 5th EU AMLD, another two evaluated member states set up BO Registers for foreign law trusts that are either administered by local trustees or professionals or that have economic ties to the country (e.g. bank account or immovable property). In these countries, these registers were not fully populated with any data on foreign trusts. This lack of population of data or inexistence of registers for foreign trusts is owed to a number of factors; (i) the recent transposition deadline of the 5th AMLD (i.e. March 2020) compared to the time of on-site visits; (ii) the use of trusts / legal arrangements not popular in the country, and (iii) ineffective measures to enforce the registration of BO data, such as no mechanism to identify persons and entities providing trust services.

74. **Measures to verify BO information insufficient** – A common trend across almost all analysed EU-MONEYVAL member states was that measures to ensure that BO information was being filed, and was accurate, were either not being applied or were insufficient. When BO data was filed the common finding was that registries were mainly focusing on: (i) ensuring that the legally required information was submitted; (ii) ensuring that any supporting documents were

authentic, and/or (iii) screening BOs against sanctions lists, adverse FIU intelligence or open-source information. Whilst these were found to be meaningful measures, it was found that when checks are not complemented by verification (at the recording stage and afterwards), this is not sufficient to ensure the accuracy of the information.

75. There were also instances where BO registers did not possess the legal powers to verify the accuracy of BO information and relied completely on the diligence of the legal persons submitting the information.

76. In the case of one country, the AT commended the register's initiative to cross-check the accuracy of BO data against personal details contained in multiple national registers. This was viewed positively, however, was not being done systematically for all registered BO data (but on a random sample) and was only relevant for resident BOs whose personal data would be available in multiple national registers.

77. The BO register in one EU-MONEYVAL member state had put in place proactive checks, through the use of an automated analytical system and on-site reviews on legal persons to verify that the BO was correctly identified, and that BO data submitted was accurate and up-to-date.

78. **Lack of Resources for BO Registries** – One of the main limiting factors to effectively ensure the quality of BO Register data was the lack of resources. This concern ran throughout various MERs (i.e. four EU-MONEVAL member states) that had put BO Registers in place. ATs commented about the lack of human resources, training opportunities, provision of technical guidance, IT tools, and financial resources to build the capacities of BO Registers in pursuing their roles.

79. **Enforcement of BO Registration Requirements needs strengthening** – A crucial step to induce effective compliance with BO registration requirements is the enforcement process. The effectiveness of the enforcement process and sanctions across all the seven EU-MONEVAL member states that had BO registers in place was generally limited. In part, this was due to failures in identifying breaches given the shortcomings within the processes to monitor the actual submission and quality of BO data. Sanctions were in general not considered to be effective due to diverse factors including:

(i) The setting up of the sanctioning regime being very recent to assess results.
(ii) The value of pecuniary fines that may be imposed by law or that are actually imposed in practice, being low considering the materiality of legal persons in the country and/or the nature of the breaches.
(iii) Sanctions not being imposed in practice or used in very few cases.
(iv) Actual recovery and collection rates of sanctions imposed being low.
(v) The unavailability of granular statistics to determine whether these sanctions were effective, dissuasive, and proportionate (e.g. no details on the specific nature of sanctioned infringements and respective sanctions applied).

80. Another common sanction across a number of EU-MONEVAL member states was to actually strike-off and de-register legal persons for failure to adhere to their BO registration requirements. This actually leads to a legal person being divested of its legal personality and existence. The general trend however that this measure was being used for breaches other than BO information-related ones. These included non-compliance with basic information requirements, non-submission of financial statements or in view of tax-related offences.

81. **Accessibility to BO Registers ensured** – On a positive note, all the seven EU-MONEYVAL member states that had BO registers in place had granted accessibility to all competent authorities with no issues being identified by ATs. In some cases, access was even granted to the

public. It should be remarked that an ECJ Ruling later on set conditions on the public accessibility to BO registers on the basis of a test of appropriateness, necessity and proportionality[12].

82. **Registry not involved in the country's AML/CFT Infrastructure** – One other relevant observation raised by an AT in one MER was the fact that the agency responsible for administering the BO register was cut-off from the country's AML/CFT infrastructure and was not involved in the country's AML/CFT policy, co-ordination, and risk assessment processes.

3.4. Mechanisms to ensure that BO information is registered, accurate and up-to-date

83. The MERs and FURs of the EU-MOENYVAL member states that have been analysed in this study help shed light on some useful mechanisms and solutions that are considered effective to verify that legal persons actually submit BO data, and that such data is accurate, adequate and kept up-to-date. Some of these solutions are listed below:

84. Inspections – Including on-site inspections conducted by BO registers, or other authorities (e.g. Tax Authorities and AML/CFT Supervisors), directed at legal persons or service providers (e.g. TCSPs) to ensure that legal persons and arrangements are adhering to their BO registration obligations.

85. Annual validations - The submission of annual validations is a tool that was used across a limited number of EU-Member member states (two), and which was considered to positively contribute to keeping registered BO information up-to-date. This was applied either for all legal persons/arrangements, or on a risk-sensitive basis requiring higher-risk entities to annually validate their BO data.

86. BO data registration as a pre-requisite for legal person incorporation – Any new legal person being incorporated is bound to submit information on its BOs as part of the requirements for incorporation.

87. Banks and other REs not permitted to do business with legal persons unless these would have complied with BO registration requirements – This measure encourages compliance with BO information filing requirements, nonetheless, its effect depends on the extent to which legal persons/arrangements in the country are banked in or serviced by other REs in that same country. This measure emanates from the 5th AMLD requiring countries to ensure that, as part of the CDD processes, REs obtain proof that legal persons and arrangements have adhered to their EU-BO registration obligations.

88. Use of discrepancy reporting – A potential mechanism to verify that registered BO data is adequate, accurate and up-to-date, envisaged under the 5th AMLD and adopted by the majority of EU-MONEYVAL member states that had BO registries in place. REs and competent authorities obtain BO information on a regular basis in pursuance of their functions or while fulfilling their CDD obligations. This mechanism entails requiring REs and competent authorities to compare BO information on legal entities/arrangements obtained from sources other than the BO register (e.g. corporate clients, service providers (e.g. banks or TCSPs), or international counterparts) with BO data held in the registry, and report to the registry any mismatches to be actioned. In some evaluations ATs remarked the low number of discrepancy reports submitted and in some cases the fact that discrepancy reports were not being actioned.

89. Cross-checks against multiple national registers – BO data on the same population of legal persons and arrangements may be available through multiple national databases (e.g. BO Register, Bank Account Register or Tax Registers). Cross-checking such data is another effective means of keeping BO data up-to-date and/or identifying discrepancies in BO data to enhance

[12] See https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62020CJ0037

accuracy. Two of the MERs reviewed positively reflect on the usefulness of such automated or manual cross-checks.

90. Disqualification of "strawmen" – Individuals identified as "strawmen" to conceal the identity of persons actually managing or owning legal persons/arrangements are prohibited from being involved in the management or structure of a legal person in the future.

91. Sanctions and Entity De-registrations – Naturally another means of ensuring compliance with BO registration obligations is through enforcement. All the MERs of the seven EU member states that had put in place BO registers have analysed and commented on the effectiveness of BO registration enforcement measures (see previous section).

BO Verification Mechanisms and Solutions

Poland MER (2021) - When a citizen is added to the database, a personal identification number known as a PESEL number is allocated to that person. This means that an individual's entry in any database can be cross-referenced across several databases. A range of authorities has direct access via digital link to the Universal Electronic System for Registration of the Population Register (PESEL Register), including the court officials administering the National Court Register (NCR), the Central Register of Beneficial Owners (CRBO) team and the National Revenue Administration (KAS). A change to an individual's details in the PESEL Register is transferred automatically to other registers if the information relevant to the change is contained in those other registers. To date, entries on the register have been verified randomly, with data on 20,000 legal persons being verified to date. Of this number, some 1,000 (5%) had an element of inaccuracy, such as an incorrect NCR registration number, an incorrect tax identification number or a misspelling of a person's name. Data on the BOs were cross-referred by the CRBO team with the data in the NCR, the KAS's VAT register and the other aforementioned registers, except the National Clearing House (NCH) and the Central Register and Information on Business Activity (CEIDG). Importantly, verification of the data for each of the 20,000 legal persons extended to the cross-checking of all the individuals and other persons mentioned in the registered details of the legal person, meaning that persons linked to the company being verified (such as BOs of the company) were also checked across the CRBO team's database and with other registers maintained by public authorities. This extensive approach to the verification of the selected company is welcomed by the AT.

Malta FUR (2021) - The third mechanism is based on collecting information through a centralised register of legal entities as a source of information. With this respect, Malta took measures to enhance the powers and capacities of the Malta Business Registry (MBR). It is currently set to maintain the BO information on companies, partnerships, associations, and foundations. Malta suggested that the register of BOs of all legal entities is now fully populated and is accessible online to all interested parties. The MBR set up the automated analytical system, which will be progressively enriched and developed, and in the authorities' view, would potentially enhance the accuracy of maintained BO data. Amendments introduced into the BO Regulation (Art. 12(1)) rectified a deficiency indicated in the MER with respect to the lack of MBR supervisory powers. Currently, the Registrar is empowered to carry on physical on-site investigations of information at the registered office of the company or at such other place in Malta as may be specified in the Memorandum or Articles of Association of the company, in order to establish the current BO and to verify that the BO information submitted to MBR is accurate and up-to-date.

Slovak Republic MER (2020) - Another important mitigating measure was the establishment of the Disqualification Register within the Žilina District Court in 2016, which keeps a list of

disqualified natural persons (mainly individuals acting in the past as “straw men”). The Žilina District Court is responsible for checking the information related to the management of legal persons. In case of suspicions about the identity of the director (in terms of being a “straw men”), he/she is automatically deleted from the Register as owner or manager, and he/she is listed as a disqualified person in the Disqualification Register. The most common way of getting informed about potentially suspicious individuals (acting as “straw men”) is coming from the FI and LEA operational analysis. There have been 220 disqualifications since 2015, which were mainly related to identified “straw men” within company structures/management. The Ministry of Justice publishes the list of disqualifications on its website, which is widely used by banks in the CDD processes.

4. Immediate Outcome 7

4.1. Introduction

92. This part of the report will analyse how the cases where there has been cooperation with EUROJUST, EUROPOL and EPPO have been analysed under IO.7 for EU-MONEYVAL member states. The description of the functionalities of these EU institutions can be found under the analysis of IO.2 (see above page 16). It must also be noted that MERs of EU-MONEYVAL member states generally provide an overview of those EU bodies and agencies under Chapter 1 "*ML/TF risk and context*" part.

4.2. Cases involving cooperation with EUROJUST, EUROPOL and EPPO

93. The review of the MERs of EU-MONEYVAL members, in respect of IO.7, showed that in some instances, reports included cases where an EU member state has cooperated with relevant EU agencies to investigate/prosecute ML cases. Although the credit for such cooperation is mostly given under IO.2 (as it demonstrates formal/informal international cooperation), the same cases may be presented under IO.7 to demonstrate the effectiveness in identifying, investigating, and prosecuting complex cases with organized crime groups with serious crimes as predicate offences.

94. For example, Cyprus's MER mentioned under IO.7 EUROPOL as one of the sources for initiating/identifying ML cases:

> "The Cyprus authorities state that the sources from which ML may be identified, and investigations initiated, are: […] (iv) incoming mutual legal assistance requests or other information from foreign counterparts (e.g. through EUROPOL/INTERPOL); and […]" (p. 57)

95. With respect to investigating complex ML case, Croatia's MER provided the following example:

> **"Complex organised crime case "La Familia"**
>
> In 2017, Croatian law enforcement authorities initiated inquiries on an organised criminal group smuggling cocaine from South America to Europe through Croatia. Croatian authorities co-operated with counterparts from several countries (including Hong Kong) with the support of EUROPOL and EUROJUST. Members of the organised criminal group smuggled cocaine from South America to Europe and Asia and registered a company in Croatia (using false identity), opened several bank accounts, bought aircraft for smuggling cocaine, made fake commercial flights etc. The group was monitored during 2018 and 2019, and several cocaine smuggling operations were recorded. Police seized over a ton of cocaine, particularly 600 kg in Switzerland and over 400 kg in Hong Kong. In addition, in October 2019, at the Croatian border, a vehicle was searched, and around EUR 1 million was found. As a result of this operation, 15 persons have been arrested in several different countries, and most of them have been extradited to Croatia to be prosecuted. The Croatian authorities prosecuted them for organised crime and drug trafficking and transferred one person to a neighbouring country for proceedings in relation to ML offences." (p. 82)

96. At the same time, at least in one MER report (under IO.2) it has been mentioned that such assistance (by EUROPOL/EUROJUST) is used only to a limited extent for ML cases.

97. For example, Bulgaria's MER (IO.2 Key Finding (d)) stated the following:

> "Law enforcement agencies (LEAs) seek and engage in both formal and informal cooperation with their counterparts using Europol (SIENA) and Interpol channels. At the prosecutorial level,

Eurojust and Joint Investigating Teams (JITs) are also often used, but only to a limited extent in ML cases…". (p. 205)

98. From analysed country reports, it can be concluded that ATs considered and gave credit under IO.7 to cases with the involvement of EUROPOL/EUROJUST as they have been described in the reports as positive examples of identifying, investigating, and prosecuting complex ML cases. However, it is possible that not all EU member states put forward such cases under IO.7 and rely on presenting mostly domestic cases because some reports are silent on them.

99. With respect to the EPPO, it has been mentioned already above that it became operational in June 2021. Thus, the 4th round reports do not mention cases that have been investigated by the EPPO. As explained above, the EPPO is responsible for investigating, prosecuting, and bringing to judgment crimes against the financial interests of the EU. These include several types of fraud, including VAT fraud (with damages above EUR 10 million), ML and corruption, amongst others. At the same time, it is important to note that the EPPO still prosecutes such cases in the competent courts of the respective EU member states, which retain jurisdiction to determine such cases. Thus, the analysed reports have not yet covered the issue of the weight that should be given to EPPO cases, and the matter may need clarifying in future evaluations.

5. Immediate Outcome 8 / Recommendation 32

5.1. Introduction

100. The main topic under this part of the report is the evaluation of R.32 and core issue 8.3 in EU-MONEYVAL member states, and how this is influenced by the harmonised EU regime for cross-border movement of cash. The relevance of EU-wide instruments and systems in assessing countries' efforts to confiscate foreign proceeds of crime and proceeds moved in foreign countries, and to repatriate and share confiscated proceeds of crime will also be discussed. While R.38 also deals with freezing and confiscation, it does so from a mutual legal assistance point of view. Thus, to avoid duplication, R.38 will be analysed alongside IO.2.

5.2. The EU Cash Control Regulations

Background

101. In 2005, the EU enacted its first EU-wide regulation, Regulation (EC) No. 1889/2005, to implement FATF SR.IX and harmonise controls on cash entering and leaving the Union, which were until then applied only in some member states and in varying manners. This regulation came into application in June 2007 and was later superseded by Regulation (EU) No. 2018/1672 transposing the new R.32 requirements, which came into application in 2021.

