



11<sup>TH</sup> FOLLOW-UP REPORT

# Mutual Evaluation of Ireland

June 2013





FINANCIAL ACTION TASK FORCE

The Financial Action Task Force (FATF) is an independent inter-governmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognised as the global anti-money laundering (AML) and counter-terrorist financing (CFT) standard.

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the FATF Secretariat, 2 rue André Pascal 75775 Paris Cedex 16, France

(fax: +33 1 44 30 61 37 or e-mail: [contact@fatf-gafi.org](mailto:contact@fatf-gafi.org)).

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## ACRONYMS

<b>AML/CFT</b>	Anti-Money Laundering / Countering the Financing of Terrorism
<b>AMLUCU</b>	Anti Money Laundering Compliance Unit
<b>CAI</b>	Chartered Accountants Ireland
<b>CDD</b>	Customer Due Diligence
<b>DNFBP</b>	Designated Non-Financial Business or Profession
<b>EU</b>	European Union
<b>LC</b>	Largely compliant
<b>MER</b>	Mutual Evaluation Report
<b>NC</b>	Non-compliant
<b>PC</b>	Partially compliant
<b>PEP</b>	Politically Exposed Person
<b>PSRA</b>	Property Services Regulatory Authority
<b>R</b>	Recommendation
<b>SCDD</b>	Simplified Customer Due Diligence
<b>SR</b>	Special Recommendation
<b>SRO</b>	Self Regulatory Organisation
<b>STR</b>	Suspicious Transaction Report
<b>TCSP</b>	Trust or Company Service Providers
<b>UN</b>	United Nations

# MUTUAL EVALUATION OF IRELAND: 11TH FOLLOW-UP REPORT

## Application to move from regular follow-up to biennial updates

*Note by the Secretariat*

### I. INTRODUCTION

The third mutual evaluation report (MER) of Ireland was adopted by the FATF plenary on 16 February 2006. At the same time, Ireland was placed in a regular follow-up process. The relevant dates for the subsequent follow-up reports of Ireland are as follows: February 2008 (first follow-up report); February 2009 (second follow-up report); October 2009 (third follow-up report); February 2010 (fourth follow-up report); February 2011 (fifth follow-up report); June 2011 (sixth follow-up report); February 2012 (seventh follow-up report); June 2012 (eight follow-up report), October 2012 (ninth follow-up report) and February 2013 (tenth follow-up report).

This paper is based on the procedure for removal from the regular follow-up, as agreed by the FATF plenary in October 2008 and subsequently amended. The procedure requires that a country should rectify the identified deficiencies and reach a level equivalent of an LC rating on all core and key Recommendations of the FATF. If a limited number of key Recommendations does not reach an LC-level, a country can still move to biennial updates under condition that it demonstrates substantial progress in its overall Anti-Money Laundering / Countering the Financing of Terrorism (AML/CFT) system.<sup>1</sup>

This paper contains a detailed description and analysis of the actions taken by Ireland in respect of all Recommendations rated partially compliant (PC) or non-compliant (NC) in the 2006 MER – including the core, the key and all other Recommendations. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislation with the FATF standards. In assessing whether sufficient progress had been

<sup>1</sup> Third Round of AML/CFT Evaluations Processes and Procedures, paragraph 39c and 40. Paragraph 39 (c) reads: *“The country has taken sufficient action to be considered for removal from the process – to have taken sufficient action in the opinion of the Plenary, it is necessary that the country has an effective AML/CFT system in force, under which the country has implemented the following Recommendations at a level essentially equivalent to a C or LC, taking into consideration that there would be no re-rating:*

- *money laundering and terrorist financing offences (R.1 & SR.II);*
- *freezing and confiscation (R.3 and SR.III);*
- *financial institution secrecy (R.4) and customer due diligence (R.5);*
- *record-keeping (R.10);*
- *suspicious transaction reporting and the FIU (R.13, 26 & SR.IV);*
- *financial sector supervision (R.23); and*
- *international co-operation (R.35, 36 and 40; and SR.I & V).*

*Plenary should, however, retain some limited flexibility with regard to those Recommendations listed above that are not core Recommendations if substantial progress has also been made on the overall set of Recommendations that have been rated PC or NC.”*

made, effectiveness is taken into account to the extent possible in a paper based desk review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudice the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in every case, as comprehensive as would exist during a mutual evaluation.

In the mutual evaluation report of 2006, Ireland was rated partially compliant on one core recommendation (R [Recommendation] 5) and on two key recommendations (SR [Special Recommendation] I & III). With regards to other recommendations Ireland was rated non-compliant in respect of recommendations 6, 7, 9, 24 and SR VII and partially compliant in respect of recommendations 8, 11, 12, 16, 17, 18, 21, 32, 33, 34 and Special Recommendations VI, VIII and IX, as indicated in the table below.

Partially compliant (PC)	Non-compliant (NC)
<b>Core Recommendations<sup>1</sup></b> R.5 (Customer due diligence)	<b>Core Recommendations</b> none
<b>Key Recommendations<sup>2</sup></b> SR.I (UN instruments) SR.III (freezing and confiscation)	<b>Key Recommendations</b> none
<b>Other Recommendations</b> R.8 (new technologies and non face-to-face transactions) R.11 (unusual transactions) R.12 (DNFBPs – R.5, R.6, R.8-R.11) R.16 (DNFBPs – R.13-R.15, R.21) R.17 (sanctions) R.18 (shell banks) R.21 (higher risk countries) R.32 (statistics) R.33 (legal persons) R.34 (legal arrangements) SR.VI (money/value transfer services) SR.VIII (non-profit organisations) SR.IX (cash couriers)	<b>Other Recommendations</b> R.6 (PEPs) R.7 (correspondent banking) R.9 (third parties and introducers) R.24 (DNFBP regulation, supervision and monitoring) SR.VII (wire transfer rules)

**Table notes**

1. According to the FATF mutual evaluation follow-up procedures, the core Recommendations are: R.1, R.5, R.10, R.13, SR.II and SR.IV.
2. According to the FATF mutual evaluation follow-up procedures, the key Recommendations are: R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III and SR.V.

## II. MAIN CONCLUSION AND RECOMMENDATIONS TO THE PLENARY

### CORE RECOMMENDATIONS

Ireland has substantially addressed deficiencies identified in relation to Recommendation 5 through the subsequent enactments of the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* (hereafter referred as “2010 Act”) and the *Criminal Justice Act 2013* (hereafter referred as “2013 Act”). In addition, in February 2012, Ireland finalised and published the *Guidelines on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (hereafter referred as “Guidelines”). The Guidelines do not constitute secondary legislation or enforceable means, but expand on, amongst other issues, customer diligence measures and provide guidelines to designated persons on the application of the relevant provisions of the 2010 Act. Ireland has reached a satisfactory level of compliance with R5 that can be judged as equivalent to an LC rating.

### KEY RECOMMENDATIONS

For Special Recommendations I and III, the two key recommendations rated as partially compliant in 2006, Ireland did not report substantive progress since the time of the mutual evaluation. Deficiencies identified for SRI and SRIII are identical, and remain outstanding as of June 2013. As mentioned above, the procedure for removal from the regular follow-up permits some flexibility when a limited number of key Recommendations were not brought at the level equivalent to an LC, which is the case for Ireland. It is required that Ireland demonstrates that substantial progress has been made on the overall set of recommendations that were rated PC and NC in 2006.

### OTHER RECOMMENDATIONS

Ireland has made substantial progress on non-core and non-key recommendations since 2006. With the enactment of the 2010 and 2013 Acts, Ireland has reached a level equivalent to an LC rating for Recommendations 6, 7, 8, 11, 12, 17, 18, 24, 32, SRVI, SRVII and SRIX. In addition, progress has been made to improve compliance with Recommendations 9, 16, 21 and SRVIII, although not to a level to an LC rating or better. However, the majority of the non-core and non-key recommendations have been brought to a level equivalent to an LC rating.

### CONCLUSION

Ireland has made significant progress since the MER of 2006. 21 recommendations were assessed PC or NC in 2006, including one core recommendation and two key recommendations. To the extent that this can be judged in a paper-based review, Ireland has made sufficient action to bring its compliance to at least a level essentially equivalent to LC in relation to the majority of the set of 21 recommendations. Although a certain number of Recommendations still cannot be judged as equivalent to an LC rating, progress has been made in relation to them. Consequently, it is recommended that this would be an appropriate circumstance for the Plenary to exercise its discretion and remove Ireland from the regular follow-up process.

### III. OVERVIEW OF IRELAND'S PROGRESS

On 15 July 2010, Ireland has enacted the *Criminal Justice (Money Laundering and Terrorist Financing) Act 2010* ("2010 Act") in order to address the deficiencies noted in the 2006 MER. The 2010 Act also transposes the EU (European Union) Third Money Laundering Directive (2005/60/EC) and its Implementing Directive (2006/70/EC) into Irish law and consolidates existing Irish money laundering legislation into a single Act. The main provisions of the 2010 Act are:

- The principal offence of money laundering has been substantially revised in order to overcome difficulties identified in successfully prosecuting this offence.
- Provisions in relation to customer due diligence have been revised with the aim to bring them in line with the FATF recommendations, including requirements to identify beneficial owners and apply additional measures in the case of customers who are not physically present, politically exposed persons and correspondent banking relationships.
- The category of designated persons has been extended to include Trust and Company Service Providers, private members' gaming clubs and barristers.
- Competent authorities are designated for categories of designated person. These competent authorities are required to monitor the designated persons and take measures that are reasonably necessary for the purpose of securing compliance with the requirements of the Act.
- The administrative sanctions regime of the Central Bank has been extended to apply to breaches of the Act by the financial sector.
- Trust and Company Service Providers are required to be authorised; their directors are subject to a "fit and proper test".
- Private members' gaming clubs are required to be registered.

After the enactment of the 2010 Act, Ireland launched a consultation process with relevant stakeholders on guidelines that would help designated persons in Ireland implementing the 2010 Act. As a result of long consultations, Ireland finalised and published the *Guidelines on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing* (hereafter referred as "Guidelines") in February 2012. The Guidelines, applicable to all financial services designated persons, expand on the provisions of the 2010 Act, in particular for the risk-based approach, customer due diligence measures, reliance on third parties, internal policies and procedures, reporting obligations, record keeping, training and enforcement. The Guidelines do not constitute secondary legislation or enforceable means, but aim to disseminate good practice.

On the basis of the 2010 Act, Ireland intended to seek removal from regular follow-up process in February 2011. The February 2011 follow-up report of Ireland provided a detailed description and analysis of the progress made by Ireland in respect of all Recommendations rated PC or NC in the MER. While the report acknowledged progress in a number of areas – including in relation to R6, R7,



R8, R9, R18, R24, SRVII and SRIX – it highlighted that Ireland had not sufficiently addressed its deficiencies related to R5 and SRI/SRIII and therefore it concluded that Ireland was not in a position to be removed from regular follow-up to biennial updates at that time. Ireland did not challenge this conclusion and acknowledged that amendments to the Act 2010 would be a necessity.

Consequently, Ireland prepared the *Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2013*, later renamed as *Criminal Justice Act 2013* (hereafter referred as “2013 Act”). The 2013 Act was signed into law on 12 June 2013. Irish authorities reported that commencement of the 2013 Act – *i.e.* the date when its provisions are brought into force – would be after the finalisation of this follow-up report but prior to the June 2013 plenary week.

The main provisions of the 2013 Act amend the 2010 Act in relation mainly to customer due diligence measures for designated persons, but also related to politically exposed persons, policies and procedures of designated persons and the prevention of misuse of technological developments.

## IV. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS

### RECOMMENDATION 5 – RATED PC

#### RISK-BASED APPROACH

The 2006 MER stated that the Irish AML/CFT system is not based on risk assessments in the manner contemplated in the FATF Recommendations. Since that time, the Criminal Justice (Money Laundering and Terrorist Financing) Acts 2010 and 2013 came into force, and according to the Irish authorities, they use a risk-based approach throughout their requirements. Section 54 (2) of the 2010 Act requires that designated persons adopt policies and procedures to apply to all persons involved in the conduct of their business. This requirement includes the assessment and management of risks of money laundering and terrorist financing. Policies and procedures are further described under Section 55 (3) of Act 2010, as amended through Section 11 of the 2013 Act. Designated persons are requested to consider risk in their internal procedures concerning customer acceptance, due diligence and ongoing monitoring (Sections 33 of Act 2010 as amended through Section 6 of 2013 Act and Section 35 of Act 2010). The 2010 and 2013 Acts together require enhanced CDD (Customer Due Diligence) measures that should be taken in higher risk scenarios and in other particular situations (Sections 37 to 39 of 2010 Act as amended and/or substituted by Sections 9 and 10 of 2013 Act). The 2010 and 2013 Acts finally identify some low risk situations where the application of CDD measures is to be exempted (Sections 34 and 36 of Act 2010, as amended, respectively, through Sections 7 and 8 of 2013 Act).<sup>2</sup>

Irish authorities explained that the general approach of the 2010 and 2013 Acts is a combination of the risk-based-approach, and, in certain specific areas – such as in the case of PEPs, correspondent banking relationships and non-face-to-face customers – the rules-based-approach. The Financial Sector Guidelines, published in February 2012, provide further clarification on how the risk-based approach should be applied by designated persons in practice. However, as mentioned before, the

<sup>2</sup> A detailed analysis of these provisions is provided later in the report.

