

FATF



Anti-money laundering and
counter-terrorist financing
measures

Ireland

Follow-up Report &
Technical Compliance Re-Rating

November 2019

Follow-up report





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This report was adopted by the FATF Plenary at its October 2019 meeting.

Citing reference:

FATF (2019), *Anti-money laundering and counter-terrorist financing measures - Ireland*, Enhanced Follow-up Report & Technical Compliance Re-Rating, FATF, Paris
<http://www.fatf-gafi.org/publications/mutualevaluations/documents/fur-ireland-2019.html>

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IRELAND: 2ND ENHANCED FOLLOW-UP REPORT

1. Introduction

The mutual evaluation report (MER) of Ireland was adopted in June 2017. Ireland's 1st Enhanced Follow-up Report (FUR) was considered as an information item in October 2018, with no request for re-ratings. This follow-up report analyses Ireland's progress in addressing technical compliance deficiencies on R. 1, 2, 10, 12, 15, 16, 18, 19, 25, 26, 29, 31, and 34 which were identified in Ireland's MER. Re-ratings are given where sufficient progress has been made. This report also analyses Ireland's progress in implementing new requirements relating to other FATF Recommendations which have changed since Ireland's MER: R.7 and 21.¹ This report does not address what progress Ireland 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 Mutual Evaluation Report

The MER rated Ireland as follows for technical compliance:

Table 1. Technical compliance ratings, June 2017

| | | | | | | | | | |
|------|------|------|------|------|------|------|------|------|------|
| R.1 | R.2 | R.3 | R.4 | R.5 | R.6 | R.7 | R.8 | R.9 | R.10 |
| LC | LC | C | C | LC | PC | PC | PC | C | LC |
| R.11 | R.12 | R.13 | R.14 | R.15 | R.16 | R.17 | R.18 | R.19 | R.20 |
| LC | PC | PC | LC | PC | PC | LC | PC | NC | C |
| R.21 | R.22 | R.23 | R.24 | R.25 | R.26 | R.27 | R.28 | R.29 | R.30 |
| C | PC | LC | LC | PC | LC | C | LC | PC | C |
| R.31 | R.32 | R.33 | R.34 | R.35 | R.36 | R.37 | R.38 | R.39 | R.40 |
| LC | PC | PC | LC | LC | C | C | 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: Ireland MER, June 2017: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Ireland-2017.pdf>; Ireland 1st FUR, October 2018: <https://www.fatf-gafi.org/media/fatf/documents/reports/fur/FUR-Ireland-2018.pdf> (no TC re-ratings requested).

¹ Recommendations 2 and 18 have also changed since Ireland's MER. However, Ireland requested re-rating for these Recommendations and they are considered in that section of this FUR.

The FATF revised R.15 in October 2018 and its interpretive note in June 2019 to require countries to apply preventive and other measures to virtual asset service providers and virtual asset activity. This follow-up report does not assess Ireland's compliance with revised R.15 because, at the time of circulating this follow-up report, the FATF had not yet revised its assessment Methodology accordingly. Ireland will be assessed for technical compliance with revised R.15 in due course, in the context of its follow-up process.

Given these results, the FATF placed Ireland in enhanced follow-up. The following experts assessed Ireland's request for technical compliance re-rating:

- Ms. Jacqueline AREND, Luxembourg Financial Supervisory Authority, and
- Mr. Alvin KOH, Monetary Authority of Singapore

Section 3 of this report summarises Ireland'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 Ireland's progress to improve its technical compliance by:

- Addressing technical compliance deficiencies² on R. 1, 2, 10, 12, 15, 16, 18, 19, 25, 26, 29, 31, and 34, identified in the MER, and
- Implementing new requirements where the FATF Recommendations have changed since the MER was adopted (R.7 and 21).

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

Ireland has made progress to address technical compliance deficiencies identified in the MER related to Recommendations 1, 2, 10, 12, 15, 16, 18, 19, 25, 26, 29, 31, and 34. As a result of this progress, Ireland has been re-rated on Recommendations 2, 12, 15, 16, 18, 19, 25, 26, 29, 31, and 34.

On Recommendations 1, and 10, 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, Ireland was rated LC based on minor shortcomings, including some higher risk areas not being addressed in Ireland's National Action Plan; Ireland's decision to exempt some of the FATF Recommendations in certain circumstances which were not based on the results of a risk assessment; and the lack of an express requirement for FIs and DNFBPs to identify, assess and understand ML/TF risks and keep those risk assessments up-to-date.

Since the MER, Ireland has developed additional action plans which include the need to conduct updated ML/TF risk assessment for legal persons, a more detailed TF risk assessment, and other deficiencies identified in the MER. In addition, Ireland has included as a standing item in its Anti-Money Laundering Steering Committee (AMLSC) to discuss and follow-up on ML issues and trends, which would assist it in addressing higher risk areas that may not already be covered in the action plans.

