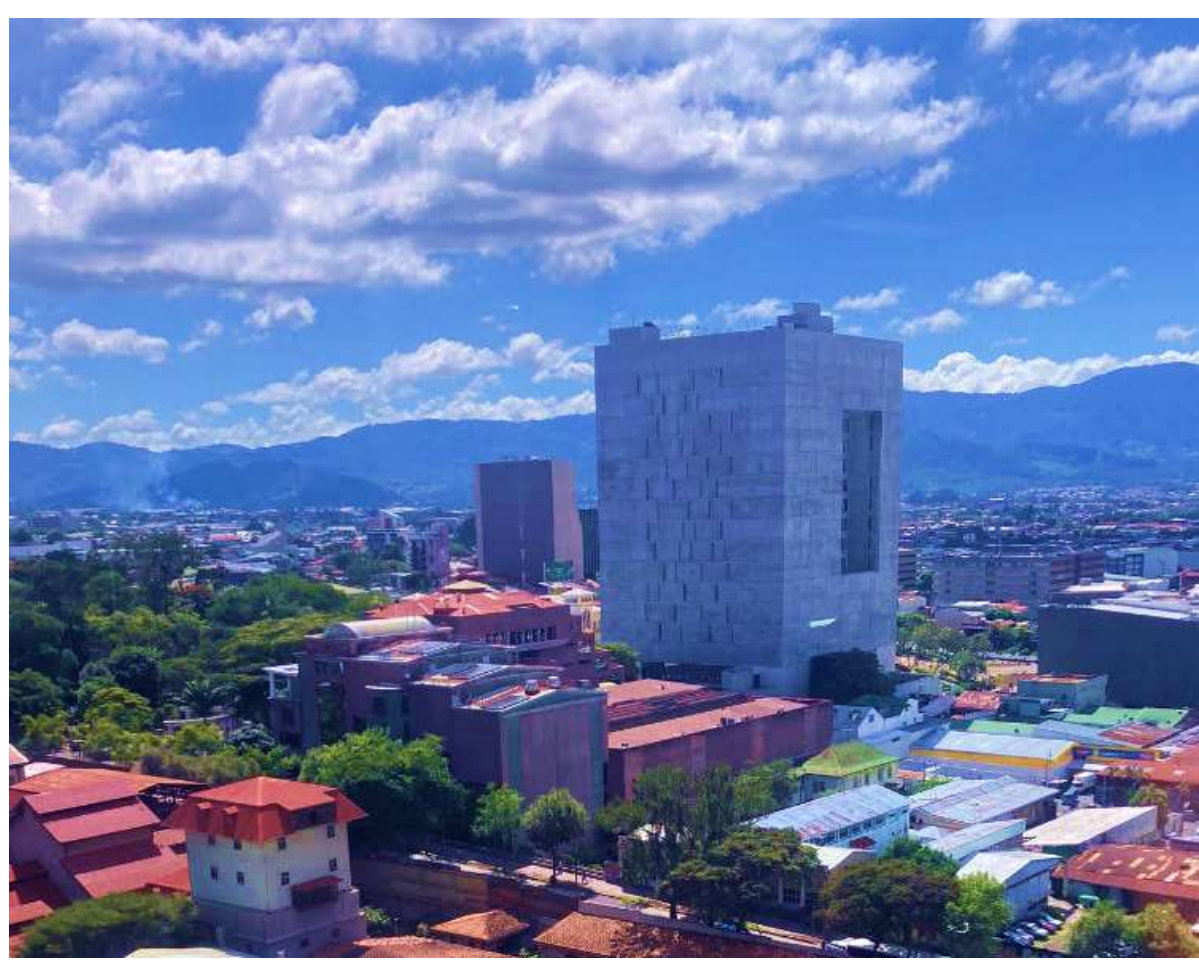




Fourteenth Enhanced Follow-Up Report and Fourth Technical Compliance Re-Rating Report of Costa Rica



January 2023



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COSTA RICA: FOURTEENTH ENHANCED FOLLOW UP REPORT – FOURTH RE-RATING REPORT

I. INTRODUCTION

1. In accordance with GAFILAT’s Fourth Round procedures, Costa Rica’s Mutual Evaluation Report (MER) was adopted in July 2015. This follow-up report analyses the progress made by Costa Rica in addressing the technical compliance deficiencies identified in its MER. New ratings are granted when sufficient progress is observed. Overall, the expectation is that countries 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 Costa Rica’s progress in improving its effectiveness.

II. FINDINGS OF THE MUTUAL EVALUATION REPORT

2. In relation to Technical Compliance, the MER indicates that Costa Rica was rated as follows:

Table 1. Technical Compliance Ratings, October 2018

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
LC	C	C	LC	C	LC	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	LC	LC	C	C	LC	PC	LC	C	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	LC	LC	LC	NC	C	LC
R.31	R.32	R.33	R.34	R.35	R.36	R.37	R.38	R.39	R.40
LC	C	LC	LC	PC	C	C	LC	C	C

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 Costa Rica: <https://gafilat.org/index.php/es/biblioteca-virtual/miembros/Costa-Rica/evaluaciones-mtuas-4/3286-informe-de-evaluacion-mutua-de-Costa-Rica/file>

3. Considering the results reflected in the MER, GAFILAT placed Costa Rica under the enhanced follow-up process.¹ Between July 2016 and October 2018, Costa Rica has been subject to three re-rating processes. The Executive Secretariat of GAFILAT evaluated Costa Rica’s request for a new technical compliance rating and prepared this report. The re-rating request was submitted by the country on May 2, 2022, and was filed with the necessary supporting documents within the terms provided for in the procedures.

4. Section III of this report summarises Costa Rica’s progress in improving technical compliance. Section IV presents the conclusion and a table showing which Recommendations were re-rated.

