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Vanuatu

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Contextual information

Reason for selection of the county:

Vanuatu is part of the EU review for the following reasons:

- it is an offshore financial centre reviewed by the IMF/listed by the OECD;
- it is economically relevant for the EU financial system. It has strong economic ties with the EU (17.9 percentile) and shows a high magnitude of financial activity (28 percentile).

Status on the EU list of non-cooperative tax jurisdictions:

Vanuatu is listed on Annex I of the EU list of non-cooperative tax jurisdictions as of March 2019. The latest update of 20 February 2020 has maintained Vanuatu on Annex I, on the grounds that "Vanuatu does not have a rating of at least "Largely Compliant" by the Global Forum on Transparency and Exchange of Information for Tax Purposes for Exchange of Information on Request, facilitates offshore structures and arrangements aimed at attracting profits without real economic substance and has not resolved these issues yet." (See Council conclusions 2020/C 64/03).

Status under the EU list on high risk third countries on AML/CTF:

Vanuatu has been listed as a jurisdiction presenting strategic deficiencies in its AML/CTF regime in Delegated Regulation (EU) 1675/2016. The inclusion has been justified by the strategic deficiencies that have been identified by the FATF based on the mutual evaluation report of Vanuatu.

International review process on AML/CFT:

Vanuatu is a member of the APG – the FATF Style Regional Body responsible for the Asia/Pacific. The mutual evaluation report under the 2012 methodology has been issued in September 2015. Following the evaluation report under the FATF 4th round procedure, Vanuatu has been subject to the ongoing process for improving global AML/CFT compliance ("FATF compliance document"), under the 3rd Round ICRG procedures. Vanuatu has been removed from the FATF grey list in June 2018. Nonetheless, Vanuatu is still included in the FATF list of jurisdictions under the 4th round ICRG pool.

Country risk profile

1. General presentation of the country

1) Economy

Vanuatu is a Small Island Developing State (SIDS) and a low-income country [IMF, 2018]. Over the last decade, Vanuatu has been one of the fastest growing economies in the Pacific region [EEAS, 2018]. In 2016, the GDP was approximately USD 914 million [World Bank, 2018]. Following Cyclone Pam in March 2015, growth has rebounded to around 3.2% [WB, 2018] but the economy is expected to take a significant blow following the very significant destruction wrecked by Harold Cyclone (March 2020) and the global Covid-19 pandemic. In spite of the dire predictions, the government has undertaken to work towards the target of graduating from the Least Developed Country status, as scheduled, by end-2020.

The economy is dominated by two sectors: subsistence agriculture, which provides a living for 70% of the population but contributes only 19% of the GDP, and services, mainly tourism, construction and financial services, which account for 72% of the GDP [EEAS, 2020]. The Vanuatu economy has a high ratio of foreign-currency deposits to total deposits in the banking system, which reflects the deposits in the Offshore Financial Centre (OFC), as well as the assets of the expatriate segment of the Vanuatu

residents [NRA, 2015].

Vanuatu joined the Belt and Roads Initiative in November 2018. China is, according to the IMF, Vanuatu's largest creditor (€117 mio or 35.5% of total public debt, which is equivalent to 17.3% of GDP). The second largest creditor is Japan (€62 mio or 19.2 % of total public debt, which is equivalent to 9.4% of GDP). A Citizenship Investment Programme was introduced in 2016/17, aimed at raising revenues after the 2015 PAM cyclone.

2) Financial sector and relevant DNFBPs

Vanuatu's **domestic financial sector** is dominated by the banking sector, which is though relatively small by global standards.

The domestic banking sector is comprised of five domestic banks licensed by the Reserve Bank of Vanuatu (RBV). In June 2014, the total of four of the domestic commercial banks was approximately 840 million USD. One commercial bank is 70% owned by the Vanuatu government, with the remaining 20% held in equal shares by the Vanuatu National Fund and the IMF-based International Finance Company. The other three domestic commercial banks are two subsidiaries and a branch of foreign banking groups. There is an additional domestic and locally-owned bank, which can qualify as “hybrid” in so that it also conducts offshore business [MER, 2015]. The domestic banks dominate the financial sector, accounting for approximately 75% of the total assets of the financial system [NRA, 2015]. There is a small money transfer business sector (5 remitters registered with the VFIU¹). Other financial institutions in Vanuatu include licensed insurance entities, financial leasing savings and loans cooperatives, one credit union, fund managers and mutual funds, one pension fund [MER 2015, 28, 61; NRA, 2015].

The Vanuatu **offshore centre (OFC)** was created at the beginning of the '70s, when the country was under Franco-British rule. The OFC's primary attraction is the absence of income tax, incorporation tax and capital gain tax. Furthermore, the costs of incorporation and the local service-provider fees are very low by international standards and the regulatory requirements have previously been rather limited. Originally, the OFC was mainly based on incorporation of International Companies (ICs), but it has progressively provided also for the establishment and licensing of financial service providers (such as international banks, insurance companies, etc.). The number of ICs reached its peak in the period between 2011 and 2015 (approximately 21.000 ICs), boosted by the Permanent Residence Visa Program which required applicants to incorporate and IC as part of the package². Afterwards, there has been a sharp contraction and currently the OFC comprises [NRA, 2017]:

- approximately 4.500 active ICs;
- six international banks, licensed by the Reserve Bank of Vanuatu (RBV), with total assets of only about 106 million USD³. These offshore banks are not permitted to conduct banking activities for their customers in Vanuatu;
- just over 400 licensed securities dealers, with unknown levels of trading⁴;
- one mutual fund;
- ten licensed offshore insurers, of which six captive and three international insurers. Only one of the

¹ Two are franchises of Western Union and another two are telecom companies using mobile technology [NRA 2017].

² A total of 21.156 ICs were incorporated in relation to the Permanent Residence Visa Program, which was terminated in 2015. The program was directed primarily to citizens of the PRC and, as part of the program, the applicant was required to establish an IC [NRA 2017].

³ The NRA 2017 reports that according to the RBV, the ultimate ownership of such international banks seems to rest with persons based in Lithuania, Indonesia, Denmark, Canada, China, Hong Kong, Singapore and Japan. Recent applications have originated from China and Hong Kong particularly.

⁴ The top five jurisdictions from which the applications originate are China, Israel, Russia, Ukraine and the UK [NRA 2017].

insurance companies provides life or investment-related policies.

Thus, by international comparison, Vanuatu's OFC is small in terms of both scale and scope of the activities being undertaken with the exception of the securities dealers, this latter representing the only growth area of the OFC in recent years. Concerning the client base of the OFC, whereas historically it was represented mainly by Australia and New Zealand, in more recent years China, Hong Kong, Malaysia, Singapore and parts of Europe have also been identified as a source of clients wishing to create offshore structures.

