



Technical Analysis of
FATF
Recommendations –
Rerating of Costa
Rica



OCTOBER 2016

Recommendation 1 – Assessing risks and applying a risk-based approach

An ML/FT risk diagnosis (RD) was carried out in Costa Rica. However, it did not include national AML/CFT policies that take into consideration the risks identified. For this reason, the Action Plan of the National Strategy to fight money laundering and the financing of terrorism (hereinafter referred to as National Strategy) was approved by Executive Decree no. 39077-MP-RREE-SP-H, published in the Official Gazette on August 17th, 2015. Said Action Plan was carried out based on the risks identified in the RD-ML/FT. Actions and activities will be implemented in the areas of prevention, intelligence detection, investigation and criminal justice, and coordination.

It has been observed that through the FIU the country has carried out training and directions to increase cash transaction reports (CTR) and suspicious transaction reports (STR) by designated non-financial businesses and professions (DNFBPs), and awareness has been raised among DNFBPs on the findings and the National Strategy Action Plan. Moreover, the National Assembly is currently considering a project aimed at strengthening the regulatory framework of DNFBPs. The shortcomings identified in the MER have been substantially overcome.

Conclusion: Since the approval of the National Strategy, the country has been implementing policies according to the risks identified in the RD ML/FT and the regulatory framework. It is therefore suggested that the rating should be modified from Partially Compliant to **Largely Compliant**.

Recommendation 2 – National cooperation and coordination.

In view of the technical compliance of Recommendation 2, the MER established the non-compliance of two criteria (2.1 and 2.4). As for criterion 2.1, Costa Rica carried out the RD-ML/FT. However, it did not include national AML/CFT policies that take into consideration the risks identified. As a result, the National Strategy Action Plan was approved. Said Action Plan was carried out based on the risks identified in the RD-ML/FT. Actions and activities will be implemented in the areas of prevention, intelligence detection, investigation and criminal justice, and coordination. The Plan was developed under the coordination of the FIU and the articulation of actions, and the joint effort of thirty-four (34) entities of both the State and the private sector. This criterion is, therefore, deemed compliant.

As for criterion 2.4, Costa Rica did not have cooperation and coordination mechanisms in place for the financing of proliferation of weapons of mass destruction (FPWMD). In the development of the National Strategy, an inter-institutional technical commission against money laundering and the financing of terrorism was created, which includes issues related with FPWMD. Mechanisms were, therefore, established to enable coordination and cooperation. In addition, specific FPWMD-related objectives are taken into consideration, including actions in order to raise awareness and provide training on FPWMD. This criterion is, therefore, deemed compliant.

Deliberation and conclusion: Based on the analysis carried out, no outstanding shortcomings are observed for the full compliance of Recommendation 2. It is therefore suggested that the rating should be modified from Partially Compliant to **Compliant**.

Recommendation 3 – Money laundering offence

Costa Rica's MER established that due to the fact that FT offences and migrant smuggling were not appropriately typified in the Costa Rican legislation, criterion 3.2 was not fully complied with, and this was the only outstanding criterion of this Recommendation. In addition, Law no. 9387, passed in 2016, amended Sec. 69 bis of Law no. 8204, which rectifies the shortcomings identified in Recommendation 5, as established in the analysis of said Recommendation. Moreover, Sec. 84 of Law no. 9095 amended Sec. 249¹ of Law no. 8764, and Sec. 249 bis² was passed together with Sec. 175 bis³, added to the Criminal Code. There are, therefore, regulations for migrant smuggling.

Conclusion: Based on the analysis carried out, no outstanding shortcomings are observed for the full compliance of Recommendation 3. It is therefore suggested that the rating should be modified from Largely Compliant to **Compliant**.

¹ **Section 249.-** *Criminalisation of migrant smuggling offence. Any person who conducts or transports people into or out of the country through locations authorized or not authorized by competent immigration authorities, evading established immigration controls or using legal, false or altered information or documents, or not carrying documentation whatsoever, shall be punished with four to eight years' imprisonment.*

The same prison term will be imposed on any person who promotes, promises or facilitates the procurement in any way of such false or altered documents, and on any person who houses, hides or harbours foreigners entering or resident in the country illegally with the aim of promoting the smuggling of migrants.