¹ The regular follow-up is the default monitoring mechanism for all countries. The enhanced follow-up process is based on the FATF traditional policy that approaches members with significant (technical compliance or effectiveness) deficiencies in their AML/CFT systems, and it involves a more intensive monitoring process.

III. OVERVIEW OF THE PROGRESS MADE TO IMPROVE TECHNICAL COMPLIANCE

5. This section summarises Costa Rica's progress in improving its technical compliance by addressing the technical compliance deficiencies identified in the MER.

3.1. *Progress in addressing technical compliance deficiencies identified in the MER*

6. Costa Rica has made progress in the approach to its technical compliance deficiencies identified in the MER regarding the following Recommendations, in relation to which it has requested to be re-rated:

- Recommendation 8, originally rated NC (re-rated PC), not re-rated
- Recommendation 172, originally rated NC (re-rated PC), not re-rated
- Recommendation 223, originally rated PC, not re-rated
- Recommendation 284, originally rated NC, not re-rated

7. In addition, as a result of amendments made to the standards since the date of the last re-rating, compliance with the updated requirements of the following Recommendations is analysed:

- Recommendation 2, originally rated PC (re-rated C), not re-rated
- Recommendation 5, originally rated PC (re-rated C), not re-rated
- Recommendation 7, originally rated NC (re-rated C), not re-rated
- Recommendation 15, originally rated NC (re-rated C), re-rated NC
- Recommendation 18, originally rated LC, not re-rated
- Recommendation 21, originally rated LC (re-rated C), not re-rated

8. As a result of the progress analysis, as well as of compliance with the new requirements derived from changes in the standards, Costa Rica was re-rated on Recommendation 15.

Recommendation 2 - Co-operation and Coordination (originally rated PC and subsequently re-rated C - not re-rated)

² At the GTEM meeting, as well as through comments received from the Global Network, a request was made to analyze the impact of normative amendments regarding compliance with the Recommendation as a whole, as Criterion 17.1 had been previously re-rated as Met. Taking this into consideration, GTEM proposes the group of Experts to carry out a complete analysis and for any potential re-rating of Rec. 17 to be postponed to the next GREM meeting, scheduled for July 2023.

³ Due to conflicting positions between the Assessor Team and the country during the GTEM meeting regarding very specific issues related to the legal framework, as well as the extension of the documents supporting the analysis of the re-rating as submitted by the country, it was determined that delegations did not have enough elements to discuss any potential re-rating, so a review of the analysis was proposed, in order to discuss the issue during the next GTEM meeting, scheduled for July 2023.

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9. In the first re-rating report (first enhanced follow-up report), approved in October 2016, Recommendation 2 was re-rated from Partially Compliant to Compliant.

Criterion 2.3

I) Análisis:

10. With respect to this criterion, Costa Rica approved Executive Decree No. 39077-MP-RREE-SP-H, issued on June 2015, approving the Action Plan of the National Strategy to Combat Money Laundering and Terrorist Financing, which establishes in its article 3 the creation of the Inter-Institutional Technical Commission against Money Laundering and Terrorist Financing (CTI), whose purpose is to assist in the coordination and planning of the actions carried out by the public entities that make up the Central and Decentralised Administration, as well as private entities aimed at preventing and combating the crimes of money laundering and terrorist financing. Likewise, the Commission will be in charge of monitoring the implementation, compliance, and updating of the National Strategy against Money Laundering and Terrorist Financing and its Action Plan.

11. The CTI is formed by a member or representative of the following institutions or bodies:

- Board of Directors of the Costa Rican Drug Institute or its representation by the General Directorate of the same Institute.
- Financial Intelligence Unit of the Costa Rican Drug Institute.
- National Council for the Supervision of Financial Entities (CONASSIF).
- Central Bank of Costa Rica.
- Ministry of Foreign Affairs and Worship.
- Ministry of Public Security.
- Ministry of Finance.

12. Said commission is also empowered to form the necessary working subgroups to deal with specific topics according to its area of expertise; likewise, it may summon to its meetings members of the other Supreme Powers of the State when deemed appropriate (Article 4). In addition, professional associations, and legally established non-profit organisations, as well as the commercial and business sector, may be requested to actively participate in the implementation of the National Strategy to Combat Money Laundering and Terrorist Financing and its Action Plan (art. 6 of the aforementioned decree).

13. In addition to the above, in March 2020 Costa Rica issued Executive Decree No. 41583-MP, which approves the updating of the national risk assessment against money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction, so that in 2021, under the coordination of the Financial Intelligence Unit (FIU) of the Costa Rican Drug Institute (ICD) and with the participation of entities of the AML/CFT System, the National Financial System, the sector of non-financial businesses and professions, as well as justice operators, police, supervisory bodies and professional associations, the National Risk Assessment of Money Laundering, Terrorist Financing and Proliferation was drafted.

14. As a result of the NRA, in April 2022 the country issued the Action Plan for compliance with FATF standards and the mutual evaluation process, which aims, among others, to provide inputs for the improvement of the anti-money laundering and counter terrorist financing (AML/CFT) regime, in terms of the implementation of actions and the generation of public policies

which is reflected in operational-level cooperation by gathering all relevant authorities. (Article 4 of Decree No. 41583-MP).

II) Conclusion:

15. Costa Rica has implemented various provisions and formal mechanisms for collaboration and cooperation among its authorities—most notably the formation of the CTI, derived from the implementation of the Action Plan of the National Strategy—as well as for the updating of the NRA. This criterion is **Met**.

Criterion 2.5

I) Analysis:

16. In terms of Law no. 8968 “Law for the Protection of the person regarding personal data” issued in September 2011, Article 8 considers the possibility of providing exceptions to the protection when pursuing the security of the State; security and exercise of public authority; prevention, prosecution, investigation, processing, and repression of criminal conducts, among other well-defined scenarios. Such exceptions can be invoked in cases of gathering and exchange of information carried out by supervisors in Costa Rica, for the purposes of the AML/CFT/CFP regime.