As far as the **DNFBP sector** is concerned, there are 59 TCSPs – holding one of five different types of licence⁵ – which service the OFC [NRA, 2017]. TCSPs are essentially the gatekeepers of the OFC, as they act for clients in the incorporation of ICs, the provision of nominee shareholders and directors as well as of registered office and, if needed, the application for licences (there is a variety of businesses and individuals providing these services, as reflected by the five different types of licenses issued to service providers) [NRA 2017]. TCSPs, but also lawyers and accountants, may as well set up trusts. In this regard, it should be noted that there is currently no trust legislation in Vanuatu (even though a trust bill is under consideration), but trusts can be created in the country under an evolving Vanuatu common law of trusts [MER 2015; ICRG 2018]. According to available sources, it is not possible to determine the materiality of trusts in Vanuatu, as the lack of comprehensive data on the number of trusts that have been created hampers a conclusive judgement in this regard [NRA 2017]. Furthermore, there are four active casinos in Vanuatu, as well as interactive gaming, gambling and betting sites. Additionally, there are approximately 20 law firms and 15 accountancy firms operating in Vanuatu [NRA, 2015]. Real estates, high-value asset sellers and car dealers also operate in the country. Finally, there is a substantial number of NPOs operating in Vanuatu, but the exact size of the sector is unknown [NRA 2017]: as of May 2017 there were 273 registered charitable associations and 9 foundations, but no estimates of the number of unregistered NPOs.

3) Threat level and key risks of ML/TF.

According to the 2015 NRA, the main money laundering threats faced by Vanuatu relate to:

- Funds derived from offshore crime, for instance overseas tax evaders employing the international and domestic financial sector of Vanuatu to launder the illicit funds. Illicit transnational funds may as well originate from overseas corruption, drug trafficking and other crimes.
- Illicit cross border currency. Indeed, Vanuatu has little means to enforce effective border control, as a result of the lack of capacity but also the high dispersion and long distance between the islands [RMF, 2018].
- Bribery and corruption. Corruption in the political and government sector is a domestic issue of concern, as also demonstrated by the recent conviction of 14 MPs.
- Fraud (particularly, VAT evasion).
- Drugs.

Furthermore, the sectors that have been identified as highly vulnerable to ML/TF are the domestic banks, the international offshore banks, company and trust formation providers and the related companies and trusts, money transfer businesses, currency exchange businesses, casinos/interactive gaming/online gambling sites [NRA, 2015]. The main money laundering techniques which appear to be used in Vanuatu are: cash deposits and withdrawals, the use of professional facilitators such as lawyers and accountants, the buying and selling of high-value assets, the use of the offshore sector as well as the use of cash couriers or money and value transfer systems (MVTs) to move funds out of the country [MER, 2015, 29].

⁵ Precisely, 10 are CTSPs, 3 holds a special trust licence, 9 have a general CSP licence, 6 have a limited CSP licence and 31 have a director's licence [VFSC website].

A second NRA conducted in 2017 focused particularly on the assessment of the ML risk through the offshore sector and on the TF risk. Specifically with regard to the **offshore centre** (OFC), it was found that the most likely threat concerning the OFC is represented by the commission of foreign tax crimes by persons either establishing International Companies (ICs) or other structures in Vanuatu, or using the services provided by the offshore financial institutions. Furthermore, fraud has also been identified as a possible source of proceeds of crime involving the OFC⁶.

As far as the **TF risk** is concerned, the 2017 NRA found Vanuatu to be low-risk for TF activities. At the same time, it also noted that the absence of a domestic terrorist threat in Vanuatu does not imply that the country's financial system and institutions cannot be used to raise funds for terrorist activities abroad, or to transfer funds from one foreign jurisdiction to another. In this regard, the most likely potential TF threat in Vanuatu derives from its role as OFC. Furthermore, it was pinpointed that the vulnerabilities that have been identified in relation to ML may also be applicable, to some extent, to TF [NRA, 2017].

Relevant international indexes

AML Basel index: Ranking 40/125 (Score: 5,9/ 10)	Below 66%
Financial secrecy index: Ranking 106/133 (Secrecy score: 76/100)	Top 33%
TI corruption perception index: Rank 64/183 (Score: 46/100)	Between 33-66%
Other relevant index:	n.a.

FATF Action Plan

Vanuatu was identified as a jurisdiction presenting strategic deficiencies in its AML/CFT regime under Delegated Regulation (EU) 1675/2016.

In February 2016, Vanuatu made a high-level political commitment to work with the FATF and APG to address its strategic AML/CFT deficiencies. Vanuatu has worked on implementing its action plan to address these deficiencies, including by: (1) adequately criminalising money laundering and terrorist financing; (2) establishing and implementing adequate procedures for the confiscation of assets related to money laundering; (3) establishing and implementing an adequate legal framework for identifying, tracing and freezing terrorist assets and other UNSCR sanctions; (4) ensuring a fully operational and effectively functioning financial intelligence unit; (5) strengthening preventive measures, including for wire transfers; (6) establishing transparency for the financial sector, and for legal persons and arrangements; (7) implementing an adequate AML/CFT supervisory and oversight programme for the whole financial sector and trust and company service providers; and (8) establishing appropriate channels for international co-operation and domestic coordination policies and actions on identified risks and ensuring effective implementation.

In particular, the FATF Action Plan included the following action items: [Report by the Asia/Pacific Regional Review Group Co-Chairs, p.11, FATF-ICRG(2016)4 of 3 February 2016, confidential]:

⁶ Finally, the 2017 NRA assessed the level of threat of market abuses (*i.e.*, insider trading and market manipulation) in the OFC – in relation to the securities dealers sector – as medium, whilst the level of threat posed by organised crime has been considered low.

IV. Actions Needed to Address Deficiencies

Given the risks and context, the action plan has a particular emphasis on offshore banks and offshore company / trust formation and management:

ASSESS ML AND TF RISKS (R.1)

- Continue risk assessment work and efforts to share findings of the assessments across government and the private sector. The risk assessment should consider risks of the offshore sector (including legal persons) and TF risks.

TIMELINES – 12 months for offshore sector risk assessment; – Ongoing for broader risk assessment work

COORDINATION AND POLICY (R.2)

- Agree NCC processes to develop and maintain policies and actions to respond to identified priority risks.
- Demonstrate that secrecy obligations over the work of the NCC do not impede coordination and policy development functions of the NCC

TIMELINES – Ongoing

CRIMINALISATION OF ML (R.3)

- Criminalise ML in keeping with the int'l standards (missing predicates and ancillary offences)
- Prioritise ML and asset tracing investigations (including with border enforcement agencies) relating to profit driven crime and ML in keeping with the risk profile.

TIMELINES – For any statutory instruments – bills/drafts by December 2016 and entry into force by June 2017

Demonstrate prioritisation of ML investigations, including training and resources by December 2016

PROVISIONAL MEASURES AND CONFISCATION (R.4)

- Amend legislation to ensure provisional measures and confiscations are in keeping with the FATF standards. Confiscation action is currently not available for

FATF/ICRG(2016)4

all tax offences, illicit arms trafficking, piracy of products, insider-trading and market manipulation due to non-criminalisation of these offences.