102. Given that this regulation became applicable at the later stages of the 5th Round of MONEYVAL evaluations, most MERs analyse the old Regulation 1889/2005. In principle, the two regulations are similar since they both harmonise control of cash movements at EU borders, but still allow member states to implement controls within the EU (i.e., at national borders). Thus, in most cases, observations that will be made in respect of Regulation 1889/2005 are also applicable to Regulation 2018/1672, unless it is stated otherwise.

103. Both regulations require that all natural persons, entering or leaving the EU and carrying cash of a value of EUR 10,000 or more, make a declaration on this to the border competent authorities. Likewise, both regulations require information on declarations and undeclared movements of cash to be made available to the FIU. The main developments brought about by the new Regulation 2018/1672 are: (i) the imposition of disclosure obligations for unaccompanied cash movements (e.g., cash sent via mail or cargo), (ii) a requirement for customs authorities to have the power to temporarily detain cash by an administrative decision where cash is suspected to be related to criminal activity and in case of failures to declare/disclose cash (including false declarations/disclosures), and (iii) requirement to ensure that information on cash movements is transmitted to the FIUs within 15 days. Moreover, the scope of the new regulation was enlarged to also capture movements of commodities used as highly liquid stores of value (i.e. coins with a gold content of at least 90% and bullion such as bars, nuggets, or clumps with a gold content of at least 99,5% - see Annex I) and prepaid cards.

Is a Partially Compliant rating foregone when controls apply only for extra-EU movements?

104. An analysis of the R.32 sections of the MERs of the 13 EU-MONEYVAL member states showed that the majority (i.e. nine out of 13) of EU-MONEVAL member states were applying cross-border cash controls only at EU external borders. After the adoption of MERs, EU-MONEYVAL members have taken action to also introduce controls for intra-EU movements. When taking into account the analysis of R.32 following the adoption of follow-up reports (FURs), the majority of EU-MONEYVAL members (i.e. seven out of 13) had introduced declaration/disclosure requirements at least for accompanied intra-EU movements of cash. One of these member states introduced declaration/disclosure requirements for both accompanied and unaccompanied (i.e. mail and cargo) cash movements (see Table 8.1).

105. R.32 has not been assessed on a supra-national basis. All 13 MERs and corresponding FURs set out the expectation that countries should apply border controls for all cash movements, and not only for movements in or out of the EU. In fact, all EU-MONEYVAL member states, except one, that applied controls only for extra-EU movements obtained a PC for R.32, with this shortcoming being consistently considered a major one. There was only one outlier case (i.e. Estonia) where a LC rating was allocated for R.32 despite there being no controls for intra-EU movements. In the case of Estonia, this was the only deficiency within the entire R.32 and the AT regarded the non-coverage of intra-EU cash movements as a minor deficiency. While under R.32 there is no further elaboration on why this technical deficiency was considered minor, further substantiation may be found under the analysis of core issue 8.3, where the AT held that given the various checks (e.g. use of x-ray scanning, physical searches and sniffer dogs in respect of all modes of transportation) carried out for all movements, regardless of origin and destination (including EU passengers), the controls were still considered comprehensive and efficient for all movements.

106. Comparatively when considering both MER and FUR analysis results, all EU-MONEYVAL member states that applied controls on accompanied cash also across EU internal borders obtained positive ratings for R.32.

Table 8.1: Cross-border accompanied cash controls – Supra-national vs National Approach

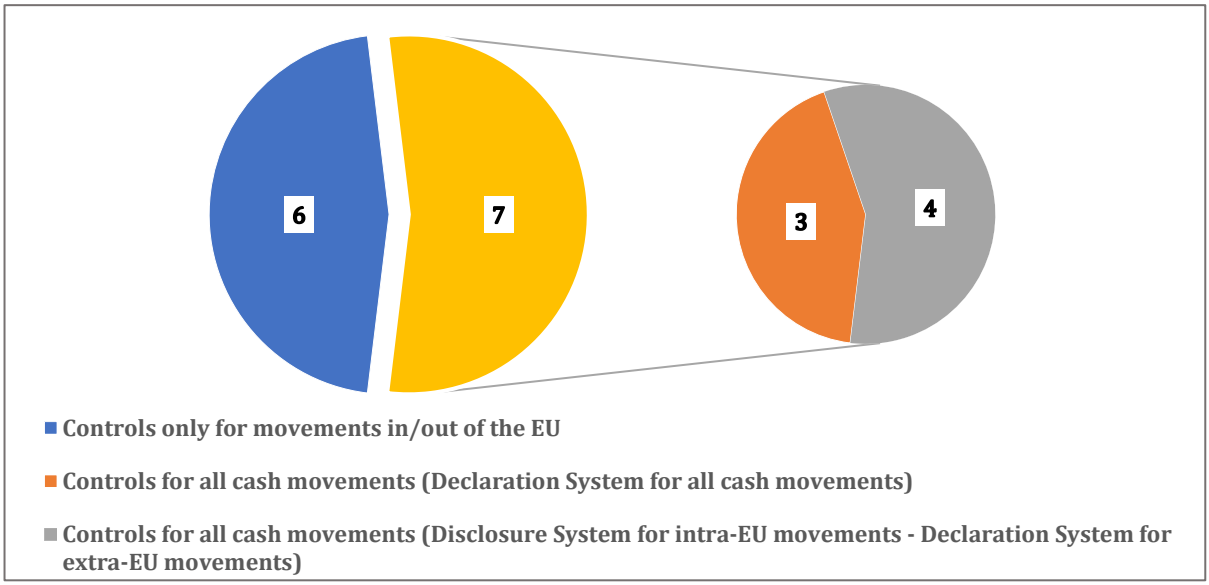
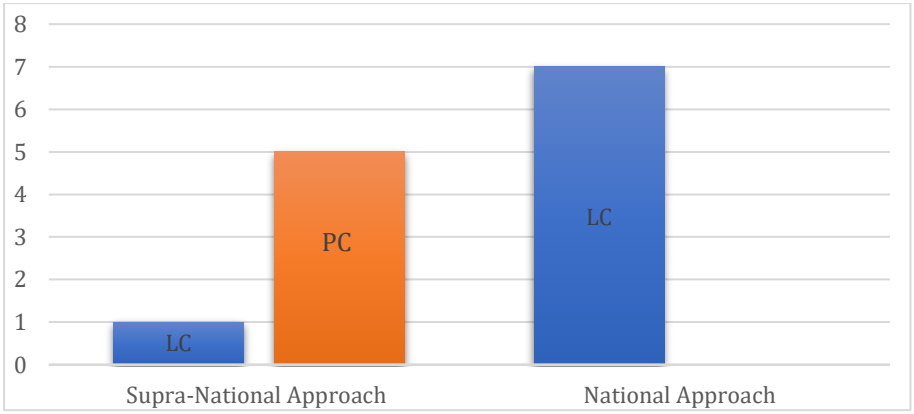


Table 8.2: R.32 Technical Compliance (MER + FURs) – Supra-national vs National Approach



Regulation EU 2018/1672[13] and compliance with R.32

107. The level of compliance of Regulation EU 2018/1672 with the requirements of R.32 has been assessed by MONEYVAL in three MERs (and seven FURs), since they became applicable in June 2021. These analyses did not indicate any shortcomings in respect of Regulation EU 2018/1672, which addressed deficiencies of the precursor Regulation (EC) No. 1889/2005, mainly the lack of controls for unaccompanied cash movements (i.e. via mail and cargo) and the limited scope of the power to restrain cash.

108. However, the direct applicability of Regulation EU 2018/1672 on its own does not suffice to ensure compliance with R.32 criteria. Not only because the Regulation exclusively covers movements of cash across EU external borders (as previously explained) but also because there are a number of aspects that need to be implemented or complemented at a national level. This expectation is consistently set out in the R.32 analysis across the 13 EU-MONEYVAL member states. This part of the report will highlight and analyse those R.32 criteria for which national actions (beyond the EU Regulation) were expected to ensure compliance[14].

109. Criterion 32.4 – Most of the reviewed MERs (11 out of 13), and all FURs where c.32.4 was re-assessed, evaluated whether the customs authorities have the power under national laws to request documents and further explanations from the carrier of cash in cases of false declarations/disclosures or failure to declare/disclose information. The consistent approach has thus been that the EU Regulations on their own did not suffice to ensure compliance with this criterion and need to be backed up by enabling powers at the national level. It was only in two MERs that the AT considered that the provisions of Regulation 2018/1672 and its precursor were sufficient to meet this criterion. These two MERs quoted in their analysis: (i) Article 5(3) of Regulation 2018/1672 - requiring customs officials to compose an *ex officio* declaration when the carrier does not fulfil his declaration obligation or provides a false declaration, and (ii) Article 3 of Regulation 1889/2005 – on the basis that this article does not consider the declaration to be fulfilled until all the required information is complete and correct, and thus until this is the case the authorities may request additional information.

110. Criterion 32.5 and 32.11 – The implementation of sanctions for non-adherence to declaration obligations and for ML/TF criminal offences is a prerogative of national EU member states. Thus the analysis of c.32.5 and c.32.11 is exclusively focused on national measures.

111. Criterion 32.6 – Article 5 of Regulation EC 1889/2005 and Article 9 of Regulation EU 2018/1672 require customs authorities to record information on cross-border cash declarations/disclosures (including suspicious cash movements) and make it available to the FIU in no later than 15 days. It was interesting to note that across almost all the 13 MERs (and corresponding FURs), ATs did not rely solely on these EU legal provisions to assess compliance with c.32.6. It was only in the case of the Slovak 1st FUR that the provisions of Article 9 of Regulation EU 2018/1672 were deemed sufficient to meet this criterion.

112. The majority of MERs referred to national laws or operational practices which ensure access to the FIU. In some MERs (e.g. the Bulgarian MER) this approach was taken since the EU Regulation articles only regulate access to information on movements at EU external borders. Hence the AT sought to identify whether there existed equivalent legal provisions or mechanisms to also make available to the FIU information on declarations/disclosures made in respect of cash movements within internal EU borders. In other cases (e.g. the Estonian, Latvia and Poland

[14] This part also takes into account the analysis of the precursor regulation in so far as it relates to elements that are still valid and relevant.

MERs), ATs deemed it necessary to identify a system/method for transmitting to the FIU the information envisaged in this criterion (beyond mere legal requirements), in order to assess compliance. The Romanian and Bulgarian MERs also referred to the OLAF – AFIS application as an appropriate means to make available information on cash movements at EU borders to FIUs.

FIU Access to Information on Cross-border cash movements (c.32.6)

Estonia MER (2022) - The competent authorities shall transmit to the EFIU the information recorded for false or failed disclosures (EU Regulation 2018/1672, Art.9). According to the authorities, the ETCB forwards, at least once a month, a detailed report from its database with the metadata of all cross-border cash delivery declarations to the EFIU. The EFIU uses the data for risk monitoring and analysis.

Romania MER (2023) - Information obtained through the declaration/disclosure process is available to the NOPCML-FIU through a system whereby the NOPCML-FIU is notified about suspicious cross-border transportation incidents by the NCA. The NCA electronically records the information obtained in accordance with the Regulation (EU) 2018/1673 Articles 3, 4, 5 (3) and 6 and transmits it to the NOPCML-FIU in accordance with the technical rules referred to in Article 16 (1) (c) of the Regulation (via the OLAF - AFIS application CIS CASH + module).

Poland MER (2021) - The requirement is met by the established system of providing GIFI (the Polish FIU) on a regular basis (once a month) with information obtained through the declaration process by an electronic document sent via the Head of KAS or the Chief Commander of the Border Guard, which corresponds to the system described under criterion 32.6 (b) (Regulation of the Minister of Finance of 11 January 2019 concerning information on imported or exported monies, national currency and foreign exchange values). Such notifications are sent through a website or interface software enabling communication, the information is encrypted and marked by a qualifying electronic signature or electronic seal. Additionally, pursuant to Art. 83 of the AML/CFT Act, there is an obligation to immediately notify the GIFI (in hard copy or via electronic communication means) in case of suspicion of committing a crime of ML or TF.

113. Criterion 32.7 – This criterion has consistently been assessed on the basis of national laws and coordination mechanisms. Domestic cooperation has been interpreted to relate to cooperation amongst national authorities, and not with other EU authorities.

114. Criterion 32.8 - Art. 7 of Regulation 2018/1672 requires member states to ensure that customs authorities are empowered to temporarily detain cash where: (a) the obligation to declare or to disclose cash is not fulfilled or (b) there are indications of connections to criminal activity, irrespective of the amount of cash. Article 4 of the precursor EU Regulation only required the availability of this power where the declaration obligations are not fulfilled. Both EU Regulations thus require member states to take legislative action at the national level to implement this requirement, with Regulation 2018/1672 laying down specific criteria that need to be fulfilled by national legislation. As a result, the evaluation of c.32.8 across all the 13 MERs reviewed focuses on determining whether the customs authorities are empowered under national laws to restrain cash at borders. Of particular interest is the analysis under the Bulgarian MER which concluded that the EU Regulation on its own was sufficient to ensure formal implementation of c.32.8, however, this cannot be considered to have any effect unless backed by national law.

Temporary Restraint of Cash (c.32.8)

Bulgaria MER - Since the 2018 EU Regulation is directly applicable in Bulgaria, c.32.8 is

formally met by the above provisions to the extent that it concerns the transport of cash through the external borders of the EU. On the other hand, even if the EU legislation applies without domestic implementation, there is a need for appropriate national legislation to set out the roles and responsibilities of domestic authorities in this field, together with the necessary procedural rules, otherwise, it might be "in force" but not "in effect" in the given country. This could have been achieved by relevant amendments to the Currency Act and the amending legislation had indeed been prepared but, finally, was not adopted by the end of the onsite visit. As a result, the practical applicability of the 2018 EU Regulations was not provided for within the time period relevant for this assessment.

115. Criterion 32.9 – This criterion has two main components: (i) international cooperation and assistance and (ii) record-keeping. With respect to international cooperation, the prevalent view across the majority of MERs analysed is that the EU legal framework, namely (a) EU Regulation 2018/1672 (and its precursor regulation), (b) Regulation (EC) 515/97, (c) the Naples II Convention on mutual assistance and cooperation between customs administrations, and (d) OLAF AFIS Platform, provide the necessary framework to ensure international cooperation and exchange of information related to cross-border cash movements. With respect to record-keeping requirements, most MERs (i.e. 10) relied on national legislation or measures, notwithstanding that both Regulation 2018/1672 (articles 9 and 13) and its precursor Regulation 1889/2005 (article 5) lay down record-keeping obligations. There was no specific motive for this focus on national measures. It is only in one case (i.e. Bulgaria's MER) that a rationale for this approach was given (i.e. since the EU Regulation only applies to information on movements at EU external borders).

116. With respect to the remaining criteria, the MERs have been consistent in stating that the provisions of Articles 3 and 4 of EU Regulation 2018/1672 setting out the declaration/disclosure obligations are directly applicable in each member state and thus suffice to meet c.32.1 - c.32.3. This is however subject to the fact that the EU Regulation does not cover intra-EU movements of cash, which, as explained above, has been considered a major shortcoming across many EU member states evaluated by MONEYVAL. Notwithstanding the direct applicability of Articles 3 and 4 of EU Regulation 2018/1672, several of the MERs (i.e. 11 out of 13) also referred to national laws which replicate the declaration obligations or, in some cases, extend them to intra-EU movements. Of particular interest is the Bulgarian MER where, in view of the existence of parallel national law on cross-border cash controls, the AT concluded that this Regulation had not been brought into effect since it was not reflected in national law, even though this Regulation became legally binding across the EU in June 2021.

