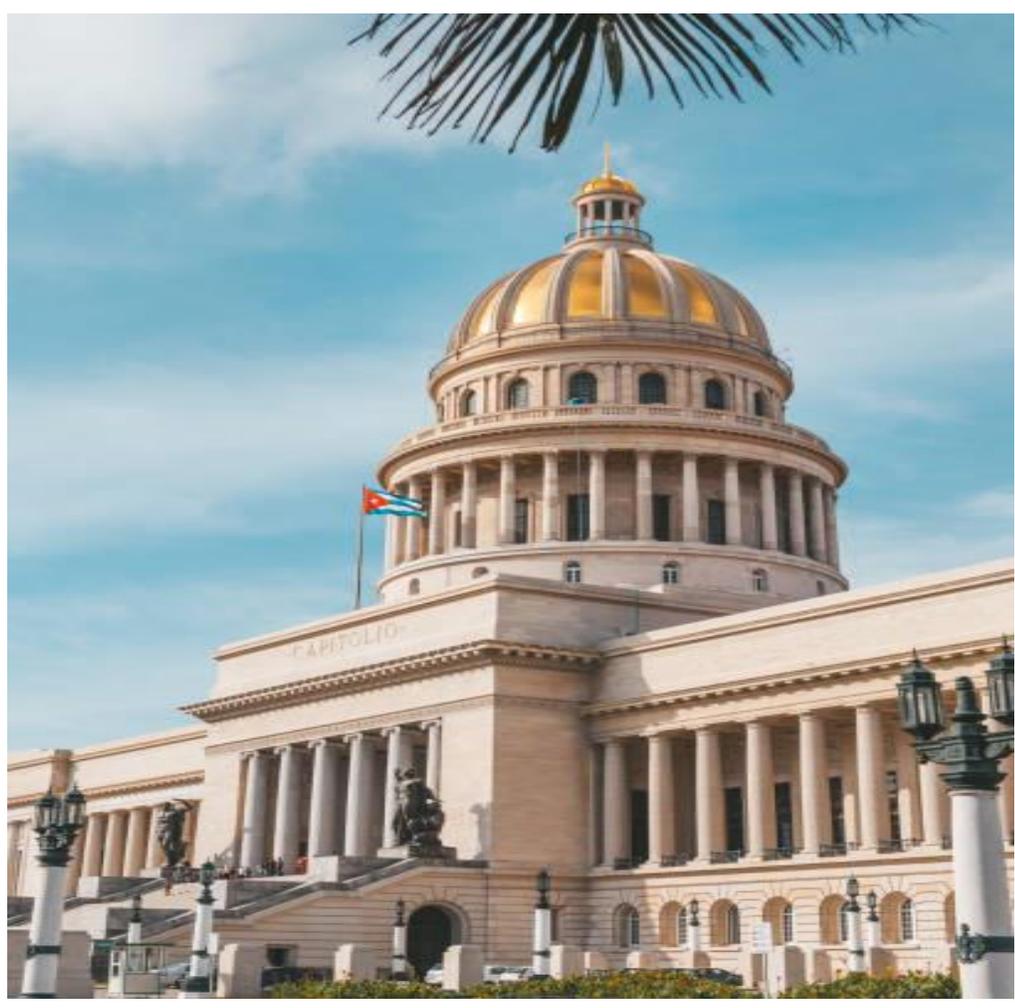


Fifth Regular Follow-Up Report and Technical Compliance Re-rating of Cuba



January 2022



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REPUBLIC OF CUBA: FIFTH FOLLOW-UP REPORT

I. INTRODUCTION

1. In accordance with GAFILAT's Fourth Round procedures, Cuba's Mutual Evaluation Report (MER) was adopted in July 2015 within the framework of the XXXI GAFILAT Plenary Meeting held in San Jose, Costa Rica. This follow-up report analyses the progress made by Cuba in addressing the technical compliance deficiencies identified in its MER. New ratings are granted when sufficient progress is observed. Overall, countries are expected to have addressed most, if not all, technical compliance deficiencies before the end of the third year since the adoption of their MER. This report does not address the progress made by Cuba towards improving its effectiveness. A subsequent follow-up evaluation will analyse the progress made towards improving effectiveness, which may eventually result in a new rating of the Immediate Outcomes.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

1. The MER and the Fourth Follow-up Report rated Cuba's technical compliance as follows:

Table 1. Technical compliance ratings, December 2020

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	C	LC	LC	C	C	LC	PC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	C	C	C	PC*	C	C	C	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	C	LC	LC	C*	LC	LC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
C*	C	LC	LC	LC*	LC	LC	LC	LC	LC

* Rating given in the Fourth Follow-up Report of the country

Note: There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-Compliant (NC).