TIMELINES – for any statutory instruments – bills/drafts by December 2016 and entry into force by June 2017

CRIMINALISATION OF TF (R.5)

- Clarify that TF is criminalised in keeping with the FATF standards (including financing terror groups and individual terrorists for any purpose).
- Establish plans and capacity for priority responses to detect and investigate TF in keeping with the risks.

TIMELINES – For any statutory instruments – bills/drafts by December 2016 and entry into force by June 2017

Demonstrate prioritisation of TF investigations, including training and resources by December 2016

TARGETED FINANCIAL SANCTIONS FOR TERRORISM AND WMD PROLIFERATION (R.6 & R.7)

- Implement comprehensive legal and regulatory frameworks for targeted financial sanctions, including:
 - Amend, as needed, relevant statutory instruments for Vanuatu's implementation of TFS against terrorism
 - Establish a legal/regulatory framework for TFS against WMD proliferation.
- Circulate sanctions lists and provide guidance and outreach to the financial institutions and DNFBPs on asset freezing and prohibitions.

TIMELINES – For any statutory instruments – drafts by December 2016 and entry into force by June 2017

Circulation of sanctions lists and policies and processes to commence guidance and outreach by June 2016

SECRECY (R.9)

- Amend or repeal secrecy obligations under S.125 of the International Companies Act and related blockages to information sharing and disclosure to ensure that they do not prevent the sharing of information between competent authorities, domestically and internationally in accordance with FATF recommendations.

TIMELINES – For any statutory instruments – bills/drafts by December 2016 and entry into force by June 2017

REGULATION AND SUPERVISION (R.26 & R.28)

- Strengthen the regulatory framework for market entry fit and proper controls and supervisory powers in keeping with the FATF standards.
- Commence a prioritised program of risk-based market entry fit and proper checks and supervision of TCSPs and high-risk banks by regulators.

TIMELINES – For any statutory instruments – bills/drafts by December 2016 and entry into force by June 2017

Risk-based plan to commence market entry checking and supervision by outreach by June 2016.

Commence supervision and market entry checking by December 2016.

PREVENTIVE MEASURES (REC 16)

- Establish a regulatory framework for wire transfers in keeping with the FATF standards.

TIMELINES – For any statutory instruments – bills/drafts by December 2016 and entry into force June 2017

FINANCIAL INTELLIGENCE AND THE FIU (R.29)

- Ensure the FIU has sufficient resources to perform its core FIU functions (analysis and dissemination, outreach to LEAs, etc.) and other roles
- Ensure that the FIU's organisational structure and procedures support effective operation.
- Remove the *ad hoc* barrier imposed by the VPF, which requires the VFU's financial intelligence disseminations to be submitted in the form of a criminal complaint.

TIMELINES: - VPF issue immediately

- FIU resourcing, structure and procedures by December 2016.

TRANSPARENCY OF LEGAL PERSONS/ARRANGEMENTS (R.24 & R.25)

- Amend controls over offshore companies and trust companies to obtain beneficial ownership information at the point of formation and management of offshore companies and trusts.
- Implement measures to address the risks associated with bearer shares and share warrants for all types of companies in Vanuatu. This includes share warrants for international companies.

TIMELINES – For any statutory instruments – bills/drafts by December 2016 and entry into force by June 2017

PRIORITISE INTERNATIONAL COOPERATION (R.40)

- Prioritise establishing and using international cooperation mechanisms, in keeping with the risks, to share information on beneficial ownership of legal persons/arrangements (VFSC, RBV, VFU, police), asset tracing and ML investigations (VPF and VFU), and market entry (VFSC, RBV, VFU).

TIMELINES: ongoing

Assessment in view of EU delisting criteria

As provided under the revised methodology [SWD(2020) 99 final], it is necessary to assess whether Vanuatu meets the EU criteria for removal from the EU list (section 4.8.2 of the methodology).

Step 1:

- Recommendation 3 (money laundering offence): re-rated C and Recommendation 5 (terrorist financing offence): re-rated C ;
- Recommendation 10 (customer due diligence): re-rated LC; Recommendation 11 (record keeping): re-rated C; Recommendation 20 (reporting of suspicious transactions): rated LC; Recommendation 22 (DNFBPs: customer due diligence): re-rated LC; Recommendation 23 (DNFBPs: other measures): re-rated LC;
- Recommendation 24 (transparency and beneficial ownership of legal persons): re-rated LC and Recommendation 25 (transparency and beneficial ownership of legal arrangements): re-rated LC;
- Recommendation 37 (mutual legal assistance): re-rated C; Recommendation 38 (mutual legal assistance: freezing and confiscation): re-rated LC; Recommendation 40 (other forms of international cooperation): re-rated LC.

1.1 the requirements on criminalising money laundering and terrorist financing :

Vanuatu enacted a number of amendments to relevant legislation in order to bring Vanuatu's Money Laundering offence into line with the international standards. The July 2016 enactment of the Statute Law (Miscellaneous Provisions) Act corrected previous deficiencies along with amendments to the AML/CTF Act.

Vanuatu enacted a further amendment to the Proceeds of Crime Act on 16 June 2017 amending the definition of "serious crime".

With regard to the identified deficiency relating to foreign tax evasion as predicate offence, Vanuatu introduced amendments to the Proceeds of Crime Act (POCA) and the Penal Code to create a domestic offence of the fraudulent evasion of any tax, (including those imposed by foreign

authorities) and to enable prosecution of money laundering, relevant MLA and proceeds of crime action.

Amendments to the POCA in December 2017 strengthened asset recovery measures available in ML cases. Work is continuing on a POCA manual with technical assistance sought from Australian authorities.

Therefore, the legislation of Vanuatu in relation to **requirements on criminalisation of money laundering and terrorist financing** is considered as technically compliant by the Commission services.

1.2 applying customer due diligence requirements, record keeping and reporting of suspicious transactions in the financial and non-financial sector:

The MER found that Vanuatu had adequate provisions covering the core CDD requirements, however moderate shortcomings remained, including the absence of requirements for CDD obligations when a series of occasional transactions appear to be linked but individually are below the CDD threshold, verification that persons purporting to act on behalf of legal arrangements are authorised to do so, permitting delayed verification of occasional customers only where the ML/TF risks are effectively managed, criteria/justification for REs to adopt simplified CDD measures or delayed verification where lower risks exist and if a RE is unable to comply with relevant CDD measures, that it must not open the account or must terminate the business relationship.

The enactment of amendments to the AML/CTF Act addressed a number of these deficiencies. Overall, Vanuatu has significantly increased its compliance with CDD requirements, although minor gaps remain, particularly in relation to timing of verification (para 76 FUR 2018).