17. On the other hand, Article 120 of Law 7786 establishes the creation of the Intelligence Programs Unit, which together with national and international police agencies, will be in charge of unifying and facilitating actions against illicit drug trafficking and related crimes, money laundering, terrorist financing, and organised crime. Likewise, with the exception of the provisions of article 123 of said Law, it will collect, analyse, and provide tactical and strategic information to the institutions and the different bodies involved in the fight against these crimes, in order to enable them to achieve their purpose and recommend actions to them. The information will be compiled in an entirely confidential database, for the exclusive use of the police and judicial authorities.

18. On its part, the FIU is empowered to request information from any State agency or institution for the purpose of complying with its obligations. In this sense, art. 123 of the above mentioned Law provides that “at the request of the FIU, the Costa Rican Drug Institute shall be required to provide all type of information required for investigations of the activities and crimes regulated in this Law, the agencies and institutions of the State and especially the Ministry of Finance, the Central Bank of Costa Rica, the Public Registry, and public control agencies, as well as the entities indicated in articles 14, 15, and 15 bis of this Law”.

19. Art. 124 of the aforementioned law states that the information gathered by the FIU shall be confidential and exclusively used for investigations carried out by this Institute. In addition, the same may be disclosed to the Public Prosecutor’s Office, the judges of the Republic, national and foreign police forces, counterpart financial analysis units, and the administrative and judicial authorities of other countries competent in this matter. Officials who fail to comply with this provision shall be subject to the sanctions set forth in the Criminal Code.

20. Similar provisions in relation to the protection of personal data and confidentiality in the exchange of information related to the AML/CFT can be found in Article 151 of the Regulatory

Law of the Stock Market, Law No. 7732, which establishes certain restrictions to disseminate information from cooperation carried out by supervisors; furthermore, this information will be considered confidential and should only be used under the terms of the specific cooperation and information exchange instruments, with the obligation to safeguard such information. Information obtained from the exchange and cooperation of Superintendencies will be considered as an exception to the “self-determination of information” established on article 8 of Law 8968, mentioned above.

21. As for the public prosecutors, Administrative Circular 04-ADM-2019 provides indications on provisions of Law 8968 and mentions the cases where such information may be revealed, as well as those cases that would be considered as an exception of the “self-determination of information” based on requirements under constitutional or legal basis.

II) Conclusion:

22. The framework of action of intelligence instances and other financial authorities, as well as the public prosecutors, provides for data protection related provisions when it exchanges information with other competent authorities and their corresponding actions. Costa Rica has shown there is cooperation amongst authorities which, according to the legal framework, is carried out under privacy and data protection provisions. This criterion is **Met**.

Conclusion on Recommendation 2

23. Costa Rica has implemented mechanisms and measures aimed at facilitating cooperation and information sharing in the prevention and combating of money laundering, terrorist financing and financing of the proliferation of weapons of mass destruction, through which it can implement the actions of its National Strategy, which include updating the understanding of risks.

24. Likewise, mechanisms have been implemented to ensure that information can be exchanged and obtained by the relevant authorities, including the FIU and financial supervisors, as well as guidelines on said information to be followed by the public prosecutors. Based on the above, **Recommendation 2 remains Compliant**.

Recommendation 5 - Terrorist financing offence (Originally rated PC and subsequently re-rated C - Not Re-rated)

25. In the first re-rating report (first enhanced follow-up report), approved in October 2016, Recommendation 5 was re-rated from Partially Compliant to Compliant.

Criterion 5.2

I) Analysis:

26. Article 2 of the Regulations issued by Executive Decree No. 40018-MP-SP-JP-H-S-RREE, issued in November 2016, provides the following definition:

- **Funds or other assets:** Financial products, money, and other assets including financial assets, money, **economic resources (including oil and other natural resources), property of every kind, whether tangible or intangible, movable or immovable**, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travellers' cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on, or value accruing from or generated by, such funds or other assets, and any other assets which may be potentially used to obtain funds, goods or services.

27. The aforementioned definition, applicable to freezing or immobilization based on article 6 of the same legal system, is broad and consistent with the definition established in the Glossary of the standards. Furthermore, Law no. 9387 of 2016, which amends, among others, Art. 69 Bis of Law No. 7786, states in its text the provision of “funds, financial products, resources or instruments, or other assets, means or services of any class”, which is consistent with the aforementioned term.

II) Conclusion:

28. The functional definition is included in the relevant legal and regulatory provisions in terms that are virtually identical to the standard; therefore, this criterion is considered to be **Met**.

Criterion 5.4

I) Analysis:

29. As established in the amendment of art. 69 bis, the crime of TF extends to the financing of any act intended to cause death or serious bodily injury to a civilian or any other person not taking direct part in hostilities in a situation of armed conflict, and subparagraphs include the budgets “even if they are not executed”. Likewise, the definition of “funds or other assets” described in the analysis of Criterion 5.2 is also applicable.

II) Conclusion:

30. Costa Rica’s legal framework, which had already been subject to a previous re-rating, included the term “funds or other assets” within its definitions in a manner in which the application of the provisions meets the requirements of the FATF standards. Criterion 5.4 (a) remains **Met**.

Conclusion on Recommendation 5

31. The inclusion in the definition of the term “funds or other assets” in terms virtually equal to the standard, as well as its application to the criminal type, whose scope also considers those funds or other assets that are not used or specifically linked to a specific terrorist act, comply with the standard. As no deficiencies were found with respect to the amended criteria, **Recommendation 5** remains **Compliant**.

Recommendation 7 – Targeted financial sanctions related to proliferation (originally rated NC and subsequently re-rated C – not re-rated)

Criterion 7.5

32. In the first re-rating report (first enhanced follow-up report), approved in October 2016, Recommendation 7 was re-rated from Non-Compliant to Partially Compliant. Subsequently, in October 2017 it was re-rated Compliant.