Ireland has amended its legislation to address the identified technical deficiencies related to simplified and enhanced measures, respectively, in connection with the identification, assessment and understanding of risks. While there is now has an obligation in Ireland for FIs and DNFBPs to do a risk assessment and manage and

² This includes new requirements where Recommendations 2 and 18 have changed.

mitigate the risks appropriately, that obligation is not mandatory. Further, Ireland has considered the decision regarding exemptions in its legislative framework; however, the decision was not based on clearly proven low risk.

Ireland has made progress in addressing the deficiencies identified in its MER; however, minor deficiencies remain. **Ireland remains rated largely compliant with R.1.**

Recommendation 2 (originally rated LC)

R.2 was rated LC during Ireland's MER due to minor shortcomings in relation to the lack of a clear link between the major risks identified in the NRA and the actions set out in the Action Plan or in discussions by the AMLSC, and the lack of formal co-operation mechanisms for operational matters. Additionally, In February and October 2018, R.2 and its interpretive note were amended to require countries to have co-operation and co-ordination between relevant authorities to ensure compatibility of AML/CFT requirements with data protection and privacy rules. The amended recommendation also requires a domestic mechanism for exchange of information.

Since the MER, Ireland has formalised co-operation mechanisms. An additional measure is the FIU's enhanced public and private partnership role, and its dissemination of intelligence to the Special Detective Unit. Importantly, the co-operation mechanism is complemented by a standing item in the AMLSC, which discuss key issues and trends and the appropriate follow-up actions.

Measures are in place to adequately address the new requirements under R.2. The AMLSC meets regularly to facilitate domestic co-ordination on AML/CFT Policy and exchange information. The AMLSC is chaired by the Assistant Secretary of the Financial Services Division in the Department of Finance, and comprises members from the Department of Justice and Equality, An Garda Síochána (Police) (including the FIU), the Revenue Commissioners, Director of Public Prosecutions, the Central Bank of Ireland, the Department of Business Enterprise and Innovation, the Attorney General's Office and the Criminal Assets Bureau. There are also existing arrangements for AML/CFT authorities to co-operate and co-ordinate with the Data Protection Authorities.

Ireland has addressed the deficiencies identified in its MER and the new requirements of R.2. **Ireland is re-rated as compliant with R.2.**

Recommendation 10 (originally rated LC)

In Ireland's MER, R.10 was rated LC as a result of minor deficiencies in connection with the identification of legal persons, and beneficiaries of life insurance policies.

Since the MER, Ireland has amended its legislation to address the identified technical deficiencies identified under R.10. This covers requirements related to customer identification and verification measures, and the inclusion of senior managing official under the definition of beneficial owner. However, the specific requirements related to legal persons have not been addressed. In relation to life insurance, the obliged entities are now required to include the beneficiaries of a life insurance policy/contract in the risk assessment when these are legal persons. However, there is no explicit requirement to include beneficiaries of life insurance as a relevant heighten risk factors when they are legal persons or arrangements, although it could be implied. Though the amended legislation requires obliged entities to conduct CDD in certain situations, there is no explicit requirement to conduct CDD on existing

customers, although in practice, the ongoing CDD requirements would address most of such cases.

With the amended legislation, Ireland only allows simplified CDD in lower risk scenarios. Obligated entities are required to conduct a risk assessment of the customer relationship, considering relevant factors (e.g. the NRA, guidelines and lower risk factors), prior to the application of simplified CDD.

Ireland has made no amendments to the legislation to allow obliged entities to discontinue CDD when completing the CDD process could result in tipping-off.

Ireland has made good progress in addressing most of the deficiencies identified in its MER. However, some minor deficiencies remain. **Ireland remains rated largely compliant with R.10.**

Recommendation 12 (originally rated PC)

In its 4th round MER, Ireland was rated PC on R.12 on the basis that the definition of “PEP” was not consistent with definition of “PEP” in the FATF glossary.

Since the MER, Ireland has revised its legislation addressing the identified deficiencies related to the lack of coverage of domestic PEPs, and PEPs of international organisations, including family members or close associates of these. Additionally, the reference to “residence” in relation to foreign PEPs have been removed, resulting in the coverage of foreign PEPs residing in Ireland.

The amended legislation also addresses the deficiency related to the determination of whether a beneficial owner of a customer is a PEP, and to inform senior management prior to payout of policy proceeds. The general obligation to consider filing an STR applies to situations of higher risks involving a PEP.