The MER of 2015 concluded that Vanuatu's record keeping requirements, incorporating the January 2015 amendments to the AML/CTF Regulations meet most of the requirements of R.11, with the exception that there is no explicit obligation on reporting entities to make CDD information swiftly available to the VFIU on request, except where an STR has been made. It concluded that Vanuatu is largely compliant with R.11. (para 169 MER 2015).

The legislative framework in place in Vanuatu in relation to requirements on customer due diligence requirements, record keeping and reporting of suspicious transactions in the financial sector is considered as technically compliant by the Commission services.

Vanuatu was rated partially compliant with R.22 on the basis that whilst the scope of DNFBP reporting entities was consistent with the FATF Recommendations, shortcomings remained with respect to CDD requirements (R.10) and reliance on 3rd parties (R.17) for DNFBPs. However, as these deficiencies have been addressed via legislative amendments to the AML/CTF Act, the Commission services consider that CDD and reporting requirements for DNFBPs is technically compliant.

Vanuatu was rated partially compliant with R.23 due to significant deficiencies with respect to several aspects of internal controls, audit and foreign branches and subsidiaries and for higher risk countries for DNFBPs.

Taking into account the abovementioned elements the Commission services consider that Vanuatu has achieved technical compliance with regard to the requirements on **applying customer due diligence requirements, record keeping and reporting of suspicious transactions in the financial and non-financial sector**.

1.3 transparency of beneficial ownership for legal persons and legal arrangements:

On Beneficial Ownership requirements for companies, the Follow-up report of the FATF (FUR 2018) found that Vanuatu was largely compliant with R.24, on the grounds that it has “(...) implemented significant reforms to its requirements to collect basic and beneficial ownership and to share this information where relevant. Vanuatu has abolished bearer shares and share warrants and imposed disclosure requirements on nominee shareholders or directors. Vanuatu has undertaken an updated risk assessment, which encompasses risk of the offshore sector (including international companies). As the assessment only considers the offshore sector, the risk of domestic legal persons being abused for ML/TF remains un-assessed, however, the MER notes that ICs form the majority of legal persons in Vanuatu, the focus on ICs is reasonable in the circumstances.” (See para 129 in FUR 2018).

Some shortcomings were however identified, mainly in relation to the rules applicable to domestic companies, which the FATF considered as “minor”, on the basis of the lesser weight attributed to domestic companies:

- No requirement for domestic companies to have a registered agent in Vanuatu
- No obligation for domestic companies to retain documentation for certain time
- No requirement for international companies to state the nominator shareholders and directors in the relevant register. It seems that the requirement for domestic companies does not include an obligation to inform the VFSC about a change of nominators.

The Global Forum also notes that there is no obligation to report changes to Beneficial Ownership information for local companies: “Even if requirements recently introduced in company law provide for the identification and reporting of beneficial ownership information for any new domestic companies and domestic and foreign partnerships, there is no requirement to report changes to this information for local companies. In addition, no requirements have been introduced for domestic companies that already existed before the entry into force of the new obligation. These gaps are compensated only to the extent the companies engage an AML obliged service provider, who collects details on beneficial owners.” On this basis, the Global Forum recommended Vanuatu “to ensure that up-to-date beneficial owners of all relevant entities and arrangements in Vanuatu are required to be identified and made available in all cases in line with the standard.” (para. 51, p.29 GF Report)

Nevertheless, the FUR concluded that: “(...) the predominant risks in relation to R.24 relate to international companies and thus significant weight has been applied to ICs in reaching the conclusion that Vanuatu is rated largely compliant with Recommendation 24”.

The mechanisms described in the FUR are the following:

- All International companies (ICs) are required to have a registered office and a licensed agent registered in Vanuatu, with updating requirements within 14 days and sanctions for non-compliance.
- ICs are required to keep BO information at the companies, with sanctions for non-compliance.
- The licensed agent is required to collect BO information.
- On accessibility of BO information:

The MER noted that basic and beneficial ownership information could not be obtained by relevant law enforcement. The amended provisions to the ICA now confirm that company records are confidential, however must be provided in certain stated situations (at section 125A). Specifically, disclosures are able to be made to the FIU, a supervisor under the AML/CTF Act, a LEA for the purpose of investigating or prosecuting a serious offence, or when undertaking action under the Proceeds of Crime Act, a domestic regulatory authority or the Sanctions Secretariat when carrying out their functions under the United Nations Financial Sanctions Act. This requirement is mirrored via amendments to the Domestic Companies Act section 180A. The amended section 45B of the AML/CTF Act allows the FIU to require any RE to provide it with information specified in the notice, being information about

the beneficial owner or a customer of the RE. Time frames are stipulated and if a RE fails to give the Director the correct information they are liable to a fine not exceeding VT15 million or imprisonment not exceeding 5 years, or a fine not exceeding VT 75 million if they are a body corporate. (para 122 of the FUR).

- On ability of sharing BO information:
Amendments to the ICA now provide for the exchange of information with foreign governments under certain conditions, none of which are restrictive (at section 125C). Similar amendments are contained in the Companies Act. Domestic authorities now have the ability to obtain BO information through the amendments outlined above and are able to share such information with foreign authorities when requested. There are no impediments to the use of investigative powers to obtain BO on behalf of a foreign government (see section 44B, 45B of the AML/CFT Act). (para 127 of the FUR)
- On abolition of bearer shares and related striking off sanctions:
Vanuatu has now abolished bearer shares and share warrants. Section 16A of the ICA and section 25A of the Companies Act prohibit the issuance of bearer shares and share warrants. (para 123 of the FUR).

Having taken into account all the above-mentioned elements, the Commission's services consider that Vanuatu is considered as technically compliant with regard to **requirements on transparency of Beneficial Ownership information for legal persons**.

On Beneficial Ownership requirements for trusts, the FUR 2018 noted several new positive elements in Vanuatu's legislation:

- Vanuatu has since placed obligations on company and trust service providers (CTSPs) to collect all relevant information.
- For trusts without a CTSP, stamp duty is payable and consequently the VFSC captures information on such trusts in this process.
- In Vanuatu, CTSP's must both obtain a licence under the CTSP Act and be registered with the VFU as a reporting entity under the AML/CTF Act. Therefore, obligations under the AML Act and the revised obligations under the CTSP Act apply to legal arrangements in Vanuatu.
- The amended CTSP Act now requires licensed company and trust service providers to obtain trust information in line with the requirements contained in Rec 25.1. A licensee must retain this information for at least 6 years after the licensee ceases to provide trust services in relation to the trust.
- On exchange of information, authorities in Vanuatu are now able to exchange information with foreign counterparts in relation to all information they hold in relation to the trust which should in future facilitate greater exchanges of information (section 44 of the CTSP Act). Amendments to the CTSP Act allow the Commission to request information for the purpose of discharging a duty, performing a function or exercising a power under this Act, from the FIU, a supervisor, the Sanctions Secretariat, a law enforcement agency, a domestic regulatory authority or a foreign government agency that carries out similar functions. Amended section 44 allows information about a licensee and their compliance with the Act to be disclosed to foreign government agencies under certain conditions that are not restrictive. Similar provisions are placed in all sectoral laws and the AML/CFT Act. Under these amendments, Vanuatu would be able to obtain and share beneficial ownership information with foreign counterparts. Furthermore, section 45B of the amended AML/CFT Act allows the Director of the FIU to compel reporting entities to provide information about the beneficial owners of customers. Section 44B of the AML/CFT Act allows the FIU to search records including all LEA records, public records, administrative records and provide information obtained from the search to the foreign government agency subject to restrictions under section 40. (para 138 FUR)