Guidelines do not constitute secondary legislation or enforceable means, but aim to disseminate good practice.

## DEFINITION OF DESIGNATED PERSONS

Since the adoption of the MER, Ireland has revised the definition of “designated persons” that are subject to AML/CFT obligations, in order to extend its coverage to a wider range of non-financial sectors and therefore address the deficiencies identified in 2006. Section 25 of the 2010 Act provides, as amended through Section 5 of 2013 Act, for the revised definition of designated persons, and this includes all relevant financial activities and entities (as was the case in 2006). As well as it covers auditors, external accountants, tax advisers, relevant independent legal professionals (only in respect to services specified in the definition of ‘relevant independent legal practitioner<sup>3)</sup>), trust or company service providers (TCSPs), property service providers, casinos, persons who effectively direct private members’ club at which gambling activities are carried on (only in respect of those gambling activities), any persons trading in goods (only in respect of transactions involving payments, to the person in cash, of a total of at least EUR 15 000 (whether in one transaction or in a series of transactions that are or appear to be linked to each other)), and any other persons of a prescribed class.

Furthermore, in line with Article 4 of the implementing measures for Directive 2005/60/EC, the 2010 Act adopted a list of situations that are exempted from the definition of the designated person, because the financial activity carried out is on a very limited basis (see Section 25(4) of the 2010 Act).

### **R5 (Deficiency 1): Financial institutions are not required to undertake full CDD measures on establishing business relations, when carrying out occasional transactions over EUR 15 000 or in circumstances in relation to SRVII and there is no requirement to identify in cases where TF is suspected.**

Ireland has adopted revised customer due diligence provisions in Chapter 3 of Part 4 of the 2010 Act. Certain provisions were amended by the 2013 Act (please refer to specific analysis under Deficiencies 1-6 below).

Section 33 (1) of Act 2010, as amended through Section 6 of 2013 Act, requires designated persons to identify and verify the identity of a customer:

1. *prior to establishing a business relationship with the customer;*
2. *prior to carrying out an occasional transaction with, for or on behalf of the customer;*

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<sup>3</sup> A “relevant independent legal professional”, in Section 24(1) of the 2010 Act is defined as a “barrister, solicitor, or notary who carries out any of the following services:

(a) the provision of assistance in the planning or execution of transactions for clients concerning any of the following:

- (i) buying or selling land or business entities;
- (ii) managing the money, securities or other assets of clients;
- (iii) opening or managing bank, savings or securities accounts;
- (iv) organising contributions necessary for the creation, operation or management of companies;
- (v) creating, operating or managing trusts, companies or similar structures or arrangements;

(b) acting for or on behalf of clients in financial transactions or transactions relating to land.”

3. *prior to carrying out any service for the customer, if, having regard to the circumstances [as described under points i) to vi)], the person has reasonable grounds to suspect that the customer is involved in, or the service, transaction or product sought by the customer is for the purpose of, money laundering or terrorist financing; or*
4. *prior to providing any service where there are doubts about the veracity or adequacy of existing identifying documents or information.*

It is important to clarify that Section (24)1 of the 2010 Act, as amended by Section 4 of Act 2013, defines an “occasional transaction”, in relation to a customer of a designated person where the designated person does not have a business relationship with a customer, as a single transaction, or a series of transactions that are or appear to be linked to each other, with *i)* an aggregate not less than EUR 2 000 for gambling activities (as referred to under Section 25(1)h of Act 2010); or *ii)* an aggregate not less than EUR 1 000 in case of transfers of funds within the definition of Regulation (EC) N° 1781/2006), and *iii)* in any other cases, where the total amount of money paid by the customer in the single transaction or series is greater than EUR 15 000.

Regulation (EC) No. 1781/2006 of the European Parliament and the Council of 15 November 2006 on information on the payer accompanying transfers, in its Article 4, specifies that complete information on the payer include the payer's name, address and account number and requires that the complete information accompanies the payment or is readily available for the payee's payment service provider. Article 5 of the Regulation requires that payment service providers ensure that transfers are accompanied by complete information on the payer, that the information is verified, and that records are kept for five years. With transfers of funds not made from an account, the payer information shall be verified where the amount, in single or connected transactions, exceeds EUR 1 000. With a transfer from an account, it is sufficient that the payer's identity has been verified and the information stored appropriately in connection with the opening of the account.

The implementation of Regulation (EC) No. 1781/2006 covers identification of the customer in Ireland, and also indirectly the beneficial owner. As referred to above, the definition of “occasional transaction”, specified under Section (24) 1 of the 2010 Act, has been extended through Section 4 of the 2013 Act to cover transfers of funds (within the definition of Regulation (EC) No. 1781/2006) with an amount not less than EUR 1 000. Full customer diligence measures (including the requirement to identify the beneficial owner) are applied to “occasional transactions”, and therefore, to wire transfers with the value not less than EUR 1 000.

*Conclusion.* Deficiency 1 has been addressed.

**R5 (Deficiency 2): A number of requirements which should be explicitly set out in law or regulation are implicit or established only in guidance. For example: ongoing due diligence; identification of the beneficial ownership of legal persons; and (Deficiency 5): In the context of a future risk-based approach there should be a review of the documents and data that is relied upon for customer identification and verification.**

The requirements of ongoing due diligence, identification of beneficial ownership of legal persons as well as the requirement to designated persons to keep documents and information relating to customers up to date, were explicitly introduced in the 2010 and 2013 Acts, making these requirements appear in a primary legislation.

## ONGOING DUE DILIGENCE

Section 35 (3) of the 2010 Act requires that a designated person shall monitor dealings with a customer, including (to the extent reasonably warranted by the risk of money laundering or terrorist financing) by scrutinising transactions and the source of wealth or of funds for those transactions to determine whether or not the transactions are consistent with

- a) *the person's knowledge of the customer and the customer's business and pattern of transactions, and*
- b) *any knowledge that the person may have that the customer may be involved in money laundering or terrorist financing.*

This general requirement of scrutinising transactions, according to the Irish interpretation, covers ongoing monitoring requirements, on the basis of the RBA, to *all* customers. In addition, Section 54 (3) c of the Act 2010, as amended through Section 11 of the 2013 Act, explicitly requires designated persons to adopt policies and procedures in relation to the designated person's business to keep documents and information relating to the customers of that designated person up to date. The reference to 'customers' in Section 54 (3) refers to new and existing customers alike.

## IDENTIFICATION OF THE BENEFICIAL OWNERSHIP OF LEGAL PERSONS

Section 33 (2) requires designated persons to identify any beneficial owner connected with the customer or service concerned, and to take measures reasonably warranted by the risk of money laundering or terrorist financing:

- i. to verify the beneficial owner's identity to the extent necessary to ensure that the designated person has reasonable grounds to be satisfied that he knows who the beneficial owner is, and
- ii. in the case of a legal entity or legal arrangement, to understand the ownership and control structure of the entity or arrangement concerned.

Beneficial owner in relation to corporate bodies is defined in Section 26 as the individual who, in case of a corporate body, ultimately owns or controls, whether through direct or indirect ownership or control (including through bearer shareholdings), more than 25% of the shares or voting rights in the body, or, otherwise exercises control over the management of the body. Beneficial ownership is further defined in Section 27 (in relation to partnerships), in Section 28 (in relation to trusts), Section 29 (in relation to estates) and in Section 30 (to other Persons who are beneficial owners). For cases not specified above, Section 30 provides that the term "beneficial owner" includes any individual who ultimately owns or controls a customer or on whose behalf a transaction is conducted.

In relation to the verification of the beneficial owner's identity, the designated person has to take "measures that are reasonably warranted by the risk" "to the extent necessary to ensure that the designated person has reasonable grounds to be satisfied that he knows who the beneficial owner is". The authorities indicated that the choice of this wording in the Act reflects the variety of relationships that will exist between a given designated person and its customer or beneficial owner.

However, the wording for the threshold introduced in the 2010 Act is in relation to the beneficial ownership of legal person (*i.e.* the combination of “measures that are reasonably warranted by the risk” and the “reasonable ground to be satisfied that he know who the beneficial owner is”) is different from the one set out in the Standards (Criterion 5.5 refers to financial institutions being satisfied that they know who the beneficial owner is). It is also a complex formulation which leaves the potential for designated persons to interpret this in different ways in practice.

Irish authorities indicated that the Core Guidance notes for financial institutions provides further details on the practical implementation of the beneficial ownership requirements of the 2010 Act and they state that financial institutions are required to: “Identify the beneficial owner, and to the extent warranted by the risk, take reasonable measures to verify the identity of the beneficial owner such that the Designated Person is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include Designated Persons taking reasonable measures to understand the ownership and control structure of the customer. It is not possible to cover all scenarios across all jurisdictions and it is for a Designated Person to be satisfied that the decisions taken and information relied upon to verify the beneficial owner’s identity was reasonable for the Designated Person to be satisfied that it verified the identity of the beneficial owner and that the extent of that verification is in accordance with the risk.”

*Conclusion.* Requirements in relation to ongoing due diligence and identification of the beneficial ownership of legal persons are now explicitly set out in law. There is also a specific requirement, introduced in the 2013 Act, for designated persons to keep documents and information collected under their CDD process up to date. In the context of this paper-based review, however, it remains difficult to judge how financial institutions will interpret and implement the complex wording of the requirements for the identification and verification of beneficial ownership of legal persons. Deficiency 2/5 has been substantially addressed.

### **R5 (Deficiency 3): Certain requirements such as obtaining information on the nature and purpose of the business relationship and timing of verification requirements are not required by “other enforceable means” (as defined)**

The requirement of obtaining information on the nature and purpose of the business relationship was introduced under Section 35 of the 2010 Act, and the requirement regarding the timing of verification were introduced under Section 33 of the 2010 Act (as amended through Section 6 of the 2013 Act). The 2010 and 2013 Acts are primary legislation.

#### **INFORMATION ON THE NATURE AND PURPOSE OF THE BUSINESS RELATIONSHIP**

Section 35 of the 2010 Act requires a designated person, prior to the establishment of the business relationship with a customer, to obtain information reasonably warranted by the risk of money laundering and terrorist financing on the purpose and intended nature of the business relationship. Irish authorities confirmed that information must be obtained in all cases, while the level of information to be obtained will vary on the basis of the *risk* of money laundering and terrorist financing.

## TIMING OF VERIFICATION REQUIREMENTS

Section 33 (5) provides that a designated person may verify the identity of the customer or beneficial owner during the establishment of a business relationship if the designated person has reasonable grounds to believe that:

1. *verifying the identity of the customer or beneficial owner prior to the establishment of the relationship would interrupt the normal conduct of business, and*
2. *there is no real risk that the customer is involved in, or the service sought by the customer is for the purpose of, money laundering or terrorist financing, but the designated person shall take reasonable steps to verify the identity of the customer or beneficial owner, as soon as practicable.*

Credit institutions are allowed to open a bank account to a customer before verifying the identity of the customer or a beneficial owner, so long as the institution ensures that transactions in connection with the account are not carried out by or on behalf of the customer or beneficial owner before the credit institution carries out that verification. Consequently, the bank account cannot be activated and no funds should be accepted from the individual before the completion of the customer verification process.

*Conclusion.* The requirements to obtain information on the nature and purpose of the business relationship and in relation to the timing of verification are required in the 2010 and 2013 Acts that are primary legislation. These requirements are in line with the FATF Standards. Deficiency 3 has been addressed.

**R5 (Deficiency 4): There is no legally binding provision for enhanced CDD measures and guidance is weak on the requirements concerning consequences of failure to complete CDD.**

## ENHANCED DUE DILIGENCE

The MER of 2006 stated that most financial institutions had not developed at that time any procedures whereby customers are classified on the basis of risk. The 2010 and 2013 Acts require enhanced due diligence in relation to certain specific pre-defined higher-risk situations, including *i)* PEPs (Section 37 as amended through Section 9 of 2013 Act, see further details under Recommendation 6); *ii)* correspondent banking relationships with non EU credit institutions (Section 38 of Act 2010, see further details under Recommendation 7) and *iii)* non-face to face business relationships (Section 33 [4] of the 2010 Act stipulates to take additional measures in situations where the individual does not present in person for identification and verification, see further details under Recommendation 8).

In addition, the general requirement that financial institutions and DNFBPs (Designated Non-Financial Business or Profession) should be required to identify higher risk categories of customers, business relationships or transactions, and to apply enhanced due diligence is specified under Section 39 of the 2010 Act, as amended through Section 10 of the 2013 Act. This provision requires that, where a designated person has reasonable grounds to believe that the circumstances relating to a customer, beneficial owner, service, product or transaction may present a heightened risk of money laundering or terrorist financing, the designated person shall, as respects that customer or



beneficial owner, apply additional measures, although these additional measures are not laid down in more details.

*Conclusion.* The provisions in the 2010 and 2013 Acts regarding enhanced due diligence in relation to higher risk customers are in line with Recommendation 5.