Ireland has addressed the deficiencies identified in its MER. **Ireland is re-rated as compliant with R.12.**

Recommendation 15 (originally rated PC)

In Ireland’s MER, R.15 was rated PC as a result of not having a specific requirement to undertake risk assessments of new products, business practices or technologies, prior to their utilisation.

Since the MER, Ireland has conducted ML/TF risk assessments on new products and technologies, including virtual assets, crowdfunding and electronic money. Additionally, Ireland has revised its legislation to require obliged entities to conduct a risk assessment of the products, services, and delivery mechanisms they provide, in order to identify ML/TF risks. However, there is no explicit requirement for the risk assessment to be conducted prior to the introduction of a new product/service/delivery mechanism into the market.

Ireland has made significant progress in addressing the deficiencies identified in its MER; however, minor deficiencies remain. **Ireland is re-rated as largely compliant with R.15.**

Recommendation 16 (originally rated PC)

In its 4th round MER, Ireland was rated PC for R.16 based on the deficiencies identified with regards to beneficiary information accompanying wire transfers, and the lack of obligations on intermediary institutions.

The new EU Regulation (2015/847 on information to be accompanying wire transfers) directly applicable in Ireland as of 26 June 2017, requires cross-border wire transfers to be accompanied by the required beneficiary information. The EU Regulation equally requires intermediary institutions to ensure that wire transfers are accompanied by the necessary beneficiary and originator information. If a wire transfer lacks 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 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.

Ireland has addressed the deficiencies identified in its MER. **Ireland is re-rated as compliant with R.16.**

Recommendation 18 (originally rated PC)

R.18 was rated PC during Ireland's MER as a result of a number of shortcomings with respect to reporting entities' internal controls, such as the lack of an explicit requirement for the appointment of a compliance officer and an independent audit function, as well as for all employee's screening before hiring, and their ongoing training. Additionally, in November 2017, the Interpretive Note to R.18 was amended to clarify the scope of information-sharing requirements.

Since the MER, Ireland has revised its legislation to require obliged entities to appoint a compliance officer and have an independent audit function, but this would only be mandatory if so directed by the competent authority for the obliged entity. In the absence of such a direction, the requirement may only be inferred from the requirement for senior management to comply with the obliged entities AML/CFT obligations. It is also not mandatory that all those obligations should be included in the financial institutions programmes' against ML/TF. Revised legislation also requires sharing STRs within the group and data protection policies and procedures, but does not explicitly include sharing of underlying analysis/transaction information, thus leading to minor residual concerns with revised requirements of R.18. Work is ongoing to put measures into place for screening employees prior to hire, but is not yet complete.

Ireland has addressed some of the deficiencies identified in its MER. However, some remedial measures are not yet complete, and gaps remain in relation to the specific types of information to be exchanged within the financial group for ML/TF risk management and application of requirements within EU member states. **Ireland is re-rated as largely compliant with R.18.**

Recommendation 19 (originally rated NC)

In Ireland's MER, R.19 was rated NC on the basis that there were no measures in place requiring the application of enhanced due diligence measures, where a transaction or business relationship involved a country or was linked to a country, for which the FATF has called for its member to apply enhanced due diligence, and Ireland lacked the ability to impose countermeasures.

Since the MER, Ireland has made legislative amendments to address the identified deficiencies related to higher risk countries. These amendments includes a requirement for obliged entities to apply enhanced CDD, or a range of countermeasures, when this is called for by the FATF, or independently of such a call. However, this only applies to "third countries" defined as non EU/EEA countries, and would not apply if the FATF call for enhanced CDD measures to be applied on an EU or EEA country. On this basis, the deficiency has not been entirely addressed.

Ireland has made significant progress in addressing the deficiencies identified in its MER; however, minor deficiencies remain. **Ireland is re-rated as largely compliant with R.19.**

Recommendation 25 (originally rated PC)

In its 4th round MER, Ireland was rated PC for R.25 based on the following deficiencies: no requirement for non-professional to obtain and hold information on settlors, trustees, and beneficiaries; no specific requirements for trustees to hold basic information on other regulated agents of, and service providers to, a trust, or for information pursuant to R.25 be kept accurate and as up-to-date as possible, and is updated on a timely basis; and a lack of requirement for obliged entities (other than FIs) to quickly provide requested information to competent authorities.

Since the MER, Ireland enacted S.I. No. 16/2019 - European Union (Anti-Money Laundering: Beneficial Ownership of Trusts) Regulations 2019. The Regulations address many of the deficiencies identified in relation to R.25. However, the Regulations do not cover express trusts governed under Irish law that are not administered in Ireland or where the trustee is not resident in Ireland, and fines (EUR 5 000) for failure to provide competent authorities with timely access to relevant information do not appear to be sufficiently dissuasive or proportionate. Also, the Regulations do not clearly impose any requirement for trustees to hold basic information on other regulated agents of, and service providers to, the trust.