The follow-up report also identified the following shortcomings:

- Vanuatu has introduced a requirement for trustees to disclose their status to FIs and DNFBPs when forming a business relationship or carrying out an occasional transaction, however this only applies to TCSPs acting as trustees and not to all trustees. (para 134 FUR)
- Vanuatu has introduced an obligation on TCSPs to collect relevant BO information when they act as trustee. There are trusts in Vanuatu which do not require a TCSP, notably family trusts, that the country assesses as low risk. (para FUR)
- On accessibility of information, there is a requirement for a trustee to provide the Commission with BO info relating to a trust, but not with other competent authorities (it would be for the Commission to further share with other competent authorities). However, the Commission may not share this information with other FIs and DNFBPs in Vanuatu. (para 136 FUR)

The FATF concluded in its Follow-up report of 2018 that "Vanuatu has now increased compliance with R.25". There are minor shortcomings (the Commission is not able to share information on trusts with the private sector [i.e. FIs and DNFBPs]). Whilst there may be a small subset of trusts for which the trustee does not require a CTSP licence, greater weight has been given to those trustees who fall under the definition of providing trust services in the CTSP Act. Vanuatu is now largely compliant with R.25." (para. 140 of FUR 2018).

However, the Commission takes into account other relevant information and noted in this respect that the OECD Global Forum on transparency and exchange of information for tax purposes (GF) downgraded Vanuatu's transparency rating from Largely Compliant to Partially Compliant in a peer review report published in July 2019.

In particular the Global Forum rated Beneficial ownership information as partially compliant because of low-level implementation in practice and more focus on domestic companies.

The ability to collect, keep and maintain BO information under the GF standard is covered under the item A.1 elements (Availability of legal and beneficial ownership information), which was re-rated partially compliant by the GF, in particular because of the following identified deficiencies in Vanuatu's legal framework (See Global Forum report "Table of recommendations" para 51 page 29):

- No clear definition of beneficial owner applicable to trusts

The GF notes, "Although Vanuatu's legal framework ensures that identity and beneficial ownership information is required to be collected for trusts in most cases, there is no clear definition of beneficial owner applicable to trusts. Therefore, it is not clear how the concept will be implemented in practice." and recommends Vanuatu to ensure that information on beneficial owner(s) of trusts is available in all cases.

- No requirement to identify the beneficiary of foundations and definition issue

The GF notes, "Although foundations are required to identify their guardian, councillor, secretary and founder, there is no requirement to identify the beneficiary of the foundation. In addition, the definition of beneficial owner relies on "key persons" and the beneficiary is not part of the key persons, which might not enable to identify the correct beneficial owner." The GF therefore recommends Vanuatu to ensure that information on beneficiaries and beneficial owners of foundations is available.

The GF further indicates that: "Further gaps exist in relation to the definition of the beneficial owner of trusts and foundations, where the definition does not ensure that the beneficial owner is correctly

identified in all cases.” (GF para 48).

Taking into account the latest available information, the Commission services conclude that the technical compliance element is in place but would however need improvements, in particular with regard to the definition of beneficial ownership for trusts and the requirement to identify the beneficiary of foundations (along with a definition issue). **Altogether, the Commission thus considers that technical shortcomings remain in relation to requirements on transparency of beneficial ownership for legal arrangements. Additional actions would therefore be needed in this field.**

- 1.4 international cooperation:

Overall, Vanuatu has reformed its ability to engage with the international community on ML/TF and related matters by passing relevant amendments in its legislation. Therefore, the Commission services consider that Vanuatu has achieved technical compliance with these requirements.

Step 2:

Concerning the effective implementation of the country’s regime in ensuring the transparency of beneficial ownership information of legal persons and legal arrangements, limited information are available in this regard. Under the FATF Action Plan, Vanuatu was in particular required to amend controls over offshore companies and trust companies to obtain beneficial ownership information at the point of formation and management of offshore companies and trusts.

It is noted that some steps towards effectiveness had been taken [ICRG on-site report, p. 57-93, ref. FATF/ICRG(2018)15 of 15 June 2018, confidential]. In particular:

- The VFSC had hired two additional staff members responsible for oversight of BO information and had engaged in a number of training sessions.
- Since October 2017 the VFSC has conducted weekly training sessions regarding onsite inspections, file reviews and improving understanding of complex ultimate beneficial ownership structures. This training is to be ongoing. Officials noted the difficulties in ensuring staff have the required level of beneficial ownership expertise, but are taking steps to address this
- Quick Reference Guides for Regulatory Authorities on Market Entry and Fit and Proper Controls as a procedure tool have been issued.
- Awareness raising has been conducted ensuring that relevant agencies are aware of reputable online database checks and sanction lists (UN, USA & Australia). Through a Memorandum of understanding, the Supervisory Working Group (SWG) members will assist members to conduct checks on the online database.
- All onsite inspections now involve a full-day file inspection to ensure registered agents are obtaining beneficial ownership information, and providing that information to the VFSC.
- At the time of the onsite visit (May 2018), 179 companies had been removed from the register for a failure to provide beneficial ownership information.
- Vanuatu deployed significant outreach measures to foreign counterparts informing them of recent reforms, particularly the removal of barriers to information sharing.

At the same time, more recent information sources raise doubts as to the effectiveness of the measures in place in Vanuatu and their ability to ensure that adequate, accurate and up-to date beneficial ownership information is available in practice.

In particular, the GF report of July 2019 [OECD, GF report, 2019, p. 29-30] identifies the following issues:

- In relation to company and trust service providers, over the last four years, there seems to be deficiencies in the quality of the beneficial ownership information kept by AML obliged professionals, although they are the main source of beneficial ownership information in Vanuatu;
- Very limited supervision was so far conducted on the international companies' obligation to keep beneficial ownership details and on the obligation to report that information to the VFSC;
- Finally, available sanctions were not consistently applied by all relevant authorities in cases of non-compliance.

In particular, the Global Forum notes that:

"The implementation of rules requiring the availability of beneficial ownership information in practice relies on reporting obligations of International Companies and Local Companies to the VFSC and on AML supervision conducted by the VFSC and the FIU. Their supervisory measures consist mainly of off-site and on-site inspections and application of sanctions by the FIU in cases where deficiencies are identified. Although both the VFSC and the FIU have made efforts to better co-ordinate and organise their supervisory activities, especially in relation to company and trust service providers (CTSPs) during and after the review period, there are deficiencies in the quality of beneficial ownership (BO) information kept by AML obliged professionals, as confirmed by Vanuatu Authorities.

