

FATF



Anti-money laundering and counter-terrorist financing measures

Italy

Follow-up Report &
Technical Compliance Re-Rating

March 2019

report





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ITALY: FOLLOW-UP REPORT & TECHNICAL COMPLIANCE RE-RATING

1. Introduction

The mutual evaluation report (MER) of Italy was adopted in October 2015. This is the 1st follow-up report which analyses Italy's progress in addressing certain technical compliance deficiencies which were identified in Italy's MER. Re-ratings are given where sufficient progress has been made. This report also analyses Italy's progress in implementing new requirements relating to FATF Recommendations which have changed since Italy's MER: R.2, 5, 7, 8, 18 and 21. This report does not address what progress Italy has made to improve its effectiveness. A later follow-up assessment will analyse progress on improving effectiveness which may result in re-ratings of Immediate Outcomes at that time.

2. Findings of the MER

The MER rated Italy as follows for technical compliance:

Table 1. **Technical compliance ratings, October 2015**

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

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

Source: Italy's Mutual Evaluation Report, February 2016,

<http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Italy-2016.pdf>

Given these results and Italy's level of effectiveness, the FATF placed Italy in regular follow-up.¹ The following experts assessed Italy's request for technical compliance re-ratings:

- Ms. Lourdes Jiménez Ramos, Area Coordinator – Legal Advisor, Ministry of Economy and Enterprise, Spain,
- Ms. Ayreen Alibux, Supervisor Specialist, De Nederlandsche Bank, The Netherlands, and
- Ms. Karina Vilhof Ankergrén, Special Legal Advisor, FIU Denmark.

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

3. Overview of progress to improve technical compliance

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

- a) addressing certain technical compliance deficiencies identified in the MER, and
- b) implementing new requirements where the FATF Recommendations have changed since the MER was adopted (R.2, 5, 7, 8, 18 and 21).

3.1. Progress to address technical compliance deficiencies identified in the MER

Italy has made progress to address the technical compliance deficiencies identified in the MER in relation to Recommendations 1, 12, 13, 16, 20, 23, 26, 27, 29, 35 and 40. As a result of this progress, Italy has been re-rated on Recommendations 1, 16, 20, 26, 27, 29, 35 and 40. On Recommendations 12, 13 and 23, progress has been noted, however, the progress has not justified re-ratings on these Recommendations.

Recommendation 1 (originally rated LC)

In its 4th round MER, Italy was rated LC for R.1 based on minor technical deficiencies related to ensuring the understanding, assessment and mitigation of money laundering (ML) and terrorist financing (TF) risks by the Guardia di Finanza (Finance Police – GdF) for its supervised persons/entities. Minor deficiencies were also identified regarding the exemption of customer due diligence (CDD) measures which was not based on an assessment of low risk and there was inadequate secondary legislation to ensure that all DNFBPs apply a risk-based approach (RBA).

Italy has implemented the 4th EU Anti-Money Laundering Directive (4AMLD) by Legislative Decree no. 90/2017 which entered into force on 7 July 2017 and amended Legislative Decree no. 231 of 2007 (AML Law). The AML Law now provides the possibility to exempt obliged entities from performing CDD measures. This requires that the financial activity in question

¹ Regular follow-up is the default monitoring mechanism for all countries. Enhanced follow-up is based on the FATF's traditional policy that deals with members with significant deficiencies (for technical compliance or effectiveness) in their AML/CFT systems, and involves a more intensive process of follow-up.

has been assessed as low risk for ML/TF, and a number of cumulative conditions has been met.

The AML Law requires the obliged entities to undertake risk assessment and risk mitigation measures that are broadly in line with those risks. The AML Law, supported by the Circular 26/7/17 of the GdF, equally requires the GdF to apply a risk-based approach towards its monitoring of the obliged entities.

Italy has also published several guidelines covering various DNFBP sectors.