Direct Applicability of Article 4 Regulation EU 2018/1672

Bulgaria MER (2022) - Regulation (EU) 2018/1672 on controls on cash entering or leaving the Union and repealing Regulation (EC) No 1889/2005, entered into force on 3 June 2021 and has since been directly applicable. However, no amendments in national legislation to harmonize it with the new EU provisions were adopted by the end of the onsite visit, at which time only the domestic legislation transposing the previous (and already repealed) 2005 EU Regulation were in force in Bulgaria.

However, as far as the declaration/disclosure regimes are concerned, these are covered to an appropriate extent and provided for in sufficient detail by the domestic legislation mentioned above and hence, the failure to transpose the 2018 EU Regulation in time did not have any particular impact on the compliance with c.32.1 as well as c.32.2 and c.32.3.

117. The majority of MERs concluded that the EU legislative framework, namely (i) EU

Regulation 2018/1672 – article 12 (Professional secrecy and confidentiality and data security) and 13 (Personal data protection and retention periods) (and its precursor regulation – article 8), (ii) Regulation (EC) 45/2001 on data protection, and (iii) the Treaty for the Functioning of the European Union - Article 26(2), ensure compliance with c.32.10.

Commission Implementing Regulation (EU) 2021/776

118. This Implementing Regulation which came into application on 3 June 2021, provides the declaration/disclosure form templates for accompanied and unaccompanied cash movements (referred to in Articles 3 and 4 of Regulation (EU) 2018/1672). These templates are required to be used throughout all EU member states, to capture the required information on cash movements that are coming into the EU or going out of the EU. This regulation is referred to in one of the three MERs (post 2021) as part of the assessment of c.32.2.

5.3. EU-Wide Instruments/Platforms for the tracing and confiscation of assets

119. The IO.8 reports of the 13 EU-MONEYVAL member states referred to a number of EU instruments or information exchange channels. The IO.2 part of the present report provides background information on these EU instruments and mechanisms. This part will limit itself to explaining the usefulness of these tools to ensure effectiveness in tracing, seizing and confiscating foreign proceeds of crime or proceeds of crime generated in a member state that are moved abroad.

CARIN Network & EUROPOL (Asset Recovery Offices / Anti-Money Laundering Operational Network)

120. These informal networks are used by law enforcement agents and asset recovery offices to share information and perform operative checks with the aim of tracing assets across the EU and beyond. Each participant jurisdiction has dedicated contact points assigned to these networks to handle cooperation requests. In this manner, LEAs would be able to obtain informal and more rapid information on assets located abroad, permitting them to make more detailed follow-up MLA requests to seize or confiscate proceeds of crime abroad. These tools were featured in four analysed MERs as useful for seeking assets located abroad.

CARIN & EUROPOL (ARO / AMON) Networks

Bulgaria MER (2022) - When seeking assets abroad, police take advantage of national contact points linked to specialised international platforms (mainly via ARO, CARIN and AMON networks) alongside standard MLA procedures. These channels are used to share information and perform operative checks both in EU jurisdictions and beyond. Such practice enables LEAs to prepare detailed MLA requests focusing mainly on executing seizure orders on property that has been already identified and linked to a perpetrator or a third person based on the aforementioned information exchange.

Latvia MER (2018) - In general, the SP considers that so few cases result in prosecutions (and related confiscation proceedings), mostly due to the increasing international elements of ML-related cases. The office uses established links with the Camden Assets Recovery Interagency Network (CARIN), but ARO staff members met by the evaluators conceded that the cooperation could still be augmented due to the very recent establishment of the ARO.

Council Framework Decision 2005/212/JHA on Confiscation of Crime-Related Proceeds, Instrumentalities and Properties[15]

[15] Planned to be replaced by a new EU Directive on Asset Recovery and Confiscation.

121. This EU instrument was also featured regularly in the evaluation of EU-MONEYVAL member states. This Decision calls on EU member states to take the necessary measures to be able to confiscate instrumentalities and proceeds of certain crimes (i.e. punishable by deprivation of liberty for more than a year), or property of corresponding value. In relation to tax offences, it allows EU member states to make use of procedures other than criminal ones to recover the proceeds of tax crimes. Member states are also required to have extended confiscation powers and should consider adopted measures to confiscate criminal proceeds transferred to third parties and legal persons controlled by a suspect.

EU Council Decision 2007/845/JHA & Directive 2014/42/EU[16]

122. Some of the MERs analysed referred to EU legal instruments such as the above which: (i) require EU member states to establish national asset recovery offices to serve as national contact points for the exchange of information concerning the recovery, tracing and identification of proceeds of crime as part of both civil and criminal investigations, and (ii) introduce harmonised rules for the freezing, confiscation and management of assets, instrumentalities, property of equivalent value, and property held by third parties amongst others.

123. Naturally, these EU legal instruments require national transposition, while the cooperation channels merely provide the infrastructure. Their relevance for the IO.8 analysis depends on their effective implementation and use by the country. They however harmonise the procedures and channels across all EU member states, and hence of relevance to prospective evaluators seeking to analyse the effectiveness of asset tracing and identification practices in EU-MONEYVAL member states.

[16] Planned to be replaced by a new EU Directive on Asset Recovery and Confiscation.

6. Immediate Outcome 9

6.1. Introduction

124. As mentioned under IO.2, one of the functions of the European Agency for Law Enforcement Cooperation (EUROPOL) is also to support LEAs across EU member states in preventing and combatting terrorism. It has networks dedicated in bringing together law enforcement contact points from across the EU and beyond. This section will analyse 13 reports of EU-MONEYVAL members which have been analysed with and/or considered the cooperation with EUROPOL in TF cases.

6.2. Cases involving cooperation with EUROPOL

125. Reviews of IO.9 in all 13 reports revealed that in some instances the reports include under IO.9 case examples where the EU member state has cooperated with relevant EU institutions to investigate/prosecute terrorism cases which later have led to investigation of TF.

126. The MER of Croatia provided the following example of where a state cooperated with EUROPOL on investigating weapons smuggling by an organized crime group, and eventually terrorism, which led to a TF investigation as well:

"Box N°4.1: Smuggling of weapons case

In 2018, the USKOK conducted a criminal investigation in co-operation with Germany and Switzerland, which revealed that an OCG operating in Croatia, from 2016 to 2018, smuggled several pieces of firearms, ammunition, and explosives from Croatia to Germany as a destination country. Evidence and data collected during the investigation were exchanged with EUROPOL and Germany. Based on the information received by German prosecutors, a search warrant was issued in Croatia for the search of homes and other premises of German nationals, who were linked to extreme right organisations in Germany and who were acquiring firearms from the Croatian OCG. During the international criminal investigation against the OCG members in Croatia, financial inquiries were conducted that revealed no elements of terrorism financing. The investigation resulted in the arrest of several individuals, and weapons and other items were seized. USKOK prosecuted all arrested persons who were later convicted only for the smuggling of weapons offence. Although a formal TF investigation was not launched, Croatian authorities affirmed that potential TF implications were considered. In particular, financial inquiries were conducted to determine if funds were transferred to conflict areas or terrorism-related persons, but no link with TF was established. Several authorities were involved in this case (the Police, the USKOK, the SIA, etc.). While Croatian authorities were aware that the provisions of weapons for terrorist purposes could be qualified as TF, the investigation was solely focused on financial flows." (p. 108)

127. Some MERs have mentioned also in other ways the positive cooperation with EUROPOL. For example, Cyprus MER IO.9 mentions positively the cooperation with EUROPOL on training local LEAs:

"[…] The Assessment team also welcome the development that there will be two EUROPOL officers seconded to Cyprus to assist in the training and development of the police officers at the air and seaports, in identifying those presenting terrorism threats." (p. 88)

128. It can be concluded that cooperation with EUROPOL has been considered and analysed in MONEYVAL reports (wherever the country has provided such details) and such cooperation is generally viewed as positive as it helps to effectively investigate more complex cases.

7. Immediate Outcome 4: Recommendations 13, 16 and 19

7.1. Introduction

129. This section covers the analysis of FATF R.13, 16 and 19, as well as IO.4 for EU-MONEYVAL member states in regard to the supranational instruments mentioned, and if specified, their effect on the outcome of the recommendations. MONEYVAL has under this cycle reviewed all the 13 EU member states that fall under its evaluation remit.

7.2. R.13 and Core Issue 4.4(b)

Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing ("4th AMLD")

130. AMLD establishes the preventive measures to be adopted by credit institutions, financial institutions and other natural or legal persons exercising certain professional activities (DNFBPs).

131. Requirements concerning correspondent banking relationships are established in Article 19 of the Directive, where it is also established that they have to be implemented only for cross-border correspondent relationships, that is, involving the respondent institutions of third countries (not EU member states). The measures contained therein are along the lines of those required by the FATF Standards under R.13, but present differences. In some of the reports analysed (at least 6 of them) the differences between c.13.1 and the national transposition of the wording in Article 19 of the Directive were highlighted as deficiencies, most notably not explicitly requiring the assessment of whether a respondent institution has been subject to a ML/TF investigation or regulatory action; or to document (rather than understand) each institutions' respective responsibilities in the correspondent banking relationship.

European Banking Authority Guidelines on ML/TF risk factors ("ESA Guidelines")

132. Articles 17 and 18(4) of the 4th AMLD require the European Supervisory Authorities (ESAs) (the European Banking Authority (EBA), the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA)) to issue guidelines to support firms with the task to apply simplified and enhanced customer due diligence measures, when appropriate, by providing relevant risk factors to be taken into consideration and measures to be adopted. For this purpose, 'the ML/TF Risk Factors Guidelines' ('JC/2017/37') were adopted in June 2017 and were subsequently revised in July 2021 and amended in August 2023.

133. Guideline 8 provides sectoral guidelines for correspondent relationships. Section 8.10 establishes CDD measures that all correspondents should carry out, in accordance with Article 13 of the 4th AMLD. These measures are to be applied in any case, regardless of whether the respondent institution is based in an EEA country or not. These are, however, considered to satisfy "only partly" the requirements of c.13.1[17] in the only report where they were explicitly mentioned.

134. A more detailed list of enhanced measures to be applied is laid out in section 8.17 of the Guidelines, in line with Article 19 of the 4th AMLD and c.13.1 of the FATF Recommendations. These measures are to be applied only to respondent institutions based on third countries (non-EEA

[17] The report cites the following reasons to justify why it is considered that the guidelines satisfy "only partly" c.13.1 requirements: (a) no explicit reference is made to CFT; (b) obtaining information on the respondent's business, quality of the AML systems and controls and recent regulatory or criminal sanctions for AML failings is not strictly required in all cases; (c) no approval from senior management is required before establishing new correspondent relationships.

members) (Section 8.18), unless the risk associated with the respondent based in an EAA member state is increased, in which case correspondents are to consider applying at least some of the measures of Article 19 of the Directive, in particular gathering sufficient information about the respondent institution's reputation and quality of supervision and assessing its AML/CFT controls (Section 8.19).

135. When requirements are only established in the 'ESA Guidelines' but are not incorporated into national legislation, this is considered a deficiency for the purpose of compliance with the relevant R.13 criterion. This is the case for the requirement of FIs to satisfy themselves that a respondent FI does not permit accounts to be used by shell banks in one of the reports analysed.

136. Notwithstanding the above, the differences between correspondent banking relationships within the EEA and others are addressed in many of the reports analysed. In only 2 reports there were no deficiencies noted or no mention in general of any differences between the EU and non-EU-based correspondent banking relationships.

137. In the majority of the cases, references were made only to each country's national legislation, which incorporates the principles set out in the 4th AMLD and the ESA Guidelines.

138. In this respect, in 8 reports, enhanced measures were not required to be applied to respondent institutions based in the EU/EEA, and only when increased risks were identified in 3 reports (and 1 follow-up report) (which would be in line with Section 8.19 of the 'ESA Guidelines'). In 1 report, it is unclear whether the enhanced measures presented in national legislation not being applicable to correspondent banking relationships within the EU was being highlighted as a shortcoming, considering that the rating of the Recommendation is based on other issues. All the analysed reports except two had a PC rating for Recommendation 13, and only in 2 cases the PC rating was based exclusively on supranational issues, with no other deficiencies mentioned.

139. It is also interesting to note that in 2 reports, materiality aspects were considered, meaning that the volume of business conducted with respondent institutions within the EEA was factored in when determining the weight of deficiencies and the overall rating for R.13. In 1 case, it was estimated that this type of business was limited, which led to a LC rating, while in another it was concluded that, since most respondents were based in EU/EEA member states (but not the major part of transactional volumes), the weighting of the deficiency should be higher, and a PC rating more appropriate.

140. The differences were also considered in the analysis of IO.4 (Core Issue 4.4(b)) in 7 reports. In 4 of them, the analysis of R.13 was echoed, while in 3 others, it was assessed whether FIs were, in practice, applying any additional measures to correspondent banking relationships with EEA-based respondent institutions, such as conducting risk assessments of parent institutions, exchanging questionnaires, assessing the risks of correspondent relationships on a case-by-case basis to determine the set of EDD measures to apply or conducting checks on the quality and reputation of the respondent institution as part of the group-wide policy.

141. It is unclear whether these aspects have had any impact on the rating of the Immediate Outcome, considering the fact that they are not mentioned in the "overall conclusions" paragraph or in the Recommended Actions section.

142. In the relevant follow-up reports, most states updated their measures if they were rated PC. In one case, the jurisdiction amended its legal framework to ensure the application of correspondent banking measures to all respondent institutions in an equal manner, although the by-laws developing such were not yet in line with the amended legislation at the time of the adoption of the follow-up report. In two cases, steps to largely address the remaining deficiencies,

and any minor concerns were alleviated by the limited number of intra-EU correspondent relationships, thus equally warranting LC ratings.

143. Only two member states were consistently given a PC rating in their follow-up reports due to a lack of action to address the issue. In one of those, while the aspect of materiality of correspondent banking relationships with EU/EEA respondent institutions is mentioned (and the volume is assumed to be significant given that the PC rating is kept), concrete details in this regard are not provided. In another follow-up report, it was highlighted that even if the requirement of EU/EEA institutions also requiring enhanced measures was addressed, the PC rating would only be re-rated if the risk-based application of measures to respondent institutions issue was also sufficiently addressed**.** What counts as "sufficient" is largely based on the measures implemented, but also the aspect of materiality, with one report showing that broad industry guidance coupled with a low volume of business conducted with respondent institutions within the EEA was sufficient.

7.3. R.16 and Core Issue 4.4(d)

Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds

144. This Regulation lays down the rules on the information on payers and payees that has to accompany transfers of funds, in any currency, for the purposes of preventing, detecting and investigating ML/TF, where at least one of the payment service providers involved in the transfer of funds is established in the EU. It is, therefore, binding and directly applicable in all EU member states. It was subsequently amended in December 2019 by Regulation (EU) 2019/2175.