### FAILURE TO COMPLETE CDD

Section 33 (8) of the 2010 Act provides that a designated person which is unable to apply the CDD measures specified in Section 33 (2) (*i.e.* customer/beneficial owner identification/verification) and Section 33 (4) (*i.e.* customer/beneficial owner identification/verification in non face-to-face scenarios) of the 2010 Act as a result of any failure on the part of the customer to provide the designated person with documents or information required:

1. *shall not provide the service or carry out the transaction sought by that customer for so long as the failure remains un-rectified, and*
2. *shall discontinue the business relationship (if any) with the customer.*

In the case of a designated person which is unable to comply with the obligation to collect information on the purpose or intended nature of the business relationship as a result of any failure on the part of the customer, the designated person shall not provide the service sought by the customer for so long as the failure continues (Section 35 (2) of the 2010 Act).

Section 42 (4) of 2010 Act requires that designated persons should file a suspicious transaction report in cases where there is a failure to satisfactory complete CDD (including obtaining information on the purpose or intended nature of the business relationship).

*Conclusion.* The requirements in the 2010 Act applicable in the case of failure to satisfactorily complete CDD are in line with the FATF standards.

### ISSUES RELATED TO LOW RISK SCENARIOS<sup>4</sup>

The 2006 MER indicated that the provisions established, at that time, full exemptions to the scope of application of the CDD obligations rather than allowing for simplified or reduced CDD procedures. The principle of such exemptions in case of low risk scenarios has been maintained in the 2010 Act. The 2013 Act amended Section 34 of the 2010 Act through its Section 7, and it indicates that *a designated person is not required to apply the measures specified in section 33 (2) (i.e. identification and verification of customers) if the designated person, having taken such measures as are necessary to establish if the customer is a specified customer or the product is a specified product, is satisfied that (a) the customer is a specific customer, or (b) the product is a specified product.* Sections 34 (5) and (7) specify what specified customer and specified products means: (1) “specified customers” – financial institutions located in Ireland or in another member state supervised and monitored for compliance with the EU Third Money Laundering Directive, or equivalent country; listed companies; public bodies; other bodies pre-defined in the Act; (2) “specified products” – life insurance policies with a premium limited to a pre-defined threshold; certain pensions; electronic money, within the

<sup>4</sup> For the sake of consistency with other FATF reports on European countries, this deficiency is hence mentioned under Deficiency 4, although it was not quoted in the rating box of the 2006 MER.

meaning of the Electronic Money Directive. However, Section 34 still seems to provide full exemptions from the CDD requirements of section 33 (2), *i.e.* identification and verification of identity of customers and beneficial owners.

Irish authorities consider that *full exemptions* do not exist in Irish law, but only *simplified* CDD measures. They consider that a designated person must determine whether the product or customer is a specific product or specified customer; and to be able to do this determination, it needs to take measures (*e.g.* collecting information and data). As this initial collection of information exist in every cases, the provision of the primary legislation cannot be interpreted as full exemption. In addition, they highlight that the Guidelines, under their paragraph 103, state: “For certain categories of customer or business defined in the Act, a set of SCDD (Simplified Customer Due Diligence) measures may be substituted for full CDD, to reflect the accepted low risk of money laundering or terrorist financing that could arise from such business. This does not represent a total exemption as, prior to applying SCDD, designated persons have to conduct and document appropriate testing to satisfy themselves that the customer or business qualifies for the simplified treatment, in accordance with the definitions and criteria set out in the Act. Designated persons do not have any discretion to add to the categories specified in the Act to which SCDD may be applied.”

The FATF standards permit an exemption of CDD measures only if there is a risk assessment undertaken by the country and where there is identified, as a result of the assessment, a proven low risk category of customers or business relationships. The measures as laid down in Sections 7 and 8 of the 2013 Act require that the designated person takes such measures as are necessary to establish if the customer is a specified customer or the product is a specified product. However, these “measures”, in the case of specified customers, cannot really be considered as a type of CDD measures, and this is clearly not the case for the specified products. For instance, in case of a life assurance policy, (as it is defined in Section 34 (7) (a) of the 2010 Act), if a client would like to subscribe for such an assurance policy, that client will not be subject to any CDD measures if the designated person has taken “such measures as are necessary” to establish that the product that the client wants to buy falls in the category of a “specified” product.

The exemptions provided in the 2010 Act under subsections 34 (1), as amended, and Section 34 (2) are qualified by the provisions of subsections (3) and (4). Subsection (3) provides that a designated person shall not apply the exemptions where:

- the customer is from a place that does not have adequate AML or CTF procedures in place
- the person has reasonable grounds to suspect that the customer is involved in, or the service, transaction or product sought by the customer is for the purpose of, money laundering or terrorist financing
- the person has reasonable grounds to doubt the veracity or adequacy of documents or information that the person has previously obtained for the purpose of verifying the identity of the customer
- the person is not physically present
- the customer or beneficial owner is a politically exposed person.



Subsection (4) provides that a credit institution may apply the exemption in relation to the beneficial ownership of money held in trust in a credit institution only if the credit institution is satisfied that information on the identity of the beneficial owners of the money held in the account is available, on request, to the credit institution.

*Conclusion.* Despite the safeguards (such as those set out in Section 34 (3) of the 2010 Act), the provisions in relation to low risk customers or products allow full exemptions from CDD requirements, in particular for situations related to specified products. Such exemptions are too broad and not consistent with the FATF standards. The Irish authorities highlight that sufficient information must be gathered to ensure that a product or customer falls in the definition of a 'specific' product and/or customer and the monitoring requirements of 35 (3) still applies to these specific products and/or customers.

#### CONCLUSION (DEFICIENCY 4)

Deficiency 4 has been largely addressed: Ireland introduced legally binding provisions for enhanced CDD measures in higher risk scenarios and measures concerning consequences of failure to complete CDD. Deficiencies remain in relation to low risk scenarios where full exemptions from CDD for certain types of customers or products may still exist, and which do not comply with the FATF standards.

#### **R5 (Deficiency 6): Provisions addressing identification of existing customers are limited to cases to where ML is suspected.**

There is still no explicit requirement to identify existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times, such as when a transaction of significance takes place; when customer identification standards change substantially; when there is a material change in the way that the account is operated; or when the institution becomes aware that it lacks sufficient information about the existing customer.

However, Section 54 (3) c of the 2010 Act, as amended through Section 11 of 2013 Act, requires designated persons to adopt policies and procedures to keep documents and information relating to the customers of that designated person up to date. Irish authorities believe that the reference to customers in Section 54 (3) c, as amended, captures *all* customers, including new and existing customers. In addition, they argue that the 2010 Act requires CDD to be applied to existing customers prior to carrying out *any* service for the customer, where Section 33 (1) (c), as amended, applies (reasonable grounds to suspect that there is a risk of money laundering or terrorist financing) or where there are doubts concerning previously obtained customer identification data. Since the wording of the Act refers to *all* services involved in a business relationship with a customer, the Irish authorities believe that services delivered to existing customers are equally covered. Furthermore, the Guidelines, under paragraph 33, clearly state that designated persons should have reliable CDD information for an existing customer prior to carrying out any service for such a customer and should monitor their dealings with existing customers, keep CDD information up to date as warranted by the overall knowledge the person has of the customer, the nature of the business relationship and the risk of money laundering or terrorist financing.

This deficiency has been largely addressed.

## R5: OVERALL CONCLUSION

Through the enactment of the 2010 and 2013 Acts, Ireland has made significant progress in relation to R.5. Only the following deficiencies remain in the Irish legislation:

- Instead of allowing for simplified or reduced CDD procedures in cases of low risk scenarios, the provisions provide some full exemptions from the scope of application of the CDD obligations, but the required justification for so doing has not been provided.
- Some very minor shortcomings remain regarding identification of existing customers.

Ireland has reached a satisfactory level of compliance with Recommendation 5 and it can be judged as equivalent to an LC.

## V. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS

### **SPECIAL RECOMMENDATION I – RATED PC**

Deficiencies identified in the 2006 MER for SR I and SR III are identical.

The analysis provided under SR III indicates that Ireland has not reached a satisfactory level of compliance with SR III. Ireland's compliance with SRI is also therefore not equivalent to an LC.

### **SPECIAL RECOMMENDATION III – RATED PC**

*S/RES/1267 (1999)*. The 2006 MER acknowledged that, at that time, Ireland implemented *S/RES/1267 (1999)* under the EU Council Regulation (EC) 881/2002. On 22 December 2009, the Council of the European Union adopted Council Regulation (EU) 1286/2009 amending Regulation (EC) 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaeda network and the Taliban. The Council Regulation was adopted on a new legal basis (Article 215 of the treaty on the Functioning of the European Union).

Since the 2006 MER, Ireland did not introduce any change in its system to implement *S/RES/1267 (1999)*, which is based on the European system. The new procedures introduced by the Council Regulation No. 1286/2009 appear to not fully comply with some requirements of SR III, notably: *i)* the freezing of funds or other assets owned or controlled, directly or indirectly, by persons acting on behalf or at the direction of the designated persons or entities is not encompassed by the Regulation; *ii)* the requirement to freeze without delay is not met. It should be noted that this potential deficiency was not raised in Ireland's MER, and affects the EU common freezing mechanism. However, for the sake of consistency with other FATF reports on European countries, this deficiency is hence mentioned here.

### **SRIII (Deficiency 1): Ireland has limited ability to freeze funds in accordance with S/RES/1373 (2001) of designated terrorists outside the EU listing system.**

The relevant EU Council Regulation to implement S/RES/1373 (2001) is (EC) 2580/2001 that requires the freezing of all funds and economic resources belonging to persons listed in the Regulations and the prohibiting of making available of funds and economic resources for the benefits of those persons or entities. The Central Bank of Ireland notifies all financial institutions operating in Ireland of changes and additions to the Regulation, and directs the institutions to search their records for funds or economic resources in the names of persons or entities mentioned in the Regulations. If an institution identifies funds held in the name of persons or entities mentioned in the Regulations, such funds must be frozen and reported to the Central Bank and Garda Síochána (Irish police force).

Council Decision 2009/1004/CFSP was adopted on 22 December 2009 updating the list of persons, groups and entities subject to Articles 2, 3 and 4 of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism (*i.e.* freezing mechanisms and the widest possible police and judicial cooperation). While Council Decision 2009/1004/CFSP only repeals Common Position 2009/468/CFSP, of 15 June 2009 insofar as it concerns persons, groups and entities to which Articles 2, 3 and 4 of Common Position 2001/931/CFSP apply, *i.e.* it is understood that Common Position 2009/468/CFSP is still in force as far as the so-called “EU internal terrorists” are concerned.<sup>5</sup> Therefore, no freezing requirements apply to the “EU internal terrorists” (the shortcoming identified throughout the FATF 3<sup>rd</sup> round of mutual evaluations in this respect remains).

### **Conclusion – compliance of Ireland with SRIII in relation to S/RES/1373 (2001)**

As Ireland’s mechanism for implementing S/RES/1373 exclusively relies on the listing system developed at EU level via Council Regulation 2580/2001, there are still no measures in Ireland to freeze funds or assets of EU “internal” or “domestic” terrorists, that would fall outside the list of persons designated for freezing purposes by the EU Council. Criterion III.2 of the Methodology is not fully met.

As noted in the 2006 MER, Section 14 of the Criminal Justice (Terrorist Offences) Act 2005 enables the High Court to make freezing orders in respect of funds where it is satisfied, following application by a Garda, that the funds may be used in committing or facilitating the commission of a terrorist offence or a terrorist financing offence, and it may prohibit a person from disposing of such funds for a period not exceeding 40 days, as specified by the Court. Once the Court is satisfied that the funds are being used, or may be intended for use in committing, or facilitating the commission of a

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<sup>5</sup> This approach constitutes a transitional arrangement put in place following the entry into force of the Lisbon Treaty on December 1<sup>st</sup>, 2009. It repealed Article 34 TEU, which enabled the Council to adopt Common Positions defining the Union’s approach to a particular matter related to police and judicial cooperation in criminal matters. The Lisbon Treaty thus deprived Council of the legal base for updating the relevant part of the annex to Common Position 2001/931/CFSP. The Treaty provides a new legal base for measures targeting “EU internal terrorists” in Article 75 TFEU. However, it remains unclear whether the EU intends to expend freezing measures to individuals and entities with the so-called “internal qualification” on the basis of Article 75 TFEU and when this may happen.

terrorist offence or a terrorist financing offence, it may continue with the freezing, confiscation and disposal procedures. To date no application has been made to the High Court under Section 14. Furthermore, it is still unclear whether the mechanism for interim court orders in Section 14 described below is applicable to requests from foreign jurisdictions to freeze funds of designated terrorists, and Section 14 imposes evidential requirements concerning intended use of the funds that are contrary to the obligation in S/RES/1373 (2001) to freeze all funds and assets of persons who commit terrorist acts whether or not there is evidence those particular funds are intended for use in terrorist acts. Criterion III.3 of the Methodology is not met.

Deficiency 1 has not been addressed.

### **SRIII (Deficiency 2): Ireland does not effectively communicate measures taken under freezing mechanisms to DNFBPs.**

Ireland has made progress in communicating action taken by the authorities under the freezing mechanisms to DNFBPs.