I) Analysis:

33. Provisions related to the implementation of targeted financial sanctions related to the financing of the proliferation of weapons of mass destruction provide for the implementation of measures based on UNSCR 1718 and successor resolutions, as well as UNSCR 1737 and successor resolutions. UNSCR 2231, which adopts the Joint Comprehensive Plan of Action (JCPOA) and modifies the sanctions regime established by UNSCR 1737, has been considered a successor resolution to the aforementioned resolution, so the text “and successor resolutions” encompasses the adoption of Resolution 2231.

34. However, Executive Order 40018 of 11/14/2016, in its article 12 (Access to frozen funds), provides as follows:

“Article 12. Access to frozen or immobilized funds. Exceptionally and duly motivated, the competent judge may authorize the access of frozen or immobilized funds or other assets which, as determined, are needed to cover basic expenses, to pay for certain professional fees, costs and service charges and to cover extraordinary expenses, under the procedures established in UNSCR 1452 and successor resolutions. Under the same motivation, the competent judge shall authorize access to the funds and other assets if the freezing or immobilization measures apply to designated persons and entities under UNSCR 1373. Likewise, the competent judge shall authorize access to funds or other assets subject to freezing or immobilization if the conditions of exception stipulated in UNSCR 1718 and 1737 are met”.

“The reporting institutions in the preceding paragraph shall not prevent a designated person or entity, from making a payment due as long as it is not received, directly or indirectly, by a designated person or entity by virtue of a contract entered into before such person or entity was listed, provided that such contract does not relate to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokerage or services referred to in UNSCR 1737”.

35. From the reading of these provisions, it can be concluded that the Law extends to all successor resolutions, because while there is no scope of the measures for Resolution 2231, in which sanctions established under UNSCR 1737 and its successors are replaced to endorse the JCPOA, the legal interpretation of the term “and successor resolutions” under Article 2 of the Regulations, enable concluding that provisions under UNSCR 2231 are included therein.

II) Conclusion:

36. Costa Rica's legal framework covers amendments to the sanctions regime under UNSCR 2231, which adopted the JCPOA and is considered successor to UNSCR 1737. The criterion is rated as **Met**.

Conclusion on Recommendation 7

37. Costa Rica's legal framework has included provisions covering successor resolutions, including UNSCR 2231, which is evident from the scope of the Law. Therefore Recommendation 7 remains as **Compliant**.

Recommendation 8 – Non-Profit Organisations (Originally rated NC and subsequently re-rated PC – Not re-rated)

Criterion 8.1

I) Analysis:

i) Without prejudice to the requirements of Recommendation 1, since not all NPOs are inherently high risk (and some may represent little or no risk at all), identify which subset of organizations fall within the FATF definition of NPO, and use all relevant sources of information, in order to identify the features and types of NPOs which by virtue of their activities or characteristics, are likely to be at risk of terrorist financing abuse.

38. The country's regulations related to NPOs are based on article 25 of the Constitution. In this sense, in prudential matters, there are 2 types of legal persons that by their nature and purpose can be considered as non-governmental organisations; these are:

- a) Associations regulated by Law 218 of August 8, 1939, and its regulation 29496 of April 17, 2001. This law regulates associations for scientific, artistic, sports, charitable, recreational, and any other lawful purposes that do not have as their sole and exclusive purpose profit or gain. Labour unions and mutual aid, welfare, and patronage associations are also governed by this law.
- b) Foundations regulated by Law 5338. This law recognises the legal status of foundations as private entities for public benefit, established for non-profit purposes and with the purpose of performing or helping to perform educational, charitable, artistic, or literary, scientific activities and, in general, all those that imply social welfare, by means of the allocation of a patrimony.

39. In the area of ML/TF prevention, Costa Rica has designated NPOs as reporting entities under Law 9449. In this sense, for purposes of being considered as REs, article 15 Bis stipulates that the activity of non-profit organisations (Foundations or Associations) that send or receive money coming from jurisdictions internationally considered of risk or that maintain relations with foreign parent companies, branches or subsidiaries located in those jurisdictions will be considered as REs. The SUGEF, the financial supervisor, is in charge of supervising compliance of these NPOs.

40. Finally, in tax matters, Law 9416 of December 2016, (Law to Improve the Fight against Tax Fraud) creates obligations for non-profit organisations, whose activity is linked to *the collection or*

disbursement of funds to fulfil charitable, religious, cultural, educational, social, fraternal purposes, or to carry out other types of “good works”, including associated non-profit organisations, understood as foreign branches of international non-profit organisations; they shall provide, in addition, the purpose and objectives of their activities, the identity of the members of the board of directors, administrative council, directors or equivalent, as well as the management body, the detail of income and expenses, records and identification of donors and of the recipients or beneficiaries of their contributions or donations up to the natural person, which are equal or higher than a base salary, established in article 2 of Law 7337, of May 5, 1993, including the identification of structures composed of affiliated organisations. The General Tax Directorate is in charge of the control or monitoring of compliance with the obligations arising from Law 9416.

41. In this sense, it is considered that Costa Rica has a comprehensive regulation of the NPO sector, although with different purposes and scopes.

42. For the purposes of this criterion, it is considered that based on what was reported by the country, progress has been made since its mutual evaluation process was conducted, and its last re-rating report (published in October 2017), among which the following stand out:

- a) The elaboration of a sectoral risk assessment with respect to NPOs, whose main purpose is making a diagnosis concerning the ML/TF/FP risk exposure of this sector. However, at the time the analytical assessment table was sent out, this document was still in the process of being finalised.
- b) The issuance of prudential regulations aimed at ensuring that the measures required from NPOs, among other sectors, are compulsory and applied in accordance with the scope consistent with their respective nature, under a risk-based approach, which is dealt with in SUGEF Regulation 13-19.

