

FATF



Anti-money laundering and
counter-terrorist financing
measures

Turkey

1st Enhanced Follow-up Report &
Technical Compliance Re-Rating

Follow-up report





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Turkey's 1st Enhanced Follow-up Report

1. Introduction

The mutual evaluation report (MER) of Turkey was adopted in October 2019¹. This Fur analyses Turkey's progress in addressing some of its technical compliance deficiencies identified in its MER. Re-ratings are given where sufficient progress has been made. This report also analyses Turkey's progress in implementing new requirements relating to FATF Recommendations that have changed since the end of the on-site visit to Turkey in March 2019: R.15. Overall, the expectation is that countries will have addressed most if not all technical compliance deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Turkey has made to improve its effectiveness.

2. Findings of the MER

The MER rated Turkey's technical compliance as follows:

Table 1. Technical compliance ratings, October 2019

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

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

Source: Turkey Mutual Evaluation Report, December 2019: <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf>

¹ www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf

The following experts assessed Turkey's request for technical compliance re-ratings:

- Mrs. Helga Rut Eysteinsdóttir, Senior Legal Advisor, Compliance & Inspections, Central Bank of Iceland, Iceland.
- Mr. Jack Carter, Head of Economic Crime Reform, HM Treasury, United Kingdom.
- Mr. Sanjay Kumar, General Manager, Department of Supervision, Reserve Bank of India, India.

Section 3 of this report summarises Turkey's progress made in improving technical compliance. Section 4 sets out the conclusion and a table showing which Recommendations have been re-rated.

3. Overview of progress to improve Technical Compliance

This section summarises Turkey's progress to improve its technical compliance by:

- a) addressing some of the technical compliance deficiencies identified in the MER; and
- b) implementing new requirements where the FATF Recommendations have changed since the on-site visit to Turkey (R.15).

3.1 Progress to address technical compliance deficiencies identified in the MER

Turkey has made progress to address the technical compliance deficiencies identified in the MER in relation to R.6, 7, 18, and 35. Because of this progress, Turkey has been re-rated on these Recommendations.

The FATF welcomes the progress achieved by Turkey in order to improve its technical compliance with R. 8, 22 and 24. However, insufficient progress has been made to justify an upgrade of these Recommendations' rating.

Recommendation 6 (originally rated PC)

In its 4th round MER, Turkey was rated PC with R.6. Moderate deficiencies were identified in the MER, including the following: no mechanism for identifying targets for designation on their own initiative related to UNSCRs 1267/1989 and 1988 or domestic designations, no evidentiary standard of proof of "reasonable grounds" or on a "reasonable basis" for deciding whether or not to make a proposal for designation on its own initiative, no implementation without delay and limited scope of funds or other assets. In addition, Turkey did not adequately prohibit their nationals, or any persons and entities within their jurisdiction, from making financial or other related services available to designated persons and entities and had no clear procedures to allow, upon request, review of the designation decision before a court or other independent competent authority, outside of the 60-day window and no clear procedures to facilitate review by the 1988 Committee,

in accordance with any applicable guidelines or procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under UNSCR 1730.

Since its MER, Turkey has amended its Law No. 6415 on the prevention of the financing of terrorism (TF Law) establishing mechanisms to identify and propose UN designations on its own initiative under 1267/1989 and 1988, based on an evidentiary standard of proof of “reasonable grounds” and to undertake domestic designations on its own initiative under UNSCR 1373. In addition, the amended TF Law includes a broader definition of funds and other assets and legal powers and processes for national designations which now require prompt determination. Lastly Turkey has provided clear guidance to relevant parties on their obligations.

In addition to the above progress, Turkey implements TFS obligations without delay². As decisions on freezing of assets and repeal of such decisions are ratified in Turkey upon their publication in the Official Gazette (Art. 12 (1), TF Law), the Department of Administrative Affairs of the Presidency issued an Administrative Order to different ministries and authorities stating that procedures about UNSCRs are to be completed urgently and as soon as possible, in order to reduce the ratification time. Administrative orders made by the President are directly applied by all public authorities, and considered as binding and enforceable means by all administrative units.