Italy has addressed the identified deficiencies. **Italy is therefore re-rated as compliant with R.1.**

Recommendation 12 (originally rated LC)

In its 4th round MER, Italy was rated LC with R.12, based on the shortcomings identified with respect to the obligation for domestic politically exposed persons (PEPs) which had not been extended to DNFBPs, no requirements in relation to person holding prominent positions in international organisations and no requirement to determine whether the beneficial owner of a beneficiary of a life insurance policy is a PEP.²

According to the AML Law, EDD must be undertaken when the beneficial owner of a beneficiary of a life insurance policy is a PEP. However, there is no explicit requirement to determine whether the beneficial owner of the beneficiary is a PEP. Therefore this deficiency has not been addressed.

Italy has addressed most of the identified deficiencies, however, one minor deficiency related to the determination of the beneficial owner of a beneficiary of a life insurance policy remains. **Italy therefore remains rated largely compliant with R.12.**

Recommendation 13 (originally rated PC)

In its 4th round MER, Italy was rated PC with R.13, based on gaps identified in relation to the lack of application of EDD for correspondent banking within the EU/EEA.

The AML Law requires that correspondent banking with FIs in third countries, meaning countries outside of the EU/EEA, shall be subject to EDD. In addition, EDD must be applied if the correspondent banking relationship pose an increased risk of ML and/or TF. However, there is no explicit requirement to apply EDD for intra EU/EEA correspondent banking relationship, as required by R.13.

Italy has not addressed the identified deficiencies. **Italy therefore remains rated partially compliant with R.13**

Recommendation 16 (originally rated PC)

In its 4th MER, Italy was rated PC with R.16, based on the deficiencies identified with regards to beneficiary information accompanying wire transfers, and related to intermediary institutions.

The new EU Regulation (2015/847 on information to be accompanying wire transfers) directly applicable in Italy as of 26 June 2017, requires cross-border wire transfers to be accompanied by the required beneficiary information. The EU Regulation equally requires

² These same requirements also apply to DNFBPs as required by Recommendation 22.

intermediary institutions to ensure the wire transfers are accompanied by the necessary beneficiary and originator information. If the wire transfers lack the necessary information, the intermediary institution must have measures in place to determine when to execute or reject a transfer.

It also requires all payee and intermediary institutions to take into account information from both sides of the transaction, as a factor when assessing whether an STR has to be filed. EU Directive 2015/849, as implemented in Italy by art. 33 of the AML Law, requires compliance officers to file an STR with the FIU of the Member State in whose territory the obliged entity transmitting the information is established.

All the identified deficiencies have been addressed. **Italy is therefore re-rated as compliant with R.16.**

Recommendation 20 (originally rated LC)

In its 4th MER, Italy was rated LC with R.20, based on the identified gap with regards to the requirement of STR reporting did not extent to ML predicate offences.

With the legislative amendments to the AML Law, Art.35 now equally requires obliged entities to report suspicious transactions related to ML predicate offences. The identified deficiency has been addressed. **Italy is therefore re-rated as compliant with R.20**

Recommendation 23 (originally rated LC)

In its 4th MER, Italy was rated LC with R.23. The minor shortcomings identified related to the DNFBBPs' reporting of STR which did not cover predicate offences to ML, and lack of requirement related to internal control.

As assessed under R.20, art. 35 of the AML Law now requires obliged entities (both FIs and DNFBBPs) to report suspicious transactions related to predicate offences to ML.

The new art. 16 of the AML Law, requires DNFBBPs to implement safeguards and carry out internal controls and procedures. In addition hereto, art. 16 requires the establishment of a compliance function. However, there is no requirement to have screening procedures in place when hiring employees, which remains a deficiency.

Most of the identified deficiencies have been addressed, however, there is no requirement for screening employees as required by C. 23.2. **Italy therefore remains rated largely compliant with R.23.**

Recommendation 26 (originally rated LC)

In its 4th MER, Italy was rated LC with R.26, based on a minor deficiency related to the risk-based approach applied by the Bank of Italy (BoI), including data on inherent risk faced by FIs and the mitigating measures in place.

Italy has improved the risk-based approach to supervision, which includes the financial institutions being subject to a risk rating process. The risk rating process conducted by the BoI covers two factors, 1) the inherent risk of ML/TF, and 2) the mitigating measures in place at the FIs. These two factors result in the residual risk, which is the basis for the BoI's risk-based approach.