43. Likewise, there were already actions such as: i) establishing that NPOs would be subject to a supervisory body in AML/CFT matters, which is the General Superintendence of Financial Institutions (SUGEF); ii) Incorporating certain NPOs as reporting institutions before the FIU. Law 9449 (May 11, 2017). “The activity of non-profit organisation that sends or receives money coming from jurisdictions internationally considered of risk or that maintain relations with foreign parent companies, branches or subsidiaries located therein,” and iii) Incorporate, to the NPOs described in Law 9416 and its Regulations, the obligation to declare the information on Beneficial Owners together with the detail of donors and recipients of charitable purposes.

44. Based on the information provided by the country, certain progress has been made with respect to this criterion. Notwithstanding, at the time that supporting information was submitted it the measures set out in the report (Technical assistance for ML/TF/FPWMD risk analysis of non-profit organisations in Costa Rica) have not begun implementation as public actions aimed at better understanding the specific TF risks of NPOs. This is due to the fact that the country does not have, for example, an assessment of the associations and foundations that fall within the definition provided by the FATF. In this sense, only the definition of the “Regulation of the registry of transparency and beneficial owners” (No. 41040 -H) under Law 9416, (Law to Improve the Fight against Tax Fraud) is limited to the definition of NPOs of the FATF Glossary. It should be mentioned that both Law 9449 and its regulations have a definition of NPOs that is not in line with the requirements of this criterion.

45. From the analysis of the information available, it is not possible to determine the universe of associative entities that meet the FATF criteria, nor those that meet the definition established in the Law to be considered as REs of the AML/CFT/FP system. This makes it very difficult to determine the types of NPOs operating in the country that are most at risk of TF.

46. Furthermore, there was not enough information available on the specific study aimed at identifying the characteristics and types of NPOs that, by virtue of their nature and activities, represent the greatest TF risk. Finally, although the current prudential, tax, BO, and AML/CFT regulations have sufficient measures to provide information that could assist in identifying the characteristics and types of NPOs that, by virtue of their activities or characteristics, are most at risk of being abused for the financing of terrorism, the country was not able to demonstrate that such analysis has been applied.

ii) Identify the nature of threats posed by terrorist entities to the NPOs which are at risk as well as how terrorist actors abuse those NPOs.

47. With regard to this item, it may be noted that the country has conducted a sectoral ML/TF/FP risk assessment with respect to non-profit organisations.

48. Likewise, it has established a procedure for ML/TF/FPWMD risk supervision of entities registered under articles 15 and 15 bis of Law 7786, as well as a Regulation for the prevention of the risk of money laundering, terrorist financing, and financing of the proliferation of weapons of mass destruction, applicable to entities regulated by articles 15 and 15 bis of Law 7786. SUGEF Agreement 13-19, and a Risk Based Supervision Manual to manage ML/TF/FPWMD risk of entities registered under articles 15 and 15 bis of Law 7786.

49. However, with regard to compliance with this sub-criterion, the country has not been able to demonstrate that it has identified the nature of the threats posed by terrorist entities to NPOs, nor the reasons for which its risk has been placed on those that send or receive money from internationally listed risk jurisdictions.

50. In this regard, it is not clear, for example, what is the task carried out by SUGEF to ensure that compliance with the obligations imposed by Law 7786 will be based on TF risk and under what criteria has this authority determined it. Likewise, for example, the consideration of how risks related to cross-border movement of cash, which may make NPOs vulnerable to misuse for FT purposes, is not clear

iii) Review the adequacy of measures, including laws and regulations, that relate to the subset of the NPO sector that may be abused for terrorism financing support in order to be able to take proportionate and effective actions to address the risks identified.

51. As mentioned above, Costa Rica has a wide range of prudential, AML/CFT/FP, tax and, BO identification regulations. The following is a list of the main measures and obligations that NPOs, in their different definitions, must comply with:

Law 7786 as defined in art. 15 Bis d) and art. 3 of SUGEF Regulation 13-19.

- a) Identification of customers and performance of customer due diligence when establishing business relationships, identification of the beneficial owner, and the purpose of the business relationship.

- b) Identification and evaluation of risks affecting them in terms of ML/TF/FPWMD.
- c) Maintenance and availability of information on transaction records.
- d) Implementation of PEP management provisions.
- e) Control of ML/TF risks
- f) Design and implementation of mechanisms for reporting suspicious transactions or their attempts to the FIU, and registration in the platform managed by the FIU called "FIU reports."
- g) Report cash transactions to SUGEF with a threshold of 10 thousand USD.
- h) Implementation of external audit.
- i) Elaboration of a prevention manual comprising the obligations to be complied with in this matter, including training of employees and knowledge of personnel to avoid risk situations.
- j) Appointment of compliance officer or liaison officer before the SUGEF and the FIU.
- k) Register with SUGEF

Other obligations under SUGEF Regulation 13-19

- l) Adopt risk-based measures for the knowledge of donors and associates of the reporting institution and the origin of its funds.
- m) Adopt risk-based measures to identify natural or legal persons or groups of them, who receive donations through the NPO's services.
- n) Adopt risk-based measures for the knowledge of related NPOs.
- o) Ensure that funds received or delivered are fully accounted for and keep such accounting and financial statements available to the competent authorities.

52. Furthermore, under the provisions of Law 9416, to Improve the Fight against Tax Fraud, NPOs are required to register in the already existing Beneficial Ownership Transparency Registry of the Central Bank of Costa Rica (RTBF) and entails other specific obligations for NPOs that meet the definition established in art. 6 of the same Law and its Regulation of the Registry of Transparency and Beneficial Ownership 41040 -H.