The Department of Finance has written to the bodies which represent the designated non-financial businesses and professions<sup>6</sup> reminding them of their obligations in implementing counter-terrorist financing laws and regulations and of the penalties for breach of the Regulations. The Department has also advised them to check on a regular basis the relevant internet websites where the Regulations are published and provided addresses to the referred websites.

In January 2008, the Department of Finance sent a letter to Irish DNFBPs, drawing their attention to the establishment of the Central Bank's Financial Sanctions website and the email update system which became available to DNFBPs. The Financial Sanctions page has been established in order to provide information to the financial institutions and DNFBPs regarding the legal basis and operation of financial sanctions. The Central Bank is the competent authority for financial sanctions for both financial and non-financial sanctions. The website is available at: [www.centralbank.ie/regulation/processes/Intfs/Pages/default1.aspx](http://www.centralbank.ie/regulation/processes/Intfs/Pages/default1.aspx). The Central Bank of Ireland has published in August 2010 a notification intended to clarify the restrictive measures in place in respect of regimes and entities currently subject to EU Financial Sanctions. Although this is primarily addressed to financial institutions, this constitutes some useful guidance to all designated persons under the 2010 Act. In addition, the Central Bank has established an email subscription service whereby updates to the listings under Council Regulation 2580/2001 are notified by email. While this service is primarily aimed at the financial sector it has been brought to the attention of the DNFBP bodies and will be fully available to that sector.

Deficiency 2 has not been addressed.

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<sup>6</sup> Irish authorities indicated that individual letters were addressed to the Law Society of Ireland, the Consultative Committee of Accountancy Bodies, the Institute of Incorporated Public Accountants, the Irish Taxation Institute, the Irish Property and Facility Management Association, the Institute of Professional Auctioneers and Valuers, the Irish Auctioneers & Valuers Institute and the Committee of the Society of Chartered Surveyors.

**SR.III (Deficiency 3): Ireland does not adequately monitor DNFBPs for compliance with the relevant laws for freezing of terrorist funds, notwithstanding the existence of criminal penalties for non-compliance.**

Procedures for monitoring compliance by DNFBPs with the Regulations are under review. Consequently, deficiency 3 has not been addressed yet.

### **SR.III: OVERALL CONCLUSION**

Ireland is not fully compliant with SR.III in relation to S/RES/1267. In relation to S/RES/1373, there is still no mechanism in Ireland for the immediate freezing of funds of EU “internal” or “domestic” terrorists. There has been an initial progress in reaching out to DNFBPs to communicate some measures taken under freezing mechanism, however, clear guidance would be required to help DNFBPs that hold funds or economic resources that are subject to an asset freezing. Furthermore, there is still no structured system to adequately monitor DNFBPs’ compliance with the relevant laws for freezing of terrorist funds. Ireland has not reached a satisfactory level of compliance with SR.III and not comparable to a largely compliant rating.

## **VI. REVIEW OF THE MEASURES TAKEN IN RELATION TO OTHER RECOMMENDATIONS RATED NC OR PC**

### **RECOMMENDATION 6 – RATED NC**

**R6: There are no legislative or other enforceable obligations currently in force.**

Enhanced due diligence for politically exposed persons was introduced in the 2010 Act and subsequently amended by Section 9 of the 2013 Act. Section 37 of the 2010 Act requires designated persons to take steps to determine whether a customer or beneficial owner is, or has become, a politically exposed person (PEP)<sup>7</sup> or an immediate family member or a close associate of a PEP resident outside Ireland. This is different from the FATF definition of PEP, which applies to all foreign PEPs but resident anywhere. The types of risk management systems that the designated persons are supposed to put in place to determine whether a client is a PEP are described in Section 37 (7) of the 2010 Act (information obtained from the customer, public knowledge). Designated persons must apply the following measures to a customer or beneficial owner whom it has grounds to believe is a PEP or an immediate family member or a close associate of a PEP: *i)* ensure that approval is obtained from any senior management before a business relationship is established with the customer, *ii)* determine the source of wealth and of funds for any transaction including those that are subject to “business relationships”<sup>8</sup> or those that are “occasional transactions” and *iii)* apply

<sup>7</sup> Section 37 (10) of the 2010 Act provides the definition of a politically exposed person, which is in line with the implementing measures for Directive 2005/60/EC. Accordingly, a “politically exposed person” means an individual or an immediate family member, or a close associate of, a politically exposed person, who is, or has at any time in the preceding 12 months been, entrusted with a prominent public function, including either of the following individuals (but not including any middle ranking or more junior official): (a) a specified official; (b) a member of the administrative, management or supervisory body of a state-owned enterprise.

<sup>8</sup> The 2010 Act defines that *business relationship* “in relation to a designated person and a customer of the person, means a business, professional or commercial relationship between the person and the customer that the person expects to be ongoing.”

monitoring in the course of monitoring the business relationship with the PEP (Section 37 (4) as amended).

The requirement applies when initiating the relationship with a customer or carrying out an occasional transaction with, for or on behalf of the customer or assisting the customer to carry out an occasional transaction. It also requires financial institutions to apply *such additional measures in the course of monitoring the business relationship that the designated person considers to be warranted by the risk of money laundering or terrorist financing*. The way the ongoing monitoring provision is formulated under Section 37 (4) (c), as amended, may give the impression that the financial institution has a certain discretion deciding whether enhanced ongoing monitoring would be necessary. However, Irish authorities explained that it does not give such discretion. To underpin this argument, the recently published Guidelines, under paragraphs 46 and 135, state, respectively, the followings: “Enhanced CDD [should apply] for politically exposed persons (PEPs)” and “Due to the higher risk of money laundering and terrorist financing posed by PEPs, designated persons should apply an enhanced level of on-going monitoring to their business relationships with PEPs”.

This deficiency has been addressed. Recommendation 6 can be judged as equivalent to an LC rating.

## **RECOMMENDATION 7 – RATED NC**

### **R7: There are no legislative or other enforceable obligations currently in force.**

Section 38 of the 2010 Act provides that a credit institution shall not enter into a correspondent banking relationship with a non EU credit institution (“the respondent institution”) unless, prior to commencing the relationship, the credit institution –

- a) has gathered sufficient information about the respondent institution to understand fully the nature of the business of that institution;
- b) is satisfied on reasonable grounds, based on publicly available information, that the reputation of the respondent institution, and the quality of supervision or monitoring of the operation of that institution, are sound. Although, the legislation does not require to determine whether the respondent institution has been subject to a ML or TF investigation or regulatory action;
- c) is satisfied on reasonable grounds, having assessed the anti-money laundering and anti-terrorist financing controls applied by the respondent institution, that those controls are sound;
- d) has ensured that approval is obtained from the senior management of the credit institution;
- e) has documented the responsibilities of each institution in applying anti-money laundering and anti-terrorist financing controls to customers in the conduct of the correspondent banking relationship;
- f) in the case of a proposal that customers of the respondent institution have direct access to a payable-through account held with the credit institution in the name of the respondent institution, is satisfied on reasonable grounds that the respondent institution:



- i. has identified and verified the identity of those customers, and can provide the related documents, and
- ii. has obtained information on the purpose and intended nature of the business relationship and is applying ongoing due diligence to its customers. There is no requirement on the respondent institution to provide relevant customer identification data upon request to the correspondent financial institution.

The provisions set out in Section 38 of the 2010 Act are broadly in line with the requirements of Recommendation 7. Therefore, Recommendation 7 can be judged as equivalent to an LC rating. However, these provisions only apply to cross-border correspondent banking relationships with financial institutions *outside* the EU. Ireland's cross-border relationships appear to be primarily linked with European institutions rather than with non-European ones, and not having in place a similar requirement vis-à-vis European countries could be a noticeable weakness. This issue needs to be addressed.

## **RECOMMENDATION 8 – RATED PC**

### **R8: Limited measures have been taken in guidance for non-face-to-face business and new technologies.**

Section 33 (4) of the 2010 Act provides for detailed additional measures to be taken by a designated person where an individual does not present in person for identification and verification. In dealing with non-face to face customers, a designated person is required to apply one or more of the following CDD measures:

1. verification of the customer's identity on the basis of documents or information, that the designated person has reasonable grounds to believe are reliable as confirmation of the identity of the customer in addition to any documents or information that would ordinarily have been used to verify the customer's identity if the customer had presented to the designated person for verification in person of the customer's identity;
2. verification of documents supplied, for the purposes of verifying the identity of the customer, to the designated person by the customer;
3. verification of the customer's identity on the basis of confirmation received from an acceptable institution that the customer is, or has been, a customer of that institution;
4. ensuring that the initial transaction is carried out through an account in the customer's name with an acceptable institution that is a credit institution.

In addition, Section 54 (Internal policies and procedures and training), as amended in Section 11 of the 2013 Act, imposes an obligation on designated persons to adopt policies and procedures dealing with measures to be taken to prevent (b) *the use for money laundering or terrorist financing of transactions or products that could favour or facilitate anonymity*, and (e) *the risk of money laundering or terrorist financing which may arise from technological developments including the use of new products and new practices and the manner in which services relating to such developments are delivered*.

In addition, the Guidelines, under paragraph 167, list the threats arising from new technologies as one of the risks against which designated persons should take appropriate measures under section 54 (Internal Policies and Procedures and Training).

This deficiency has been addressed. Recommendation 8 can be judged as equivalent to an LC rating.

## **RECOMMENDATION 9 – RATED NC**

### **R9: No legally binding obligations are currently in force governing identification carried out by third parties or introducers on behalf of designated bodies.**

Section 40 (3-5) of the 2010 Act introduces provisions for reliance on third parties for the purposes of customer due diligence, excluding ongoing monitoring. Outsourcing and agency relationships are expressly excluded from the scope of Section 40. The designated person remains liable for any failure to apply customer due diligence measures.

Section 40 requires that there be an arrangement between the designated person and the relevant third party which should include an agreement that identification documents are to be provided to the designated person as soon as practicable after a request from the designated person. The language ‘as soon as practicable’ could not be judged as equivalent to ‘immediately’ in terms of forwarding copies of the documents requested (therefore not complying with criteria 9.2). Another gap in the 2010 Act is the requirement for the financial institution relying upon a third party to immediately obtain from the third party the necessary information concerning certain elements of the CDD process (*i.e.* name, address, beneficial ownership) (criteria 9.1). Irish authorities point out that as a matter of necessity specific information is requested and would have to be received in order for the business relationship to commence.

The relevant third party is defined in Section 40 (1) a). It is *i)* a credit institution, *ii)* a financial institution, *iii)* an external accountant or auditor, *iv)* a tax adviser, *v)* an independent legal professional, or *vi)* a TCSP. All of the relevant third parties based in Ireland are subject to the 2010 Act (and are *de facto* required to apply the CDD requirements set out in the 2010 Act and are supervised accordingly).

The 2010 Act provides that third parties located in another Member State are to be supervised or monitored for compliance with the requirements of the EU Third Money Laundering Directive and are *i)* a credit institution, *ii)* a financial institution or *iii)* an external accountant, auditor, tax adviser, legal professional or a TCSP subject to mandatory registration or mandatory professional supervision under the laws of the other Member State. The 2010 Act does not require that such third parties have measures in place to comply with the CDD requirements set out in Recommendations 5 and 10. Third parties can also be located in third countries that have equivalent AML/CFT requirements to those specified in the EU Third Money Laundering Directive. Such third parties must also be supervised or monitored for compliance with requirements equivalent to those of the EU Third Money Laundering Directive. The 2010 Act does not require that such third parties have measures in place to comply with the CDD requirements set out in Recommendations 5 and 10.

In determining in which countries the third party can be based, the Irish authorities do not take into account whether those countries adequately apply the FATF Recommendations. Ireland indicates that it is entirely relies upon the EU member states equivalence list that is derived from the



“Common Understanding on the Criteria for the Recognition of Third Countries Equivalence under the EU Third Anti-Money Laundering Directive”.<sup>9</sup> Ireland implements section 31 of the 2010 Act – that determines the designation of places imposing requirements equivalent to the EU Third Money Laundering Directive – through the statutory instrument SI.343 of 2010. Ireland confirms that the list of countries set out in SI.343 is the EU Common Understanding list. However, as in a number of FATF mutual evaluation reports, this approach does not fully meet the FATF requirements.

The provisions set out in Section 40 are not fully in line with the requirements of Recommendation 9, and therefore cannot be judged as equivalent to an LC rating.

## **RECOMMENDATION 11 – RATED PC**

**R11: There is no explicit requirement to pay attention to all unusual, complex large transactions and transactions with no visible economic purposes, nor to further examine these situations and to set out these findings in writing.**

Section 54 (3) of the 2010 Act imposes an obligation on designated persons to adopt policies and procedures to be followed by persons involved in the conduct of the designated person’s business including the identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the designated person has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing.