The prison term will be from six to ten years when:

- 1) *The migrant is a minor, senior and/or disabled person.*
- 2) *The life or health of the migrant is endangered due to the conditions in which the smuggling is carried out, or when the migrant suffers severe physical or mental suffering.*
- 3) *The perpetrator or accomplice is a civil servant.*
- 4) *The smuggling is carried out by an organized group of two people or more.*
- 5) *The person suffers severe health damage.*

² **Section 249 bis.-**

Any person who promotes, plans, coordinates or carries out the smuggling of national migrants towards a second, third or more countries through locations authorized or not authorized by the General Directorate for Migration and Aliens, even when the transportation is carried out through the established legal routes, or using false or altered information or documents, or without documentation, shall be punished with four to eight years' imprisonment.

The same prison term will be imposed on any person who promotes, promises or facilitates the procurement, in any way, of legal, false or altered documents, or harbours legal or illegal financial transactions that affect the patrimony of the affected person or his guarantors, with the aim of promoting the smuggling of national migrants, and on any person that coordinates, facilitates or carries out actions aimed at housing, hiding or harbouring nationals entering or resident in the country legally or illegally in a second, third or more countries, with the purpose of consolidating the smuggling of migrants.

The term of prison will be from six to ten years when:

- 1) *The migrant is a minor.*
- 2) *The life or health of the migrant is endangered due to the conditions in which the smuggling is carried out, or when the migrant suffers severe physical or mental suffering.*
- 3) *The perpetrator or accomplice is a civil servant.*
- 4) *The smuggling is carried out by an organized group of two people or more.*
- 5) *As a consequence of migrant smuggling, the person becomes a victim of human trafficking.*

³ **Section 175 bis.-** *Penalty on owners, lessors, administrators or holders of establishments. The owner, lessor, administrator or holder of an establishment or place that benefits from, or is destined to, migrant smuggling, human trafficking or related activities will be punished with three to five years' imprisonment.*

Recommendation 5 – Terrorist financing offence

According to Costa Rica’s MER, criteria 5.1 and 5.2 were partially complied with, since Law no. 8204 did not include the conducts contemplated in Section 2.b of the Convention against FT, and the criminalisation of FT offence did not include the financing of an individual terrorist. Law no. 9387, passed in 2016, amended Sec. 69 bis of Law no. 8204 in order to overcome the shortcomings identified in the MER:

“Section 69 bis.- Any person who, by any means, directly or indirectly, collects, hides, provides, promotes, facilitates or cooperates in any other form with the collection or delivery of funds, financial products, resources or instruments, or other assets, means or services of any kind, in the country or abroad, with the intention or the knowledge that they will be used or destined, totally or partially, to the financing of the following will be punished with five to fifteen years’ imprisonment:

- a) Terrorist acts, even when these are not perpetrated.*
- b) Organizations or individuals declared as terrorists or having terrorist purposes.*
- c) Any act intended to cause the death of a civilian not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or international organization to do or abstain from doing any act, even if it is not perpetrated.*
- d) Any act intended to cause minor, serious or severe injuries to a civilian not taking active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or international organization to do or abstain from doing any act, even if it is not perpetrated.*
- e) The travel of individuals to a State different from their States of residence or nationality for the purpose of perpetration, planning or preparation of, or participation in, terrorist acts or of providing or receiving of terrorist training, even if the terrorist act is not perpetrated. The conducts sanctioned in this section shall be judged in Costa Rica, in accordance with Section 7 of the Criminal Code.”*

As established in the amendment of Sec. 69 bis, the FT offence extends to the financing of any act intended to cause death or serious bodily injury to a civilian or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population or to compel a Government or international organization to do or abstain from doing any act, even if it is not perpetrated, in accordance with Sec. 2.b of the Convention against FT, included in Subsections “c” and “d”. Criterion 5.1 is, therefore, fully complied with.

Moreover, it extends to the financing of “individuals declared as terrorists or with terrorist purposes” (Subsection b), even in the absence of a link to a specific terrorist act or acts, complying, therefore, with criterion 5.2

In addition, the incorporation of Subsection “d” criminalises “*The travel of individuals to a State different from their States of residence or nationality for the purpose of perpetration, planning or preparation of, or participation in, terrorist acts or of providing or receiving of terrorist training, even if the terrorist act is not perpetrated*”, therefore complying as well with the new Methodology criterion 5.2 bis, recently incorporated in the Methodology not subject to Costa Rica’s MER.