- a) Register with the Central Bank of Costa Rica in the RTBF indicating the partners and beneficial owners that have a substantive participation.
- b) Provide the purpose and objectives of its activities.
- c) Provide the identity of the members of the board of directors, administrative council, directors or equivalent, as well as the management body; and
- d) Provide details of income and expenditures, records and identification of donors and recipients or beneficiaries of contributions or donations up to the individual, which are equal to or greater than a base salary.

53. The country has robust measures in place with respect to the regulation of the NPO sector. A series of regulations have been issued that have established a rigorous regulation of the sector. This is reinforced by the results of the technical assistance received. However, it is not clear whether, for example, due to their intrinsic nature, NPOs that receive or send funds to at-risk countries are the only ones at risk of being used for TF and how the SRA of NPOs contributed to confirm that legal description.

54. Furthermore, the regulation on tax control and BO identification establishes, in a more reliable way, not only the subset of NPOs targeted, but also specific obligations and measures that will provide valuable information to know if an NPO is at higher or lower risk to be used for TF.

II) Conclusions:

55. Costa Rica has taken regulatory actions to further its compliance with this criterion; however, there is no clear evidence of: i) identification of the universe of NPOs that fall within the definition of FATF; ii) the identification of the nature of TF threats posed by current terrorist groups and the way in which NPOs can be abused, in addition to those sending or receiving funds from high-risk jurisdictions; iii) the review of the adequacy of measures and regulations to mitigate risks with effective and proportionate actions, and; iv) the periodical re-assessment of the sector to guarantee the effective application of measures. Criterion 8.1 is partially met.

Criterion 8.2

Encourage and undertake outreach and educational programmes to raise and deepen awareness among NPOs as well as the donor community about the potential vulnerabilities of NPOs to terrorist financing abuse and terrorist financing risks, and the measures that NPOs can take to protect themselves against such abuse.

56. On this point it may be noted that there have been a large number of training activities for the DNFBP sector (Recommendation 22 / 23), but no training or educational programs directly linked to NPOs that refer to their specific obligations and relevant TF risks are identified.

57. Some level of training could be considered with respect to general supervisory programs and guidance and understanding of regulatory duties, although no specific programs are seen with respect to awareness of how NPOs can be abused for terrorist financing purposes.

Work with NPOs to develop and refine best practices to address terrorist financing risk and vulnerabilities and thus protect them from terrorist financing abuse.

58. It can be observed that work has been done with respect to NPOs, in terms of their inclusion as reporting institutions and the dimensioning and materiality of the sector. Regarding an evaluation of technical compliance, there are a series of documents that allow justifying how the work in this area has been developed. In this context, it is important to note that NPOs require registration in order to operate, establishing duties of vigilance and information on ML/TF prevention. However, the type of work or specific best practice documents, trends, or typologies developed and shared with the DNFBP sector to better understand and address their specific risks and vulnerabilities in terms of TF is not clear.

59. As indicated in criterion 8.1, the country has taken various measures from different regulatory angles aimed at having greater control over NPOs and these measures, such as registration and other obligations, undoubtedly contribute to generating a compliance environment that allows these institutions to operate through regulated financial channels.

60. Likewise, the technical assistance program establishes a series of measures aimed at improving the integration of NPOs, although they are also aimed at all other DNFBPs. Furthermore, there is still a challenge of managing those NPOs that may be in the informal sector and therefore have not registered with either the SUGEF, the Central Bank through the RTBF or the National Registry of Legal Persons. It is also not clear what kind of approach has been taken with specific NPOs such as Religious Organisations and how these types of NPOs are being

sensitised to improve their practices and mitigate the TF risks they may represent, even where they have not been identified as senders of recipients of electronic wire transfers with high-risk jurisdictions.

II) Conclusions:

61. Costa Rica has shown progress related to outreach with Res under Law 7786, which only implies NPOs under Article 15 Bis, item d). The outreach and materials shared with these REs is very useful to comply with their obligations; however, they are not considered to be targeted towards the requirements of this criterion, particularly referring to TF and conscientization of NPOs and donors on the potential vulnerabilities and risks of TF abuse. This criterion is partially met.

Criterion 8.5

i) Have investigative expertise and capability to examine those NPOs suspected of either being exploited by, or actively supporting, terrorist activity or terrorist organisations.

62. Given the robust regulation of the sector and the obligations it generates, it may be deduced that the authorities may have the necessary information for an investigation. However, from the information available, there was no further data on whether the competent authorities have the expertise and operational capacity to examine or investigate NPOs suspected of TF, and therefore, whether competent authorities may apply the powers granted by law.

63. Regarding the country's capabilities to examine, a series of studies and analyses have been carried out with respect to the sector, considering that the country should implement measures proposed in the technical assistance program, as well as train the FIU and the Prosecutor's Office on the treatment of a possible case of TF related to NPOs; carry out and share with the competent authorities typologies, trends or case studies, national or international on the misuse of NPOs for TF, which is scheduled to begin in 2023.

64. According to the analysis conducted, the country has the regulatory framework that allows it to quickly share information among the competent authorities regarding possible misuse of NPOs. This can be seen in the supervisory powers of the SUGEF, in the obligation for NPOs to register their beneficial owners, and in the need for NPOs to be registered in order to operate.

65. Likewise, there is usefulness in information required to "Non-profit organisations, whose activity is linked to the collection or disbursement of funds to fulfil charitable, religious, cultural, educational, social, fraternal purposes, or to carry out other types of "good works", including associated non-profit organisations, understood as foreign branches of international non-profit organisations, such as to provide the purpose and objectives of their activities, the identity of the members of the board of directors, administrative council, directors or equivalent, as well as the management body, the detail of income and expenses, records and identification of donors and of the recipients or beneficiaries of their contributions or donations up to the natural person, which are equal or higher than a base salary, established in article 2 of Law 7337, of May 5, 1993, including the identification of structures composed of affiliated organisations"

66. In addition, there is the obligation to disclose information on the control structure to the Central Bank of Costa Rica with the registry or indication of shareholders and beneficial owners with a considerable share, as set forth in Article 15 of the corresponding Law.