Irish authorities highlighted that in section 54 (3) the phrase “identification and scrutiny of complex or large transactions” is associated with, but not qualified by, “other activity that the designated person has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing”. In other words, the policies and procedures must address complex or large transactions per se. In addition, the Irish authorities added that the provisions of Section 55 (3) of the 2010 Act requiring a designated person to keep records evidencing the history of services and transactions carried out in relation to each customer, equally applies to complex, unusual large transactions as well. To underpin this argument, the Guidelines, under paragraphs 71 and 101, state, respectively, the followings: Paragraph 71: “A designated person must, as part of its CDD process and following the policy it adopts in compliance with the obligations under section 54(3) of the Act, identify and scrutinise complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose, and any other activity that the designated person has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing. As designated persons should be in a position to demonstrate compliance with this requirement, it is recommended that the background and purpose of such transactions should, as far as possible, be examined and the findings established in writing – see also paragraph 101.”

Paragraph 101 states “The objective of the on-going monitoring obligation imposed by the Act is to identify activities of customers during the course of the business relationship which are not

<sup>9</sup> The understanding of then FATF Secretariat is that the revision of the Third EU Directive will remove the Third Country Equivalence measure, and will replace it by exemptions through the risk based approach. Ireland earlier indicated its intention to further amend its legislation once the EU 4<sup>th</sup> Money Laundering Directive will have come into force.

consistent with the designated person's knowledge of the customer, or the purpose and intended nature of the business relationship, and which need to be assessed for the possibility that the designated person may have grounds to report a suspicion of money laundering or terrorist financing. It is recommended that designated persons should pay particular attention to complex or unusually large transactions and all unusual patterns of transactions which have no apparent economic or visible lawful purpose. As designated persons should be in a position to demonstrate compliance, it is recommended that the background and purpose of such transactions should, as far as possible, be examined and the findings established in writing – see also paragraph 71.”

This deficiency has been largely addressed. Recommendation 11 can be judged equivalent to an LC rating.

### **RECOMMENDATION 12 – RATED PC**

The 2006 MER lists many shortcomings of DNFBPs' compliance with FATF standards. Under the money laundering provisions (now repealed) of the Criminal Justice Act 1994, barristers, trust or company service providers and private members' gaming clubs were not designated for money laundering purposes. Only guidance notes were published for DNFBPs on AML/CFT guidelines, in particular for solicitors, real state agents and auctioneers dealing with high value goods. However, provisions contained in these guidance notes were not directly enforceable and were not subject to an adequate range of administrative sanctions.

The 2010 Act, under its Section 25, provides a revised definition of a “designated person”, which hence covers not only credit institutions and financial institutions but also the following categories of DNFBPs:

- auditor, external accountant or tax advisor
- relevant independent legal professionals (which means barrister, solicitor or notary, as defined under Section 24 of the 2010 Act)
- trust or company service provider
- property service provider<sup>10</sup>
- casino
- private members' gaming clubs
- traders in goods in respect of transactions involving cash payments of a total of at least EUR 15 000.

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<sup>10</sup> Under its Section 24 (1), the 2010 Act defines a “property service provider” as a person who by way of business carries out any of the following services in respect of property located in or outside the State:

(a) the auction of property other than land;

(b) the purchase or sale, by whatever means, of land;

but does not include a service provided by a local authority in the course of the performance of its statutory functions under any statutory provision.

“Land” is defined in the Interpretation Act 2005 (Schedule, Part 1) as including “tenements, hereditaments, houses and buildings, land covered by water and any estate, right or interest in or over land.”

The 2006 MER stated that casinos, including internet casinos, are illegal in Ireland. Poker is the only authorised gaming activity. Irish authorities confirmed that this prohibition has not been changed since 2006. Therefore, at the present time, casino-type of gaming is carried out in private members' gaming clubs, that are required to be registered for the purposes of money laundering and terrorist financing, although they still remain illegal. The Irish authorities explained, in early 2011, that the reason why casinos and private members' gaming clubs are identified in the 2010 Act as a separate category of designated persons to which the AML/CFT legislation applies is to be in line with the EU Third Money Laundering Directive.

The Irish authorities subsequently reported that Ireland was reviewing its gambling laws and regulatory practices. The Minister of Justice proposed to introduce a new regulatory system for all types of gambling, including online gambling. Work on this legislation commenced and it is expected that the legislation would be presented to the Government within the first half of 2013. While expecting this new legislation to be enacted, however, there is no specific provision in Irish law to regulate online gambling although online casinos offer products in Ireland. Also, as casinos remain formally illegal according the Irish law, no competent authorities were nominated to supervise casino activities in Ireland. For the private members' gaming clubs, the Minister of Justice and Law Reform was nominated as competent authority for AML/CFT purposes.

*Conclusion on the scope issue.* There is no specific provision in Irish law to regulate online gambling although online casinos offer products in Ireland.

#### **R12 (Deficiency 1): Not all DNFBPs are obliged to undertake CDD and record keeping for AML/CFT purposes as covered by the Recommendation 12.**

Customer due diligence requirements are covered by Section 33 of the 2010 Act. Any remaining shortcomings identified under Recommendation 5 are valid shortcomings for DNFBPs, too (see further under the Deficiencies 2-5 below).

Section 55 of the 2010 Act requires that all designated persons shall keep records on all information received from each customer, including identification data used to verify the identity of customers and beneficial owners, for a period not less than 5 years. These records should be provided upon request of State competent authorities (Section 67 of the 2010 Act). The record keeping requirements for DNFBPs are adequately addressed by the 2010 Act. This also includes that domestic competent authorities (including the Garda Síochána and the Central Bank) have the authority to obtain information and documents in a *reasonable time*, as described in related sections of the 2010 Act – *i.e.* in Sections 67-68, 56 (1) and 75-77). Irish authorities confirmed that the category of *information and documents* covers the customer and transaction records.

Under Section 4 of the 2013 Act, amendments were introduced to the definition of an “occasional transaction” (as defined under Section 24 (1) of 2010 Act). According to this amendment, money or monetary value not less than EUR 2000, whether paid to, or paid by the designated “person who effectively directs a private members' club at which gambling activities are carried out” (as defined in Section 25 (1) h of 2010 Act), will be considered as an occasional transaction. Therefore, CDD and record-keeping requirements would apply to these gambling activities.

*Conclusion.* All DNFBPs covered by the 2010 Act are required to undertake CDD and record keeping. However, internet casinos do not fall under the scope of the 2010 Act. Deficiency 1 has been partially addressed.

**R12 (Deficiency 2): The same deficiencies apply for DNFBPs as for financial institutions in the implementation of Recommendation 5 regarding CDD, including the consequences of failure to complete CDD, timing of verification requirements and provisions addressing identification of existing customers.**

The same remaining concerns in the course of the implementation of Recommendation 5 apply equally to DNFBPs with regards to:

- Allowing for, in some instances and in relation to a specified customers and/or products, full exemptions to the scope of application of the CDD obligations instead of simplified or reduced CDD (Deficiency 4 of R.5.);
- Some very minor shortcomings in relation to the identification of existing customers on the basis of materiality and risk (Deficiency 6 of R.5.).

Deficiency 2 has been mostly but not fully addressed.

**R12 (Deficiency 3): Under the present regime there are no, or limited requirements to apply higher risk measures as required under Recommendations 6, 8 and 9.**

The 2010 Act introduces specific provisions with regards to PEPs (Section 37, as amended though Section 9 of the 2013 Act); non face-to-face transactions (Section 33 (4)) and third party and introducers (Section 40). Recommendations 6 and 8 have been largely rectified and reached a level equivalent to an LC level. The shortcomings identified in relation to Recommendations 9 apply equally to DNFBPs (please refer to the analysis provided under R.9 above). Deficiency 3 has been largely addressed.

**R12 (Deficiency 4): Guidance is limited in relation to the DNFBPs obligations to pay attention to complex and unusual transactions (applying Recommendation 11).**

As mentioned under R.11. above, the 2010 Act imposes an obligation on designated persons, including DNFBPs, to adopt policies and procedures for the identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the designated person has reasonable grounds to regard as particularly likely, by its nature, to be related to money laundering or terrorist financing. Provisions of Section 55 (3) of the 2010 Act requiring a designated person to keep records evidencing the history of services and transactions carried out in relation to each customer equally applies to complex, unusual large transactions. The Guidelines provides additional details in relation to recommendation 11, to be also applied to DNFBPs as designated persons.

Deficiency 4 has been addressed.

**R12 (Deficiency 5): A proportionate range of sanctions are not directly available for AML/CFT failures and not all DNFBPs have a designated body (supervisor or SRO [Self Regulatory Organisation]) to impose AML/CFT sanctions (applying Recommendation 17).**

This issue is dealt with under Recommendation 24 in the most recent version of the 2004 Methodology, and is addressed in that context.

## **R12: OVERALL CONCLUSION**

Internet casinos seem to not fall under the scope of the 2010 Act. However, an important number of shortcomings identified in the MER have been addressed. Compliance with R.12 can therefore be considered to reach the level equivalent to an LC rating.

## **RECOMMENDATION 16 – RATED PC**

**R16 (Deficiency 1): Not all DNFBPs are subject to the STR (Suspicious Transaction Report) obligations (applying Recommendation 13).**

Section 42 of Chapter of the 2010 Act requires all designated person who knows, suspects or has reasonable grounds to suspect, on the basis of information obtained in the course of carrying on business as a designated person, that another person has been or is engaged in an offence of money laundering or terrorist financing, to report this knowledge or suspicion to the Garda and the Revenue Commissioners.

As mentioned above, the category of *designated person* has been broadened in the 2010 Act, from the former interpretation of 2003 – including only accountants, auctioneers, auditors, estate agents, tax advisors and solicitors – to the additional categories of barristers, trust or company service providers and private members' gaming clubs. Although internet casinos do not fall under the scope of the 2010 Act, it does not seem to be a major issue. Deficiency 1 has been largely addressed.

**R16 (Deficiency 2): DNFBPs are not required to develop internal policies procedures, internal controls, ongoing employee training and compliance in respect of AML/CFT (applying Recommendation 15).**

Section 54 of the 2010 Act requires all designated persons to adopt policies and procedures to prevent and detect the commission of money laundering and terrorist financing including –

1. the assessment and management of risks of money laundering or terrorist financing, and
2. internal controls, including internal reporting procedures.

The 2010 Act does not specify the type of internal controls that designated persons are supposed to take in line with Recommendation 15 (that applies to DNFBPs through Recommendation 16), it only specifies them in relation to reporting procedures (R.13) and the scrutiny of complex or large transactions (R.11). Designated persons are not required to develop specific compliance management arrangements such as the designation of an AML/CFT compliance officer at the managerial level. There is no requirement to give the AML/CFT compliance officer and other appropriate staff a timely access to customer identification data and other CDD information,

transaction records and other relevant information. No reference in the 2010 Act is made to the setting up of an adequately resourced and independent audit function. There is no requirement to put in place screening procedures to ensure high standards when hiring employees. Nevertheless, Section 54 (6) of the 2010 Act requires ongoing staff training on identifying and dealing with a transaction that may be related to money laundering and terrorist financing.

Internal controls requirements in the 2010 Act are not specifically identified and do not meet most of the requirements under Recommendation 15. However, Ireland reported that current negotiations at European level show that the 4<sup>th</sup> Money Laundering Directive will require the appointment of a compliance officer at management level “when appropriate to the size and nature of the business (Article 8.4. (a))”. The Directive, once adopted, will have to be transposed into the Irish law. Irish authorities added that in general, the appointment of a money laundering compliance officer may be less relevant in the Irish DNFBP sector due to the greater prevalence of sole traders or small firms in that sector.

Deficiency 2 has not been adequately addressed.

**R16 (Deficiency 3): There are not adequate measures for DNFBPs to pay special attention to transactions involving certain countries and to make their findings available in writing, or apply appropriate counter-measures.**

In preparing policies and procedures, Section 54 of the 2010 Act requires designated persons to have regard to any relevant guidelines approved under Section 107. The Guidelines prepared for the financial services sector de facto apply to DNFBPs, and they deal with the issue of country risk. For detailed analysis, please refer to R.21 below.

Deficiency 3 has not been addressed.

**R16 (Deficiency 4): The STR regime is not yet effective with low numbers of STRs being made by DNFBPs.**

Reporting of suspicious transactions from the non financial sector remains low but shows an increasing number. This can be justified by a raising awareness of DNFBPs’ reporting obligations due to the requirement in Section 63 of the 2010 Act on each competent authority to monitor the designated persons and take measures that are reasonably necessary for the purpose of securing compliance with the requirements of the 2010 Act, including the requirements of Section 42 in respect of suspicious transaction reporting and the requirements of Section 54 in respect of internal policies and procedures and training. It was earlier reported that the Gardai gave presentations at various seminars organised by the DNFBPs during which issues relating to the reporting of suspicious transactions, record keeping and customer identification are emphasised together with the consequences for the designated persons for non compliance with legislation.

Table 1 shows the breakdown of STRs submitted by the different categories of DNFBPs, during the period between 2005 and 2012.