Conclusion: The criminalisation of FT offence established in Sec. 69 bis and amended by Law no. 9387 compensate for the shortcomings established in the MER. It is therefore suggested that the rating should be modified from Partially Compliant to **Compliant**.

Recommendation 6 – Targeted financial sanctions related to terrorism and FT.

Costa Rica's MER established the lack of procedures development to develop Sec. 33, 33 bis and 86 of Law no. 8204 for compliance with Recommendation 6, which enables a full compliance with UNSCR 1267 and 1373. Taking into consideration that Law no. 9387 amends such Sections, it is necessary to carry out an analysis of the new sections and their relevance for the compliance of each criterion of Recommendation 6, particularly the new Sec. 33 bis⁴.

As regards targeted financial sanctions, Sec. 33 bis establishes the legal basis for the implementation of targeted financial sanctions without delay. However, it is required that the regulations of the Law establish the procedures for the implementation of the system established for the implementation of freezing actions (criterion 6.4).

Sec. 33 bis establishes the following:

- 1) All reporting entities (Sec. 14, 15 and 15 bis) are required to freeze, immediately and without delay or previous hearing, all the funds and assets of the lists pursuant to UNSCR 1267/1989/2253 and 1988, and designations pursuant to UNSCR 1373 once the FIU informs reporting entities about such listings and designations, sent by the Ministry of Foreign Affairs (criterion 6.5.a);
- 2) The obligation to freeze applies, at first instance, to cases i-v of the criterion. However, the regulations must specifically establish its scope (criterion 6.5.b);
- 3) Sec. 33 bis prohibits nationals or any person or entities within the country's jurisdiction from making funds or other assets available in the cases of perpetration of the FT offence; Law no. 9387 must be regulated in order to extend the obligation to include designated persons (criterion 6.5.c);
- 4) The FIU's communication of the listings and designations to reporting entities regarding the lists and designations, and the obligation to implement freezing actions (criterion 6.5.d):
- 5) Reporting entities' requirement to report to the FIU any assets frozen or actions taken in compliance with the prohibition requirements (criterion 6.5.e).

Nonetheless, there are no measures adopted to protect the rights of *bona fide* third parties acting in good faith when implementing the obligations under Recommendation 6.

⁴ Section 33 bis.- The Ministry of Foreign Affairs and Worship shall immediately and simultaneously notify the Public Ministry and the Financial Intelligence Unit (FIU) of the Costa Rican Drug Institute on the natural or legal persons included in:

a) International terrorist lists approved by the United Nations Security Council, in accordance with Resolutions 1267 of 1999, 1989 of 2011, 1988 of 2011, 2253 of 2015, and its successor resolutions.

b) Lists developed by the committees created by Resolutions 1718 of 2006 and 1737 of 2006 of the United Nations Security Council regarding the financing of proliferation of weapons of mass destruction, and its successor resolutions.

c) Designations pursuant to Resolution 1373 of 2001 of the United Nations Security Council, and its successor resolutions.

The Financial Intelligence Unit of the Costa Rican Drug Institute shall immediately inform the institutions stated in Sections 14, 15 and 15 bis of this law and the National Register about the lists and designations mentioned in paragraphs a), b) and c) of this section. Once this information is received, said institutions shall proceed to freeze, without notification or previous hearing, all the financial products, cash, assets and movable or immovable property, and shall communicate the results to said Unit within a maximum period of twenty-four hours, once the United Nations Security Council communicates the listings and designations defined in the previous paragraphs.

The Public Ministry shall receive the communication of said results from the Financial Intelligence Unit in order to request the competent judge the corresponding freezing or immobilisation. The judge shall inform its decision within twenty-four hours, which will be communicated to the Financial Intelligence Unit.

The freezing and immobilisation established in this section will only proceed in the cases mentioned in the previous paragraphs. Otherwise, the party affected by the measure may appeal before the competent administrative authority.