Turkish authorities have made progress in addressing the prohibition obligation on their nationals and on any persons and entities within their jurisdiction, from making funds, assets or financial services available to designated persons and entities by criminalising to willingly provide or collect funds or provide financial services, for the benefit of individuals, entities and organizations about whom decision of freezing of assets has been made, or for entities controlled directly or indirectly by them, or for individuals or entities who act on their behalf or for their benefit, knowing their nature. While the prohibition does not extend to cover explicitly individuals or entities who act on a designated person’s behalf in the revised TF Law, in the Turkish Legal System³, a person who acts at the direction of someone else, would be naturally acting on this persons’ behalf, whether legally or illegally. However, this criminalisation does not extend to making other related services available to designated persons and entities.

Despite progress to rectify deficiencies in its MER, minor deficiencies remain, as Turkey’s TF law does not prohibit persons from making other related services (to financial services) available to designated persons. In addition, there are no clear procedures to allow, upon request, review of the designation decision before a court or other independent competent

² Turkey has provided examples from 23 February and 24 March 2021 showing that implementation of UNSCRs occurs within 24 hours. However, the implementation in the examples did not take place six months prior to the Plenary discussion on the Turkey FUR. As such, in accordance with FATF’s 4th Round Procedures, the expert cannot consider this additional information as part of its review. Legal provisions are however sufficient to conclude implementation occurs without delay.

³ Art. 12, 502 and 505 of Turkish Code of Obligations.

authority, outside of the 60-day window established under the Constitutional framework.

Therefore, R.6 is re-rated largely compliant.

Recommendation 7 (originally rated NC)

R.7 was rated as NC in Turkey's 4th round MER, due to the lack of legal basis to implement UNSCRs related to Iran, no implementation without delay and the limited scope of the assets.

Since its MER, Turkey has made significant steps in relation to R.7. Turkey has adopted a new Law on Preventing Financing of Proliferation of Weapons of Mass Destruction (CPF Law), Law No. 7262 which has a wide scope and covers all UNSCRs, including UNSCR 1718, 2231 and successor resolutions. The CPF law provides for a mechanism ensuring that payments are not related to proliferation activity undertaken before designation. In addition, Turkey has rectified deficiencies relating to systems for notifying of proliferation-related actions, the definition of assets and the implementation of PF actions not occurring without delay and provided various guidance documents, including for freezing/unfreezing of assets, on false positive cases and applications against freezing decisions.

Turkey has also taken measures to facilitate monitoring and ensure compliance by obliged entities with relevant laws and enforceable means with the establishment of the Commission on Supervision and Cooperation which has the monitoring authority and sanctioning powers, however the team could not evaluate how this is done in practice⁴.

Therefore, R.7 is re-rated largely compliant.

Recommendation 8 (originally rated PC)

In its 4th round MER, Turkey was rated PC with R.8. The main technical deficiencies were: NPO audits did not focus on TF, lack of specific procedures to periodically review NPO risk, to conduct outreach and guidance to NPOs, and lack of specific procedures to work with NPOs to develop best practices on preventing TF abuse. The MER noted that supervision applied to NPOs was not focused on TF and aimed primarily at preventing fraud and mismanagement.

Since its MER, Turkey reviewed the adequacy of the laws that govern the whole NPO sector to protect the sector from possible misuse for TF purposes. Turkey amended Law No. 5253 on Associations, Law No. 2860 on Aid Collection, and the Directive of Auditors Associations to explicitly focus on ML/TF. These amendments aimed to mitigate TF risks but were not targeted or proportionate enough to focus on those NPOs at greater risk of TF abuse.

⁴ In February 2021, Turkey has passed the Regulation on Proliferation Financing (RoPF) with regard to monitoring and ensuring compliance with TFS in relation to PF however, as it was only published and put into effect after the deadline for submitting TC rating materials, this RoPF could not be considered as part of this report.

Following the amendments, the General Directorate for Relations with Civil Society (GDRCS) developed a risk-based methodology (RBA) which established the criteria, principles and procedures of TF-based risk analysis of NPOs, determining three different levels of TF risk (high, medium and low). Since the time of its MER, Turkey had already conducted a risk assessment of all NPOs falling within the FATF definition (within its NRA) and identified humanitarian aid associations operating close to conflict zones as the highest TF risk. Turkey started re-directing supervisory efforts towards higher risk NPOs identified using its RBA methodology. Turkey aims to audit all types of associations eventually based on this risk based audit methodology, but associations identified as being high-risk such as the above will be prioritized with varying degrees of depth and frequency according to the risk level. Each NPO's risk level will be determined as low, medium, or high according to the sum of points obtained from the risk criteria. The audits will be carried out according to this risk matrix.