145. A new Regulation (Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets), amending Regulation (EU) 2015/847, was adopted in May 2023. It introduces significant changes, such as extending the information requirements to providers of crypto-assets established in the EU, or laying down rules on internal policies, procedures, and controls in relation to restrictive measures. However, since it is applicable from 31st December 2024, it falls outside the scope of the analysis of this project.

146. According to Article 5 of the Regulation (EU) 2015/847, transfers of funds within the EU are only required to be accompanied by the relevant payment account numbers (or unique transaction identifiers) and not the full set of information laid out in Article 4 (although this information is to be made available on request within 3 working days). In all reports analysed, it was stated that the EU-MONEYVAL member states concerned considered wire transfers within the EU/EEA as domestic transfers, which is in line with R.16[18].

147. Obligations that the Regulation imposes on providers have been considered in line with those required by the FATF Standards in all the analysed reports. Consequently, all the reports where compliance with R.16 requirements stems from Regulation (EU) 2015/847, were given either an LC or a C rating for that Recommendation, and deficiencies corresponded to other issues unrelated to the supranational instrument.

148. Some of these deficiencies arise in relation to c.16.16 and c.16.17. These require the application of R.16 requirements to MVTS (Money & Value Transfer Service) providers and their agents and, where one MVTS provider controls both the payer's and the payee's side of a wire transfer, it has to take into account information from the ordering and beneficiary side to

[18] Footnote 57 of the FATF Methodology clearly states that the term "domestic" refers to any chain of wire transfers that take place entirely within the borders of the European Union and that it is further noted that the European internal market and corresponding legal framework is extended to the members of the European Economic Area.

determine whether a suspicious transaction report (STR) should be filed, and to file a STR in any country affected by the suspicious wire transfer, after which the information should be made available to the FIU. Some reports therefore mentioned the deficiency that the specific measure providing that an MVTS that controls both the ordering and the beneficiary side of a wire transfer take into account all the information from both the ordering and beneficiary sides in order to determine whether an STR has to be filed was not present. This was at least a contributing factor in 6 of the reports with a LC rating, and one with a PC rating. As stated, these aspects are unrelated to the provision of Regulation (EU) 2015/847.

149. Regulation (EU) 2015/847 repealed former Regulation (EC) 1781/2006, which was still in force at the time of the time of publication of only 2 of the reports analysed. These are the only 2 instances where PC ratings for R.16 were granted initially, since the former Regulation fell short in many aspects required by R.16, such as requirements concerning beneficiary information in general or intermediary FIs to identify missing originator or beneficiary information and apply risk-based policies. In both of these instances, the EU-MONEYVAL member states were upgraded to a LC rating in subsequent follow-up reports, when the Regulation (EU) 2015/847 was already in force.

150. Regulation (EU) 2015/847 is also explicitly mentioned in the analysis of IO.4 in 4 of the reports analysed. References are mostly contextual (indicating that it is the legal framework applicable in the country) and serve as the basis to assess the degree of compliance of FIs with this framework, which is considered, in general terms, as good, but with some gaps and shortcomings concerning certain institutions.

7.4. R.19 and Core Issue 4.4(f)

Commission Delegated Regulation (EU) 2016/1675 of 14 July 2016 supplementing Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies

151. This regulation supplements Directive (EU) 2015/849 of the European Parliament and of the Council by identifying high-risk third countries with strategic deficiencies by specifying a list of high-risk countries in relation to their AML/CFT capabilities. Four reports mention the Delegated Regulation 2016/1675 specifically, with 8 reports using more broad terminology (such as 'EU lists' or 'EC lists'), although in 2 of these cases, there is an indirect reference to Regulation 2016/1675 by mentioning Art.9 of the Directive 2015/849, from which this delegated act stems from. It is also worth mentioning that 2 reports made specific references to concrete updates of the list from Regulation 2016/1675, in particular, Commission Delegated Regulation (EU) 2021/37, and, under IO.4, Commission Delegated Regulation (EU) 2020/855 (which amends the list of high-risk countries significantly, adding 12 nations and removing 7 from what is to be understood generally as the 'EU list' of high-risk countries for AML/CFT purposes). The list of high-risk third countries is regularly updated, meaning that a reference to the 'EU list' of high-risk countries, effectively refers to the most recently available commission delegated regulation at the time.

152. Other than the EU lists, the FATF list is also a source that defines high-risk jurisdictions. Unlike the FATF, the EU list however importantly excludes EU-MONEYVAL member states and therefore does not completely always align with that of the FATF. The non-inclusion of the FATF list and mere use of EU lists is therefore rated as a deficiency in 6 reports. Out of these, 3 were rated PC as a result of this fact together with a combination of other deficiencies (related to the application of EDD and countermeasures), with the 3 other reports being rated LC as either the national policy included the need to take other international assessments and evaluations into account or the UE lists being only "broadly" in line with the FATF lists and EDD requirements

being applicable only to high-risk third countries are not considered major deficiencies. 3 reports also showed that, although broad rules to take other international lists, reports, assessments, and evaluations into account is a positive step, this was still a deficiency, as a clear reference to the FATF list was deemed as necessary for a fully compliant rating. It is also worth noting that in the only MER where a full C (compliant) rating has been granted, the legislation only specifically referred to EU-designated countries, with reference to countries for which action is called for by the FATF being covered through supporting guidance instead.

153. There are also discrepancies noted in the approach adopted when considering the inclusion of the FATF lists within the EU lists. For example, one report deemed that the EU lists are enough to warrant an LC rating, referring to the fact that the 4th AMLD and the national AML/CFT law establish that the European Commission is required to consider relevant evaluations by international organisations in relation to the ML/TF risks posed by individual third countries when designating high-risk jurisdictions, interpreting that this would also include the FATF public statement.

154. Regarding follow-up reports, one country's compliance was re-rated as LC in a follow-up report, for which the non-inclusion of the FATF list was not mentioned as a deficiency in the MER, and the wording of the FUR suggested that the list of the Delegated Regulation 2016/1675 included all the FATF-identified high risk and non-cooperative jurisdictions.

7.5. Core Issue 4.4

European Banking Authority Guidelines on risk-based supervision

155. This non-binding guidance mainly establishes how national authorities and banks should evaluate levels of risk, which can be used to set out how much certain financial entities need to be supervised. Article 48(10) of the 4th AMLD mandates the EBA to issue guidelines addressed to competent authorities on the characteristics of a risk-based approach to supervision and the steps to be taken when conducting supervision on a risk basis. The guidance introduced 4 main risk categories and set out parameters and assessment's recommendations for authorities. A new version is due to be applicable in December of 2024, with past versions being from 2016 and 2021.

156. One report referenced the guidelines under IO.4. It is not always clear what version is used when the guidelines are mentioned. It is not sufficient to assume that reports conducted post-2021 reliably reference the 2021 version, as the report from 2022 specifies that the 2016 guidelines were applicable in that instance. The report indicated that limited use of supervisory guidance other than the EBA guidance may be one of the multiple factors resulting in a low volume of STRs in that jurisdiction.

8. Immediate Outcome 3: Recommendations 15 and 26

8.1. Introduction

157. This section covers the analysis of FATF R.15 and 26, as well as IO.3 for EU-MONEYVAL member states in regard to the supranational instruments mentioned, and if specified, their effect on the outcome of the recommendations. MONEYVAL has under this cycle reviewed all the 13 EU member states that fall under its evaluation remit.

8.2. Immediate Outcome 3

The Single Supervisory Mechanism (SSM)

158. The European Central Bank is in charge of licencing credit institutions within the EU and is empowered to do so under Article 4 (1) Council Regulation (EU) No 1024/2013 (SSM regulation). The ECB also has the authority to withdraw licences and make fit and proper decisions to determine whether members of the management body of a supervised entity are suitable for their roles. The fit and proper decisions encompass banks that are deemed 'significant', while less significant ones are left to be decided upon by national authorities. The Regulation (EU) 1024/2013 also confers specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions.

159. The ECB, through the Single Supervisory Mechanism (SSM), is the central banking supervisor in the Banking Union. The SSM refers to the system of banking supervision in the Banking Union. The Banking Union currently comprises 21 Member States: the Euro Area member states and those other member states that establish close cooperation. The SSM itself comprises the ECB and the national supervisory authorities of the participating countries.

160. Within MERs, the SSM is referenced on 7 occasions, mainly in relation to the powers of the ECB in general, fit and proper tests, and the granting of licenses. It should be noted that the ECB is not an AML supervisor, yet when carrying out certain functions such as granting or withdrawing licences or carrying fit and proper tests for managers, AML elements may form part of its assessment, as would other elements that impact the sound and prudent management of a bank.

161. The references to the licensing role of the ECB are largely informative, however, in some reports, the close cooperation between bank supervisors and the ECB is shown positively. For example, the box below highlights a case where the national authorities cooperated with the ECB regarding the withdrawal of a license of a bank considered a "less significant institution".

Malta MER (2019): In 2018, after a prudential assessment had been carried out two years earlier, Maltese authorities conducted a comprehensive AML/CFT supervisory examination of a Bank in Malta. The indictment in a third country of the BO of the bank provided concrete and actionable information on his suitability. The MFSA (Malta Financial Services Authority) immediately prevented the BO from exercising any influence on the Bank and appointed a competent person under the Banking Act to take control and the running of the Bank. Notwithstanding that the Bank is a less significant institution, the withdrawal of its licence falls within the powers of the ECB, therefore the MFSA submitted its recommendation to the ECB for consideration of the withdrawal of the licence of the bank. Less than 4 months later, the ECB reached a preliminary decision to revoke the licence of the bank.

162. The references to 'fit and proper tests' (which test the suitability of members of the management board and supervisory board) are mainly informative as well, outlying that the ECB

only has the power to conduct fit and proper assessments for significant banks, whilst banks not deemed as significant are tested by national authorities.

163. As six MERs also mentioned, the ECB also authorises the acquisition of qualifying shareholding of all banks. The criteria include looking at whether the transaction involves or increases the risk of ML and TF. This is based on Article 23(1)(e) of the Directive 2013/36/EU (CRD) and Articles 85 to 87 of the EU Regulation 468/2014. As expressed before, these references are also informative in nature as well.

164. The SSM is also mentioned in 6 MERs under the relevant sections of R.26. All references were also informative in nature, covering the role of the ECB in its supervision of significant banks and the requirement of national banks to be approved by the ECB.

165. It is also worth mentioning that the MER of Bulgaria referenced a "close cooperation mechanism" between the Bulgarian National Bank and the ECB (within the context of concerns over the source of funds for a proposed acquisition of a qualifying shareholding in a Bulgarian bank, for which joint discussions and enhanced scrutiny were conducted). This follows from the SSM framework regulation, Decision 2014/434/EU on the close cooperation with the national competent authorities of participating non-euro member states (ECB/2014/5) and Decision (EU) 2020/1015 establishing close cooperation between the European Central Bank and Bulgarian National Bank. This has the effect that the ECB oversees the direct supervision of the significant institutions in Bulgaria and the common procedures for all supervised entities, as well as the oversight of less significant institutions. Bulgaria, together with Croatia, were the first non-euro states to enter the SSM.

The European Central Bank Supervisory Review and Evaluation Process (SREP)

166. The SREP is another noteworthy inclusion as referenced in 2 reports, especially in connection with the ECB. The SREP is the process used by the ECB for evaluating the suitability of significant institutions and making an eventual decision (AML aspects are taken into consideration when conducting the SREP). The three main outcomes of the SREP are a forward-looking assessment of the overall viability of the institution, issuance of a decision requiring banks to meet their capital/liquidity requirements if needed, and input into the determination of the minimum level of supervisory engagement as part of the next Supervisory Examination Programme. One report mentioned that the national central bank had adopted part of the SREP process for their own assessments. No mentions resulted in an impact on the level of effectiveness of IO.3.

Revised Payment Services Directive (PSD2, Directive (EU) 2015/2366)

167. Although only briefly included in one report, the PSD2, referenced as the "EU payment services directive" is relevant. The directive is generally important for the rights and obligations of payment providers and users, and it includes an exception set out in Article 32 that applies to smaller institutions which exempts them from most of the obligations of the Directive. PSD2 is mentioned in the report to explain that smaller institutions, which have a ceiling of EUR 3 million in payments in 12 months, are effectively registered without the checks that apply to larger institutions.

The supranational risk assessment (SNRA) and other risk analyses

168. As explained in more detail in the IO.1 section, the SNRA, published by the European Commission, is an assessment of specific ML/TF risks affecting the internal market and relating to cross-border activities. This is an obligation the Commission has under Article 6(1) of the 5th AMLD and is to be completed every two years, with the first report being published in 2017. The

SNRA analyses money laundering and terrorism financing risks and recommends a comprehensive action plan to address them. The SNRA also considers "sectors or products where relevant changes have been detected".

169. The SNRA is mentioned 6 times in relation to IO.3. Two references are simply that the SNRA is included as a useful source of information for understanding ML/TF risks and to guide authorities when determining what sectors need to be focused on. It is worth noting that one report mentioned the SNRA in a similar way under R.26.

170. One MER considered that the use of the SNRA could lead to a supervisory approach predominantly based on sectoral risk and that, whilst covering all EU member states, the assessment does not necessarily consider the specificities of a country in particular. A second report also included that a national financial regulator is cautious about developing its risk model due to evolving EU regulations, especially regarding crypto-related risks. Lastly, another report also mentioned that, in light of the SNRA, multiple onsite inspections on banks were conducted, focusing on deposit boxes and BO.

171. One of the reports that mentioned the SNRA in IO.3 also referred to other risk analyses from other authorities, such as the EBA. The EBA analysis is the EBA Risk Assessment Report, an annual update on risks and vulnerabilities in the EU banking sector. It describes the main developments and trends that affect the EU banking sector and provides the EBA's outlook on the main micro-prudential risks and vulnerabilities.

172. The MER mentioning the European Commission and EBA assessments did so in relation to virtual assets, mentioning that the nation at hand has been actively promoting the use of virtual assets and related services, but is balancing this out by making sure that international risk assessments, such as the risk analyses from the European Commission and European Banking Authority, are considered.

The EU passporting regime

173. The "EU passporting regime" allows EEA FIs to conduct business in another member state with almost no restrictions. The EU passporting system for banks and financial services companies enables firms that are authorised in any EU or EEA state to trade freely in any other member state, with minimal additional authorisation. Supervision regarding issues of AML and CFT is carried out by the home supervisor and not the host. The legal basis of passporting is generally the right to freedom of establishment and right to freedom of services, with specifics in Directive (EU) 2015/2366.

174. From an AML/CFT supervisory perspective, this means that the home supervisor is responsible for the AML oversight of the authorised FI operating under the free provision of services. In that case, should the host supervisor become aware of concerns about AML/CFT compliance in its territory, it should inform the home supervisor who can take adequate actions to address the shortcomings, including by delegating supervisory powers to the host authority. When an FI operates under the freedom of establishment in the host country, AML supervisory competencies belong to the host supervisor.

175. The regime is mentioned in 5 reports under IO.3 and twice under R.26. It is worth mentioning that the regime is not always directly referenced as the "EU passporting regime", as in several reports simply the right to freedom of services is mentioned.