67. However, there was no evidence of information related to whether other relevant authorities, such as law enforcement agencies and the public prosecutor, have mechanisms or protocols to exercise investigative and disruption actions when there are elements of a NPO being abused for TF purposes.

II) Conclusions:

68. Costa Rica has solid regulation over the NPO sector which generates obligations that may lead to believe that authorities have all the information required to carry out a TF investigation within their reach; however, from the information available there were no major facts related to whether competent authorities have the operational expertise and capabilities to examine or investigate NPOs under suspicion of being involved in TF schemes. On the other hand, the country has a regulatory framework that enables it to quickly share information among the competent authorities regarding possible misuse of NPOs. The latter is evidenced all in the faculties of supervision by SUGEF, the obligation to register the beneficial owner by the NPO, and the need for the NPO to be registered to operate. Notwithstanding the latter, there was no information available related to whether other relevant authorities, such as law enforcement, intelligence or prosecution agencies have mechanisms or protocols to initiate investigation and disruption actions when there are elements to suspect that an NPO is being misused for TF purposes. This criterion is partially met.

Criterion 8.6

69. No specific and adequate points of contact and procedures have been identified for responding to international information requests concerning particular NPOs suspected of TF or involved in other forms of support to terrorism. The procedures indicated for requesting information on NPOs respond to the general procedures by means of which supervisors request information, but no point of contact has been established to which international requests on the matter should be addressed, nor any special procedure on this matter.

70. Therefore, criterion 8.6 is not met.

Conclusion on Recommendation 8

71. Costa Rica has developed a sectoral risk study on NPOs, although the final report is still pending.

72. Considering that the deficiencies identified in criteria 8.1, 8.2, 8.5 and 8.6 are moderate, Recommendation 8 is maintained as **Partially Compliant**.

Recommendation 15 – New Technologies (originally rated NC and subsequently re-rated C – Re-rated NC)

Criterion 15.3

I) Analysis:

73. The country does not have legislation, regulations, or provisions that allow for the identification and assessment of risks related to virtual assets (VAs); therefore, it is not in a position to implement a risk-based approach with respect to virtual asset service providers (VASPs). Furthermore, there are still no provisions requiring VASPs to implement steps for the identification, assessment, management, and mitigation of their ML/TF risks.⁵

II) Conclusion:

74. The country does not have the relevant regulations to implement a risk-based approach in the VASP sector. This criterion is Not Met.

Criterion 15.4

I) Analysis:

75. Costa Rica has not yet implemented licensing or registration requirements for VASPs; therefore, it has not yet implemented measures aimed at preventing criminals or their associates from owning, being beneficial owners, or having a participation, or occupying a management position in a VASP.

II) Conclusion:

76. Costa Rica does not yet have a regulatory framework that includes virtual assets or virtual asset service providers in the AML/CFT system. The criterion is rated as Not Met.

Criterion 15.5

I) Analysis:

77. There are still no licensing or registration requirements for the sector, Costa Rica has not yet identified the universe of individuals or legal persons that carry out VASP activities without a license or registration.

⁵ The country reported on a draft law through which it is planned to incorporate the VASPs to the AML/CFT regime. However, at the time of the relevant analysis, said bill had not yet been approved or entered into force as a Law, therefore, based on the Re-rating Procedures, it is not considered for purposes of re-rating of Recommendation 15.

II) Conclusion:

78. Costa Rica does not yet have a regulatory framework that includes virtual assets or virtual asset service providers in the AML/CFT system. The criterion is rated as Not Met.

Criterion 15.6**I) Analysis:**

79. No provisions have yet been approved under which VASPs are subject to supervision or risk-based monitoring by a competent authority. In this regard, it is not possible to determine whether the powers of supervision or oversight and enforcement by the sector will be adequate.

II) Conclusion:

80. Costa Rica does not yet have a regulatory framework that includes virtual assets or virtual asset service providers in the AML/CFT system. The criterion is rated as Not Met.

Criterion 15.7**I) Analysis:**

81. As provisions extending AML/CFT obligations to VASPs have not yet been included, guidelines have not yet been established or information has not yet been provided for VASPs to implement related measures, as well as to identify and/or report suspicious transactions. No prior outreach to the sector has been reported either.

II) Conclusion:

82. Costa Rica does not yet have a regulatory framework that includes virtual assets or virtual asset service providers in the AML/CFT system. The criterion is rated as Not Met.

Criterion 15.8**I) Analysis:**

83. As they are not yet incorporated as reporting entities for purposes of the AML/CFT regime and do not yet have a supervisory and/or oversight entity, it is not yet possible to apply a range of effective, proportionate, and dissuasive sanctions, of a criminal, administrative or civil nature, applicable to VASPs or their managers.

II) Conclusion:

84. Costa Rica does not yet have a regulatory framework that includes virtual assets or virtual asset service providers in the AML/CFT system. The criterion is rated as Not Met.

Criterion 15.9

I) Analysis:

85. As VASPs have not yet been incorporated as RIs in the AML/CFT system, the preventive measures set out in Recommendations 10 to 21, or the ratings outlined in sub-criteria 15.9 (a) and 15.9 (b), are applicable to the sector.

II) Conclusion:

86. Costa Rica does not yet have a regulatory framework that includes virtual assets or virtual asset service providers in the AML/CFT system. The criterion is rated as Not Met.

Criterion 15.10**I) Analysis:**

87. There are currently no regulations related to reporting or monitoring related to criteria 6.5(d), 6.5(e), 6.6(g), 7.2(d), 7.2(e), 7.3 and 7.4(d) applicable to VASPs.

II) Conclusion:

88. Costa Rica does not yet have a regulatory framework that includes virtual assets or virtual asset service providers in the AML/CFT system. The criterion is rated as Not Met.