Only limited supervision was conducted on the international companies' obligation to keep BO details and on the obligation to report that information to the VFSC. No supervision took place on the new obligation for local companies to report to the VFSC BO information since the new rules have only recently been adopted, and the reporting obligation for directors of local companies under AML has still to be put in place. In practice, approximately half of all the BO declarations by International Companies reported are not yet registered by the VFSC. Although the FIU imposed some sanctions for non-compliance, sanctions were not consistently applied by all relevant authorities in cases of non-compliance." (GF para 49)

The Global Forum therefore concludes that: "(...) adequate measures are not taken to ensure that adequate, accurate and up-to date beneficial ownership information is available in practice and Vanuatu is recommended to address these deficiencies." (GF para 49)

Taking into account these elements, the Commission services consider that effective implementation of Vanuatu's regime in ensuring the transparency of beneficial ownership information of legal persons and legal arrangements should be further demonstrated by addressing the abovementioned gaps, in particular the gaps with regard to quality of beneficial ownership information kept by AML obliged professionals and the backlog in registration of BO declarations by International Companies.

Step 3:

3.1. Criminalisation of ML and TF

Through the implementation of the relevant items in its Action Plan, Vanuatu has demonstrated continued progress towards increasing effectiveness with regard to the investigation, prosecution and conviction of ML and TF offences.

Authorities were able to demonstrate statistics of STRs being disseminated to the Vanuatu Police Force (VPF), resulting in ML investigations. The increased collaboration between all LEAs is also led by the high level National Coordination Committee (NCC) and Law Enforcement Working Group (LEWG)

and guided by the MOU signed by all members of the LEWG. There is also increased collaboration and interaction between police and prosecutors to achieve more effective ML prosecutions and related asset recovery.

Vanuatu has taken steps to prioritise the investigation of ML, including dedicating two dedicated staff members in the VPF for ML and related asset tracing. In implementing the various amendments, the increased focus has thus far resulted in over 40 counts of ML successfully convicted since the Mutual evaluation report. Judgments in ML cases were delivered and increased awareness.

Taking into account these abovementioned elements, the Commission services consider that Vanuatu is **implementing requirements in relation to criminalisation of money laundering and terrorism financing in a sufficiently effective manner.**

3.2 Requirements relating to CDD in the financial sector

The available information sources only offered limited information on how requirements relating to CDD in the financial sector are effectively implemented. However, Vanuatu has considerably strengthened its regulatory framework for market entry fit and proper controls and supervisory powers, in line with the FATF standards.

Market entry fit and proper controls apply to all entities including some entities that are not subject to the AML/CFT framework as a reporting entity. Controls are applied by the prudential supervisory authority for entities they supervise and by the VFIU for all other entities.

Amendments have been made to the International Companies Act, Companies Act, Charitable Association Act and Partnership Act to give effect to:

- Due diligence checks to be made on shareholders and directors of these legal persons at the point of registration/licensing;
- Requirement for registered agents and companies to keep and maintain records including register of members and financial records.

Licencees who wish to enter the market in Vanuatu are now subject to a two-stage process whereby they are to fulfil market entry requirements by their regulator and are also required to register as a reporting entity with the VFIU. Information is shared between the VFIU and other supervisors so as not to duplicate work.

Vanuatu has also reinforced its rules with regard to “Licensing & fit and proper”, where the roles of the Reserve Bank of Vanuatu (RBV) and VFSC, including their Boards, and the VFIU have been clarified and adjusted to ensure sufficient independence from sectoral interference from private sector Board members. Further bills were passed to establish extended market entry fit and proper controls to both lower and high-risk entities and ensuring all necessary powers for supervision and enforcement of AML/CFT controls over the relevant sectors.

With regard to the new “Market entry fit and proper” regime, the RBV, VFIU, VFSC, Department of Customs and Inland Revenue (DCIR) under the Finance Ministry and the Department of Cooperatives are responsible for enforcing market entry fit and proper standards with those FIs and DNFBPs that they regulate and license/register. In each case, these regulators will follow the fit and proper rules issued by the VFIU, which are required under the AML/CFT Amendment Act. The Financial Institutions Act and the International Banking Act has RBV determining fit and proper based on rules to be issued by the RBV, which it has done.

Taking into account these elements, the Commission services consider that Vanuatu's **requirements relating to CDD in the financial sector are implemented in a sufficiently effective manner.**

3.3. Requirements relating to CDD by DNFBPs

Apart from the fact that two new supervisors commenced with the VFIU in 2016 resulting in increased outreach to charitable associations, cooperative societies, foundations, lending schemes and some of the DNFBPs mentioned in the onsite report, available information sources offered limited directly accessible information on how requirements relating to CDD by DNFBPs is effectively implemented.

Nonetheless, Vanuatu has considerably strengthened its regulatory framework for market entry fit and proper controls and supervisory powers over DNFBPs, in line with the FATF standards.

As with FIs, cooperation and coordination between the VFSC, Finance and VFIU on the supervision of DNFBPs has improved due to enhanced NCC structures and the June 2017 amendments to various statutes clarify the powers and responsibilities of the various sectoral regulators. This includes for group supervision.

The SWG is actively coordinating joint supervisory priorities for offsite and onsite supervision. Supervisors have written to foreign counterparts, including seeking fit and proper information.

VFSC has issued its fit and proper guidance, shared it with the sector and held meetings, as needed, with license holders. The RBV conducted onsite visits of offshore banks for both prudential and AML/CFT issues.

The FIU now has 8 supervisors appointed and with plans in place to ensure that most if not all onsite inspections will be jointly conducted with the VFSC and RBV, this should also free up resources.

In relation to casinos, market entry requirements are now in place. The DCIR has issued 9 casino licenses however only four are active at present. The DCIR has now been restructured to ensure that there is a full time supervision team to supervise casinos and cooperate with the FIU on related matters. It is envisaged that the new unit will also be responsible for the exchange of tax information.

Taking into account these elements, the Commission services consider that Vanuatu's **requirements relating to CDD by DNFBPs sector are implemented in a sufficiently effective manner.**

3.4 Powers and procedures of the third country's competent authorities for the purposes of combatting money laundering and terrorist financing

Vanuatu was rated partially compliant for recommendation 31 in the MER. The factors underlying the rating included the lack of effective implementation by the authorities to compel the production of records, conduct searches and make seizures in money laundering and terrorist financing investigations. Vanuatu did not have the ability to conduct investigations utilizing a wide range of investigative techniques. The provision that supports controlled deliveries to aid investigations applied only to offences set out in the Counter Terrorism and Transnational Organised Crime Act (CTTOCA) and did not apply to predicate offences for money laundering or money laundering offences. (para 149 FUR).