The identified deficiency has been addressed. **Italy is therefore re-rated as compliant with R.26**

Recommendation 27 (originally rated LC)

In its 4th MER, Italy was rated LC with R.27, based on the gap with regards to the inability for financial supervisors to apply administrative sanctions on natural persons and remove directors and senior management, and the relative low level of sanctions which can be applied on legal persons.

The new AML Law empowers the BoI with the ability to apply administrative sanctions on members of the management. The sectorial supervisors can further apply a temporary ban (from 6 months to 3 years) on persons from exercising management functions in obliged entities. In addition to the ban, the Consolidated Law on Banking (CLB), as amended by Legislative Decree 72/2015, provides the power to remove directors and senior management, if the continuation is damaging for the sound and prudent management of the bank. Consob and IVASS have similar powers.

The range of administrative sanctions applicable has been increased with the AML Law. The range is now from EUR 30 000 to 5 000 000 or the equal to 10% of the total annual turnover.

The amendments made by Italy have addressed the identified shortcomings. **Italy is therefore re-rated as compliant with R.27.**

Recommendation 29 (originally rated LC)

In its 4th MER Italy was rated LC with R.29 based on minor shortcomings regarding the FIU's lack of powers to deal with suspicious transactions related to predicate offences to ML and the FIU's inability to access law enforcement information.

The legislative amendments made to art. 35 in the AML Law requires the obliged entities to report suspicious transactions, related to predicate offences to ML, to the UIF (Italian FIU). Art. 12, para. 4 of the AML Law provides the UIF powers to access investigative information when deemed relevant for analysis falling within the competences of the UIF. Access for the UIF to law enforcement information in general is subject to conditions of relevance, proportionality and consistency. However, information covered by investigative secrecy can be made available to UIF subject to an ad-hoc authorization by the competent prosecutor, taking into account possible implications on the ongoing proceedings.

These legislative amendments have addressed the identified deficiencies. **Italy is therefore re-rated as compliant with R.29.**

Recommendation 35 (originally rated PC)

In its 4th MER, Italy was rated PC with R.35. The deficiencies identified covered a low level of monetary sanctions, including monetary sanctions available to supervisors, the BoI's inability to apply administrative sanctions on natural persons and the BoI's inability to remove directors and management.

Application of monetary sanctions has been increased with the amendments to the AML Law, art. 62. The monetary sanctions applicable to legal persons are up to EUR 5 000 000 or the equivalent to 10% of the total annual turnover, for natural persons the range of monetary sanctions applicable is up to EUR 5 000 000, however, not more than twice the amount of the benefit derived from the violation. These sanctions can equally be applied by the BoI, the Consob and the IVASS.

The revised sanctioning framework is applicable to all banks, this includes the banks which are subject to ECB's prudential supervision.

The deficiencies identified have been addressed. **Italy is therefore re-rated as compliant with R.35**

Recommendation 40 (originally rated LC)

In its 4th MER Italy was rated LC with R.40, based on the minor shortcomings identified with regards to the FIU's inability to exchange STRs on predicate offences with foreign counterparts.

With the legislative amendments made, art. 35 of the AML Law now requires the reporting of suspicious transactions related to predicate offences to ML. The new requirement ensures that the UIF has information on predicate offences to ML in the database, which, on the basis of the AML Law, can be exchanged with foreign counter parts.

The legislative amendments made have addressed the identified deficiency. **Italy is therefore re-rated as compliant with R.40.**

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

Since the adoption of Italy's MER, the FATF has amended Recommendations 2, 5, 7, 8, 18 and 21. This section consider Italy's compliance with the new requirements.

Recommendation 2 (originally rated LC)

In February and October 2018, R.2 and its interpretive note was amended to require countries to have co-operation and co-ordination between relevant authorities to ensure compatibility between AML/CFT requirements and Data Protection and Privacy Rules. The amended recommendation further requires a domestic mechanism for exchange of information.

Italy was rated LC with R.2 based on minor deficiencies with regards to the lack of a national strategy and action plan, based on the findings of the National Risk Assessment (NRA), lack of supervisory activities based on the NRA, and the lack of powers for the FSC to cover proliferation financing (PF) issues.

