

Anti-money laundering and Counter-terrorist financing measures

Madagascar

Technical Compliance Re-Rating

December 2020

Follow-Up Report



The Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) was officially established in 1999 in Arusha, Tanzania through a Memorandum of Understanding (MOU). As at the date of this Report, ESAAMLG membership comprises of 18 countries and also includes a number of regional and international observers such as AUSTRAC, COMESA, Commonwealth Secretariat, East African Community, Egmont Group of Financial Intelligence Units, FATF, GIZ, IMF, SADC, United Kingdom, United Nations, UNODC, United States of America, World Bank and World Customs Organization.

ESAAMLG's members and observers are committed to the effective implementation and enforcement of internationally accepted standards against money laundering and the financing of terrorism and proliferation, in particular the FATF Recommendations.

For more information about the ESAAMLG, please visit the website: www.esaamlg.org

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This report was approved by the ESAAMLG Task Force of Senior Officials at the December 2020 virtual meeting.

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MADAGASCAR: 1st ENHANCED FOLLOW-UP & RE-RATING REPORT

I. INTRODUCTION

1. The Mutual Evaluation Report (MER) of Madagascar was adopted by the ESAAMLG Council of Ministers in September 2018. This follow-up report assesses the progress made by Madagascar to resolve the technical compliance shortcomings identified in its MER. New ratings are given when sufficient progress has been made. In general, countries are expected to have corrected most or all of their technical compliance shortcomings by the end of the second year of follow-up at the latest. This report does not cover the progress made by Madagascar in improving its effectiveness. Progress in this area will be assessed as part of a subsequent follow-up assessment. If sufficient progress has been made, the Immediate Outcome ratings may be reviewed.

II. KEY FINDINGS OF THE MUTUAL EVALUATION REPORT

2. The MER¹ gave Madagascar the following technical compliance ratings:

Table 2. 1. Technical compliance ratings², September 2018

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

¹ Mutual Evaluation Report (MER) on Madagascar, September 2018, <https://esaamlg.org/reports/Madagascar%20MER.pdf>

² Four technical compliance ratings are available: compliant (C), largely compliant (LC), partially compliant (PC), and non-compliant (NC).

3. In the light of these results, Madagascar was placed in the enhanced follow-up process.¹
4. Subsequent to the adoption of the MER, Madagascar is submitting its first request for re-rating. This report analyses the progress made by Madagascar in addressing the TC deficiencies identified in its MER on the Recommendations which Madagascar is requesting re-ratings (i.e., Based on the new AML/CFT Law, and the measures taken, Madagascar requests for re-ratings for **Recs 5, 12, 13, 14 and 32**).
5. In accordance with ESAAMLG's Second Round Mutual Evaluation Procedures and the Terms of Reference (as approved by the Council of Ministers in September 2014), Expert Reviewers have analyzed the progress made by Madagascar for Recommendations which the country has requested technical compliance re-ratings (Recs 5, 12, 13, 14, and 32) using the information provided by Madagascar.
6. The assessment of Madagascar's request for technical compliance re-ratings and the preparation of this report were undertaken by the following experts (Supported by ESAAMLG Secretariat: John Muvavarirwa and Bhushan Jomadar):
 - Bheki Khumalo (eSwatini)
 - Nokwazi Mtshali (South Africa)
 - Masautso Ebere (Malawi)
 - M. Roopchand (Mauritius)
 - Toka Mashoai (Lesotho)
 - Agnes Sentala (Malawi)
 - Abby Dinka (Ethiopia)
7. Section II of this report highlights the progress made by Madagascar and analysis undertaken by the Reviewers. Section III sets out the conclusion and a table showing which Recommendations have been approved for re-rating.

¹ Enhanced follow-up is based on the traditional ESAAMLG policy for members with significant shortcomings (in technical compliance or effectiveness) in their AML/CFT systems, and involves a more intense follow-up process.

III. DETAILED ANALYSIS OF PROGRESS

8. This section of the report summarises the progress made by Madagascar in improving technical compliance by resolving the shortcomings identified in its MER.

3.1. Progress in resolving the technical compliance shortcomings identified in the MER

3.1.1. Recommendation 5 – Terrorist Finance Offence (Originally rated PC – no re-rating)

9. Under its Second Round MER, Madagascar was rated Partially Compliant with the requirements of this Recommendation. The major deficiency was that the definition of financing of terrorism in the legislation in Madagascar does not mention, either directly or indirectly, the financing of individual terrorist or of terrorist organisations in the absence of a link to terrorist acts. In addition the law did not specifically address the funding of travel to participate in terrorist activities abroad. Moreover, prosecutions for participation in a terrorist agreement/arrangement could conceivably be pursued in certain cases only if the prosecuted individual knowingly financed a group activity or project, but this possibility does not fully cover the requirement to address the financing of terrorist organizations and individuals more broadly. Further, the offence of terrorist financing is applicable if it was committed on the territory of Madagascar, or abroad by a person of Malagasy nationality, or to the detriment of a Malagasy national. Malagasy law does not provide for prosecution in the case of a terrorist organization located abroad or a terrorist act committed or planned in another country.
10. In order to address the deficiencies identified under this recommendation, Madagascar enacted a new Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Law n°2018-043 on 13 February 2019 and gazetted on 28 March 2019, which repealed some sections of the old AML/CFT law. With the new enactment, the term “financing of terrorism” was re-defined under Article 2 to include any act of a natural or legal

