



# Anti-money laundering and counter-terrorist financing measures

# Ukraine

## 1<sup>st</sup> Enhanced Follow-up Report & Technical Compliance Re-Rating

July 2019



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

The 1<sup>st</sup> Enhanced Follow-up Report and Compliance Re-Rating on Ukraine was adopted by the MONEYVAL Committee at its 58<sup>th</sup> Plenary Session (Strasbourg, 15 – 19 July 2019).

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## *Ukraine: 1<sup>st</sup> Enhanced Follow-up Report and Technical Compliance Re-Ratings*

### I. INTRODUCTION

1. The mutual evaluation report (MER) of Ukraine was adopted in December 2017. The 1<sup>st</sup> Enhanced Follow-up Report analyses the progress of Ukraine in addressing the technical compliance (TC) deficiencies identified in its MER, as well as the implementation of new requirements relating to FATF Recommendations which have changed since the MER was adopted: Recommendations 2, 7, 18 and 21. The expectation is that countries will have addressed most if not all TC deficiencies by the end of the third year from the adoption of their MER. This report does not address what progress Ukraine has made to improve its effectiveness. Progress on improving effectiveness will be analysed as part of a later follow-up assessment and, if found to be sufficient, may result in re-ratings of Immediate Outcomes at that time.

### II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. The MER rated<sup>1</sup>Ukraine as follows:

| IO.1 | IO.2 | IO.3 | IO.4 | IO.5 | IO.6 | IO.7 | IO.8 | IO.9 | IO.10 | IO.11 |
|------|------|------|------|------|------|------|------|------|-------|-------|
| Sub. | Mod. | Mod. | Mod. | Mod. | Sub. | Low  | Mod. | Mod. | Mod.  | Mod.  |

#### *Technical Compliance Ratings*

| R.1 | R.2 | R.3 | R.4 | R.5 | R.6 | R.7 | R.8 | R.9 | R.10 |
|-----|-----|-----|-----|-----|-----|-----|-----|-----|------|
| LC  | C   | LC  | LC  | PC  | PC  | 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   | C    | LC   | LC   | C    | N/A  | LC   | C    | C    |

| R.21 | R.22 | R.23 | R.24 | R.25 | R.26 | R.27 | R.28 | R.29 | R.30 |
|------|------|------|------|------|------|------|------|------|------|
| C    | LC   | LC   | LC   | PC   | LC   | LC   | PC   | C    | C    |

| R.31 | R.32 | R.33 | R.34 | R.35 | R.36 | R.37 | R.38 | R.39 | R.40 |
|------|------|------|------|------|------|------|------|------|------|
| C    | LC   | PC   | C    | PC   | LC   | LC   | LC   | LC   | LC   |

3. Given these results, Ukraine was placed in enhanced follow-up.

4. Ukraine has not submitted requests for re-ratings, therefore this report discusses the revised Recommendations only.

5. The assessment and the preparation of this report were undertaken by the MONEYVAL Secretariat, together with the following Rapporteur teams:

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<sup>1</sup> There are four possible levels of technical compliance: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC). In exceptional circumstances, a Recommendation may also be rated as non-applicable (N/A).

- Isle of Man
- Israel

6. Section III of this report summarises the analysis of Ukraine’s compliance with the revised Recommendations. Section IV sets out the conclusion and a table showing which Recommendations have been re-rated.

### III. OVERVIEW OF PROGRESS TO IMPROVE TECHNICAL COMPLIANCE

7. This section summarises the progress made by Ukraine to improve its technical compliance by implementing new requirements where the FATF Recommendations have changed since the 5<sup>th</sup> Round onsite visit (27 March – 8 April 2017).

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

8. Since the 5<sup>th</sup> Round onsite visit of Ukraine, Recommendations 2, 7, 18 and 21 have been amended. This section considers Ukraine’s compliance with the new requirements in these four Recommendations. In addition, the analysis also covers Ukraine’s progress with regard to the deficiencies identified in the MER in respect of these recommendations.

##### *Recommendation 2 (Originally rated C – no re-rating)*

9. The 5<sup>th</sup> Round MER found no shortcomings in the implementation of R.2 (national coordination and cooperation). In February 2018, R.2 was revised to ensure compatibility of AML/CFT requirements and data protection and privacy rules, and to promote domestic inter-agency information sharing among competent authorities. Consequently, criterion 2.3 was amended and a new criterion 2.5 was added.

10. The AML/CFT Council, which took over the duties and responsibilities of the Council for Research into AML/CFT Methods and Trends (referred to in the 2017 MER under R.2), serves as a mechanism for the development and implementation of AML/CFT policies and activities in Ukraine. Among other functions, the Council “provides proposals for improving the mechanisms for information exchange between executive authorities, other state authorities involved in AML/CFT area, in particular with a view to ensuring the functioning of a Unified state information system in this area”<sup>2</sup>. In practice, the mechanisms for information exchange are numerous agreements concluded between the FIU and other authorities (Ministry of Finance, Ministry of Interior, Customs, Ministry of Economic Development and Trade, Commission for State Regulation of Financial Services Markets, State Audit, etc.), as well as the joint Orders by the Ministry of Finance and law enforcement and supervisory authorities. Extracts from these agreements and orders were provided by the authorities and they specifically refer to procedures for exchanging information between the FIU and the authorities concerned, emphasising the purpose of such information exchange (e.g. in case of a supervisor to “increase the efficiency of supervisory regime”). Therefore, the revised criterion 2.3 is met.