The revised AML Law provides the possibility to elaborate an AML/CFT strategy, but Italy has not developed one yet.

The Minister of Economy and Finance annually provides the Parliament with a report on AML/CFT actions, as required by the AML Law. However, these reports cannot be considered as either a national strategy or an action plan, as these are a summary of the past years achievements. Therefore the deficiency has not been addressed.

According to art. 14.3(c) of the new AML Law, the NRA should be used by authorities to allocate resources and optimize the exercise of their respective competencies, which includes the supervisory authorities and the RBA.

Italy has amended the powers of the Financial Security Committee (FSC) to also cover Italy's international obligations in the fight against proliferation of weapons of mass destructions,

whereby the FSC has the power to co-ordinate and co-operate in PF related policy and activities.

In relation to the revised aspects of R.2, c.2.3 is covered by the AML Law, which enables the exchange of information among competent authorities. With regards to c.2.5, the Italian regulation of the area of Data Protection and Privacy Rules, authorises the Italian Data Protection Authority (DPA) to ensure comparability between AML/CFT legislation and Data Protection and Privacy Rules. In the AML Law there is equally a need to ensure comparability with Data Protection and Privacy Rules when drafting new AML/CFT legislation.

Based on the described initiatives, Italy has addressed most of the identified deficiencies and has implemented measures to comply with the revised R.2. **Italy therefore remains rated largely compliant with R.2.**

Recommendation 5 (originally rated C)

In its 4th MER Italy was assessed to be compliant with R.5. In October 2015 and October 2016, R.5 and its Interpretive Note were revised to clarify the term “funds and other assets” and to require that TF offences include the financing of individuals travelling to a State other than their States of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training.

To comply with the new requirements of R.5 Italy has amended the Criminal Code by implementing articles 270-bis to 270-sexies.

Italy has criminalised the new requirement of criterion 5.2*bis* by using a combined approach, including article 270 quarter-1 and article 270 sexies, which criminalises the organisation, financing and propagating foreign-based travel aimed at carrying out terrorist conduct. Based on article 270-sexies, the receiving of, or providing training for, terrorist purposes constitutes terrorist conduct.

Based on the combined approach of articles 270 quarter-1 and 270 sexies, Italy has adequately criminalised the financing of individuals travelling to a State other than their States of residence or nationality for the purpose of the perpetration, planning or preparation of, or participation in, terrorist acts or the providing or receiving of terrorist training, **Italy therefore remains rated compliant with R.5.**

Recommendation 7 (originally rated PC)

In its 4th MER Italy was rated PC with R.7. The identified deficiencies were regarding the proliferation financing-related United Nations Security Council Resolutions (UNSCRs) where these were not being implemented without delay and there was no system for active notification to FIs and DNFBPs of newly listed persons.

By revising Legislative Decree 109/2007 articles 4-quinquies-3 and 4-sexies-6, Italy has adopted a mechanism for notifying when any listings or de-listings are made to the UNSCRs.

In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the UNSCRs since the FATF standards were issued in February 2012, in particular, the adoption of new UNSCRs.

Italy has implemented procedures to comply with most parts of the revised Recommendation 7. The DPRK and Iran related UNSCRs are implemented in Italy through the EU system by EU

Regulation 1509/2017 and 267/2012. However, the EU system does not implement the UNSCRs without delay, as required. Even though Italy has implemented a provision which should cover national implementation of UNSCRs, to cover the delay in the EU system, it is not clear that the implementation is without delay.

Based on the delay in implementing the UNSCRs, **Italy remains rated partially compliant with R.7.**

Recommendation 8 (originally rated LC)

In June 2016, R.8 and its Interpretive Note were significantly revised, which makes most of the R.8 analysis in the MER obsolete. For the purpose of this report Italy has provided information to demonstrate its compliance with the requirements of the revised R.8.

The FSC has analysed the NPO sector for the risk of TF abuse. This analysis covers which NPOs fall within the FATF definition. To assess which of these NPOs are vulnerable to TF abuse, the FSC has used different criteria and identified two sub sectors posing a higher risk of TF abuse. This analysis will feed into the NRA and be further developed by the FSC as required by art. 14 of the AML Law.