176. The distribution of AML/CFT supervisory responsibilities is highlighted in many reports as an area of concern, due to situations where the host supervisor is not sufficiently aware of the activities that the foreign entities are performing in the country. For example, one MER

highlighted that cooperation between host and home supervisors is sometimes not enough to understand the risks associated with EU agents operating in the country, and this should be supplemented by enhancing domestic cooperation (between supervisors and the FIU and LEAs), including exchange of typologies and trends on vulnerabilities and threats. Another MER expressed a concern that certain sectors (MVTS) operating in the assessed jurisdiction (host country) were not being supervised for their activities in the country by a domestic supervisor. A third MER considered that the TF risks of foreign MVTS using EU passporting provisions to undertake business in the assessed country are not sufficiently well assessed and understood.

177. One report however showed that, although passporting is usually allowed with minimal restrictions, a host state can take action where there is unauthorised provision of services by EU FIs in their country (see box below).

Latvia MER (2018): "In 2016 the FCMC decided to prohibit a bank in another EU State from providing financial services in Latvia: including a prohibition on attracting new customers in Latvia and a requirement to terminate existing contractual relationships with current customers in Latvia. The decision to impose the ban was adopted because the bank had substantially violated applicable procedures laid down in the Credit Institution Law. The bank had continuously provided financial services through a permanent and unauthorised physical presence in Latvia." (p. 109)

178. The system is also referenced in 2 reports under IO.4, in a similar manner as the mentions under IO.3. One report mentioned that the use of passporting could be an area of concern due to the lack of information available to domestic authorities on a significant number of foreign credit institutions.

The EU "Solvency II" Framework

179. The EU "Solvency II" framework is a prudential regime for insurance and reinsurance undertakings in the EU. It sets out requirements applicable to insurance and reinsurance companies in the EU to ensure the adequate protection of policyholders and beneficiaries. The framework also sets out strengthened requirements around capital, governance, and risk management in all EU-authorised (re)insurance undertakings. The general principles of this framework are laid down in Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) and are supplemented by Commission Delegated Regulation (EU) 2015/35 of 10 October 2014.

180. It is referenced in one report in relation to the licensing and supervision of insurance companies. The implementation of the framework has the effect that particular attention is paid to corporate governance and internal controls as part of the application process. The MER didn't comment on the effect this has on IO.3.

8.3. Recommendation 26

The joint ESMA and EBA guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU

181. These guidelines aim to further improve and harmonise the assessment of suitability within the EU financial sector, and to ensure sound governance arrangements in institutions. They are not legally binding or enforceable.

182. The guidelines are mentioned in two reports. One report highlighted that the EBA/ESMA guidelines can't be taken into consideration, in the sense that they are not legislation/enforceable

means and there is no clear basis on how to implement them at the country level. Rather than merely relying on the EBA/ESMA guidelines, regulatory processes therefore need to be established on a national level to be fully compliant, especially in relation to the coverage of close associates, since this is an aspect that is not clearly prescribed in the guidelines alone. The second report mentioned the joint guidelines, but also that they have been fully transposed into national requirements. The MER therefore didn't deem this a deficiency.

183. The aforementioned MER also included the fact that the EIOPA, EBA and ESMA Guidelines on prudential assessment of acquisitions and increases of qualifying holdings in the financial sector, are transposed into national requirements.

European Banking Authority guidelines on risk-based supervision

184. The guidelines (for further information see the IO.4 section) are mentioned in 5 reports, with 3 of the references being in relation to R.26, and 2 references to IO.3. It is not always clear what version is used when the guidelines are mentioned. One report highlighted that the EBA guidance on risk-based supervision is not enforceable, as is standard for EBA guidance, while another highlights that the national supervisors are required by law to adhere to these AML/CFT supervisory guidelines. 3 of the reports also included the fact that the guidelines form part (or will form part) of the internal procedures applied by the national supervisory authorities, generally for determining the risk levels of FIs and the scope of supervision. All references are largely of an informative nature.

The European Insurance and Occupational Pensions Authority (EIOPA)

185. EIOPA is the European authority for insurance and occupational pensions, with the goal of financial stability and confidence in the insurance and pensions markets. It is mentioned in one MER and in one follow-up report, with respect to an issue regarding c.26.4. In the case of the FUR, the reference concerned an assessment done by the national financial regulatory authority, in which the authorities were unable to confirm their current level of compliance with the core principles, where relevant for AML/CFT purposes. The national authorities then conducted a self-assessment after the MER to confirm compliance with the principles. The EIOPA was used in the period between the MER and the follow-up to conduct a peer review of the self-assessment. It is unclear whether this directly influenced the re-rating of R.26 from partially compliant to largely compliant.

The Financial Sector Assessment Programme (FSAP)

186. The FSAP provides a comprehensive, in-depth analysis of the resilience of a country's financial sector by the International Monetary Fund (IMF). A crucial part of the IMF's financial surveillance includes "stress tests" of financial institutions, an evaluation of the quality of supervision and regulation of the sector, and an assessment of the crisis management framework.

187. The FSAP is mentioned in 4 MERs, mostly for information purposes. In one of the reports, it is mentioned that a national regulatory body followed the FSAP structure of assessment to confirm the level of current compliance of FIs with the core principles, where relevant for AML/CFT purposes, but the level of compliance could not be confirmed at the time of the onsite. In the other MERs, the references are mainly informative ones, concerning the fact that the jurisdictions underwent a review by the IMF under the FSAP programme at some point throughout the assessed period. In one of these cases, it is specified that the review related to compliance with the Basel Committee on Banking Supervision Principles (which have been implemented in all member states through the EU Regulation 2013/575) and in another it is detailed that the review resulted in a technical note which encompassed several short, medium, and long term targets in order to achieve compliance with the principles.

EEA colleges of supervisors

188. Supervisory colleges are the vehicles through which supervisory activities are coordinated. They are designed to promote enhanced cooperation and information sharing between authorities responsible for the supervision of banking group entities located in different jurisdictions. They are regulated by the Capital Requirements Directive (CRD) 2013/36. Only one report mentioned the colleges, referencing the fact that the country in question had a memorandum of understanding, which included the obligation under EU law (i.e. the CRD) of home supervisors to set up Supervisory Colleges when they have FIs that have branches in other EU States.

8.4. Recommendation 15

Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 ("5th AMLD")

189. An important amendment with respect to recommendation 15 is the definition of virtual asset service providers (VASPs) in the 5th AMLD including virtual asset exchangers and custodian wallet providers.

190. One MER expressly mentions the Directive in relation to R.15, highlighting the definition of VASPs, and that the risk assessment of the sector may not be accurate as the definition of VASPs used by the jurisdiction derives from the 5th AMLD, which only encompassed virtual asset exchangers and custodian wallet providers, which is not in line with FATF standards. The FATF definition of VASPs sets out a series of activities[19] that, if any of them are conducted, deem the business a VASP. The MER further mentions that the 5th AMLD definition has the effect of not including certain types of providers that may end up having a significantly different risk profile, leading to inaccurate risk assessment scopes. However, Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets introduces amendments to the Directive (EU) 2015/849, by introducing as reporting entities under the Directive "crypto-asset service providers" ("CASPs") as defined in Regulation (EU) 2023/1114 ("MiCA"). These new CASPs categories of reporting entities will replace the current ones of virtual asset exchangers and custodian wallet providers on 30 December 2024, when Regulation (EU) 2023/1113 and Regulation (EU) 2023/1114 will enter into application. As a result, the definition applicable in EU member States will be more in line with FATF Standards. As there has not yet been a follow-up, and these Regulations are not yet applicable, the actual effects of this are still to be assessed.

191. Another report similarly mentioned the Directive and shortcomings concerning the VASP definition. R.15 has been upgraded to LC in a subsequent follow-up report due to, among other improvements, establishing a national regime that "covers VASP activities as defined by the FATF Glossary".

Regulation (EU) 2023/1114 of the European Parliament and of the Council of 31 May 2023 on markets in crypto-assets ("MiCA")

192. Regulation (EU) 2023/1114 ("MiCA") lays down uniform requirements for the offer to the public and admission to trading on a trading platform of crypto-assets, as well as requirements for CASPs. Article 3(15) defines CASPs as legal persons or other undertakings who, on a

[19] Exchange between virtual assets and fiat currencies; exchange between one or more forms of virtual assets; transfer of virtual assets; safekeeping and/or administration of virtual assets or instruments enabling control over virtual assets; and participation in and provision of financial services related to an issuer's offer and/or sale of a virtual asset.

professional basis, offer crypto-asset services[20] to clients. The Regulation has been in force since June 2023, but it will only be applicable to member states from the 30th of December 2024.

193. One MER mentioned that due to Regulation (EU) 2023/1114, the definition applicable in the country in question, will be, in the future, more in line with the FATF Standards. As there has not yet been a follow-up for that country, and the Regulation was not yet applicable, the actual effects of this are still to be assessed. One follow-up report also mentioned the upcoming application of MiCA as a reason given by the assessed country not to adopt actions to align the national provision with either the EU or the FATF VASPs definition in the interim period. However, since the Regulation was not yet applicable at the time of the adoption of the FUR, it was still considered that the VASP definition was falling short of the one from the FATF Glossary.

European Banking Authority Guidelines on ML/TF risk factors (ESA Guidelines)

194. These guidelines (for further information, see the IO.4/R.13 section) are mentioned once in relation to recommendation 15, highlighting that the guidelines require that FIs understand the risks associated with new or innovative products or services, particularly where this involves the use of new technologies.

Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds

195. As stated in the section concerning IO.4 and R.16, this Regulation ensures traceability of fund transfers, in particular with a view to prevent, detect and investigate money laundering and terrorist financing. Since it only applies to transfers defined as banknotes and coins, scriptural money and electronic money, VASPs are excluded from its scope.

196. The regulation will be replaced by Regulation (EU) 2023/1113 of the European Parliament and of the Council of 31 May 2023 on information accompanying transfers of funds and certain crypto-assets. This new regulation now extends the scope of the EU legal framework on transfers of funds to transfers of virtual assets, making the EU legislation in line with the "travel rule" requirements, however it will only be applicable to member states from the 30th of December 2024. As raised above, this Regulation also introduces amendments to the Directive (EU) 2015/849, by introducing crypto-asset service providers ("CASPs") as reporting entities and extending the definition of CASPs from Regulation (EU) 2023/1114 ("MiCA") to the Directive as well.

197. Three MERs and one follow-up report mentioned Regulation (EU) 2015/847 directly. In all reports, the use of the regulation as a legal basis for compliance is deemed a deficiency as VASPs are outside the scope of the regulation. In one of the reports, the authorities even expressed specific reliance on Regulation (EU) 2015/847 filling a gap in their national legislation, which was not the case due to VASPs being outside of the scope of the Regulation. One follow-up report mentioned Regulation (EU) 2023/1113, which is used as an argument for the assessed jurisdiction to explain the lack of national-level actions taken to ensure compliance with c.15.9(b) and to amend the VASP definition. Considering that the EU Regulation was not yet applicable at the time of adoption of the follow-up report and the lack of measures adopted in interim, the

[20] According to Article 2(16) of the Regulation, those would include: providing custody and administration of crypto-assets on behalf of clients; operation of a trading platform for crypto-assets; exchange of crypto-assets for funds or other crypto-assets; execution of orders for crypto-assets on behalf of clients; placing of crypto-assets; reception and transmission of orders for crypto-assets on behalf of clients; providing advice on crypto-assets; providing portfolio management on crypto-assets; and providing transfer services for crypto-assets on behalf of clients.

report concluded that criterion c.15.9(b) was not met and that the VASP definition was not yet in line with that of the FATF Glossary.

9. Immediate Outcome 10: Recommendation 6

9.1. Introduction

198. This section covers the analysis of R.6 and IO.10 in the EU-MONEYVAL evaluations. It is based on AT's findings drawn from the evaluations of the various elements regarding R.6 and IO.10, indicating the instruments and mechanisms for fulfilling the standards. The following part of the report describes the most important and frequently occurring instruments and related mechanisms in the MERs, but this does not imply that they are exhaustive.

199. This part of the report analyses MERs describing supranational mechanisms that deal with targeted financial sanctions. Since reliance solely on the EU mechanism was not sufficient to ensure full compliance with FATF requirements, ATs in parallel evaluated national solutions that complemented the EU ones. However, national mechanisms are not examined in this section.

9.2. EU Legal Instruments

EU Legal Instruments on specific restrictive measures

Council Regulation (EU) No 753/2011 of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan[21]

Council Decision 2011/486/CFSP of 1 August 2011 concerning restrictive measures directed against certain individuals, groups, undertakings and entities in view of the situation in Afghanistan[22]

Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the ISIL (Da'esh) and Al-Qaida organisations (and successors)[23]

Council Decision (CFSP) 2016/1693 of 20 September 2016 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP[24]

Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism[25]

Council Common Position of 27 December 2001 on the application of specific measures to combat terrorism (2001/931/CFSP)[26]

Council Regulation (EU) 2016/1686 of 20 September 2016 imposing additional restrictive measures directed against ISIL (Da'esh) and Al-Qaeda and natural and legal persons, entities or bodies associated with them[27]

Compliance with Recommendation 6

200. Criterion 6.1(a) — Targeted Financial Sanctions pursuant to United Nations Security Council resolutions (UNSCRs) 1267 (1999) and 1988 (1999) on Afghanistan are implemented in the European Union through Council Regulation (EU) No 753/2011 and Council Decision

[21] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011R0753-20220413
[22] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02011D0486-20220205
[23] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02002R0881-20240119
[24] https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32016D1693
[25] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02001R2580-20220413
[26] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02001E0931-20240116
[27] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016R1686-20240116

2011/486/CFSP. While UNSCR 1267 and 1989 (2011) on Al Qaida are implemented through Council Regulation (EC) No 881/2002 (and its successors) and Council Decision 2016/1693/CFSP (repealing Common Position 2002/402/CFSP). Additionally, the UNSCR 1373 (2001) is implemented in the EU legal framework by the Council Regulation (EC) No 2580/2001 and the EU Council Common Position (CP) 2001/931/CFSP.

201. Incorporation of the UNSCRs into the EU legal order takes place through the mechanism of adoption of regulations and decisions by the Council of the European Union, and thus these EU instruments have direct legal effect in all EU member states. At the Union level, designations under the United Nations Security Council 1267/1989 and 1988 sanctions regimes are implemented through amendments to the relevant EU regulations.

202. Criterion 6.1(b) — For instance, Poland's MER stated that the categories of subjects and the criteria for designations are subject to the Council Decision (CFSP) 2016/1693.

203. Criterion 6.2(a) – Pursuant to Council Regulation (EC) No 2580/2001 and EU Council Common Position (CP) 2001/931/CFSP, the Council of the EU (through the Council's Working Party on the Application of Specific Measures to Combat Terrorism (COMET WP)) is responsible for deciding on the designation of persons or entities meeting the criteria consistent with the designation criteria set forth in UNSCR 1373. The Council of the EU includes on the list persons, groups or entities on the basis of proposals submitted by the EU member states or the High Representative for Foreign Affairs and Security Policy on the basis of decision(s) by a third state's competent authority and reviewed by the COMET WP.