Sources: i) Mutual Evaluation Report of Cuba, <https://www.gafilat.org/index.php/es/biblioteca-virtual/miembros/cuba/evaluaciones-mutuas-6/123-iem-cuba-texto-finalf>

ii) Fourth Follow-up Report of Cuba, <https://gafilat.org/index.php/es/biblioteca-virtual/miembros/cuba/informes-de-seguimiento-6/4009-fourth-regular-follow-up-report-and-re-rating-of-cuba>

2. Considering these results, GAFILAT placed Cuba under a regular follow-up process¹. GAFILAT Executive Secretariat evaluated Cuba's request for a new technical compliance rating and prepared this report.

3. Section III of this report summarises Cuba's progress in improving technical compliance. Section IV shows the progress made by the country towards complying with the Recommendations that were

¹ The regular follow-up is the default monitoring mechanism for all countries.

revised since the date of adoption of its MER. Finally, Section V presents the conclusion and a table showing which Recommendations were re-rated.

III. OVERVIEW OF THE PROGRESS MADE TOWARDS IMPROVING TECHNICAL COMPLIANCE

4. As mentioned above, this section summarises Cuba's progress towards improving technical compliance by addressing the technical compliance deficiencies identified in the MER.

3.1 Progress made towards addressing the technical compliance deficiencies identified in the MER

5. Within the framework of this follow-up report, Cuba did not submit any Recommendation to be re-rated.

IV. OVERVIEW OF THE PROGRESS MADE WITH RESPECT TO THE RECOMMENDATIONS REVISED SINCE THE MER.

6. Cuba addressed the new technical compliance requirements with respect to the following:

- Recommendation 7, originally rated as LC.²

Recommendation 7 – (originally rated as LC – re-rated as C)

7. Regarding compliance with criterion 7.1, in particular its footnote, on September 14, 2018, the Central Bank of Cuba (BCC) issued Decree-Law 361 (DL 361), which in its third final provision modifies article 14.1 of Decree-Law 317 (DL 317) of December 7, 2013, expressly including freezing mechanisms in line with UNSCRs 1718 and 1737 and their successor resolutions (2231) or other resolutions in place imposing sanctions on persons and entities linked to Al-Qaeda, the Taliban, terrorism and the PF. Additionally, in relation to UNSCR 2231(2015), the BCC issued Circular 11 of 2015 and Circular 2 of 2016 to instruct reporting entities to take the necessary steps to re-establish the provision of services to the persons and entities that had been listed under UNSCRs 1737 (2006), 1747 (2007), 1803 (2008), and 1929 (2010).

8. Regarding criterion 7.4 c), the MER points out that Instruction 31/2013 of the BCC (Inst. 31/2013) instructs FIs on how to access the frozen assets necessary to cover the extraordinary or basic expenses incurred by designated persons. In addition, Cuba counts with the mechanism set out in Resolution 12/2014 of the Ministry of the Interior (MININT) (in particular, the first section, articles 19 to 21), through which the competent authority has powers over the requests submitted to access frozen funds or other assets to pay for the extraordinary or basic expenses as appropriate. All the above is in compliance with the mechanisms set out in UNSCRs 1735, 1718, 1737 or their successor resolutions or amendments. Thus, UNSCR 2231 is provided for in Resolution 12/2014 as an amendment to UNSCR 1737.

² Within the framework of the re-rating process during the XLII Plenary Meeting, Cuba provided inputs on R.7 to be included in the appropriate Fourth Regular Follow-up Report. Nevertheless, according to 9.1.1 of the Minutes of the XLII GAFILAT Plenary Meeting (Key issue 3), the discussion and eventual adoption of the re-rating of Recommendation 7 was postponed until the XLIV GAFILAT Plenary Meeting in order to ensure full compliance with the processes.

9. In turn, regarding compliance with criterion 7.5 a) and b), Resolution 12/2014, in its article 5, describes that “Extraordinary and basic expenses” shall be understood as payments due under contracts or obligations as appropriate, pursuant to the provisions of UNSCRs 1452 (2002) or 1735 (2006), or 1737 (2006) and their successor resolutions or amendments, which is applicable to UNSCR 2231 in line with the revised standard. It should also be noted that although the definition provided in article 5 does not expressly mention UNSCR 1718, this does not affect compliance with criterion 7.5. a) and b), since article 19 of Resolution 12/2014 makes express reference to UNSCR 1718 (2006).

10. In order to overcome the deficiency related to the fact that DL 317 did not provide for the freezing mechanisms under UNSCRs 1718 and 1737 as required by criterion 7.1, Cuba issued Decree-Law 361 (amending DL 317), which expressly includes, in its article 14, asset freezing mechanisms in line with UNSCRs 1718 and 1737, as well as their successor resolutions (2231) and other resolutions in place imposing sanctions on persons and entities linked to Al-Qaeda, the Taliban, terrorism and the proliferation of weapons of mass destruction.