Ireland has made good progress in addressing the deficiencies identified in its MER; however, minor deficiencies remain. **Ireland is re-rated as largely compliant with R.25.**

Recommendation 26 (originally rated LC)

In Ireland's MER, R.26 was rated LC as a result of minor deficiencies in connection with the lack of consolidated supervision for AML/CFT purposes.

Since the MER, Ireland has revised its legislation related to consolidated group supervision for AML/CFT purposes which addressed the deficiencies identified in its MER. Ireland is re-rated as compliant with **R.26.**

Recommendation 29 (originally rated PC)

R.29 was rated PC during Ireland's MER as a result of the FIU not being operationally independent and autonomous from other parts of the national police force, An Garda Síochána (AGS), and the FIU's limited ability to conduct strategic analysis due to its IT system.

Since the MER, Ireland has amended its legislation to clearly establish the FIU as an independent statutory body with legal authority to exercise the powers and perform the functions required by R.29. The FIU also acquired GoAML, which enhanced its capacity to undertake complex operational and strategic analysis, and put in place rules to ensure security and confidentiality of information.

Ireland has addressed the deficiencies identified in its MER, and **is re-rated as compliant with R.29.**

Recommendation 31 (originally rated LC)

In its 4th round MER, Ireland was rated LC for R.31 as the legal authority of the competent authorities to identify whether persons hold or control accounts at Irish FIs was not clear.

Since the MER, Ireland made legislative amendments to provide the legal basis for the FIU to access central registries. The FIU further have the authority to request information in writing from any financial, administrative or law enforcement entity, which is needed for the FIU to perform its functions. This would include a designated person (e.g. financial institutions).

Ireland has addressed the deficiencies identified in its MER, and **is re-rated as compliant with R.31.**

Recommendation 34 (originally rated LC)

In Ireland's MER, R.34 was rated LC as a result of a minor deficiency related to the lack of guidance and feedback for the real estate sector.

Since the MER, the Property Services Regulatory Authority (PSRA), which is responsible for supervising the real estate sector, has begun providing ongoing guidance. The PSRA's website provides AML Policy and Procedures templates, AML requirements for different customer types, guidance on STR reporting, etc. Additionally, PSRA provides feedback on areas for increased focus when non-compliance has been identified.

Ireland has addressed the deficiencies identified in its MER. **Ireland is re-rated to compliant with R.34.**

3.2. Progress on Recommendations which have changed since the MER

Since the adoption of Ireland's MER, the FATF has amended Recommendation 7 and 21.³ This section considers Ireland's compliance with the new requirements.

Recommendation 7 (originally rated PC)

In its 4th MER Ireland was rated PC with R.7. The identified deficiencies were regarding the proliferation financing-related United Nations Security Council Resolutions (UNSCRs) where these, including the freezing obligation, were not being implemented without delay. In addition, 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.

Ireland has implemented measures to comply with the revised Standards. The DPRK and Iran related UNSCRs are implemented in Ireland 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 by the FATF Standards, and Ireland has not put any additional domestic measures in place to address this delay.

Based on the remaining deficiencies, in particular the delay in implementing the UNSCRs, **Ireland remains rated partially compliant with R.7.**

Recommendation 21 (originally rated C)

In Ireland's MER, R.21 was rated compliant. In November 2017, R.21 was amended to clarify that tipping off provisions are not intended to inhibit information sharing under R.18.

Since R.21 was amended, Ireland amended its legislation to comply with the new requirement of the FATF Standard. Section 57 provides the legal basis and requirement for obliged entities within a group to share STRs within the group for the purpose of preventing and detecting ML and TF. There are also requirements under section 49 on obliged entities to ensure adequate safeguards on the confidentiality and use of information exchanged, including safeguards to prevent tipping-off.

Ireland has implemented the new requirement of R.21. Ireland therefore remains rated compliant with R.21.

³ The new requirements of Recommendations 2 and 18 are addressed under section 3.1.

4. Conclusion

Overall, Ireland has made good progress in addressing the technical compliance deficiencies identified in its MER, sufficient to justify upgrading 11 Recommendations.

In light of Ireland'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, October 2019

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

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

Regarding Recommendations 1 and 10, Ireland has made progress toward improving its technical compliance. However, deficiencies remain and re-rating for these Recommendations is not yet justified.

Ireland will move from enhanced to regular follow-up and will continue to report back to the FATF on progress to strengthen its implementation of AML/CFT measures.

FATF



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November 2019

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

Follow-up Report & Technical Compliance Re-Rating

As a result of Ireland'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 11 of the 40 Recommendations.

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

Follow-up report