204. The analysed MERs assessed the national solutions dealing with EU internals/nationals (persons, groups and entities having their roots, main activities, and objectives with the EU), since EU listing decisions drawn up on the basis of precise information from a competent authority (judicial authority or equivalent) of EU member states or third states do not include them. Hence, they can only be subject to enhanced measures related to police and judicial cooperation in criminal matters. As an example, Cyprus' MER mentioned the remit of the Common Foreign and Security Policy: *"At national level, if accounts are held by persons listed in the annex of the relevant EU Regulation that do not fall under the competence of the Common Foreign and Security Policy of the EU (EU internals), Cyprus can freeze these accounts on the basis of Sec. 16B of the Suppression of Terrorism Law"* (p. 203)[28].

205. Criterion 6.2(b) – There were divergences in the approach toward this criterion across the various reports. Particularly interesting is that in Latvia, Lithuania and Malta MERs, the ATs did not state that the mechanism at EU level for the identification of targets for designation was in line with UNSCR 1373, while in others, ATs mentioned that at the EU level, identification of designation targets is covered by Common Position (CP) 2001/931/CFSP (Art. 1(2) and (4)) and

[28] During the consultation of this report, the European Commission clarified this determination, by adding that nothing prevents the listing under the EU CT sanctions regimes of EU nationals, and in practice, a number of EU nationals are already designated. Moreover, EU internals refer to a list of terrorists involved in '*domestic*' terrorism, chiefly ex basque ETA, they were listed under the EU Council Common Position (CP) 2001/931/CFSP with the limitation that only the police and judicial cooperation applied to them (not the assets freeze and prohibition from making funds and economic resources available). If the account holders are designated in the EU regulations, the relevant operators (i.e. banks) apply the directly applicable regulation and have to freeze the accounts (whatever the holder is, national/internal, etc. since what matters is that he or she is actually designated). From the time they have been designated, this is under a common foreign and security policy (CFSP) rationale and there is no further national leeway. What remains possible in this case (as provided in the Cyprus example) is to list under its domestic regime persons that have not been designated at the EU level, for instance for terrorist activities.

that the COMET WP applies designation criteria consistent with the designation criteria set forth in Common Position 2001/931.

Examples of assessments in c.6.2(b)

Latvia MER (2018) - "There is no explicitly defined mechanism for the identification of targets for designation in line with UNSCR 1373". (p. 147)

Estonia MER (2022) - "At the EU level, the competent authority of the EU Member State submits a proposal for listing (the MFA for Estonia). The COMET WP prepares and makes recommendations for designations. The EU Council applies designation criteria set in the CP 2001/931/CFSP (Art. 1(2) and (4)), and EC Regulation 2580/2001 (Art. 2(3))". (p. 234-235)

Hungary MER (2016) - "At European level, identification of targets for designation is handled by the EU Common Position 2001/931 /CFSP. EU Council considers submissions from the competent authorities of the Member states, third States and designations made by the UNSC". (p. 149)

Poland MER (2021) - "The categories of subjects and the criteria for designations are regulated both at the EU level (Decision 1693/2016/CFSP) and in national legislation (AML/CFT Act). The criteria for designation are in line with the UNSCR". (p. 235)

206. Criterion 6.2(c) – Estonia's MER indicated that under this criterion "*At the EU level, requests for designations are received and examined by the COMET WP, which evaluates and verifies information, including the reasonable basis for request, to determine whether it meets the criteria set forth in Common Position (CP) 2001/931/CFSP. No clear time limit has been set for the procedural steps to be accomplished before the COMET WP circulates the proposal to delegations*" (p. 235). The EEAS or Member States can put forward a justified request to shorten some deadlines in the EU listing procedure. It's for instance mentioned in the Estonia MER, paragraph 99: "*Once circulated, delegations are given 15 days, which in exceptional instances can be further shortened (doc. 14612/1/16 REV 1 on the establishment of COMET WP, ANNEX II Art. 9-10)*" (p. 235). It is worth noting that all EU member governments are represented at the COMET WP.

207. Criterion 6.2(d) – For this requirement as in c.6.2(c), reports indicated that the COMET WP at the Council of the EU examines and evaluates the information to assess whether the request is substantiated enough and meets the designation criteria set out in Common Position (CP) 2001/931/CFSP. It then makes recommendations, and the Council of the EU adopts the decision, based on reliable and credible evidence, without condition upon the existence of a criminal proceeding pursuant to Common Position (CP) 2001/931/CFSP. This was referred to in some MERs as the application of the standard of proof of "reasonable basis". Just as for c.6.2(c), it was mentioned in some reports that no clear time limit has been set for the WP's review.

208. Criterion 6.2(e) – Some MERs stated that there is no specific mechanism at the EU level that allows for requesting non-EU member states to give effect to the EU restrictive measures, while others gave examples of EU practical solutions in that regard.

Examples of EU mechanisms in c.6.2(e)

Czechia MER (2018) – "At the European level, there is no specific mechanism that would allow for requesting non-EU member countries to implement the EU list. All EU designations must have sufficient particulars and substantiated to permit effective identification of the person to be designated, thus facilitating the exculpation of those bearing the same or similar names (Art. 1(5) of 2001/931/CFSP)". (p. 168)

Estonia MER (2022) – "At the EU level, there is no specific mechanism that would allow for requesting non-EU member states to implement the EU restrictive measures. Within the scope of the approximation procedure countries aspiring to join the EU are proposed to be invited to align themselves with the EU Council Decisions". (p. 235)

209. Criterion 6.3(a) — At the EU framework, Art. 8 of Council Regulation (EC) No 881/2002; Art. 9 of Council Regulation (EU) No 753/2011 as well as Art. 8 of Council Regulation (EC) No 2580/2001 and Art. 4 of EU Council Common Position (CP) 2001/931/CFSP) state, inter alia, that member states shall immediately inform each other of the measures taken under relevant Regulation and shall supply each other with relevant information at their disposal in connection with relevant Regulation.

210. Criterion 6.3(b) – Under this criterion, MERs recalled the ex parte measures, which means that designations at EU level take place without prior notice to the person or entity identified according to the Council Regulation (EC) No 881/2002 (Art. 7a(1)). In this regard, some MERs also indicated the preamble (5) of Council Regulation (EU) No 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaeda network and the Taliban[29], and Council Decision (CFSP) 2016/1693 of 20 September 2016 concerning restrictive measures against ISIL (Da'esh) and Al-Qaeda and persons, groups, undertakings and entities associated with them and repealing Common Position 2002/402/CFSP (Art. 5(2) and (3)).

211. The reports also gave the example of the Court of Justice of the European Union's exception to the general rule that notice must be given before the decision is taken in order not to compromise the effect of the designation. At the same time, the MERs indicated that Council Decision 2011/486/CFSP; Council Regulation (EU) No 753/2011; and Common Position (CP) 2001/931/CFSP do not address the issue of ex parte proceedings.

212. Criterion 6.4 – The MERs indicated that the implementation of targeted financial sanctions under UNSCRs 1267/1989 and 1988 regimes into the EU legal framework does not occur without delay (ideally within hours) as required by Recommendation 6. They explained that this delay is related to the European Commission's consultation procedure between its departments and the translation of the designations into all EU official languages.

213. At the same time, some of the reports mentioned that the situation differs for UNSCR 1373. In this case, the implementation of targeted financial sanctions takes place without delay, as Council Regulation (EC) No 2580/2001 is immediately applicable in all EU member states once the decision to freeze has been taken.

214. According to the AT's assessment, even though the European Commission has been trying to overcome the delay by introducing expedited procedure under Council Regulation (EC) No. 881/2002 (there was a reference to the Commission Implementing Regulation (EU) 2016/307 of 3 March 2016 amending for the 243rd time Council Regulation (EC) No. 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al-Qaeda network[30]), the time gap between the date of designation at the UN level and its transposition at the EU level still exists. Therefore, ATs evaluated how EU-MONEYVAL member states have been mitigating the gap through their national mechanisms and criticised the delays in transposing UN designations. See also the measures overcoming the delay analysed under the section on R.7 and IO.11.

[29] https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex:32009R1286
[30] https://eur-lex.europa.eu/eli/reg_impl/2016/307/oj

215. Criterion 6.5(a) – In relation to UNSCRs 1988 and 1267/1989 there was a reference in the analysed MERs to the Council Regulation (EC) No 881/2002 (Art. 2(1)) and Council Regulation (EU) No 753/2011 (Art. 3), pursuant to which all funds and economic resources belonging to a natural or legal person or entity designated on the European list shall be frozen. As in c.6.4, certain MERs explained that delays in transposition can result in de facto prior notice to the persons or entities concerned.

216. It was added that in relation to UNSCR 1373, the freezing obligation results immediately and automatically from the coming into force of the relevant EU regulation, and without notification to designated individuals and entities as regards Art. 2(1a) of Council Regulation (EC) No 2580/2001).

217. Moreover, listed EU internals/nationals are subject only to enhanced measures related to police and judicial cooperation in criminal matters (Common Position (CP) 2001/931/CFSP footnote 1 of Annex 1), but not to freezing measures.

218. Criterion 6.5(b) – Freezing obligations, as laid down in the EU Regulations, extend to all funds and economic resources, as defined in R.6, including interest, dividends or other income on or value accruing from or generated by assets belonging to, owned, held or controlled directly or indirectly by the designated person or entity or a third party acting on their behalf or at their direction (Council Regulation (EC) No 881/2002 (Art. 1(1) and 2(1)) – for UNSCR 1267/1989; and Council Decision 2011/486/CFSP (Art. 4(1)) and Council Regulation (EU) No 753/2011 (Art. 1(a) and Art. 3(1)) – cumulatively for UNSCR 1988). However, there is no explicit reference in the primary legislation to assets owned jointly, it is addressed in follow-up guidance (EU Best Practices for the implementation of restrictive measures, paragraphs 34-35).

219. With regard to UNSCR 1373, the freezing obligation applies to all funds, other financial assets, and economic resources belonging to, or owned or held by, a natural or legal person, group or entity as stipulated in Article 2(1(a)) of the Council Regulation (EC) No 2580/2001. This doesn't apply directly to the freezing of funds or other assets controlled by, indirectly or jointly owned by, or derived from assets owned by, or owned by a person acting on behalf of, or at the direction of a designated person or entity. However, inter alia, Estonia's MER (p. 238) explained that this shortcoming is largely mitigated by the Council of the EU's ability to designate any legal person or entity controlled by, or any natural or legal person acting on behalf of, a designated person or entity as laid down in Art. 2(3) (iii) and (iv)) of Council Regulation (EC) No 2580/2001.

220. The obligation to freeze the funds or assets of persons and entities acting on behalf of, or at the direction of designated persons or entities is covered by the notion of 'control' as stipulated in Council Regulation (EC) No 881/2002 (Art. 2) and Council Regulation (EU) No 753/2011 (Art. 3). The reports clarified that by Council Decision (CFSP) 2016/1693 and Council Regulation (EU) 2016/1686, compliance with FATF requirements in this regard is assured.

221. ATs explained that despite the lack of apparent referral to jointly owned assets, this issue is clarified by the EU Best Practices for the implementation of restrictive measures (paragraph 34) and Sanctions Guidelines of the Council of the EU (paragraph 55a), descriptions of which can be found below in section 1.3.

222. Criterion 6.5(c) – The AT determined that the FATF requirements under this criterion with regard to UNSCR 1267/1989 are implemented at the EU level cumulatively through the provisions of the Council Decision 2016/1693/CFSP (Art. 3(2, 5)) and Council Regulation (EC) No 881/2002 (Art. 2(2-2a), Art. 2a and Art. 11), in a way that no funds or economic resources shall be made available, directly or indirectly, to, or for the benefit of, designated natural or legal persons, entities, bodies or groups owned or controlled directly or indirectly and acting on their behalf or

under their direction. Thus, this prohibition applies to EU nationals and all other persons or entities present in the EU and it is waived when authorised or notified. Moreover, the UNSCR 1988 requirements are implemented cumulatively through the Council Decision 2011/486/CFSP (Art. 4(2 and 3) and Council Regulation (EU) No 753/2011 (Art. 3(2) and Art. 5) via prohibitions and derogations laid down therein.

223. With regard to UNSCR 1373, the prohibitions and derogations are implemented through Council Regulation (EC) No 2580/2001 (Art. 2(1(b), Art. 6 and Art. 10). And although there is no apparent referral to the prohibitions with respect to funds or other assets controlled by, or indirectly, or jointly owned by, or derived from assets owned by, or owned by a person acting on behalf of, or at the direction of a designated person or entity, the ATs explained that this deficiency is substantially mitigated by the Art. 2(3) (iii-iv) of the Council Regulation (EC) No 2580/2001, by empowering the Council of the EU to designate any legal person or entity controlled by, or any natural or legal person acting on behalf of, a designated person or entity.

224. Furthermore, the AT's analysis explained that, despite the lack of apparent referral to jointly owned assets in these three cases, this issue is clarified by the EU Best Practices for the implementation of restrictive measures (paragraph 34) and Sanctions Guidelines of the Council of the EU (paragraph 55a), descriptions of which can be found below in the section 1.3.

225. Criterion 6.5(e) – According to Council Regulation (EC) No 881/2002 (Art. 5(1)), Council Regulation (EC) No 2580/2001 (Art. 4), and EC Regulation 753/2011 (Art. 8) natural and legal persons are required to provide immediately any information all information that would facilitate compliance with the relevant Regulation such as information about accounts and amounts frozen, to the competent authorities of the member states where they are resident or located, and, directly or through those competent authorities, to the European Commission. Some MERs added that this requirement includes Financial Institutions and Designated Non-Financial Businesses or Professions.

226. Criterion 6.5(f) – Council Regulation (EC) No 881/2002 (Art. 6) and EC Regulation 753/2011 (Art. 7(1)) ensure the protection of third parties acting in good faith, in a way that the freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with the Regulation, shall not give rise to liability of any kind on the part of the natural or legal person, entity or body implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen, or not made available, as a result of negligence. The MERs clarified that there are no similar provisions in the Council Regulation (EC) No 2580/2001.

227. Criterion 6.6(b) – In relation to UNSCR 1373, the EU list shall be reviewed at regular intervals and at least once every 6 months, therefore de-listing at the EU level is immediately effective in all EU member states and may occur after a mandatory 6-monthly review or ad hoc (Art. 1(6), Art. 6 and Art. 7 of Council Common Position (CP) 2001/931/CFSP; Art. 11(2) of Council Regulation (EC) No 2580/2001). In the framework of Council Regulation (EC) No 2580/2001, modifications to the list are self-executing and directly applicable in all member states.

228. The Slovenian MER provided that "*The EU WP revises the list of EU-level designations pursuant to UNSCR 1373 at regular intervals to examine whether grounds remain for keeping a subject on the list (Art. 6 CP 931/2002). Independently of this review, listed subjects, a member state or the third state which had originally proposed the listing in question can make a request for de-listing at any time. The General Secretariat of the Council acts as a mailbox for de-listing requests, and requests are discussed in the CP 931 WP. Amendments to Regulation 2580/2001 are immediately effective in all EU member states. The Slovene FRM Guidelines refer to available guidance at EU level*

and indicate that, pursuant to EU legislation, requests for de-listing should be submitted to the EU Council" (p. 152).