Table 1. Breakdown of STRs submitted by DNFBP type

INSTITUTION TYPE	2005	2006	2007	2008	2009	2010	2011	2012
Accountants	24	13	11	14	10	11	20	39
Auctioneer		1	2	2	3	1	1	
Auditors / Accountants	8	19	10	17	16	18	19	20
Dealers - High Value Goods	0	0	0	3	7	21	10	5
Solicitor	26	19	13	15	15	19	32	23
Tax Advisor	0	1	0	0	0	1	2	1
TCSPs							20	38
Other <sup>1</sup>	1	1	0	3	6	11	25	31
<b>Total</b>	<b>59</b>	<b>54</b>	<b>36</b>	<b>54</b>	<b>57</b>	<b>82</b>	<b>129</b>	<b>157</b>

**Table note**

1. Other includes: Mortgage Brokers, spread betting, Supervisory Body

In the context of this desk review, the effectiveness of the STR system implemented by the DNFBPs is difficult to assess. On the basis of the figures that have been provided, it seems that the STR regime as implemented by the DNFBPs is improving.

**R16 (Deficiency 5): A proportionate range of sanctions are not available for AML/CFT failures and not all DNFBPs have a designated body (supervisor or SRO) to impose AML/CFT sanctions (applying Recommendation 17).**

See Recommendation 24 below.

**R16: OVERALL CONCLUSION**

Ireland has improved its compliance vis-à-vis Recommendation 13, although the effectiveness component is difficult to judge in the context of this report. Compliance with Recommendation 15 is still problematic in case of DNFBPs. Shortcomings also remain in relation to Recommendation 21. Ireland's compliance in relation to R.16 cannot yet be judged as equivalent to an LC rating.



## **RECOMMENDATION 17 – RATED PC**

**R17 (Deficiency 1): This recommendation is overall not effectively implemented as there is no range of sanctions available proportionate to the severity of a situation.**

At the time of the MER, there were a limited range of sanctions available to the Irish authorities for AML/CFT matters including criminal prosecutions and revocation of license. Administrative sanctions in the context of AML/CFT were not available.

The 2010 Act, under its technical Section 114 (4), introduces the necessary link between the 2010 Act and the Central Bank and Financial Services Authority of Ireland Act 2003. Irish authorities reported that this essentially means that breaches to the 2010 Act are either subject to criminal prosecutions or to administrative sanctions. The technical deficiency identified under Deficiency 1 has been addressed. However, the effectiveness of the sanctions system is difficult to judge in the context of this paper-based review. For further details, see Deficiency 2 below.

**R17 (Deficiency 2): Administrative sanctions are not yet directly available for AML/CFT purposes.**

The 2006 MER stated that the Financial Regulator could not apply the administrative sanctions for ML or TF matters, and was unable to use its sanctions powers for breaches of the 1994 ML law.

Irish authorities indicated that Section 114 (4) of the 2010 Act provides for the application of the administrative sanctions regime of the Central Bank to breaches of the money laundering and terrorist financing obligations of credit and financial institutions under the Act. The extended administrative sanctioning powers of the Central Bank are described under Part IIIC of the Central Bank Act 1942 as amended (Part IIIC – Enforcement of Designated Enactments and Designated Statutory Instruments) to cases where designated persons (DPs that are Credit and Financial Institutions – see section 60 (2) (a) commit an offence under part 4 (“Provisions Relating to Finance Services Industry, Professional Service Providers and Others”) of the Act.

Section 114 (4) operates as follows:

1. It amends schedule 2 to the Central Bank Act 1942 by inserting a reference to Part 4 of the 2010 Act.
2. Once added to the above schedule, Part 4 of the 2010 Act becomes a ‘designated enactment’ for the purpose of Part IIIC of the Central Bank Act 1942.
3. A ‘contravention’ of a ‘designated enactment’ is a ‘prescribed contravention’ for the purposes of Part IIIC of the Central Bank Act 1942.
4. A ‘prescribed contravention’ by a designated person can be administratively sanctioned (as an alternative to criminal prosecution) by the Central Bank pursuant to Part IIIC.



According to the authorities, these sanctions can be applied to all categories of financial institutions as listed in the FATF Standards and may take the form of:

- Public caution or reprimand;
- Direction to refund or withhold all or part of an amount of money charged or paid, or to be charged or paid, for the provision of a financial service;
- Monetary penalty (not exceeding EUR 5 000 000 in the case of a corporate and unincorporated body, not exceeding EUR 500 000 in the case of a person);
- Direction disqualifying a person from being concerned in the management of a regulated financial service provider;
- Direction to cease the contravention if it is found the contravention is continuing; and
- Direction to pay all or part of the costs of the investigation and inquiry.

The Central Bank has indicated that more serious sanctions such as the suspension or withdrawal of a licence are also available under its general powers (although they are not explicitly listed in the 2010 Act).

The AML/CFT Supervisory Unit of the Central Bank commenced its onsite inspections following the enactment of the 2010 Act (*i.e.* the time of its designation as State Competent Authority for AML/CFT oversight of all Irish credit and financial institutions). The Unit has conducted approximately 80 on-site and off-site AML/CFT inspections in all sectors of financial activity. Ahead of an IMF review due at the end of September 2013, as reported by the Irish authorities, the Central Bank is currently strengthening and enhancing its risk-based supervision of AML/CFT/FS issues in all sectors of financial services.

In October 2012, the Central Bank wrote to financial institutions pointing out that the inspections revealed a lower level of compliance than expected, with AML/CFT control weaknesses identified in a number of core areas. Financial institutions were required to review their AML/CFT infrastructures, to address any shortcomings in them and to align their business processes to ensure compliance with the 2010 Act. Financial institutions were also requested to future-proof systems and processes in accordance with anticipated changes to legislation and international standards.

Irish authorities provided two cases in which the mentioned Unit identified breaches against certain provisions of the 2010 Act, and applied administrative sanctions in form of monetary penalties to rectify them. The range of sanctions, as described by the authorities, seems to be quite broad. Irish authorities indicated that sanctions are applicable in relation to the legal persons that are financial institutions or businesses, *and* also in relation to their directors and senior management. However, the cases provided by Ireland showed application of sanctions to legal persons only, but not to directors and senior managers.

The Central Bank of Ireland's publicity notices webpage provides a comprehensive indication of the breadth of issues to which the Bank's administrative sanctions procedure has successfully been applied.

## **R17: OVERALL CONCLUSION**

The Central Bank is the competent authority for administrative sanctions against financial institutions under the Irish AML/CTF regime. Following the enactment of the 2010 Act, onsite inspections have been commenced, and sanctions have been applied in at least two instances. While this Recommendation should be implemented on an on-going basis, this paper-based review is limited to the information authorities provided. On that basis, the deficiencies identified earlier seem to be largely addressed. Recommendation 17 can be judged as equivalent to an LC rating.

## **RECOMMENDATION 18 – RATED PC**

### **R18 (Deficiency 1): Correspondent banking relationships with shell banks are not forbidden by law or regulation.**

The 2010 Act introduces specific provisions that prohibit credit institutions from entering into a correspondent banking relationship with a shell bank (Section 59). A shell bank is defined in Section 59 (6) as a credit institution that *i)* does not have a physical presence, involving meaningful decision-making and management, in the jurisdiction in which it is incorporated; *ii)* is not authorised to operate, and is not subject to supervision, as a credit institution (or equivalent) in the jurisdiction in which it is incorporated, and *iii)* is not affiliated with another body corporate that has a physical presence, involving meaningful decision-making and management, in the jurisdiction in which it is incorporated, and that is authorised to operate, and is subject to supervision, as a credit institution or an insurance undertaking, in the jurisdiction in which it is incorporated.

It is important to note that there is a detailed authorisation process in place for establishment of credit institutions in Ireland. Specific requirements on authorisation and ownership are set out in the licensing and supervision requirements and standards for credit institutions which set out details on required legal form, corporate structure, proposed objectives and proposed operations. All applications must be submitted to the Board of the Central Bank for approval. In addition the Central Bank has a role in consideration of such applications in the context of its responsibilities in relation to maintenance of overall financial stability. The authorisation process in place for establishment of credit institutions in practice prevents the establishment or operation of shell banks.

### **R18 (Deficiency 2): There is no prohibition on financial institutions from entering into, or continuing correspondent banking relationships with shell banks.**

Section 59 of the 2010 Act prohibits a credit institution from entering into a correspondent banking relationship with a shell bank. It also requires that a credit institution that has entered into a correspondent banking relationship with a shell bank before the commencement of the Act shall not continue that relationship.

### **R18 (Deficiency 3): Financial Institutions are not required to satisfy themselves that correspondent institutions in a foreign country do not permit accounts to be used by shell banks.**

Section 59 (3) also provides that credit institutions shall not engage in or continue a correspondent banking relationship with a bank that the institution knows permits its accounts to be used by a

shell bank. Credit institutions are also required by Section 59 (4) to apply appropriate measures to ensure that they do not enter into or continue a correspondent banking relationship with a bank that permits its accounts to be used by a shell bank.

## **R18: OVERALL CONCLUSION**

Section 59 of 2010 Act satisfies the requirements of Recommendation 18. Recommendation 18 can be judged as equivalent to a C rating.

## **RECOMMENDATION 21 – RATED PC**

### **R21 (Deficiency 1): There is no mechanism in place to make designated bodies aware of weaknesses in other countries' AML/CFT systems.**

Section 43 of the 2010 Act requires designated persons to report to the Garda Síochána (*i.e.* the national police force in Ireland) and the Revenue Commissioners (*i.e.* the Irish Tax and Customs Administration) any service or transaction with a place which has been designated by the Minister for Justice and Law Reform, after consultation with the Minister of Finance, as a place not having adequate procedures in place for the detection of money laundering and terrorist financing under Section 32.

Under Article 40 (4) of the EU Third Money Laundering Directive, if the EU Commission finds that a third country does not meet certain AML/CFT requirements it shall adopt a decision so stating. Section 32 of the 2010 Act provides that any country the subject of an EU Commission decision under Article 40(4) is taken to be designated under Section 32. Designated bodies in Ireland will be advised of any such countries. To date there have been no decisions under Article 40(4) and consequently, to date no countries have been designated under Section 32.

In addition, this designation process would apply solely to places that fall outside the EU countries. The way it is formulated implicitly considers all European member countries as having adequate procedures in place for the detection of ML and FT. This is not in line with the FATF requirement. The reporting obligation under Section 43 should apply to any third country. In addition, the current provisions do not introduce any specific requirement with regards to transaction monitoring and detection measures that should be adopted by the designated persons (the focus is only on an automatic transactions reporting).

The Central Bank advises the financial services sector in respect of countries which are the subject of a FATF call for counter measures or which have been identified by the FATF as having strategic deficiencies in their AML/CFT regimes. This advice is publicly available on the Central Bank's website: [www.centralbank.ie/regulation/processes/anti-money-laundering/Pages/WhatsNew.aspx?ListID=39be8f14-7392-41d0-bf89-d74c6d8f99ee&ListItemID=25](http://www.centralbank.ie/regulation/processes/anti-money-laundering/Pages/WhatsNew.aspx?ListID=39be8f14-7392-41d0-bf89-d74c6d8f99ee&ListItemID=25). Irish authorities reported that designated person would be expected to take account of the country risk posed by any country appearing on a FATF list, whether European or not.

Under section 54, the 2010 Act imposes an obligation on designated persons to adopt policies and procedures to be followed by persons involved in the conduct of the designated person's business, including the assessment and management of risks of money laundering or terrorist financing.

Although a relevant risk factor is the 'country risk' presented by countries that insufficiently apply the FATF Recommendations, there is no specific requirement in the 2010 Act, as primary legislation, to consider this risk.

Country/Geographic risk is dealt with in paragraph 55 of the recently published Guidelines as follows: "Country risk, in conjunction with other risk factors, provides useful information as to potential money laundering and terrorist financing risks. Country risk is not solely related to the country of origin of a customer. It should also take into account that a customer may have business interests in or relevant links to a country that may signify that the customer should be placed in a higher risk category. Factors that may result in a determination that customers from, in or connected with a particular country pose a higher risk include:

- Countries subject to sanctions, embargoes or similar measures issued by, for example, the United Nations ("UN") or European Union. In addition, countries subject to sanctions or measures similar to those issued by bodies such as the UN, but which may not be universally recognised, may be given credence by a designated person because of the standing of the issuer and the nature of the measures;
- Countries identified by credible sources (*e.g.* FATF, FATF-style regional bodies or other recognised evaluation bodies and EU Commission) as lacking adequate money laundering laws and regulations;
- Countries identified by credible sources as providing funding or support for terrorist activities; or
- Countries identified by credible sources as having significant levels of corruption, or other criminal activity."

In addition, paragraph 156 of the same Guidelines says that "Although the Minister for Justice and Equality has powers under section 31 of the Act to designate countries not directly subject to the Third Money Laundering Directive but which the Minister is satisfied impose requirements equivalent to the Third Money Laundering Directive, designated persons are still expected to include any such countries in any risk assessment they are required to perform. While the designation pursuant to section 31 is a significant factor, designated persons should have regard to any specific jurisdictional issues that might nonetheless arise."

Deficiency 1 has not been adequately addressed.