As regards frozen or immobilised financial products, cash and assets, the institutions stated in Sections 14, 15 and 15 bis of this law shall proceed to deposit them in the confiscated cash accounts, held by the Costa Rican Drug Institute to that effect, and shall inform the Financial Intelligence Unit upon carrying out such action, submitting a copy of the deposit slips.

The institutions mentioned in Sections 14, 15 and 15 bis of this law shall be obliged to permanently monitor the lists and designations referred to in this section, regardless their communication to the Financial Intelligence Unit of the Costa Rican Drug Institute.

The actions carried out in compliance with this section shall not entail administrative, civil, criminal or any other liability for the institutions referred to, their officials or the officials of the Financial Intelligence Unit who carry them out, so long as they are not proven.

Sec. 33 bis stipulates that the party affected by the freezing measure may resort to the competent administrative authority. This would enable the implementation of criteria 6.6.b and 6.6.f. However, the development of the remaining elements of criterion 6.6 should be regulated.

Law no. 9387 should be regulated to take into consideration: a) an own mechanism(s) for identifying targets for designation according to the criteria of the UNSC Resolutions (criterion 6.1); b) an authority or mechanism for identifying targets for designation, based on the designation criteria set out in UNSCR 1373, and to make such designation based on reasonable grounds or reasonable basis (criterion 6.2); c) a competent authority with legal authorities and procedures or mechanisms to: i) collect or solicit information to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation; and ii) operate *ex parte* against a person or entity who has been identified and whose (proposal for) designation is being considered; and d) provisions for the authorization of access to funds or other assets in accordance with the procedures established in UNSCR 1452 and in accordance with UNSCR 1373.

Conclusion: The amendment of Law no. 8204 through Law no. 9387 has developed some aspects towards compliance with this Recommendation. Taking into consideration that several criteria still ought to be complied with, it is considered that the rating should remain **Partially Compliant**.

Recommendation 7 – Targeted financial sanctions related to proliferation.

Given the fact that the relevant section of Law no. 9387 for the implementation of targeted financial sanctions is Sec. 33 bis, the analysis of criteria 6.4, 6.5 and 6.6 is applicable to criteria 7.1, 7.2 and 7.4.b. Law no. 9387 should be regulated in order to contemplate criteria 7.3, 7.4 (except for subsection “b”) and 7.5.

Conclusion: Costa Rica has developed some aspects towards compliance with this Recommendation since Law no. 9387; however, regulation is still pending towards compliance with the remaining criteria. It is therefore suggested that the rating should be modified from Non-Compliant to **Partially Compliant**.

Recommendation 15 – New technologies

The MER rated this Recommendation Non-Compliant. The Regulations of Law no. 8204 establish that FIs should implement a rating system that enables the identification of entities’ ML/FT risks, taking into consideration products and services, and distribution channels (Sec. 14), among others.

In addition, the amendment of the Rules for Compliance with Law no. 8204, approved by the National Council for the Supervision of the Financial System (CONASSIF, for its Spanish acronym) on July 26th 2016, establishes in Sec. 3 that FIs should identify and assess money laundering or terrorist financing risks and practices that may arise in relation to: i) the development of new products and new business practices, including new mechanisms and distribution channels; and ii) the use of new or developing technologies for both new and pre-existing products (criterion 15.1). The same section establishes that FIs should undertake the risk assessment prior to the launch of new products, commercial practices, distribution channels, or the use of new or developing technologies (criterion 15.2.a) In addition, it establishes that assessments should establish corrective plans to overcome the weaknesses observed, and these should indicate responsible actions and deadlines for their correction (criterion 15.2.b).

Conclusion: Costa Rica has developed obligations for FIs regarding the criteria of this Recommendation. Given the advances, it is suggested that the rating should be modified from Non-Compliant to **Compliant**.

Recommendation 16 – Wire transfers

The MER identified as shortcoming that the established threshold of USD 10,000 for wire transfers is considerably higher than the threshold established by FATF's standards (USD 1000). In addition, there were no regulatory provisions addressing criteria 16.3, 16.4, 16.8 to 16.12 and 16.18.