However, Vanuatu has passed several legislative amendments under which, notably, the VFIU now has a wide scope of administrative powers to enforce AML/CFT compliance under amendments to the AML/CTF Act. For example, the power to ensure fit and proper requirements and remove directors/management (s48 AML/CFT Act), suitable enforcement provisions for DNFBPs, the ability to suspend or remove the Reporting entity (RE) from the register if the Director is satisfied on reasonable grounds that the RE has failed to comply with a provision of the AML/CFT Act.

The VFIU has increased its staffing, including a compliance officer who has been employed to contact all 300+ NPOs and cooperatives not previously engaged who are in the market but not registered.

The RBV has revised its Information Pack for international bank licenses, which sets out the information that an applicant for a license to operate an international bank is required to submit to the Reserve Bank of Vanuatu in support of its application.

The VFSC has signed an agreement with TRR (Telecommunications and Radio Communications Regulator), and is negotiating agreements with URA (Utilities Regulatory Authority), RBV, Immigration Department and the Transnational Crimes Unit of the VPF to exchange information.

The VFSC issued copies of revocation of licence notices to four entities in line with the amended enforcement powers. Of those four, two were able to respond adequately to the notices providing the required information and the notices were revoked. Guidelines for fit and proper are now available on the VFSC website.

The VFSC has hired an experienced compliance manager, with previous experience in RBV and the banking sector, to run its compliance section. VFSC conducted its first on-site inspection of a licensed Company and Trust Services Provider in November 2017. A report outlining the findings of the inspection has since been finalized and provided to the AP JG. As of April 2018, VFSC has removed 216 ICs for failure to disclose beneficial ownership details.

The RBV conducted onsite visits of offshore banks for both prudential and AML/CFT issues.

However, The Global Forum report noted, “Only limited supervision was conducted on the international companies’ obligation to keep BO details and on the obligation to report that information to the VFSC. No supervision took place on the new obligation for local companies to report to the VFSC BO information since the new rules have only recently been adopted, and the reporting obligation for directors of local companies under AML has still to be put in place. In practice, approximately half of all the BO declarations by International Companies reported are not yet registered by the VFSC.” (para. 49 GF)

The Commission services, taking into account the abovementioned elements, consider that the **powers of and procedures of Vanuatu's competent authorities for the purposes of combatting money laundering and terrorist financing are generally implemented in a sufficiently effective manner. However, considering the crucial element of beneficial ownership transparency, the Commission Services consider that Vanuatu should continue efforts to demonstrate that all remaining issues identified by the Global Forum report in this field are addressed, in particular with regard to the limited supervision conducted so far over international companies’ obligation to keep beneficial ownership details and on the obligation to report that information to the VFSC; and to the lack of supervision conducted so far on the new obligation for local companies to report to the VFSC BO information.**

3.5 Existence of dissuasive, proportionate and effective sanctions

The follow-up report noted that Vanuatu has significantly reformed its AML/CTF penalty regime, which can be overall considered as compliant. The Director now has a wide range of powers to sanction reporting entities, and in line with the significant AML/CTF reforms outlined in this report, relevant sanctions are in place for breaches of new AML/CTF requirements. Sectoral regulators now have greater sanctioning tools available to them pursuant to the amended laws. (para 172 FUR).

The VFSC Amendment bill more clearly regulated the administrative powers of the Commissioner. Amendments to the AML/CTF Act introduced a range of enforcement measures as alternatives to pursuing criminal prosecution for non-compliance with the Act. Most preventive measures and record keeping obligations (both AML/CTF law and various sectoral laws) are enforceable by a criminal offence. However, the introduction of section 50A allows for a wider range of sanctions available to the FIU to enable them to take a graduated, tailored approach to enforcement. The amendments across various laws include the same mechanism to allow enforcement of relevant obligations to an administrative standard of proof (reasonable basis to believe') and to apply a monetary penalty at a greatly reduced rate. There is a fast-track mechanism to apply lesser fines and the level of fines has been increased, however Vanuatu advise that it is a domestic norm that administrative sanctions do not exceed the lowest level criminal penalties

All Reporting Entities, including DNFBPs must now register under the AML/CTF Act. Written compliance direction letters have been issued to those entities not yet registered with the VFIU. Several compliance enforcement letters were also issued to entities not responding to VFIU's call to register and VFIU is now in the process of issuing penalty notices to those non-responsive entities. VFIU has also issued respective compliance direction and compliance enforcement letters to those entities that have not responded to the fit and proper criteria.

Taking into account the abovementioned elements, the Commission services consider that Vanuatu's authorities generally demonstrate the existence of dissuasive, proportionate and effective sanctions.

However, the Commission takes into account other relevant information and noted in this respect that the OECD Global Forum on transparency and exchange of information for tax purposes (GF) downgraded Vanuatu's transparency rating from Largely Compliant to Partially Compliant in a peer review report published in July 2019; noting notably that "available sanctions were not consistently applied by all relevant authorities in cases of non-compliance" (GF report, para 51, p. 30).

On this basis, the Commission services consider that Vanuatu should further demonstrate that authorities put in place dissuasive, proportionate and effective sanctions in case of violation of AML/CFT obligations by the financial and DNFBPs sectors, in particular with regard to transparency of beneficial ownership information.

3.6. Third country's practice in cooperation and exchange of information with Member States' competent authorities

The FATF Action Plan required Vanuatu to "Prioritise establishing and using international cooperation mechanisms, in keeping with the risks, to share information on beneficial ownership of legal persons/arrangements (VFSC, RBV, VFIU, police), asset tracing and ML investigations (VPF and VFIU), and market entry (VFSC, RBV, VFIU)"

The Commission services' assessment is that Vanuatu has substantially addressed this requirement and that implementation has begun (FATF onsite report, ref. FATF/ICRG(2018)15, p.89).

In particular, the Commission services note the following points:

- Key legislation, through which circumstances for international cooperation have been widened, has been enacted. Various impediments in sharing regulatory information have been lifted.
- Vanuatu has now established the financial crime unit responsible for dealing with formal requests for mutual legal assistance (para 199 FUR); the AML/CTF Act allows the FIU to enter into agreements to share information or cooperate on matters in relation to information that may be shared with foreign government agencies (section 44A confirms information can be

disclosed by the FIU without an agreement being in force) (para 200 FUR); and The VFIU has in the past provided feedback to its requesting FIU counterparts (para 201 FUR).