person who, by any means, directly or indirectly, by itself or through an intermediary, has deliberately provided or collected property, funds and other financial resources with the intention of using them or knowing that they will be used, in whole or in part, to the commission of a terrorist act by a terrorist organization or group of terrorists and also includes attempt to commit such acts within the territory of Madagascar or a foreign country by a Malagasy national. Despite Article 2 providing for an improved definition of TF which takes into account some of the deficiencies highlighted in the MER, the definition still has some gaps in that it does not cover the financing of a terrorist organisation or an individual terrorist “*for any purpose*”. From the text of the law, it appears that the financing of a terrorist organisation or an individual terrorist would be captured only if the funds were specifically provided or intended to be provided to them for the commission of a terrorist act. Further, the term “*...funds and other financial resources...*” provided in the new definition of terrorism financing is narrower than “*...funds or other assets...*” as provided in the FATF glossary. This deficiency may have a negative impact on the rating of criterion 5.3.

11. Although the definition of terrorism financing under Article 2 covers financing of terrorist acts committed abroad by a Malagasy person, it does not specifically address the funding of individuals who travel to a State other than their State of residence or nationality for the purpose of preparing, planning or participating in terrorist acts or the provision or receipt of terrorist training.
12. Article 2 of the new AML/CFT Law further highlights that a TF offence does not require that the funds or other assets be actually used to carry out or attempt a terrorist act. However, the provision under Article 2 of the law which says; “The offense is formed, whether the act referred to in this article occurs or not or whether the property was or was not used to commit that act” have gaps in that it seems to suggest that regardless of whether the property was used or not, a link with a specific act is still required.

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13. As noted under para. 8 above, the new AML/CFT law expanded the definition of terrorism financing to make it applicable if the act was committed on the territory of Madagascar, regardless of the nationality of the author, or abroad by a Malagasy person or to the detriment of a Malagasy citizen. This makes it possible for the perpetrator of the offense to be prosecuted even if the terrorist organization or the terrorist act committed or planned are located in one or other countries.

Weighting and Conclusion

14. The definition of terrorism financing does not cover financing of a terrorist organisation or an individual terrorist “for any purpose” and funding of individuals who travel to a State other than their States of residence or nationality for the purpose of preparing, planning or participating in terrorist acts or the provision or receipt of terrorist training. It also seems to suggest that regardless of whether the property was used or not, a link with a specific act is still required. Further, the term “...*funds and other financial resources...*” provided in the new definition of terrorism financing is narrower than “...*funds or other assets...*” as provided in the FATF glossary. This deficiency may have a negative impact on the rating of criterion 5.3. Taking into consideration these deficiencies, **there is no re-rating for R.5.**

3.1.2. Recommendation 12 – Politically Exposed Persons (Originally rated PC – no re-rating)

15. Under its Second Round MER, Madagascar was rated Partially Compliant with the requirements of this Recommendation. The major deficiency was that Madagascar has no systems in place that require financial institutions to establish whether a foreign customer’s status has changed to become a PEP during a business relationship. In addition, the search for wealth and source of funds information does not extend to PEPs who are the beneficial owners of customers of reporting institutions. It was also noted that the law does not require financial institutions to implement CDD measures where persons have been entrusted with a prominent function in an international organisation and that the relevant requirements of criteria 12.1 and 12.2 were only limited to a very close family members which include the spouse

and children, and any natural or legal person clearly linked to PEP. Other gaps identified include absence of provisions in the AML/CFT law that imposes specific measures applicable to beneficiaries of life insurance policies.

16. In March 2019 Madagascar enacted a new AML / CFT Law No 2018/043. Article 4 provides an adequate definition of PEP, clearly distinguishing between foreign, domestic and international organization PEPs. While Article 16 sets obligations to financial institutions in relation to PEPs, it partly addresses the deficiencies identified in the MER. According to Article 16 FIs are required to (a) put in place risk management systems to determine whether a customer or the beneficial owner is a PEP; (b) obtain senior management approval before establishing (or continuing, for existing customers) such business relationships; (c) take reasonable measures to establish the source of wealth and the source of funds of customers and (d) conduct enhanced ongoing monitoring on business relationship. Criterion 12.1(c) is not adequately addressed in that the Article does not extend the establishment of source of wealth and funds to beneficial owners identified as PEPs.
17. Whereas Article 16 places an obligation on financial institutions to exercise vigilance on PEPs, there is no provision allowing for adopting the measures under c 12.1 (b) to (d), when financial institutions identify a higher risk business relationship. The article limits the measures required under c. 12.1 (b) to (d) only to foreign PEPs and not to other types of PEPs.
18. With regards to deficiencies relating to family members and associates of all types of PEPs, Article 16 of the new AML/CFT law adequately addresses the deficiency identified in the MER by removing the limit previously placed on “family members”.
19. Pursuant to Article 16.f of the AML/CFT law, financial institutions are required to exercise vigilance towards the customer or the beneficial owner of a life insurance policy and other insurance-related investment products. Although Article 16.f of the AML/CFT law provides for the identification of