**R21 (Deficiency 2): There is no requirement to examine and monitor transactions from countries who insufficiently apply FATF Recommendations that have no apparent economic or lawful purpose, or to make these findings available to competent authorities.**

Section 54 of the 2010 Act imposes an obligation on designated persons to adopt policies and procedures to be followed by persons involved in the conduct of the designated person's business, that include policies and procedures dealing with the identification and scrutiny of complex or large transactions, unusual patterns of transactions that have no apparent economic or visible lawful purpose and any other activity that the designated person has reasonable grounds to regard as

particularly likely, by its nature, to be related to money laundering or terrorist financing. These policies and procedures are, however, not linked to places and countries that have been designated under Section 32 of the 2010 Act as not having adequate procedures in place for the detection of money laundering and terrorist financing or that do not or insufficiently apply the FATF Recommendations. Irish authorities indicated that this link exists as Section 32 falls into Part 4 of the 2010 Act, and therefore the requirement of adopting policies and procedures should cover the countries designated under section 32. However, the provisions in Section 54 are not sufficient and therefore that this deficiency has not been addressed.

## **R21: OVERALL CONCLUSION**

The shortcomings identified in the MER have not been adequately addressed and therefore compliance with R.21 cannot be judged as equivalent to an LC rating.

## **RECOMMENDATION 24 – RATED NC**

### **R24 (Deficiency 1): Almost all DNFBPs are not subject to oversight for AML/CFT purposes.**

Designated persons are subject to the compliance monitoring provisions of Chapter 8 of Part 4 of the 2010 Act. Section 63 requires the competent authority for each category of designated person to effectively monitor the designated person and take measures that are reasonably necessary for the purpose of securing compliance by those designated persons with the requirements of Part 4 of the 2010 Act *Provisions Relating to Finance Services Industry, Professional Service Providers and Others*. It includes the requirements of Section 54 in respect of internal policies and procedures and training.

The 2010 Act, under Section 60, nominates/specifies the competent authorities, responsible for monitoring of compliance for certain categories of DNFBPs, including:

- For auditors, external accountants and tax advisers the competent authority is the accountancy body designated by the Companies (Auditing and Accounting) Act 2003, as defined under Section 24 (1) of the 2010 Act; For solicitors, the competent authority is the Law Society of Ireland;
- For barristers, the competent authority is the General Council of the Bar of Ireland; and
- For any other categories of designated person the competent authority is the Minister for Justice and Law Reform.<sup>11</sup>

<sup>11</sup> The Anti-Money Laundering Compliance Unit has been established within the Department of Justice and Law Reform to administer the functions of a competent authority under the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. Under the Act the Minister for Justice and Law Reform is the competent authority for the following designated persons:

- Auditor, External Accountant or Tax Adviser, who are not members of a designated accountancy body or of the law society;
- Trust or Company Service Providers, who are not members of a designated accountancy body or of the Law Society or regulated by the Central Bank;
- Private Members' Gaming Clubs;

Section 63 of the 2010 Act requires the competent authority for each category of designated person to effectively monitor the designated persons and take measures that are reasonably necessary for the purpose of securing compliance with the requirements of the 2010 Act, including the requirements of Section 54 in respect of internal policies and procedures and training. Section 65 requires each competent authority to publish in its annual report an account of the activities that it has carried out in performing its functions under the 2010 Act.

Irish authorities indicate with regard to the powers of competent authorities, that certain powers are conferred on State competent authorities *i.e.* the Central Bank and the Minister for Justice and Law Reform (Anti Money Laundering Compliance Unit, AMLCU) under the 2010 Act (Chapter 8). These powers consist mainly of powers to give directions to furnish information or documents, power to give directions to comply with obligations and power to appoint authorised officers who may enter premises and require production of documents. Section 64 of the 2010 Act makes it clear that the powers of competent authorities under the 2010 Act are without prejudice to any other powers they may have.

Since the commencement of the 2010 Act, Irish authorities highlighted several actions they have taken, including:

- The AMLCU entered operational phase immediately following enactment;
- Public Notices were placed in national papers and a dedicated website [www.antimoneylaundering.gov.ie/en/AML](http://www.antimoneylaundering.gov.ie/en/AML) was launched in June 2010;
- Trust or Company Service Provider Authorisations commenced on the 15th July 2010;
- Registration of persons directing private members gaming clubs at which gambling activities carried on commenced on 15 July 2010;
- Authorised Officers have been appointed and compliance monitoring of designated persons on a risk sensitive basis commenced during the 3rd quarter of 2010.

Ireland confirmed that a priority for the AMLCU is to ensure that all affected business sectors are fully informed generally of the new legal obligations. The AMLCU has committed itself to administer robust anti money laundering/counter terrorist financing supervisory systems for all businesses that fall under the remit of the Department. All designated persons compliance would be monitored on a risk sensitive basis.

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- Any person trading in goods involving payments, to the person in cash, of a total of at least EUR15,000 (This category, temporarily, also includes the property service providers as the future competent authority for property service providers, the Property Services Regulatory Authority is still hasn't been established).

The principal functions of the Unit are:

1. to administer the authorization process for Trust and Company Service Providers
2. to administer the registration process for Private Members Gaming Clubs
3. to undertake the general functions of compliance monitoring of those designated persons that are assigned by the Act to the Minister.



In April 2012, Ireland further reported that the Minister for Justice and Equality, by [www.npsra.ie/website/npsra/npsraweb.nsf/0/D3532048EBBBC39F802579DC004FDB33/\\$File/Etablissement Day Order - SI 113 of 2012.pdf](http://www.npsra.ie/website/npsra/npsraweb.nsf/0/D3532048EBBBC39F802579DC004FDB33/$File/Etablissement%20Day%20Order%20-%20SI%20113%20of%202012.pdf) under the Property Services (Regulation) Act 2011, established the Property Services Regulatory Authority (PSRA) on a statutory basis. One of the main functions of the Authority is the licensing of Property Services Providers (*i.e.* Auctioneers/Estate Agents, Letting Agents and Management Agents). The PSRA would take over the licensing of Auctioneers/Estate Agents and Letting Agents from the Courts and Revenue Commissioners and also license, for the first time, Management Agents. While the establishment of the PSRA was prompted by wider concerns arising in the property services sector in Ireland, Irish authorities believe that it would also help to address concerns expressed by the FATF about compliance monitoring in the DNFBP sector. It is intended that the PSRA would be prescribed as a State Competent Authority under Section 62 of the 2010 Act. In accordance with Section 63 of the 2010 Act the PSRA would be then required to monitor real estate agents and take measures that are reasonably necessary for the purpose of securing compliance with the requirements of the Act.

Ireland has taken important steps to address this shortcoming. However, the effectiveness of these monitoring systems is difficult to judge in the context of this paper-based review.

**R24 (Deficiency 2): Where an oversight role exists the SROs do not have sufficient resources to perform these functions.**

The prescribed accountancy bodies, the Law Society and the AMLCU within the Department of Justice and Law Reform have all indicated that they have adequate resources for the purposes of fulfilling their functions as competent authorities under the 2010 Act.

The Law Society of Ireland believes that it effectively monitors solicitors and takes all measures that are reasonably necessary for the purpose of securing compliance by the solicitors' profession with the imperatives of the 2010 Act. There are approximately 2 200 law firms in Ireland and approximately 400 investigations are carried out each year by the Society's Regulation department's team of eleven full-time investigating accountants. Consequently, approximately 20% of all firms are investigated each year for the purposes of general regulatory and AML/CFT compliance. In 2013, the Law Society confirmed that the level of AML/CFT awareness, understanding and compliance by law firms has increased as firms become more aware of and more familiar with their AML/CFT duties. While fulfilling its statutory AML/CFT monitoring obligations over the past few years, the Law Society has noted continued improvement in both awareness and the application of AML/CFT procedures/ policies and other AML/CFT compliance.

In addition, the Law Society believes that it has an adequate range of administrative sanctions and adequate powers to perform its functions both under the 2010 Act and the Solicitors Acts 1954 to 2008. The "sanctions" contained in the 2010 Act require that the Society make a report to the Garda Bureau of Fraud Investigation and the Revenue Commissioners against a solicitor for breach of AML requirements. These reports are made by the Society's Money Laundering Reporting Committee. The Society's legislative obligations for breaches of AML/CFT duties conclude upon the making of a report to State authorities, as responsibility for criminal prosecution rests with State authorities in accordance with the imperatives of the Irish Constitution.

The Chartered Accountants Ireland (CAI) indicated that the Chartered Accountants Regulatory Board<sup>12</sup> devotes significant resources to inspecting the activities of CAI member firms; this includes compliance with AML/CFT requirements. Non compliance with such requirements can trigger necessary regulatory action which can result in regulatory penalties and related sanctions, as well as withdrawal of practising rights and exclusion from membership.

In addition, the AMLCU within the Department of Justice and Law Reform reported that approximately 370 compliance inspections of High Value Goods Dealers, Trust or Company Service Providers and Private Members' Clubs were carried out in 2011. Approximately 50 reports under Section 63 of the 2010 Act were issued to the Garda Síochána and the Revenue Commissioners in that year. This level of activity continued in 2012 with 368 compliance inspections and 67 reports under Section 63. Given that the compliance monitoring remit of the AMLCU extends to approximately 5 000 businesses, this represents a high level of compliance monitoring activity. The AMLCU's 2011 Statistics Report noted that businesses such as high value dealers are responding well to the requirements of the Act and considerable improvement in compliance is already evident for example in relation to Customer Due Diligence practice, suspicious transaction reporting and staff training to protect themselves from the threat of money laundering and terrorist financing.

The AMLCU has the power to issue directions to non-compliant persons but does not have any administrative sanctions available. Any criminal prosecution would be a matter for the Garda Síochána though Irish authorities also indicated that since reports also go to the Revenue Commissioners there would be, in their views, a strong incentive for the persons in question to avoid a tax audit or any penalties or other legal action that might be undertaken by the tax authorities.

## **R24: OVERALL CONCLUSION**

Ireland has taken important steps to improve compliance with Recommendation 24, and its technical compliance has been brought to a level equivalent to an LC rating. However, in the context of this desk review, it is difficult to judge the effectiveness of the monitoring system put in place for the DNFBPs or the adequacy of resources.

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<sup>12</sup> The Chartered Accountants Regulatory Board is the independent regulatory board established by Chartered Accountants Ireland – the largest of the prescribed accountancy bodies in Ireland. The attached link [www.carb.ie](http://www.carb.ie) contains a significant amount of information on the rules, regulations, sanctions etc that apply to members of the CAI. Most, if not all, of the other prescribed accountancy bodies (9 in total) will have similar rules and regulations. Also attached is a direct link to the practising certificate regulations which set out the requirements applicable to CAI members undertaking any kind of public practice work.



## RECOMMENDATION 32 – RATED PC

**R32 (Deficiency 1): Overall there are a limited number of statistics available to assess the effectiveness of the AML/CFT regime. (Deficiency 2): The available statistics are not used for systematic review of the effectiveness and efficiency of AML/CFT systems. (Deficiency 3): There is no overall proactive review of the AML/CFT effectiveness.**

The 2006 MER stated that statistics collected by the FIU were limited at that time; which is in part due to the lack of IT, including the absence of management system that could collect detailed information in relation to STRs and subsequent ML investigations. Since then, an on-line reporting system of STRs (FIDOL) has been implemented at the FIU, which has assisted the prompt processing of STRs. As of mid 2010, online reporting accounted for approximately 70% of all STRs received annually by the FIU. Work is also in progress with regard to on-line feedback on STRs, that, when implemented, will be of considerable benefit to the administration of the FIU.

In 2011, Irish authorities reported that there were, at that time, some ongoing discussions to provide a sound statistical basis upon which to systematically review the efficiency and effectiveness of AML/CFT systems. As a result of such discussions, a committee, chaired by the AMLCU of the Department of Justice and Equality and including the Central Statistics Office, the Garda Síochána and the Revenue Commissioners decided to compile statistical data for 2011 – the first full year of operation of the 2010 Act – and to publish a report on it. The report was published with the intention to demonstrate a commitment to developing the data and statistical tools at every relevant stage of the criminal justice and related enforcement systems in specific areas of investigation and enforcement activity.<sup>13</sup>

The report provides an overview on statistical data as they relate to STRs (including a breakdown of financial institutions and different category of DNFBPs), as well as on ML/TF investigations, prosecutions and confiscations. It also presents the AML/CFT compliance monitoring activities of the main regulatory bodies / competent authorities.

Publishing the statistical report is an important step in the right direction. Its conclusions say that the key agencies directly involved in the suspicious transaction reporting framework and follow up action have not identified any particularly significant issues in the working of the system to date. While the overall level of STRs is high, both the Garda Síochána and the Revenue Commissioners indicated that information is the key tool in the detection and prosecution of money laundering offences and emphasise the value of quality completed STRs.

However, despite the high number of STRs, the level of detection and prosecution of ML/TF offences is low in Ireland. This discrepancy, according to Irish authorities, is due to several factors including the fact that 75% of the STRs submitted to the FIU on an annual basis are revenue related (and therefore it is the Revenue Commission that will take the necessary action on them).