- There are no expressed provisions for joint investigative teams however, section 44A of the AML/CTF Act as amended allows the FIU to enter into agreements with foreign government agencies about the sharing of information or cooperating on matters. (para 209 FUR)
- The MLA and Extradition Central authority has changed to the Public Prosecutor, which is increasing its staff and preparing templates to support implementation. The Public Prosecutor's Office (OPP) is looking to establish a website to support international cooperation.
- The VFIU has written to all key FIUs in the region and beyond, commensurate with findings of risk. The letters provide an update on the key legislative reforms undertaken and how they facilitate greater information exchange with foreign partners. Up to date contact details are provided not only for the VFIU but also for the RBV and VFSC.
- The OPP has also written to 15 priority countries informing them of the legislative amendments in Vanuatu.
- The VFSC and RBV have also sent letters to key foreign counterparts. They have confirmed they will continue to send further letters. All letters reference the fact that Vanuatu is able now to provide assistance in cases of foreign tax evasion.
- A workshop was held in 2018 to build an understanding of the linkages between formal and informal cooperation, as well as the interaction between MACMA and POCA in the context of proceeds of crime. OPP also intends to send a letter to the Central Authorities of priority countries (based on the NRA) to advise of the shift of the Central Authority and other recent legislative changes e.g. Vanuatu's ability to cooperate with respect to foreign tax offences.

The Global Forum report noted (para. 343-347) that over the period 1 January 2015 to 31 December 2017, Vanuatu received two requests for information from one peer in relation to ownership information in both cases, and banking information in one case. Both requests related to companies and individuals. Vanuatu reported it did not receive any request outside the review period. Vanuatu answered one request within 180 days and the second request in nine months. The peer feedback provided to the assessment team indicates that the peer was satisfied with Vanuatu's assistance, and found the information from Vanuatu useful.

- For the first case, the Vanuatu competent authority received the request in January 2017 and contacted the requesting jurisdiction after five days to help them reformulate the request to make it more effective as they considered the requesting jurisdiction risked not capturing all the available information in Vanuatu. The peer agreed to amend the request and sent it to Vanuatu after one month. The Vanuatu competent authority managed to obtain the requested information and replied at the end of August 2017 (within 180 days after receiving the amended request).
- With regard to the second case (received in November 2017), the Vanuatu competent authority sent three separate interim status updates to the requesting jurisdiction. The first update was within 90 days of receipt of the request. It was positive that the Vanuatu competent authority was proactive in keeping their treaty partner in the loop on their status of obtaining the requested information. The full set of requested information was sent to the requesting jurisdiction nine months after the second request was received.

Therefore, it can be concluded that Vanuatu's efforts are adequate to demonstrate progress towards increasing effectiveness with regard to its **practice in cooperation and exchange of information with Member States' competent authorities.**

3.7. Implementation of targeted financial sanctions (TFS) related to terrorism and terrorist financing.

The Action plan required Vanuatu to implement comprehensive legal and regulatory frameworks for targeted financial sanctions, including:

- a. Amend, as needed, relevant statutory instruments for Vanuatu's implementation of TFS against terrorism
- b. Establish a legal/regulatory framework for TFS against WMD proliferation.

The enactment by Vanuatu of the UN Financial Sanctions Act ('the UNFSA') in June 2017 establishes the legal framework to implement UNSCRs 1267, 1373 and future resolutions. It also implements a regime to give effect to the UN Sanctions relating to weapons of mass destruction.

The UNFSA establishes a Sanctions Secretariat situated within the VFIU and for which the VFIU has now appointed a full time officer.

The Action Plan also required Vanuatu to circulate sanctions lists and provide guidance and outreach to the financial institutions and DNFBPs on asset freezing and prohibitions.

This item has been substantially addressed and implementation has begun through a number of steps to implement the new UN Financial Sanctions Act. The onsite report noted in particular:

- the circulation of a new comprehensive Guidance Note and Standard operating procedure (SOP).
- reporting entities are now promptly advised of updates to the consolidated list (which take automatic effect). There is a link on the FIU website to the UN Consolidated List and updates are also circulated to reporting entities by email.
- with the hiring of a dedicated sanctions officer, Vanuatu has commenced TFS supervision. VFIU is currently conducting offsite supervision of certain high-risk entities for compliance with their sanctions obligations and plans to commence on-site TFS supervision from July. On-site inspections will be triggered by concerns about the level of compliance with statutory obligations identified during the offsite reviews, delays in providing STRs or other issues identified in internal risk assessments provided by the banks to VFIU.
- VFIU should continue to ensure it coordinates and integrates its planned on-site review program with the reviews conducted by other AML supervisors. Ideally, TFS should be included in every on-site review triggered by other AML/CFT breaches.

There is confirmation that financial institutions have a good understanding of their sanctions obligations and appear to have regular and positive engagement with the VFIU. The FIU also delivered targeted financial sanctions compliance training to financial institutions. The onsite report however noted that VFIU should continue outreach and prioritise other high-risk sectors in line with the findings of the NRA. Efforts to include the Vanuatu Shipping Registry as a reporting entity under the AML/CTF Act were also noted.

Based on the available information, the Commission services consider that Vanuatu's efforts are adequate to demonstrate progress towards increasing effectiveness with regard to the **implementation of targeted financial sanctions (TFS) related to terrorism and terrorist financing.**

Conclusion

On the basis of the assessment of the AML/CFT regime of Vanuatu, with regard to the abovementioned specific EU delisting requirements, the Commission services conclude that Vanuatu does not currently meet the EU criteria for removal from the EU list on AML/CFT. Therefore, the Commission proposes the following EU Benchmarks.

Proposed draft EU Benchmarks:

Vanuatu should ensure that accurate and up-to-date BO information for all legal entities, legal arrangements and foundations is available and timely accessible by competent authorities. It should also ensure that effective sanctions are applied by the supervisors in case of breaches of BO requirements.

In order to strengthen the effectiveness of the BO transparency framework, Vanuatu should consider addressing the technical deficiencies in its legal framework regarding the BO definition applicable to trusts and foundations and is encouraged to seek a re-rating of Recommendation A1 of the Global Forum.

Information sources

- Global Forum on Transparency and Exchange of Information for Tax Purposes: Vanuatu 2019 (Second Round) Peer Review Report on the Exchange of Information on Request, July 2019: <https://www.oecd.org/countries/vanuatu/global-forum-on-transparency-and-exchange-of-information-for-tax-purposes-vanuatu-2019-second-round-dd70b774-en.htm>
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- Asia/Pacific Anti-Money Laundering Group (APG), Mutual Evaluation Report, September 2015: <https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/APG-Mutual-Evaluation-Report-Vanuatu-2015.pdf>
- Report by the Asia/Pacific Joint Group co-chairs, FATF International Co-operation Review Group, FATF/ICRG(2018)15 of 26 June 2018 (confidential)
- AML Basel index: <https://www.baselgovernance.org/basel-aml-index/public-ranking>
- Financial secrecy index, 2020: <https://fsi.taxjustice.net/en/introduction/fsi-results>
- Transparency International corruption perception index: <https://www.transparency.org/cpi2019>
- OECD Taxation Working Papers No. 46 -Exchange of information and bank deposits international financial centres (O'Reilly, Parra Ramirez & Stemmer) of 28 November 2019: https://www.oecd-ilibrary.org/taxation/exchange-of-information-and-bank-deposits-in-international-financial-centres_025bfebe-en;jsessionid=DN--Bi2hMixfuNUinrjTVua.ip-10-240-5-