



# 2<sup>nd</sup> Follow-Up Report

## EL SALVADOR

May 20<sup>th</sup> 2011

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## I. Introduction

1. This document summarizes the CFATF's analysis of the actions that the country informs it has taken to overcome the shortcomings identified in the mutual evaluation report discussed in the Plenary of May 2010, and published on September of the same year. It is based on information submitted from February 7 and 18 of 2011.

2. El Salvador is under expedited follow up from CFATF and it must present a progress report in each six-monthly Plenary meeting. Its compliance ratings were NC or PC in 26 of the FATF recommendations, including five key and core, as shown in the next tables.

### Key and Core Recommendations

Rec.	1	3	4	5	10	13	23	26	35	36	40	I	II	III	IV	V
Calific.	MC	MC	C	PC	MC	MC	PC	PC	C	MC	MC	C	C	MC	PC	PC

### All recommendations rated PC or NC

Partially Compliant (PC)	Non Compliant (NC)
5. Customer Due Diligence	06. PEPs
8. New technologies & non face-to-face business	07. Corresponding Banking
9. Third parties and introducers	12. DNFBPs– (R.5, 6, 8-11)
17. Sanctions	16. DNFBPs– R.13-15 & 21
21. Special attention to high-risk countries	24. DNFBPs– Regulation, Supervision, Monitoring
22. Foreign branches and subsidiaries	30. Resources, Integrity, Training
23. Regulation, supervision and monitoring	32. Statistics
25. Guidance and Feedback	RE.VI Money/Value Transfers
26. The FIU	
29. Powers of Supervisors	
31. Domestic Cooperation	
33. Legal persons –beneficial owner	
39. Extradition	
RE.IV Report suspicion of FT	
RE.V International Cooperation	
RE.VII Wire Transfers	
RE.VIII NPOs	
RE.IX Cross Border cash	

## II. Summary of progress made by the country since the last evaluation.

3. In the twelve months since the adoption of the Mutual Evaluation Report, El Salvador has given priority to addressing the weaknesses of the five key/core recommendations that were rated PC. In this second report partial progress was informed in the areas summarized below, mainly consistent in the wording of draft regulation (except for Rec.17 which shows new legislation already enacted).

4. Also attached is the previous monitoring report to provide a complete picture of the actions reported so far by the country. El Salvador did not make any modifications to the previous matrix of

progress, and instead provided a separate document, with annexes. The information that reflected new actions is what the Secretariat used to prepare this report. We urge the authorities in the next period to use the correct template.

Rec. 6 (PEPs)

5. The Superintendency of the Financial System has drafted a regulation called "Minimum Standards for Managing Money laundering and Terrorist Financing risks". It will establish the obligation of financial institutions to monitor and control politically exposed persons. It is not clear to the Secretariat whether this will cover the requirement of Rec.6 about requiring approval of a senior officer for opening of PEP accounts.

Rec. 7 (correspondents)

6. The Interagency Committee for the Prevention of Money Laundering and Terrorist Financing, consisting of FIU, ABANSA and the Financial System Superintendency SSF, proposed to the Superintendent a draft "Guidelines for Correspondent Banking Services" that would implement this recommendation. CFATF Secretariat did not receive a copy of this (only the introductory letter sent to the SSF).

Rec. 17 and 29 (Sanctions and supervisory powers)

7. A new "Law on Supervision and Regulation of the Financial System" was enacted on January 14, 2011 (Act 592). It merged the supervision of the banking, insurance and securities in a single Superintendency, the SSF. It also gives clear punitive powers for breaches of AML/CFT (Article 44) and extends the range of penalties. The Act shall enter into force six months after publication. The authorities did not inform whether the Act has been published in the Gazette already.

Rec. 21 and 22 (high risk countries, subsidiaries)

8. The Interagency Committee also proposed to the SSF, a draft guidance or regulation in this field. CFATF Secretariat has not received a copy of the text.

Rec. 31 (domestic cooperation)

9. The mutual evaluation report noted that there are no channels in the country for effective interagency cooperation and AML/CFT policy setting. As a result El Salvador reactivated the Interagency Committee for the Prevention of Money Laundering and Terrorist Financing. This Committee has developed some proposals for reform submitted to the FSS and the Congress. The Committee is comprised of:

- Financial Investigation Unit of the Attorney General's Office (UIF)
- Superintendency of the Financial System SSF
- Central Bank of El Salvador
- Salvadoran Banking Association
- Stock Exchange of El Salvador

Rec. 33 (legal persons)

10. Meetings have begun between the FIU and the CNR (commercial register, where companies and other entities are centrally registered) to establish online connections necessary for ensuring that the FIU has direct access to the Registry.

**III. Conclusion**

11. None of the five key/core recommendations that were rated PC or NC has been fully corrected. Nor have the shortcomings in most of the other recommendations been fully addressed.
12. As stated in our previous follow up report, the successful reform of the CFT Act in 2010 was a very important and urgent matter, since El Salvador's reinstatement in the Egmont Group depended on this. The country is also working on draft amendments to the FIU Instructions (the main AML/CFT regulation in the country), a draft circular of the Superintendency of the Financial System and a partial amendment of the AML Law.
13. However, the draft amendment to the FIU Instructions, mentioned in the previous follow up report, is extremely limited in scope compared to the large number of shortcomings that should be addressed, according to the mutual evaluation report.
14. The other draft regulations have not been known to the CFATF Secretariat, but according to the mutual evaluation report, the Superintendency of the Financial System (SSF) has been preparing such a regulation or guidance at least since 2008. There continues to be little evidence of support from the SSF to the Superintendency's group that is responsible for AML/CFT matters.
15. At the institutional level, the authorities have not addressed the recommendation of the evaluators to review the distribution of powers between the FIU and the Superintendency of the Financial System, to prevent excessive concentration of regulatory and supervisory functions in an FIU that has not enough resources, technical capacity or expertise to meet these responsibilities.
16. El Salvador has not sent a delegation to the Plenary meetings of November 2010 and May 2011, and this raises questions the degree of commitment of this country with its follow up process.
17. Therefore, the Secretariat recommends that El Salvador be moved to enhanced follow-up, and that the CFATF Chair send a letter to the Prime Contact (Attorney General of El Salvador) with copy to the other relevant authorities such as the Superintendent of the Financial System and the corresponding Ministers. Its next report will be presented to the Plenary in November 2011.