The newly established risk based auditing system also determines the amount of guidance and outreach to NPOs, depending on the level of risk assigned for each NPO. Workshops for high risk NPOs have been conducted and work is ongoing for others.

In addition, Turkey revised the sanctions that can be applied to NPO with a view to having a range of sanctions which could cater to different types and severity of breaches, while keeping proportionality.

However, Turkey was not able to demonstrate sufficiently that TF risk-based measures apply to NPOs in line with criterion 8.3, especially due to the broad nature of legislative amendments, the recentness of measures and the need to further refine its risk-based methodology to target those NPOs at greater TF risk.

Turkey still needs to fully implement its RBA focusing on preventing TF abuse, conduct further outreach and training as planned and work with NPOs to develop best practices on preventing TF abuse. These deficiencies combined prevent re-rating R.8 to LC.

Therefore, R. 8 remains rated partially compliant.

Recommendation 18 (originally rated PC)

In its 4th round MER, Turkey was rated PC with R.18 due to a lack of explicit requirements on group-wide implementation of AML/CFT programmes, a lack of provision at group level for customer, account and transaction information and information and analysis of transactions or activities that appear unusual to be shared and, no specific requirements for financial groups to apply additional measures and inform home supervisors if the host country does not permit the proper implementation of AML/CFT measures.

Since its MER, Turkey issued Law No. 7262 amending the AML Law No. 5549. The amended AML Law requires financial groups to implement group-wide AML/CFT programmes and clarifies that customer, account, and transaction information can be shared within financial groups for the purposes of AML/CFT.

Some deficiencies identified in the MER remain. There is no legislative requirement for groups to have policies and procedures for sharing information within groups and no requirements for financial groups to apply additional measures and inform home supervisors if the host country does not permit the proper implementation of AML/CFT measures⁵. However, the impact of these deficiencies is largely mitigated through other measures and the remaining deficiencies are considered minor.

Therefore, R.18 is re-rated largely compliant.

Recommendation 22 (originally rated PC)

In its 4th round MER, Turkey was rated PC with R.22. The primary deficiencies identified were lawyers were not covered in the AML/CFT framework and no specific requirements for DNFBPs to comply with provisions covering PEPs and new technologies.

Since its MER, through the new Law No. 7262 Turkey's AML/CFT framework now covers lawyers. However, DNFBPs are still not required to adopt a risk based approach for enhanced due diligence where ML/TF risks are higher. In addition, deficiencies in relation to R.10 have an impact on R.22. Further, there are no specific requirements for DNFBPs to comply with provisions covering PEPs and new technologies.

Therefore, Turkey's progress is noted, however the rating for R. 22 remains partially compliant.

Recommendation 24 (originally rated PC)

In its 4th round MER, Turkey was rated PC with R.24 because Turkey lacked a comprehensive assessment of ML/TF risks associated with all types of legal persons created in Turkey, a general obligation to obtain and keep up-to-date beneficial ownership information, a mechanism to ensure that bearer shares/warrants are not abused for ML/TF and lacked proportionate and dissuasive sanctions. In addition, Turkey did not have a dedicated process or mechanism to monitor the quality of assistance received regarding basic and beneficial ownership information.

Since its MER, Turkey put in place a mechanism to ensure that bearer shares/warrants are not abused for ML/TF by amending the Turkish Commercial Code (TCC) (by Law 7262). Based on these revisions, legal persons can issue bearer shares if they maintain a proper record of issue and transfer of the bearer shares. Bearer shares will not be converted into registered shares. If the transfer of bearer shares has not been recorded with Central Securities Depository, the holder of bearer share may not be able to exercise its rights.

In addition, Turkey has amended TCC in relation to sanctions (sanction of TRY 20.000 (EUR 2000) for companies who violate reporting obligation,

⁵ In February 2021, Turkey has amended the Regulation on Compliance (RoC) to address the deficiency regarding an absence of a legislative requirement for financial groups to have policies and procedures for sharing information however, as it was only published and in effect after the deadline for submitting TC rating materials, this revised RoC could not be considered as part of this report.

new sanction of TRY 5000 (EUR 500) for the bearer share holders who violate reporting obligation in addition to the increase of the amount of fines imposed to obliged parties for violating the identification of beneficial ownership information from TRY 12152 (EUR 1200) to TRY 30000 (EUR 3000). However, the base amount of sanction is very low and hence is not considered dissuasive. In addition, Turkey made some improvements in monitoring the quality of assistance received from other countries in response to requests for beneficial ownership information.