In terms of inter-agency collaboration, the Garda Financial Intelligence Unit has an annual feedback meeting at which representatives of the major credit institutions attend. This is a forum for institutions to hear how their colleagues are dealing with the challenges of money laundering and to

<sup>13</sup> Irish authorities reported that they expect that the Department of Justice and Equality's Anti-Money Laundering Compliance Unit will publish a similar report for 2012 by the final quarter of 2013.

exchange experiences and to develop shared approaches to common problems. In 2011 the Revenue Commissioners held a seminar for money laundering reporting officers in financial institutions to give feedback on the quality of the reports being submitted and outline how the valuable intelligence is being used in investigations. 155 money laundering reporting officers from 92 financial institutions attended, some of which had travelled from England and Northern Ireland. The Gardaí also participated in the event and made a presentation. Colleagues from the UK Revenue (HMRC) Office in Belfast and the Fiscal Crimes Liaison Officer in the British Embassy attended to emphasise the close working relationship between the two tax authorities.

### **R32: OVERALL CONCLUSION**

Ireland has commenced systematic collection of statistical data and information following the enactment of the 2010 Act, and made substantive progress to improve compliance with Recommendation 32. The first structured AML/CFT statistical report has been published, and the second is expected to be published soon. This is an important step in the right direction. However, effectiveness is difficult to judge in the context of this paper-based review and this analysis is limited to the information authorities provided. On that basis, technical compliance with R32 has been brought to a level equivalent to an LC rating. Nevertheless, maintaining statistics is not an end in itself, but a tool through which the effectiveness of an AML/CFT system can be determined and therefore it should remain an on-going exercise.

### **RECOMMENDATION 33 – RATED PC**

#### **R33: Competent authorities do not have access in a timely fashion to adequate, accurate and current information on beneficial ownership and control.**

Section 56 of the 2010 Act requires credit or financial institutions to have systems in place to enable them to respond fully and promptly to enquiries from the Garda Síochána as to whether or not they have, or have had, a business relationship, within the previous 6 years, with a person specified by the Garda Síochána, and on the nature of any such relationship with that person. However, this requirement does not satisfy the requirement of R33 stipulating that competent authorities should be able to have access in a timely fashion to adequate, accurate and current information on beneficial ownership and control.

Irish authorities indicated that personnel from the Garda Bureau of Fraud Investigation are on permanent secondment to the Office of The Director of Corporate Enforcement. This arrangement may enhance access by the FIU to accurate information held at the latter Office relating to the remit of the Director. But again, this does not address the shortcoming identified in the MER.

The Irish authorities indicated that the Central Bank of Ireland, the Minister of Justice and Law Reform as well as other competent authorities are able to access this information through use of powers contained in Sections 67, 75 and 77 of the 2010 Act. These provisions do not make explicit reference to information regarding beneficial ownership and do not address the broader requirements set in the FATF standards on transparency of legal persons.

### **R33: OVERALL CONCLUSION**

The shortcomings identified in the MER have not been addressed. Therefore, Ireland's compliance with R.33 cannot be judged equivalent to an LC rating. Ireland acknowledged that this Recommendation needs to be given future considerations.

### **RECOMMENDATION 34 – RATED PC**

#### **R34: Competent authorities have limited powers to have timely access to information on the beneficial ownership and control of trusts.**

See under Recommendation 33.

Ireland reported that Section 93 Finance (No. 2) Act 2008 inserted a new reporting requirement at section 896A of the Taxes Consolidation Act 1997 and required returns to be made by Third Parties in relation to settlements involving non-resident trustees. However, these provisions do not seem to satisfy the requirements of R34 and do not refer to beneficial ownership and control of trusts.

#### **R34: OVERALL CONCLUSION**

The shortcomings identified in the MER with relation to R.34 have not been addressed. Therefore, Ireland's compliance with R.34 cannot be judged equivalent to an LC rating.

### **SPECIAL RECOMMENDATION VI – RATED PC**

#### **SR VI: As with other financial institutions, overall implementation of Recommendations 5-10, 15, 17, 21, 22 and Special Recommendation VII is inadequate, this negatively impacts on the effectiveness of AML/CFT measures for money transmission services.**

As mentioned in the MER, money transmission services are subject to an authorisation regime. Money transmission is subject to the same CDD and record keeping requirements, obligations to establish internal procedures and controls to prevent ML and TF, etc. as other financial institutions.

As highlighted in this report, since the adoption of the MER, Ireland made important progress in its compliance with FATF Recommendations 5, 6, 7, 8, 11, 17 and SR VII. Shortcomings remain as far as Recommendations 9 and 21 are concerned. For further information on the progress made, please see the comments of this report under each of these recommendations.

Since the coming into effect of the Payment Services Directive in 2009, money transmission businesses are authorized as payment institutions under the terms of Statutory Instrument No. 383 of 2009 (European Communities (Payment Services) Regulations 2009) which transpose the directive into Irish law. While the Central Bank will consider applications for authorisation, including from Informal Value Transfer System (IVTS) operations, in practice the Central Bank has not issued any authorisations to the 'informal' sector as the applicants were not in a position to meet the minimum applicable requirements.

*Conclusion.* This deficiency is based on inter-linkages with other FATF recommendations. Irish authorities have taken steps to identify and discourage any un-authorized alternative remittance providers in Ireland. Also, important progress was made in relation to Recommendations 5, 6, 7, 8, 11, 17 and SR VII. Deficiencies have not been adequately addressed regarding Recommendations 9

and 21. However, Ireland's compliance with SRVI has been brought to a level equivalent to an LC rating.

### **SPECIAL RECOMMENDATION VII – RATED NC**

#### **SR VII (Deficiency 1): The requirements for transfers to record include and maintain originator information is limited and currently only contained in guidance.**

The EU Regulation No. 1781/2006 on information on the payer accompanying transfer of funds implements FATF Special Recommendation VII on an EU-wide basis. The Regulation entered into force on 1 January 2007 and has direct application in Ireland. It requires that money transfers in and out of the EU be accompanied by the identity of the sender including name, address and account number. An Irish Regulation – S.I. No. 799 of 2007– makes provision for penalties for breach of the EU Regulation, nominates the Central Bank as the competent authority and makes provision for compliance monitoring.

#### **SR VII (Deficiency 2): There is no obligation to verify that the originator information is accurate and meaningful.**

Regulation (EC) No. 1781/2006 requires that originator information be accurate.

#### **SR VII (Deficiency 3): There are no obligations to require financial institutions to apply risk-based procedures when originator information is incomplete.**

Regulation (EC) No. 1781/2006 sets out the procedures to be followed by financial institutions when originator information is incomplete. Article 9 provides that if the payment service provider of the payee becomes aware, when receiving transfers of funds, that information on the payer is missing or incomplete, it shall either reject the transfer or ask for complete information on the payer. In any event, the payment service provider of the payee shall comply with any applicable law or administrative provisions relating to money laundering and terrorist financing, in particular, Regulations (EC) No. 2580/2001 (combating terrorism) and (EC) No. 881/2002 (Al-Qaida/Taliban sanctions), Directive 2005/60/EC (Third Money Laundering Directive) and any national implementing measures.

Article 9 further provides that where a payment service provider regularly fails to supply the required information on the payer, the payment service provider of the payee shall take steps, which may initially include the issuing of warnings and setting of deadlines, before either rejecting any future transfers of funds from that payment service provider or deciding whether or not to restrict or terminate its business relationship with that payment service provider.

The payment service provider of the payee is required to report that fact to the authorities responsible for combating money laundering or terrorist financing.

### **SR VII: OVERALL CONCLUSION**

The shortcomings identified in the MER have been addressed. Ireland's compliance with SRVII can therefore be judged equivalent to an LC rating.

## **SPECIAL RECOMMENDATION VIII – RATED PC**

**SR VIII: Ireland is in the process of completing a review of its NPO sector, but has not yet implemented measures to ensure accountability and transparency in the sector so that terrorist organisations cannot pose as legitimate non-profit organisations, or to ensure that funds/assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorists or terrorist organisations.**

Ireland reported that it has enacted the Charities Act 2009. Although the Act is still not yet in force, the Irish authorities indicated that the Act will provide the basis for an integrated system of mandatory registration and proportionate regulation of the charities sector in Ireland. They also reported that the Act is framed in such a way that charities based in other EU Member States and operating in Ireland would be subject to the same regulation as Irish charities. When commenced, the Act will require all charities operating in Ireland to provide accounts and annual activity reports to the new Charities Regulatory Authority, which will have investigative powers. Also, it will be an offence for a non-charity to represent itself as a charity. The Authority will be empowered to cooperate on an administrative basis with statutory bodies both inside and outside the State.

In May 2013, Irish authorities reported that, although, no date has been set for the establishment of the Charities regulatory Authority, there is a Ministerial-level awareness of the importance to regulate this sector particularly vulnerable to abuses of terrorist financing. Delay in the enforcement of the Charities Act 2009 is due to other financial and budgetary priorities Ireland currently faces.

However, it is important to note that the Irish charity sector is not completely unregulated, as many charities are subject to scrutiny by various State bodies, under a set of legislations including the tax law, the company law, the trust law or the general criminal and fraud legislation.

### **SR VIII: OVERALL CONCLUSION**

The shortcomings identified in the MER have not been addressed as, at the time of drafting this report, the Charities Act 2009 is not yet in force. It is recommended that Ireland approve and put into effect a law regulating the non-profit organisations that is in line with the requirements of FATF SR.VIII. While progress in this area has been made, Ireland's compliance with SR.VIII cannot be judged as equivalent to an LC rating.

## **SPECIAL RECOMMENDATION IX – RATED PC**

**SR IX (Deficiency 1): There are no powers to obtain a truthful disclosure upon request by individuals suspected of physical cross-border transportation of cash or bearer negotiable instruments.**

Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community came into effect on 15 June 2007. It provides for a declaration system for movements of cash of EUR 10 000 or more across the external borders of the EU. The national legislation (SI 281/2007) provides powers to question, search and seize. A penalty of up to EUR 5 000 is provided for failure to make a declaration or for providing a false declaration.

It is important to note that the Regulation No. 1889/2005 does not relate to transfers of cash and bearer negotiable instruments between Ireland and other EU member states. However, this deficiency is no longer relevant since the FATF accepted a supranational approach in respect of the EU member states (Methodology, update as of February 2009).

The Revenue Commissioners are the competent authority in Ireland in relation to Cash Declarations. Information obtained is subsequently reported to the FIU and retained on the FIU database. If it is deemed necessary for the FIU to conduct international enquiries pertaining to same, enquiries can be carried out on an FIU-to-FIU basis.

The Irish authorities have also pointed out that apart from EU Regulation 1889/2005 certain provisions of Irish domestic legislation are relevant in detecting cross border cash movements related to criminal activity. Section 38 of the Criminal Justice Act (CJA) 1994 and the Proceeds of Crime (Amendment) Act 2005 enhance cash control mechanisms as this legislation allows for search, detention, seizure and forfeiture of (criminally derived cash) over a prescribed amount (*i.e.* EUR 6350). These provisions have, to date, served the law enforcement agencies well in the context of cash seizures. With regard to the provisions of Section 38 of the CJA Act 1994 as amended, most of these seizures are made by Customs Officers at Irish airports/ports. However, members of An Garda Síochána can and have also made seizures pursuant to this Section. Irish authorities indicated that, in 2012, the total value of confiscation and seizure orders was EUR 967 921. The same valued at EUR 1 213 628 in 2011 and EUR 2 638 685 in 2010.

In addition to the seizure and forfeiture aspect of the provisions of Sections 38 and 39 of the CJA Act 1994, criminal prosecutions for money laundering can also be taken if the seized funds can be directly linked with criminal conduct or if the provisions of Section 11 of the 2010 Act apply. For example, two persons were charged in 2012 with money laundering offences following a cash seizure at Dublin Airport by Customs Officers. Irish authorities believe that this is also a good example of national Authorities working together in the fight against money laundering and terrorist financing. This criminal case is still before the Circuit Criminal Court awaiting disposal.

#### **SR IX (Deficiency 2): No sanctions are available for false declarations/disclosure.**

The EU Regulation has direct application in Ireland. Irish regulations (S.I. No. 281 of 2007) provide for penalties of up EUR 5 000 for failure to make a declaration or for making an incorrect or incomplete declaration. The Revenue Commissioners are designated as the competent authority. While the penalty of EUR 5 000 seems not to be high enough to be dissuasive, Irish authorities indicated that the EUR 5 000 fine is used to support the primary legislation (*i.e.* Section 38 of the Criminal Justice Act 1994 and the Proceeds of Crime (Amendment) Act 2005) which enhance cash control mechanisms as this legislation allows for search, detention, seizure and forfeiture of (criminally derived cash) over a prescribed amount (*i.e.* EUR 6 350). This legislation can be used on intra community as well as import and export into/out the community of cash. This can result in full seizure and forfeiture of the cash amount. See also Deficiency 1 above.

#### **SR IX (Deficiency 3): Measures are not currently in place to fully comply with SR IX.**

In addition to measures outlined in response to deficiencies 1 and 2, a full publicity programme was implemented which included display of posters and leaflets at ports and airports, display of a video

clip on monitors in the baggage hall at Dublin Airport, the placing of ads in the national papers and in in-flight magazines with Aer Lingus and Ryanair. Information on Cash Controls was also set up on the Revenue website (revenue.ie).

### **SR IX: OVERALL CONCLUSION**

The shortcomings identified in the MER have been largely addressed. Ireland's compliance with SRIX has been brought to a level equivalent to an LC rating.