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Annexes:

- Text of the 1st follow-up report on actions previously reported.

El Salvador did not present information in matrix form for this 2<sup>nd</sup> Follow-Up Report. Please refer to the matrix appended to the first report of December 2010.



## **ANNEX: Relevant paragraphs from the 1<sup>st</sup> Follow up Report**

### **II. Summary of progress made by the country since the last evaluation.**

18. In the six months since the adoption of the Mutual Evaluation Report El Salvador has given priority to addressing the weaknesses of the five key/core recommendations that were rated PC, by undertaking the following actions:

- a) Passed and entered into effect a new law (Decree 342 of the Legislative Assembly, June 7, 2010) that corrects the deficiencies identified in the "Special Law Against Acts of Terrorism" (CFT Law).
- b) Proposed amendments to the AML Act, presented it to the Legislative Assembly.
- c) Drafted amendment to the "FIU Instructions" (regulations of the AML Act); currently under consultation with the obliged institutions of the private sector.
- d) Drafted new "minimum requirements for managing ML/FT risks ", which the Superintendency of the Financial System (SSF) circulated for consultation with financial institutions.
- e) Drafted Bill to give powers to the SSF to regulate, monitor and sanction companies or persons engaged in money transfer services, which are currently obligated under the AML Law but lack governmental oversight. This draft is completed but not yet submitted to Congress.

19. The CFATF Secretariat has not received the text of these reform proposals or information about the estimated timeframe for their finalization.

20. The following paragraphs summarize the information provided by El Salvador, which relates only to developments in the five key/core recommendations rated PC. The authorities explained, however, that they are committed to resolve all deficiencies identified in the mutual evaluation report and they will be informing accordingly during the next Plenary.

#### **Rec. 5 CDD**

21. All actions recommended in the report with respect to Rec 5 remain outstanding but the authorities are already in the process of reforming the "FIU Instructions" which contain the AML/CFT regulations applicable to all reporting entities. Currently there is a reform proposal that is in a phase of consultation with the private sector.

22. The Superintendency of the Financial System (SSF) also prepared a draft circular to set "minimum standards for managing ML/FT risks", which is under consultation with financial institutions. The bill prohibits the opening of new accounts encrypted, and obliges to consider them a hazardous product.

23. Additionally, the authorities presented to the Congress a proposed amendment to Article 9 of the AML Law in order to reduce to \$10,000 the threshold at which it is mandatory to report cash transactions. The Secretariat notes that according to this description, the proposal would have no positive impact on the implementation of Rec. 5 unless it states that:

- a) Identification of all regular customers is mandatory regardless of the amount of their transactions, as specified in Article 10 of the AML Law.
- b) The identification threshold for occasional customers is reduced to the maximum amounts provided by the FATF.

**Rec. 23            Supervision**

24.     The bill to give the SSF powers of regulation and supervision of money transfer businesses will address one of the recommendations made in the evaluation report. It is unclear whether it also refers to supervision of other nonbank financial institutions that are not part of Financial Conglomerates. Nor have the authorities considered the possibility of transferring the regulatory function for AML/CFT to the SSF and the Superintendency of Securities, for their respective supervised institutions.

25.     The authorities also mentioned as an advance the drafting of "Minimum requirements for managing ML/FT risks" prepared by the SSF. The Secretariat is unaware of the relationship between these draft requirements and Rec. 23.

**Rec. 26            FIU**

26.     A new law/act (Decree 342 of the Legislative Assembly, June 7, 2010), corrected the mistakes of the "Special Law Against Acts of Terrorism (CFT Law) that limited the FIU's legal powers in this area. Thanks to this legal change, in July 2010 the Egmont Group lifted the membership suspension that it had imposed on the FIU.

27.     The FIU is preparing a project for the acquisition of technological equipment and related training of personnel, which could improve their data transmission system, reporting, query and analysis of information. The project has already passed the stages of "cost analysis, relevance and significance", and is in the process of getting approval of funding. The investment in this project will be approximately US\$ 250.000.

**RE. IV.           Report suspicions of FT**

28.     Decree 342 which amended the CFT Act imposes an obligation on financial institutions to report suspicious transactions of FT in general, not just in cases in which the subject is included in lists of terrorists. It also gives broad powers to the FIU to analyze these reports and to share information with other countries in the course of an investigation and/or for intelligence purposes, without having to sign memoranda of understanding.

29.     With this reform El Salvador overcomes almost all the deficiencies noted in the mutual evaluation regarding RE.IV. It is still necessary to establish a clear obligation to report attempted transactions, as well as suspicion of terrorist financing with funds of legal origin (an action recommended under Rec.13).

**RE.V.            International Cooperation on FT**

30.     The authorities mentioned the augmented powers of the FIU with respect to CFT (Decree 342 of 2010), as an improvement. However, it is unclear what aspects of this Decree help to enhance mutual legal assistance (the possibilities of cooperation of the FIU positively impact compliance with R.40, but not SR.V).