11. With regard to the new criterion 2.5, the Ukrainian delegation presented information on the capability of the country’s legal and institutional framework to coordinate and cooperate between competent authorities to ensure the compatibility of AML/CFT requirements with data protection

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<sup>2</sup> Clause 5(6) of Council of Ministers Resolution No. 613

and privacy rules. In particular, the delegation emphasised the role of the Coordination Council established under the Order of the Ombudsman which is assigned to improve the legislation on personal data. The competent authorities for AML/CFT are members of this Council which regularly holds meetings and discusses related matters. In addition, Article 2 of the AML/CFT Law of Ukraine states that the application of that law cannot trigger a violation of the data protection legislation. Moreover, numerous inter-agency agreements and Government Orders referred under criterion 2.3 include provisions that the AML/CFT information exchange has to be carried out taking into account the general limitations established by the law (which includes data protection rules).

12. **On the basis of the above, R.2 remains C.**

#### **Recommendation 7 (Originally rated PC – no re-rating)**

13. The 5<sup>th</sup> Round MER identified several outstanding deficiencies with regard to R.7, in particular gaps in the scope of funds covered by the freezing obligation, as well as the absence of a prohibition to make funds available to designated persons or entities and lack of clear procedures to delist/unfreeze funds. There was a lack of clarity in the articulation between the AML/CFT Law and the Law on Sanctions in relation to Iran/PF-related TFS. Hence R.7 was rated PC.

14. In June 2017, the Interpretive Note to R.7 was amended to reflect the changes made to the proliferation financing-related United Nations Security Council Resolutions (UNSCRs) since the FATF standards were issued in February 2012, in particular to reflect the adoption of new UNSCRs.

15. On 29 May 2019, Ukraine adopted Order (no. 62) *approving the Procedure for Establishing by the State Financial Monitoring Service of Ukraine the List of Persons Related to Commission of Terrorist Activities or Regarding Whom International Sanctions are applied*. On the basis of this order, a list was issued which includes the persons and entities designated under the UNSCRs referred to under criterion 7.1 ([http://sdfm.gov.ua/content/file/Site\\_docs/Black\\_list/BlackListFullEng.pdf](http://sdfm.gov.ua/content/file/Site_docs/Black_list/BlackListFullEng.pdf)).

16. With regard to the revised criteria 7.4 and 7.5, the authorities referred to draft legislation (i.e. draft law 9417 “*On Prevention and Counteraction to Legalization (Laundering) of Proceeds from Crime, Terrorist Financing and Financing Proliferation of Weapons of Mass Destruction*”), i.e. the new requirements have not yet been implemented and the deficiencies remain for the time being. The same law is also intended to address the deficiencies noted in the MER under criteria 7.2 (a), (b), (c), (d) and (f), 7.4 (a) and (b) and 7.5 (a) and (b). Consequently, the deficiencies noted in the MER under c.7.2, 7.4 and 7.5 cannot yet be considered to have been rectified. No measures, legislative or otherwise, were taken to rectify the deficiency under sub-criterion 7.4 (d).

17. In relation to the deficiencies under criterion 7.3, the authorities referred to Resolution of the Cabinet of Ministers of Ukraine No. 1069 which sets up a working group to improve the sanctions regime. The Resolution does however not specifically address the deficiency noted in relation to Iranian sanctions. Consequently, the criterion remains partly met.

18. Overall, only revised criterion 7.1 is met while the other revised criteria (7.4 and 7.5) have not yet been implemented. Deficiencies identified in the 2017 MER in relation to criteria 7.2, 7.3, 7.4 and 7.5 also remain. In view of the aforementioned, **the rating of R.7 remains PC.**

#### **Recommendation 18 (Originally rated LC – no re-rating)**

19. In the 5<sup>th</sup> round MER, Ukraine was rated LC with R.18. The LC rating was based on deficiencies identified with respect to c.18.2 (b and c), which were the following:

- i. It was unclear how much authority the responsible employee has over the Group’s RES

located outside Ukraine; and

- ii. Disclosure of wider information between group entities for AML/CFT purpose did not appear to be covered.

20. In November 2017, the Interpretive Note to R.18 was amended to clarify the scope of information-sharing requirements.

21. With regard to the revised scope of information-sharing requirements, the authorities referred to draft legislation which has not come into effect (i.e. draft law 9417 referred under R.7), meaning that requirements of the revised criterion have not yet been addressed.

22. As for the deficiencies noted in the MER in relation to c.18.2(b) (see above i), the authorities referred to legislation which was already in force at the time of the on-site visit and has not changed since. In view of that, this review has not carried out a reassessment of that legislation. Therefore, the deficiency remains.