229. Criterion 6.6(d) and (e) – For designations under UNSCRs 1267/1989 and 1988, there are procedures at the EU level that assure de-listing names, unfreezing funds and reviews of designation decisions by the Council of the EU pursuant to Art. 11 of Council Regulation (EU) No 753/2011; and Art. 7a and Art. 7e of Council Regulation (EC) No 881/2002. The designated persons and entities are informed of the listing, its reasons and legal consequences, their rights of due process and the availability of de-listing procedures including the UN Office of the ombudsperson for UNSCR 1267/1989 designations or the UN Focal Point mechanism for UNSCR 1988 designations.

230. Criterion 6.6(f) – The MERs alluded here, inter alia, to the Council Regulation (EC) No 881/2002, Council Regulation (EU) No 753/2011 and Council Regulation (EC) No 2580/2001 according to which upon verification that the person or entity involved is not designated, the funds or assets must be unfrozen.

231. Criterion 6.6(g) – At the EU level, according to Art. 13 of Council Regulation (EC) No 881/2002; Art. 15 of Council Regulation (EU) No 753/2011; Art. 11 of Council Regulation (EC) No 2580/2001, legal acts on delisting are published in the Official Journal of the European Union, and information on the de-listings is included in the Financial Sanctions Database.

232. Criterion 6.7 – At the EU level there are procedures in place to authorise access to frozen funds or other assets, including virtual assets, which have been determined to be necessary for basic expenses, for the payment of certain types of expenses, or for extraordinary expenses (Art. 2a of Council Regulation (EC) No 881/2002; Art. 5 of Council Regulation (EU) No 753/2011, and Art. 5–6 of Council Regulation (EC) No 2580/2001). Moreover, the competent authority to decide on such release of funds is included in the Annexes to Council Regulation (EU) No 753/2011 and Council Regulation (EC) No 2580/2001.

9.3. Other EU Legal Instruments and mechanisms

- **EU Best Practices for the effective implementation of restrictive measures**[31]
- **Guidelines on implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy**[32]

233. The majority of MERs referred to the EU Best Practices for the effective implementation of restrictive measures (hereinafter the EU Best Practices) in their assessments of several criteria regarding Recommendation 6. Through non-binding EU Best Practices, the Council of the EU provides recommendations of a general nature for the effective implementation of restrictive measures, making them publicly available and revising them periodically. This document highlights that it should not be read as recommending any action which would be incompatible with applicable Union or national laws, including those concerning data protection. The reviewed MERs also alluded to the Guidelines on the implementation and evaluation of restrictive measures (sanctions) in the framework of the EU Common Foreign and Security Policy (hereafter the EU Sanctions Guidelines).

234. Some of the MERs analysed referred to the EU Best Practices (paragraph 34) and EU Council Sanctions Guidelines (paragraph 55a) when assessing the issue related to assets owned jointly, affected by the lack of provisions in the regulations stipulated in c. 6.5(b) and (c).

[31] https://data.consilium.europa.eu/doc/document/ST-10572-2022-INIT/en/pdf
[32] https://data.consilium.europa.eu/doc/document/ST-5664-2018-INIT/en/pdf

235. In line with paragraph 34 of the EU Best Practices, "*The freezing covers all funds and economic resources belonging to or owned by designated persons and entities, and also to those held or controlled by such persons and entities. Holding or controlling should be construed as comprising all situations where, without having a title of ownership, a designated person or entity is able lawfully to dispose of or transfer funds or economic resources he, she or it does not own, without any need for prior approval by the legal owner. A designated person is considered as holding or controlling funds or economic resources, inter alia, if he or she:*

(a) has banknotes or debt certificates issued to bearer,

(b) has movable goods on his or her premises which he or she owns jointly with a non-designated person or entity,

(c) has received full or similar powers to represent the owner, allowing him or her to order the transfer of funds he or she does not own (e.g. for the purpose of managing a specific bank account), or

(d) is a parent or guardian administering a bank account of a minor in accordance with the applicable national law.

The notions of ownership and control in the context of the prohibition on making funds and economic resources available are developed in section B part VIII".

236. Paragraph 55a of the Sanctions Guidelines reads as follows: *"The criterion to be taken into account when assessing whether a legal person or entity is owned by another person or entity is the possession of more than 50% of the proprietary rights of an entity or having majority interest in it. If this criterion is satisfied, it is considered that the legal person or entity is owned by another person or entity".*

237. The de-listing process, as described in the EU Best Practices (paragraphs 23-24) and the EU Sanction Guidelines (Annex I, paragraphs 18-20 - Processing requests for de-listings), was cited in the MERs under c.6.6(a). The guidance above has also been used to demonstrate compliance with the c.7.4(a).

238. The process for de-listing pursuant to the EU Best Practices is the following: "*23. On 19 December 2006 the Security Council of the UN adopted resolution 1730 (2006) by which a focal point to receive de-listing requests was established by the Secretary-General within the Secretariat. Petitioners, other than those whose names are inscribed on the Al-Qaida Sanctions List, can submit de-listing requests either through the focal point or through their State of residence or citizenship. Petitioners whose names are inscribed on the Al-Qaida Sanctions List can submit their de-listing requests through the Office of the Ombudsperson. If a person is de-listed from the UN sanctions list, relevant amendments are made to the corresponding legal acts of the EU*".

239. The detailed process for de-listing with regard to EU autonomous sanctions is also provided in the EU Best Practices (paragraphs 18-22) and it was quoted under c.6.6(b) in the analysed reports.

240. Only Latvia referred to the EU Best Practices to comply with c.6.6(d) and (e). In its MER, it was found that "*Latvia refers to the EU Best Practices paper as basis for fulfilling c.6.6(d) and (e). However, the paper is not binding, is not on the MFA sanctions webpage, and does not provide procedures that private or other holders of blocked assets should follow*" (p. 150).

241. In their paragraphs 8 to 17, the EU Best Practices provide guidance concerning mistaken identity, which several ATs invoked in c.6.6(f) as "*publicly known procedures for obtaining assistance for verifying whether persons or entities having the same or similar name as designated*

persons or entities (i.e. a false positive) are inadvertently affected by a freezing mechanism". This was also the case in the analysis of Recommendation 7 (c.7.4(b)) in certain MERs.

242. Moreover, according to paragraph 22 of the EU Sanction Guidelines, "*When adopting autonomous sanctions, the EU should, through outreach, actively seek cooperation and if possible adoption of similar measures by relevant third countries in order to minimize substitution effects and strengthen the impact of restrictive measures. In particular, candidate countries should be systematically invited to align themselves with the measures imposed by the EU […]*", which proves that there is guidance at the EU level to request third countries to give effect to EU targeted financial sanctions.

9.4. Treaty on the Functioning of the European Union (TFEU)[33]

243. All of the ATs in their analyses of c.6.6(c) provided a legal basis for designated persons and entities to challenge relevant Council Regulation, a Commission Implementing Regulation, or a Council Implementing Regulation and CFSP Decision providing for restrictive measures at the EU level, which were adopted in accordance with UN sanctions or autonomously, by commencing proceedings before the Court of Justice of the European Union. It may be possible on the basis of the Treaty on the Functioning of the European Union and its Art. 263(4) for the regulations and Art. 275(2) for the decisions.

244. With regard to the lack of application of freezing obligations under UNSCR 1373 in relation to EU internals/nationals, Hungary's MER under the assessment of Immediate Outcome 10 concluded that although Article 75 of the Treaty on the Functioning of the European Union provides a legal basis for the introduction of such a mechanism, the European Commission has not yet put forward a proposal for a corresponding regulation. Hungary and Czechia reports also cited Article 75, however, in the Lisbon Treaty (2007), as part of the assessment of Recommendation 6.

Article 75 TFEU

"Where necessary to achieve the objectives set out in Article 67, as regards preventing and combating terrorism and related activities, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall define a framework for administrative measures with regard to capital movements and payments, such as the freezing of funds, financial assets or economic gains belonging to, or owned or held by, natural or legal persons, groups or non-State entities.

The Council, on a proposal from the Commission, shall adopt measures to implement the framework referred to in the first paragraph.

The acts referred to in this Article shall include necessary provisions on legal safeguards".

Art. 263(4) TFEU

"Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person or which is of direct and individual concern to them, and against a regulatory act which is of direct concern to them and does not entail implementing measures".

Art. 275(2) TFEU

"However, the Court shall have jurisdiction to monitor compliance with Article 40 of the Treaty on European Union and to rule on proceedings, brought in accordance with the conditions laid

[33] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT

down in the fourth paragraph of Article 263 of this Treaty, reviewing the legality of decisions providing for restrictive measures against natural or legal persons adopted by the Council on the basis of Chapter 2 of Title V of the Treaty on European Union".

Publishing designations

245. EU designations are published in the Official Journal of the EU and on a website (publicly accessible on the EUR-lex website) and included in the consolidated financial sanctions database[34] administered by the European Commission, which is also publicly accessible. This mechanism was mentioned in the analysed MERs under c.6.5(d). As part of the evaluation of Immediate Outcome 10 and 11, an interactive map[35] of countries under UN and EU sanction regimes was also referenced.

246. The European Commission updates the financial sanctions database after UN designations are issued and after the list is published in the Official Journal. The EU also provides the option to subscribe to an RSS feed to be automatically informed of all changes.

247. The EU sanctions database includes UN sanctions that have not yet been implemented by EU regulation with a concrete reference that they are pending.

248. Adding to that, the Lithuanian MER (p. 157) and Poland's MER (p. 237) mentioned that, on the website of the European External Action Service, users may subscribe to an automatic alert notification.

Report from the Commission to the European Parliament and to the Council on the assessment of the risks of money laundering and terrorist financing affecting the internal market and relating to cross-border situations

249. Poland's MER, under Immediate Outcome 10, mentioned that "*Two general TF possible scenarios identified by the European Commission related to the collection and transfer of funds through the NPO for TF purposes are included in the body NRA (the establishment of an NPO in order to "raise funds" and the use of existing NPOs to finance local terrorist activities)*" (p. 116).

Activities of the relevant EU working parties

250. In Hungary's MER (p. 152-153) the assessment of criterion 6.5(d) cites the fact that the Hungarian Permanent Representation to the EU and Permanent Representation to the UN conduct ongoing monitoring of the activities of the relevant EU working groups (The Working Party of Foreign Relations Counsellors – RELEX and other committees and working groups dedicated to financial or property related restrictive measures in the EU framework) and UNSCs, promptly updating the Ministry of Foreign Affairs and Trade and the Ministry for National Economy on the amendments to the sanctions lists.

[34] https://data.europa.eu/data/datasets/consolidated-list-of-persons-groups-and-entities-subject-to-eu-financial-sanctions?locale=en
[35] https://www.sanctionsmap.eu/#/main

10. Immediate Outcome 11: Recommendation 7

10.1. Introduction

251. This section analyses the evaluation of R.7 and IO.11 in the MONEYVAL evaluations of the 13 EU member states.

10.2. EU Legal Instruments

EU Legal Instruments on specific restrictive measures

- Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Regulation (EC) No 329/2007[36]
- Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2013/183/CFSP [37]
- Council Regulation (EU) 2015/1861 of 18 October 2015 amending Regulation (EU) No 267/2012 concerning restrictive measures against Iran[38]
- Council Implementing Regulation (EU) 2015/1862 of 18 October 2015 implementing Regulation (EU) No 267/2012 concerning restrictive measures against Iran[39]
- Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran and repealing Regulation (EU) No 961/2010[40]
- Council Decision 2012/35/CFSP of 23 January 2012 amending Decision 2010/413/CFSP concerning restrictive measures against Iran[41]
- Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran and repealing Common Position 2007/140/CFSP[42]
- Council Decision 2013/183/CFSP of 22 April 2013 concerning restrictive measures against the Democratic People's Republic of Korea and repealing Decision 2010/800/CFSP (no longer in force)
- Council Implementing Regulation (EU) No 54/2012 of 23 January 2012 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (no longer in force)
- Council Implementing Regulation (EU) No 1245/2011 of 1 December 2011 implementing Regulation (EU) No 961/2010 on restrictive measures against Iran (no longer in force)
- Council Regulation (EU) No 961/2010 of 25 October 2010 on restrictive measures against Iran and repealing Regulation (EC) No 423/2007 (no longer in force)
- Council Regulation (EC) No 329/2007 of 27 March 2007 concerning restrictive measures against the Democratic People's Republic of Korea (no longer in force)

Compliance with Recommendation 7

252. At the EU level, UNSCR 1718 and successor Resolutions on the Democratic People's Republic of Korea (DPRK) are transposed into the EU legal framework based on Council Decision

[36] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02017R1509-20231115
[37] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02016D0849-20231115
[38] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015R1861
[39] https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:32015R1862
[40] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0267-20231018
[41] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012D0035-20120123
[42] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010D0413

(CFSP) 2016/849 and Council Regulation (EU) 2017/1509, both as amended. UNSCR 2231 on Iran is transposed into the EU legal framework through Council Regulation (EU) No 267/2012 as amended by Council Regulation (EU) 2015/1861 and 1862. These Regulations have direct legal effect from the date of their publication in the Official Journal of the European Union. The implementation of the targeted financial sanctions defined in the UNSCRs relating to combatting proliferation financing is also set out in Council Decision 2010/413/CFSP and Council Decision 2012/35/CFSP.

253. Criterion 7.1 – The MERs confirmed that at the EU level, implementation of Targeted Financial Sanctions in line with UNSCRs 1718 and 2231, does not yet occur without delay and that there is a delay between the date of the UN designation and its transposition into the EU framework.

Examples of overcoming the transposition delay

Lithuania MER (2018) – "The Lithuanian authorities do not contest the delays caused by the transposition system in place, although they argue that in practice, the risks are to a certain extent mitigated, as the EU applies sanctions to a larger number of entities that are not designated by the UN. In addition, they put forward the view that in practice service providers implement the UN TFS related to PF immediately as designations are made, before EU transposition. This was confirmed by most of the reporting entities met on-site." (p. 93)

Poland MER (2021) – "The EU mechanisms do not suffer from technical problems in relation to the time of their transposition when it concerns Iran. Individuals and entities had already been listed by the EU when their designation by the UN was made. There are additional mitigating measures applied by the EU requiring prior authorisation of transactions with designated Iranian entities. This allows the authorities to determine if the transfer of funds for which the authorisation is requested would be permissible according to the EU Regulations." (p. 122)

254. It was also noted that after the adoption of UNSCR 2231 (2015), which terminated UNSCR 1737 and its successor resolutions, a number of targeted restrictive measures contained in EU Regulation No 267/2012 have been lifted.

255. Criterion 7.2 – The Council Regulation (EU) 2017/1509 and Council Regulation (EU) No 267/2012 provide that all funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in relevant annexes (XIII, XV, XVI and XVII) should be frozen. This obligation is effective immediately upon approval of the regulation and publishing of the designation in the Official Journal of the European Union. Poland's MER added the information that "*With respect to the moment of entry into force of the UNSCRs, the obligation to freeze takes place after a prior confirmation at the EU level*" (p. 239) (Art. 23, Art. 23(a) and Art. 49 of Council Regulation (EU) No 267/2012; Art. 1 and Art. 34 of Council Regulation (EU) 2017/1509).