The Legislative Decree no. 117/2017 created a national single register, which is publicly available and contains i.e. the legal form, the legal head office, with the indication of any secondary offices, the date of incorporation or the object of the general interest activities etc.

A specific feature in the Italian system is on the basis of Legislative Decree No. 125/2014, where the Italian Agency for Development Cooperation (AICS) issued the "Management and reporting procedures for initiatives performed by non-profit and civil society organizations". This covers an obligation for NPOs receiving public money to use financial channels to ensure traceability. This, however, does not extend to NPOs who are not receiving public funds.

As mentioned, Italy has done an assessment of the TF risk in the NPO sector, however, this has been done recently and consequently, Italy has not done the required outreach to inform the sectors. The TF analysis of the sector carried out by the FSC will serve as the basis for completing the remaining activities required by R.8, e.g. outreach to the sector.

Based on the minor deficiencies assessed, **Italy remains rated largely compliant with R.8.**

Recommendation 18 (originally rated LC)

In November 2017, the Interpretive Note to R.18 was amended to clarify the scope of information-sharing requirements. The revised requirement of Recommendation 18 has been addressed by the 2011 BoI Regulation which enable the sharing of information relating to suspicious transactions and include safeguards on the confidentiality and use of information in order to prevent tipping-off.

In its 4th MER, Italy was rated LC on R.18 based on minor shortcomings related to screening of employees and group wide measures was limited to issues on CDD and record keeping. Italy has taken steps to address the identified deficiencies with the new BoI Regulation. However, the BoI Regulation is neither adopted nor in force yet, and can therefore not be considered.

The identified deficiencies have not yet been addressed, but the measures in place in Italy have addressed the revised part of the Recommendation. **On this basis, Italy remains rated largely compliant with R.18.**

Recommendation 21 (originally rated LC)

In its 4th MER, Italy was rated LC on R.21 based on minor deficiencies regarding tipping-off and confidentiality which did not extent to the reporting of predicate offences to ML.

Based on the amendments made to the AML Law, the prohibition of tipping-off and the requirement of confidentiality now extents to predicate offences to ML, the identified deficiency has therefore been addressed.

In November 2017, R.21 was amended to clarify that tipping off provisions are not intended to inhibit information sharing under R.18.

Art. 39.3 of the AML Law clearly covers the ability to exchange information between financial institutions in Italy, and between these financial institutions and their branches and majority owned subsidiaries outside of the EU/EEA, under specific conditions. However, the law does not explicitly provide for STR information to be exchanged with financial institutions located in the EU/EEA.

Based on the assessed deficiency, **Italy remains rated largely compliant with R.21.**

3.3. Brief overview on other recommendations rated LC

Italy reported progress on Recommendations 6, 10 and 24, the information provided has not been assessed by the expert reviewers. On R.6 Italy reported that they now have a national mechanism in place to cover the delay in transposing UNSCRs into EU Regulations, directly applicable in Italy. With regards to R.10 Italy reported that the legislative framework for CDD obligations has been improved with the implementation of the 4AMLD, further, a new BoI Regulation covering CDD is under public consultation. Lastly, Italy reported progress on R.24 which primarily is based on the new AML Law e.g. that associations and foundations now are required to keep beneficial ownership information, and that a bank account register has been set up.

4. Conclusion

Overall, Italy has made progress in addressing the technical compliance deficiencies identified in its MER and has been upgraded on eight Recommendations.

In light of Italy's progress since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

Table 2. **Technical compliance with re-ratings, February 2019**

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

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

Italy will remain in regular follow-up. In accordance with the *FATF Procedures*, Italy will report back to the FATF on progress in the context of its 5th year follow-up assessment.

FATF



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March 2019

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

Follow-up Report & Technical Compliance Re-Rating

As a result of Italy's progress in strengthening their measures to fight money laundering and terrorist financing since the assessment of the country's framework, the FATF has re-rated the country on 8 of the 40 Recommendations.

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

Follow-up report