However, moderate deficiencies remain, such as lack of a comprehensive assessment of ML/TF risks associated with all types of legal persons and lack of dissuasive sanctions, concerns regarding accurate and updated beneficial ownership information and its timely determination, as well as monitoring quality of assistance with regard to locating beneficial owners resided abroad.

Therefore, Turkey's progress is noted, however the rating for R. 24 remains partially compliant.

Recommendation 35 (originally rated PC)

In its 4th round MER, Turkey was rated PC with R.35 due to lawyers not being covered; monetary sanctions for FIs/DNFBPs and sanctions for NPOs being regarded as not proportionate or dissuasive; and the existence of a statute of limitations that restricted the ability to levy administrative fines to within five years from the date of violation of the obligation.

Most of these deficiencies were addressed through Law No. 7262 which introduced amendments to six other Laws. Turkey has: brought lawyers into the AML/CFT framework; increased the maximum amounts of monetary penalties for breaches of targeted financial sanctions; increased the level of sanctions that can be applied to NPOs; and increased the monetary sanctions that can be applied to FIs and DNFBPs for breaches of AML/CFT requirements of Recommendations 9-23. The updated monetary sanctions framework is overall proportionate and dissuasive when considered in light of the business size of most obliged entities in Turkey.

Despite these significant amendments, a minor deficiency remains regarding the existence of a statute of limitations (although it has increased from five years to eight years since the MER).

Therefore, R.35 is re-rated largely compliant.

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

Since the adoption of Turkey's MER, the FATF amended R.15. This section considers Turkey's compliance with the new requirements.

Recommendation 15 (originally rated LC)

In June 2019, R.15 was revised to include obligations related to virtual assets (VA) and virtual asset service providers (VASPs). These new requirements include: requirements on identifying, assessing and understanding ML/TF risks associated with VA activities or operations of VASPs; requirements for

VASPs to be licensed or registered; requirements for countries to apply adequate risk-based AML/CFT supervision (including sanctions) to VASPs and for such supervision to be conducted by a competent authority; as well as requirements to apply measures related to preventive measures and international co-operation to VASPs.

In its 4th Round MER, Turkey was rated LC with R.15, as there was no explicit requirement on financial institutions to identify and assess the ML/TF risks that may arise in relation to the development of new business practices, new delivery mechanisms and pre-existing products).

Since its 4th Round MER, no action has been taken to address the minor deficiencies related to the new technologies requirements in relation to R.15 and no measures have been undertaken by Turkey to address requirements relating to VAs and activities of VASPs. Turkey has assessed the money laundering and terrorist financing risks presented by virtual assets as part of their National Risk Assessment, however, no information was provided by Turkey regarding what risks were identified in this process.

Turkey has not addressed the minor deficiencies identified in its MER and has not met the new criteria of R.15, therefore major deficiencies remain overall.

R.15 is therefore downgraded to non-compliant.

4. Conclusion

Overall, Turkey has made progress in addressing some of the technical compliance deficiencies identified in its MER and has been upgraded on R. 6, 7, 18 and 35. R.15 is downgraded to non-compliant because Turkey didn't meet the new requirements of R.15.

Considering progress made by Turkey since the adoption of its MER, its technical compliance with the FATF Recommendations has been re-evaluated in the following manner:

Table 2. Technical compliance ratings, June 2021

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

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

Turkey will remain in enhanced follow up and will continue to inform the FATF of progress achieved on improving the implementation of its AML/CFT measures.

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November 2021

Anti-money laundering and counter-terrorist financing measures in Turkey

1st Enhanced Follow-up Report & Technical Compliance Re-Rating

As a result of Turkey's progress in strengthening their measures to fight money laundering and terrorist financing since the assessment of the country's framework, the FATF has re-rated the country on 4 of the 40 Recommendations.

The report also looks at whether Turkey's measures meet the requirements of FATF Recommendations that have changed since their Mutual Evaluation in 2019.

Follow-up report