256. In order to comply with this criterion, the MERs provided that at the EU level the obligation to freeze all types of funds or other assets, as required by FATF Standards, is covered. Poland's MER mentioned that "*Annexes (XIII, XV, XVI and XVII) to Regulation 1509/2017 cover persons and entities designated by the Sanctions Committee or the UNSC as well as additional persons and entities autonomously indicated by the EU. Also, EU Regulation 267/2012 lays down the obligation to freeze all funds and economic resources belonging to, owned, held or controlled by the persons, entities and bodies listed in Annex XIII and Annex XIV to the Regulation. Annex XIII to Regulation 267/2012 includes the natural and legal persons, entities and bodies designated by the UN Security Council in accordance with paragraph 6(c) of Annex B to UNSCR 2231 (2015)*" (p. 239).

257. While, inter alia, Romania's MER elaborated on that, as follows: "*At the EU level, the freezing obligation extends to all funds and economic resources belonging to, owned, held or controlled by a designated person or entity (EC Regulation 2017/1509, Art.34; EC Regulation 267/2002, Art.23 and 23a). This includes funds or other assets derived or generated from such funds (EC Regulation 2017/1509, Art. 2(12(d)), EC Regulation 267/2002, Art.1(l(iv))). However, (i) there is no explicit reference to funds or assets owned jointly, but the non-binding EU Best Practices for the implementation of restrictive measures (8519/18, para. 34) clarify this matter; (ii) there is no reference to funds or assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities, but (a) these situations are covered by the requirement to freeze funds or assets "controlled by" a designated person or entity and (b) by requiring the designation of any person or entity acting on behalf or at the direction of designated persons or entities (EC Regulation 2017/1509, Art.34(5); EC Regulation 267/2012, Art.23(2(a, c, e)) and 23a (2(c))*" (p. 235).

258. According to the Bulgarian MER (p. 249), the freezing obligation under the EU framework extends to all types of funds and assets as required by Recommendation 7, including virtual assets.

259. Pursuant to the analysed reports, at the EU level, in relation to UNSCRs 1718 and 2231, no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of any person or entity designated by the EU (Art. 1 and Art. 34(3) of Council Regulation (EU) 2017/1509; Art. 23(3), Art. 23a(3) and Art. 49 of Council Regulation (EU) No 267/2012).

260. The MERs proved that the reporting obligation under the EU framework (Art. 50 of Council Regulation (EU) 2017/1509 and Art. 40 of Council Regulation (EU) No 267/2012) is covered by the requirement to "*provide immediately any information which would facilitate compliance with […] Regulation […]*", including information about the frozen accounts and amounts.

261. The rights of bona fide third parties are protected at the EU-level framework by Art. 42 of the Council Regulation (EU) No 267/2012 and Art. 54 of the Council Regulation (EU) 2017/1509.

262. Criterion 7.3 – The EU regime that was mentioned under this criterion requires member states to take all necessary measures to ensure that the EU regulations are implemented and to adopt and administer a system of effective, proportionate, and dissuasive sanctions in line with EU regulations (Art. 55(1) of Council Regulation (EU) 2017/1509 and Art. 47(1) of Council Regulation (EU) No 267/2012).

263. Criterion 7.4 – Under this criterion in Poland's MER, it was stated that "*Article 47 of the EU Regulation 1509/2017 provides that where the Security Council or the Sanctions Committee lists a natural or legal person, entity or body, the Council shall include such natural or legal person, entity or body in Annex XIII and XIV. Where the United Nations decides to de-list a natural or legal person, entity or body, or to amend the identifying data of a listed natural or legal person, entity or body, the Council shall amend Annexes XIII and XIV accordingly. In accordance with Article 47a of the EU Regulation 1509/2017, the Annexes are reviewed at regular intervals and at least every 12 months and include the grounds for the listing of persons, entities and bodies concerned*" (p. 240).

264. There are procedures at the EU level under Council Regulation (EU) No 267/2012 (Art. 35-36) and Council Regulation (EU) No 267/2012 (Art. 24 and Art. 26-28), which provide for authorising access to funds or other assets if member states' competent authorities have determined that the exemption conditions of UNSCRs 1718 and 2231 are met.

265. According to Bulgaria's MER; "*The definition of Funds and other assets according to the Council Regulation (EU) No 267/2012 is broad enough and covers also virtual assets*" (p. 250).

266. At the EU level, delisting and unfreezing decisions are published in the Official Journal of the EU and information on the de-listings is included in the Financial Sanctions Database. Therefore, once published, the measure is enforced, thus immediate communication of EU designations is ensured.

267. Criterion 7.5 – Poland's MER confirmed that at the EU level, Art. 34 of the Council Regulation (EU) 2017/1509 and Art. 29 (1) of the Council Regulation (EU) No 267/2012 "*do not prevent financial or credit institutions in the Union from crediting frozen accounts where they receive funds transferred by third parties to the account of a listed natural or legal person, entity or body, provided that any additions to such accounts will also be frozen. The financial or credit institution shall notify the competent authorities about such transactions without delay*" (p. 241).

268. The Commission indicated during the consultation of this project that all EU regulations on sanctions have a definition of "funds" which include virtual assets, because "*'funds' means financial assets and benefits of every kind, including but not limited to: (...)".* Therefore crypto-assets are covered. However, it is worth noting that, for example, in Bulgaria MER, the evaluators reached a different conclusion, i.e. "*Since there is no definition of interest or other earnings under EU regulations, the AT cannot conclude that virtual assets would precisely be covered*" (p. 250). While other MERs are silent in this regard.

269. Making payments under a contract entered into, prior to designation, is possible under the necessary conditions to be found in Art. 25 of Council Regulation (EU) 2015/1861, which amends Council Regulation (EU) No 267/2012.

10.3. Other EU Legal Instruments and mechanisms

- Council Regulation (EC) No 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (Recast)[43]
- New Computerised Transit System (NCTS)
- EU online systems COARM and Dual-Use e-System (DUeS)
- The Common EU Trade Policy[44] and Security and Defence Policy[45]

270. Two MERs gave as an example the EU export control system in their analysis under Immediate Outcome 11.

Examples of customs instruments

Lithuania MER (2018) – "The Customs Department is responsible for the control of strategic and dual-use goods. Its control system is based on a customs' declaration system. The Customs Department applies risk controls including for dual use goods (See Box 11.1). It carries out risk analysis and audit-based controls, along with randomly selected declarations. Being a member of the EU, Lithuania applies all European customs requirements. It requires all economic operators to provide pre-arrival and pre-departure information in relation to all the goods brought into or out of the territory. Pre-arrival and pre-departure information is submitted electronically via a new online system (Computerised Transit System). A strategy for the implementation of the common EU trade policy and security of the whole trade supply chain has been put in place by the Customs Department for the period 2016-2020"(p. 94).

[43] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009R0428-20211007
[44] https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/making-trade-policy_en
[45] https://www.eeas.europa.eu/eeas/common-security-and-defence-policy_en

Lithuania MER (2018) – *Prevention of dual-use goods smuggling*

Case 1

In 2016 the Vilnius regional court in an administrative case under the Ref. No. A2.11-11823-929/2016, related to the unlicensed export of "Hydrofluoric acid", imposed a fine of EUR 800 on a Lithuanian exporter. The case was identified during risk profile validity controls in the national electronic Risk Management and Control system aimed at establishing the customs controls on export declarations in cases when chemical substances are under the Combined Nomenclature code (CN) subheading 2811 11 10. The identified declarations were lodged for the export procedure by one Lithuanian exporter to Belarus in 2016. In all these cases, the said substance, Hydrofluoric acid, was declared under CN heading 2811 11 10. No licence for the export of dual-use was presented to Customs, but a virtual document under the code Y901. The latter raised suspicions that Art. 3 of Council Regulation No. 428/2009 (5 May 2009) on the export of dual-use goods had been violated. The Lithuanian authorities conducted an investigation in order to identify whether the exported Hydrofluoric acid is included in Annex I of the Council Regulation (dual-use goods exceptions). On the basis of the investigation result, an administrative case was initiated, and the representative of the company was found guilty under the relevant articles of the Law on Administrative Proceedings and the Law on strategic goods.

Case 2

In 2011, while examining suspicious international trade transactions, customs came across an export declaration submitted to the Lithuanian Customs Point by a consignor registered in another EU Member State. According to the single administrative document, the license request referred to 144 kg of aluminium powder (high-risk explosive precursor chemical) of non-lamellar structure, with CN – 7603 10 00, to be exported to the Russian Federation. Due to the lack of certificates proving its chemical composition and the underlying risk, aluminium powder is classified as a dual-use good (Council Regulation No. 428/2009 of 5 May 2009), therefore customs decided to refuse an export license.

Poland MER (2021) – "The trade in goods and technologies such as military equipment and dual-use goods, including technologies related to WMD, is subject to control by the state. The main role in this area is given to the Department for Trade in Strategic Goods and Technical Safety on behalf of the Ministry of Economic Development, Labor and Technology (minister competent for economy), which licenses international trade in strategic goods, including dual-use goods. The procedure is initiated by filing an application to the minister competent for the economy by the entity wishing to export products present on the control lists (dual-use goods list or military equipment list). Before a license is granted, an EU database (so-called COARM online system – in case of arms or DUES – in case of dual-use goods) is checked for the presence of similar applications denied by the other EU MS within the last three years." (p. 121).

- Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures in view of the situation in Syria[46]
- Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011[47]

271. Under Immediate Outcome 11, Romania's MER indicated measures concerning restrictive measures in view of the situation in Syria.

[46] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02013D0255-20240122
[47] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02012R0036-20240122

Romania MER (2023) – "Despite not having identified funds and resources of designated individuals pursuant to UNSCRs, Romania has had experience in identifying and freezing the funds and resources of designated individuals pursuant to EU sanctions, in the context of the non-proliferation EU restrictive measures regime against Syria (Council Decision 2013/255/CFSP of 31 May 2013 concerning restrictive measures in view of the situation in Syria and Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria and repealing Regulation (EU) No 442/2011). Freezing order by the Fiscal Administration can be found here: https://www.anaf.ro/anaf/internet/ANAF/info_ue/sanctiuni_internationale/ordin_blocare_debloare" (p 120).

EU Best Practices for the effective implementation of restrictive measures

272. As it was described in the section on Recommendation 6, the EU Best Practices were also applied to Recommendation's 7 criteria. For instance, the MER of Estonia referred to paragraph 23 in c.7.4(a), paragraphs 8-17 in c.7.4(b), and in c.7.4(d).

Joint Comprehensive Plan of Action and restrictive measures (JCPOA)[48]

273. The JCPOA agreement ensures that Iran's nuclear programme will be exclusively peaceful. It lays down the timeline and arrangements for the lifting of nuclear-related sanctions against Iran. The UN Security Council endorsed the JCPOA through Resolution 2231 (2015) on 20 July 2015. On 31 July the Council of the EU adopted the legal acts transposing the first of these provisions into EU law.

274. Czechia and Slovenia referred to JCPOA in their reports under Recommendation 7.

Czechia MER (2018) – "As a member of the EU, Czechia applies the EU framework for implementing designations under UN Security Council Resolution 1718 (DPRK) through the Council Regulation No. 2017/1509, Council Decision 2016/849/CFSP). Security Council Resolution 1737 (Iran) is transposed into the EU legal framework through Council Regulation No. 267/2012 and Council Decision 2010/413/CFSP. Council Regulation (EU) 2015/1861 introduces changes to take account of the Joint Comprehensive Plan of Action, which is applied from 16 January 2016. These Regulations have direct force of law from the date of their publication in the Official Journal of the European Union" (p. 172).

Slovenia FUR (2018) – "In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the proliferation financing-related United Nations Security Council Resolutions (UNSCRs) since the FATF standards were issued in February 2012, in particular, the adoption of new UNSCRs. As noted in the MER, Slovenia's PF TFS largely relies on EU regulations for the implementation of R.7. Since the adoption of the MER, Council Regulation 2015/1861/EU came into force, which makes amendments to EU legislation in light of UNSCR 2231's JCPOA" (p. 5).

48

List of Acronyms

AFIS	Anti-Fraud Information System
AML/CFT	Anti-Money Laundering / Countering the Financing of Terrorism
AMLD	EU Anti-Money Laundering Directive
AT	Assessment Team
BO	Beneficial Owner
CARIN	Camden Asset Recovery Inter-Agency Network
CDD	Customer Due Diligence
CFSP	Common Foreign and Security Policy
COMET	Working Party on restrictive measures to combat terrorism
CT	Counter Terrorism
SIENA	Secure Information Exchange Network Application
SIS	Schengen Information System
EAW	European Arrest Warrant
EBA	European Banking Authority
EC	European Community
ECB	European Central Bank
EDD	Enhanced Due Diligence
EEA	European Economic Area
EIO	European Investigation Order
EIOPA	European Insurance and Occupational Pensions Authority
EJN	European Judicial Network
EPPO	European Public Prosecutor's Office
ESAs	European Supervisory Authorities
ESMA	European Securities and Markets Authority
EU	European Union
EUROPOL	European Union Agency for Law Enforcement Cooperation
EUROJUST	European Union Agency for Criminal Justice Cooperation
FATF	Financial Action Task Force
FI	Financial Institution
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Programme
FSRB	FATF-style regional bodies
GDPR	EU General Data Protection Regulation
INTERPOL	International Criminal Police Organization
IO	Immediate Outcome
ISIL	Islamic State of Iraq and the Levant
JCPOA	Joint Comprehensive Plan of Action and restrictive measures
LC	Largely Compliant
LEA	Law Enforcement Agency
MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual Legal Assistance
MVTS	Money & Value Transfer Service
NPO	Non-Profit Organisation
NRA	National Risk Assessment
OCG	Organised Crime Group
PC	Partially Compliant
PF	Proliferation Financing
RBA	Risk-Based Approach
RE	Reporting Entity
RELEX	EU Working Party of Foreign Relations Counsellors
SDD	Simplified Due Diligence

SNRA	Supra-National Risk Assessment
SREP	European Banking Authority Supervisory Review and Evaluation Process
SSM	Single Supervisory Mechanism
STR	Suspicious Transaction Report
TF/FT	Terrorist Financing
TFEU	Treaty on the Functioning of the European Union
TFS	Targeted financial sanctions
UK	United Kingdom
UN	United Nations
UNSCR	United Nations Security Council Resolution
US/USA	United States of America
VASP	Virtual Asset Service Provider
VAT	Value Added Tax

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Anti-money laundering and counter-terrorist financing measures -

Supranationality Analysis

This horizontal study analyses how European Union (EU) supra-national legislation, mechanisms and other initiatives have been considered and weighted in the MONEYVAL 5th mutual evaluation processes. During MONEYVAL's 5th round of mutual evaluations, discussions have often raised the question as to how EU supranational measures should be interpreted and weighted when evaluating EU member states. This horizontal study helps to develop more consistent understanding for the assessment of supranational mechanisms.

Horizontal review