11. Additionally, in order to comply with the obligations under criterion 7.3, reporting entities that fail to implement TFS as required in Recommendation 7 are subject to a sanctions regime under article 10.3 and 12 of DL 363. In this regard, infringements, including those related to PF, are considered in cases of non-compliance with the obligation to freeze without delay the funds of persons or entities designated by the UNSC.

12. On the other hand, in May 2021, Cuba’s Ministry of Foreign Trade and Investment issued Resolution 113, which establishes the Rules of Procedure on how said authority is to engage in different actions to prevent, detect and combat ML/TF and PF. In that respect, article 8.1 establishes the mechanism through which said authority must comply with its obligations in relation to the lists maintained by the UNSC on PF, and article 15 sets out the relevant administrative measures, including the implementation of sanctions for non-compliance with these obligations.

13. In turn, on April 29, the BCC issued Resolution 155 on specific regulations for natural persons and legal persons residing or established in the country in order to prevent the PF. In this regard, article 5 sets out that the natural and legal persons established in Cuba that fail to comply with the provisions of said resolution shall receive an administrative sanction in accordance with the applicable law, without prejudice to the civil and criminal actions that may apply.

14. Lastly, regarding the aspects identified for consideration by the Global Network in relation to the term “without delay” and to the fact that the freezing should be conducted without prior notification as required by criterion 7.2 a), Cuba amended article 14.1 of DL 317 through the issuance of DL 361/2018 by the BCC, in order to address these issues. In this sense, following amendment, said article sets out that the funds or other assets derived or generated from other assets of the same or different nature, owned or controlled, directly or indirectly, by persons designated by the UNSC under Resolutions 1267, 1718 and 1737, as well as their successor resolutions and other resolutions in place imposing sanctions on persons and entities linked to Al-Qaeda, the Taliban, terrorism and the proliferation of weapons of mass destruction, “shall be frozen without delay and without prior notification.”

15. Additionally, Resolution 155/2021, in its article 3, sets out that when natural and legal persons are aware that the funds or other assets they receive come from persons or entities designated by the UNSC under Resolutions 1718 (2006), 1737 (2006), 1747 (2007), 1803 (2008), 1874 (2009), 1929 (2010), 2087 (2013), 2094 (2013), 2231 (2015), 2270 (2016), 2321 (2016), 2356 (2017), and their successor resolutions, they should refrain from continuing with the business relationship or transaction, and communicate it immediately to the Directorate General of Financial Transactions Investigation (DGIOF) within the BCC,

so that said funds or assets are frozen without delay and without prior notification. Furthermore, pursuant to article 3.1 of said Resolution, the freezing obligation should extend to all the funds or other assets owned or controlled by the designated person or entity, and not only to those that may be linked to a specific act, conspiracy or threat of proliferation; to the funds or other assets wholly or partially owned or controlled, directly or indirectly, by designated persons or entities; and the funds or other assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by designated persons or entities, as well as funds or other assets of persons and entities acting on behalf or at the direction of designated persons or entities.

16. Likewise, article 4 of Resolution 155/2021 sets out that the natural and legal persons residing in the country are not allowed to provide funds or other assets to designated persons or entities, unless they have a license, authorisation or similar instrument to do so, in line with the relevant UNSCRs (as well as with the exceptions stipulated in UNSCRs 1718 and 2231). In turn, article 5 sets out that the natural and legal persons subject to Resolution 155/2021 that fail to comply with it shall receive an administrative sanction pursuant to the applicable law, without prejudice to the civil and criminal actions that may apply; and this shall be communicated to the DGIOF. In this sense, we can say that the relevant Cuban regulatory framework does comply with the term “without delay” as required by the applicable standards, and with the so-called “general prohibition” against proliferation financing in line with criterion 7.2.

17. From the analysis conducted, we can conclude that Cuba addresses all the criteria for Recommendation 7, and **therefore we propose that the rating should be adjusted to Compliant.**

IV CONCLUSION

18. Cuba continues making significant progress towards addressing the technical compliance deficiencies identified in its MER and has been re-rated for R.7 (from Largely Compliant to Compliant).

19. In view of the progress made by Cuba since the adoption of its MER, its technical compliance with FATF Recommendations was re-rated as follows:

Table 2. Technical compliance ratings, December 2021

R 1	R 2	R 3	R 4	R 5	R 6	R 7	R 8	R 9	R 10
LC	C	LC	LC	C	C	C	PC	C	LC
R 11	R 12	R 13	R 14	R 15	R 16	R 17	R 18	R 19	R 20
C	C	C	C	PC	C	C	C	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	C	LC	LC	C	LC	LC
R 31	R 32	R 33	R 34	R 35	R 36	R 37	R 38	R 39	R 40
C	C	LC							

Note: There are four possible levels of technical compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC) and Non-Compliant (NC).

20. Cuba will continue under the regular follow-up process and shall continue to report to GAFILAT on the progress made towards strengthening implementation of AML/CFT measures.