23. With regard to c.18.2(c) (see above i), the authorities stated that the deficiency will be addressed through legislative amendments which are still in draft form.

24. Overall, no provisions have yet come into force to address both the revised interpretative note and the deficiencies identified in the 2017 MER. However, the deficiencies are not deemed to be serious enough to justify a re-rating. **R.18 therefore remains LC.**

#### **Recommendation 21 (Originally rated C - re-rated as LC)**

25. In the 5<sup>th</sup> Round MER, Ukraine was rated C with R.21. R.21 was amended in February 2018 to clarify the interaction between the tipping-off provisions and the revised requirements on information sharing within financial groups (R.18).

26. The AML/CFT Law which is currently in force has not yet been amended to clarify that tipping-off provisions are not intended to prevent group-wide information sharing, as now required by c.21.2. The authorities stated that they are in the process of addressing it through legislation, which is still in draft form. Therefore, **R.21 is re-rated as LC.**

#### **IV. CONCLUSION**

27. Overall, Ukraine has only made limited progress in addressing the TC deficiencies identified in its 5<sup>th</sup> Round MER and, as a consequence, no request for re-rating was made. Limited measures have been taken to implement the new elements under Recommendations 2, 7, 18 and 21. As a result, Recommendation 21, initially rated as C, is re-rated as LC. Recommendations 2, 7 and 18 remain rated as in the 2017 MER (C, PC and LC respectively).

28. Ukraine should continue its efforts to address the remaining deficiencies.

29. Overall, in light of the progress made by Ukraine since its MER was adopted, its technical compliance with the FATF Recommendations has been re-rated as follows:

| <b>R.1</b> | <b>R.2</b> | <b>R.3</b> | <b>R.4</b> | <b>R.5</b> | <b>R.6</b> | <b>R.7</b> | <b>R.8</b> | <b>R.9</b> | <b>R.10</b> |
|------------|------------|------------|------------|------------|------------|------------|------------|------------|-------------|
| LC         | C          | LC         | LC         | PC         | PC         | PC         | LC         | C          | LC          |

|             |             |             |             |             |             |             |             |             |             |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>R.11</b> | <b>R.12</b> | <b>R.13</b> | <b>R.14</b> | <b>R.15</b> | <b>R.16</b> | <b>R.17</b> | <b>R.18</b> | <b>R.19</b> | <b>R.20</b> |
| C           | LC          | C           | LC          | LC          | C           | N/A         | LC          | C           | C           |

|             |             |             |             |             |             |             |             |             |             |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>R.21</b> | <b>R.22</b> | <b>R.23</b> | <b>R.24</b> | <b>R.25</b> | <b>R.26</b> | <b>R.27</b> | <b>R.28</b> | <b>R.29</b> | <b>R.30</b> |
| <i>LC</i>   | LC          | LC          | LC          | PC          | LC          | LC          | PC          | C           | C           |

|             |             |             |             |             |             |             |             |             |             |
|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
| <b>R.31</b> | <b>R.32</b> | <b>R.33</b> | <b>R.34</b> | <b>R.35</b> | <b>R.36</b> | <b>R.37</b> | <b>R.38</b> | <b>R.39</b> | <b>R.40</b> |
| C           | LC          | PC          | C           | PC          | LC          | LC          | LC          | LC          | LC          |

30. Ukraine will remain in enhanced follow-up, and will continue to report back to MONEYVAL on further progress to strengthen its implementation of AML/CFT measures in a year's time.

## GLOSSARY OF ACRONYMS

|       |   |
|-------|---|
| AML   | Anti-money laundering                             |
| C     | Compliant   |
| CDD   | Customer due diligence                            |
| CFT   | Countering the financing of terrorism             |
| DNFBP | Designated non-financial business and professions |
| FI    | Financial institution                             |
| FIU   | Financial Intelligence Unit                       |
| FT    | Financing of terrorism                            |
| GDPR  | General Data Protection Regulation                |
| KYC   | Know your customer                                |
| LC    | Largely compliant                                 |
| MER   | Mutual Evaluation Report                          |
| ML    | Money laundering                                  |
| MoJ   | Ministry of Justice                               |
| MoU   | Memorandum of Understanding                       |
| NPOs  | Non-profit organisations                          |
| PC    | Partially compliant                               |
| PF    | Proliferation Financing                           |
| PEP   | Politically exposed person                        |
| R.    | Recommendation                                    |
| SFMS  | State Financial Monitoring Service of Ukraine     |
| TC    | Technical compliance                              |
| TFS   | Targeted Financial Sanctions                      |
| TCSP  | Trust and Company Service Provider                |

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**1<sup>st</sup> Enhanced Follow-up Report &  
Technical Compliance Re-Rating**

The Summary Report in Annex A of the 1<sup>st</sup> enhanced follow-up report on Ukraine proposes one re-rating for Recommendation 21.

In accordance with Rule 21, paragraph 7 of MONEYVAL's Rules of Procedure, this Summary Report consists of an independent analysis by the Secretariat on the basis of the desk-based review undertaken by the Rapporteur Teams.