Criterion 15.11**I) Analysis:**

89. In the absence of a supervisory and monitoring framework and an authority in charge of such tasks, it is not yet possible to provide international cooperation specifically in relation to money laundering, predicate offences, and terrorist financing linked to virtual assets. While the international cooperation framework does not appear to prevent sharing this type of information, in the absence of a competent supervisory authority, it is not evident that this type of information is available and can be adequately provided.

II) Conclusion:

90. Costa Rica does not yet have a regulatory framework that includes virtual assets or virtual asset service providers in the AML/CFT system. The criterion is rated as Not Met.

Conclusion on Recommendation 15

91. Costa Rica had previously implemented legislative and regulatory measures to meet the criteria of Recommendation 15. However, in view of the comprehensive amendment of the Recommendation and, mainly, the Methodology with the addition of criteria 15.3 to 15.11, the country has no measures to include virtual assets and virtual asset service providers in the AML/CFT system. Due to weighting of Criterion 15.3 and its impact in compliance with all the

criteria of the Recommendation, as assessed in other reports of the Global Network, Recommendation 15 is downgraded from Compliant to Non-Compliant.

Recommendation 18 – Internal controls and foreign branches and subsidiaries (Originally rated LC – Not re-rated)

Criterion 18.2

I) Analysis:

92. The MER of Costa Rica concluded that the obligations contained in criterion 18.1 must be applied by the companies or entities belonging to financial groups or conglomerates (Law 8204, art. 14 and NCL 8204, art. 43). Furthermore, the legal framework is observed to include specific obligations for the existence of a corporate compliance officer (NCL 8204, arts. 27 bis and 27 ter). Additionally, NCL 8204 establishes that FIs belonging to the same Financial Group or Conglomerate may share among themselves “the information collected in the know-your-customer process, obtaining the customer’s written authorization. Likewise, they must comply with the legislation in force on personal data protection, as well as handle the information confidentially and use it exclusively for compliance with the obligations set forth in the legal framework on prevention of money laundering and terrorist financing”.

93. In addition, by means of SUGEF Agreement 12-21 the Regulation for the Prevention of the Risk of Money Laundering, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction applicable to reporting institutions is established, article 48 sets out provisions on the treatment and content of unusual transactions and STRs, indicating that the provisions on confidentiality of information must not inhibit the exchange of information, as part of an investigation between the compliance officers of the financial groups or conglomerates.

II) Conclusion:

94. The legal framework applicable to reporting institutions, which establishes the obligation of financial groups to keep information they receive and share among their entities under the valid legislation for the protection of personal data, as well as to handle information confidentially, and using it exclusively for the purpose of complying with obligations set forth in the AML/CFT legal framework. Furthermore, it establishes the confidentiality of the information contained in the STRs, as well as that maintaining confidentiality should not prevent the exchange of information within financial groups or conglomerates; therefore, Criterion 18.2 is maintained as Compliant.

Conclusion on Recommendation 18

95. In the MER, Recommendation 18 was rated as Largely Compliant, based on the deficiency related to a lack of requirement to establish additional measures for financial groups related to ML/TF risk-management, as well as to inform supervisory authorities when the host country does not allow the proper implementation of AML/CFT measures. The relevant valid regulations are covered by the amendments that have been introduced in the standards and in the Evaluation Methodology; therefore, Recommendation 18 is maintained as Largely Compliant.

Recommendation 21 – Tipping-off and confidentiality (Originally rated LC, re-rated C – Not re-rated)

Criterion 21.2

I) Analysis:

96. Art. 25 of Law 9387 prohibits REs from informing, under any circumstances, the customer or any other internal or external body, natural or legal person, public or private, of the fact that they have reported a suspicious transaction to the FIU in compliance with the obligations set forth in said law. Likewise, Decree No. 40018-MP-SP-JP-H-S-RREE, sets forth in art. 5, the duty for the Compliance Officers of the reporting institutions, or in their absence the equivalent officer, to keep absolute confidentiality on the suspicious transaction reports.

97. In this sense, the legislation provided by the country addresses the requirements of the standard, since the attributions for financial institutions, their officers, and directors are not intended to prevent the exchange of information referred to in R. 18.

II) Conclusion:

98. No provisions of any kind are noticed in the legislation that could hinder or prevent the exchange of information in the terms expressed in Recommendation 18. In this sense, the criterion is Met.

Conclusion on Recommendation 21

99. Criterion 21.2, which was modified after the adoption of Costa Rica's last re-rating report, remains as compliant and unchanged. The latter considering that Recommendation 21 had not previously shown deficiencies and there seems to be no provision that affects the new requirements. This Recommendation maintains the rating of Compliant.

IV. CONCLUSION

100. Overall, Costa Rica continues to make significant progress in addressing the technical compliance deficiencies identified in its MER; nevertheless, it has presented deficiencies related to the implementation of requirements arising from the amendments to the Recommendations and the Evaluation Methodology, and therefore has been re-rated as follows: Recommendation 15, Non-Compliant (previously Compliant); additionally, no modifications have been made to Recommendations 2, 5, 7, 8, 18, and 21.

101. Based on the progress made by Costa Rica since the adoption of its MER, its technical compliance with FATF Recommendations was re-rated as follows:

Table 2. Technical Compliance Ratings, changes in relation to October 2018

R.1	R.2	R.3	R.4	R.5	R.6	R.7	R.8	R.9	R.10
LC	C	C	LC	C	LC	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	LC	LC	C	NC	LC	PC	LC	C	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	LC	LC	LC	NC	C	LC
R.31	R.32	R.33	R.34	R.35	R.36	R.37	R.38	R.39	R.40
LC	C	LC	LC	PC	C	C	LC	C	C

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

102. Costa Rica will continue in the enhanced follow-up process and will continue to report to GAFILAT on the progress made to strengthen its implementation of AML/CFT measures.