The amendment of the Rules for Compliance with Law no. 8204 establishes obligations for FIs when carrying out wire transfers of USD 1000 or more (criterion 16.1). Moreover, in accordance with criterion 16.3, obligations are established for transactions below the USD 1000 threshold, and the ordering FIs should not be allowed to execute the wire transfer if it does not comply with the requirements established in such section (criteria 16.4 and 16.8). In addition, it is established that the intermediary and beneficiary FIs of the wire transfers should be required to have effective risk-based policies and procedures for determining: i) when to execute, reject, or suspend a wire transfer lacking the required beneficiary information; and ii) the appropriate follow-up action (criterion 16.12).

As mentioned in the analysis of Recommendation 6, Law no. 9387 establishes the legal basis for the implementation of targeted financial sanctions. However, the analysis reflects the need for regulation for the implementation. Therefore, criterion 16.18 is partially complied with.

Conclusion: Costa Rica has developed obligations for FIs regarding the criteria of this Recommendation. However, the analysis shows that this Recommendation should be developed for compliance with criterion 16.18. Given the advances, it is suggested that the rating should be modified from Partially Compliant to **Largely Compliant**.

Recommendation 17 – Reliance on third parties

Sec. 7 of the Rules for Compliance with Law no. 8204 establishes that, in the case of reliance on third parties, financial institutions should establish permanent surveillance mechanisms to ensure that it is carried out in accordance with regulations, and that FIs will always be exclusively responsible for their implementation (criterion 17.1). Nevertheless, FIs are still required to comply with the remaining criteria (17.2 and 17.3).

Conclusion: In view of the advances in the establishment of some requirements for compliance with this Recommendation, it is suggested that the rating should be modified from Non-Compliant to **Partially Compliant**.

Recommendation 19 – Higher-risk countries

Costa Rica's MER showed that there are not any specific regulatory provisions addressing criteria 19.2 and 19.3 (partially). Sec. 14 of the Rules for Compliance with Law no. 8204 establishes that customers from countries for which this is called for by the FATF or any other ML/FT international well-known organization are considered to be of high-risk (criterion 19.2). The same section establishes an enforced due diligence regime for said customer as countermeasure (criterion 19.3). The remaining criteria for compliance with this Recommendation are, therefore, complied with.

Conclusion: Based on the analysis carried out, the shortcomings identified in the MER have been overcome. It is therefore suggested that the rating should be modified from Partially Compliant to **Compliant**.

Recommendation 20 – Reporting of suspicious transactions

The MER identified as shortcoming the provision of Law no. 8204, which established that STRs should be submitted to the relevant supervision and control body, which should submit STRs to the FIU. With the amendment of Law no. 8204, Sec. 25 of Law no. 9387 establishes that reporting entities should communicate STRs to the FIU confidentially and without delay. This shortcoming has, therefore, been overcome.

The shortcomings in the criminalisation of ML (Rec. 3) and FT (Rec. 5) affected the technical compliance of this Recommendation. According to the analysis of Recommendations 3 and 5, they have been overcome, and the technical criteria of this Recommendation are complied with.

Conclusion: Based on the analysis carried out, the shortcomings identified in the MER have been overcome. It is therefore suggested that the rating should be modified from Partially Compliant to **Compliant**.

Recommendation 21 – Tipping-off and confidentiality

According to the MER, the prohibition of disclosing suspicious transaction reports or information related to the FIU was not specifically considered. With the amendment of Law no. 8204, Sec. 25 of Law no. 9387 currently addresses this shortcoming by specifically prohibiting the disclosure of STRs.

Conclusion: Based on the analysis carried out, the shortcoming identified in the MER has been overcome. It is therefore suggested that the rating should be modified from Largely Compliant to **Compliant**.

Proposal and conclusion

The following modifications are suggested as regards compliance ratings:

- R. 7 and 17 from NC to PC
- R. 3 and 21 from LC to C
- R. 2, 5, 19, 20 from PC a C
- R. 1 and 16 from PC a LC
- R. 15 from NC to C



The Financial Action Task Force of Latin America (GAFILAT) is a regionally based inter governmental organization that gathers 16 countries from South America, Central America and North America in order to combat money laundering and terrorist financing by means of a commitment for continuous improvement of the national policies against both scourges, and the enhancement of different cooperation mechanisms among its member countries.

Citing reference:

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