the beneficiaries for life insurance activities and other insurance-related investment products by financial institutions at the time of payment of benefits, the provisions do not adequately address the requirements, in particular, to determine whether the beneficiaries and/or beneficial owner of the beneficiary, are PEPs and to take relevant measures where higher risks are identified and to consider making a suspicious transaction report where required.

Weighting and Conclusion

20. Although Madagascar has adequately amended its legal framework to provide for a clear definition of domestic, foreign, and international organization PEPs in line with the FATF Standards, there are still gaps in the AML/CFT Law in that it has not adequately addressed all the outstanding deficiencies highlighted in the MER under this Recommendation. In particular, the law does not extend the establishment of source of wealth and funds to beneficial owners identified as PEPs; no provision allows for adopting the measures under c 12.1 (b) to (d), when financial institutions identify a higher risk business relationship; the article limits the measures required under c. 12.1 (b) to (d) only to foreign PEPs and not other types of PEPs; and provisions do not adequately impose specific measures applicable to beneficiaries of life insurance contracts. **Therefore, there is no re-rating for R. 12.**

3.1.3. Recommendation 13 – Correspondent Banking (Originally rated PC – no re-rating)

21. Under its Second Round MER, Madagascar was rated Partially-Compliant with the requirements of this Recommendation. The major deficiencies were that financial institutions in Madagascar were not obliged to understand their respective responsibilities of each respondent institution with regards to AML/CFT. Also, the legislative framework did not deal with “*payable-through accounts*” and the definition of fictitious banks used was not in line with the FATF definition.
22. Although Madagascar has revamped its AML/CFT law, the country is yet to come up with legal provisions obliging financial institutions to

undertake the required measures to understand the AML/CFT responsibilities of each respondent institution. This also includes obligations with respect to payable-through accounts. With the amendment of the AML/CFT law, Article 4(29) sufficiently provides for the definition of “shell bank” in line with the FATF requirements. Article 4(29) defines “shell bank” as a bank that has been established and certified in a country where it has no physical presence and that is not affiliated to a regulated financial group subject to a consolidated and effective supervision, where the expression ‘physical presence’ refers to the presence of a senior management body and a decision-making authority in a country. According to the definition, the mere presence of a local agent or a subordinate does not constitute a physical presence. In addition to the above expression, Article 12 prohibits the establishment of shell credit and financial institutions and subsequently banks are required to refuse entering into or continuing any relationship with such entities.

Weighting and Conclusion

23. Based on the foregoing information provided, although Madagascar has adequately addressed the outstanding deficiencies relating to shell banks, it is yet to develop legal provisions addressing the highlighted deficiencies. In particular, FIs are not obliged to understand the respective responsibilities of each respondent institution with regard to AML/CFT. In addition, the Regulations do not deal with payable through accounts. **There is therefore no re-rating for Rec. 13.**

3.1.4 Recommendation 14 – Money or Value Transfer Services (MVTs) (Originally rated PC – no re-rating)

24. Under its Second Round MER, Madagascar was rated Partially Compliant with the requirements of this Recommendation. The deficiencies identified in the MER are that there were no mechanisms to enforce and where appropriate to punish persons who carry out MVTs activities without being authorized. Moreover, the Caisse D’Epargne de Madagascar (CEM) and the postal financial services were not being supervised for AML/CFT purposes

although they were under the purview of the Ministry of Finance. No information was provided to the assessment team about on-the-spot checks by the Ministry of Finance.

25. Article 10 of the new AML / CFT Law No. 2018/043 provides an obligation to conduct international money transfers through a credit or a financial institution. Moreover, at Article 42 of the same piece of legislation provides for sanctions for any person who violates these provisions. Despite these provisions, the deficiency has not been adequately addressed given that Madagascar has not taken action, with a view to identify natural or legal persons that carry out MVTs without a license or registration.
26. In March 2019, CEM was approved as a Microfinance deposit and credit institution by Banking and Financial Supervision Commission (CSBF) under decision n° 002/2019-CSBF, and its activities are now subjected to the supervision of the CSBF. Similarly, Postal Services is under the financial supervision of the Ministry of Finance. Despite these developments, the authorities have not yet provided information to the Reviewers as to whether CEM or Postal Services have been subjected to monitoring for AML/CFT compliance.

Weighting and Conclusion

27. Madagascar has not adequately addressed the outstanding deficiencies cited in the MER under R.14. Madagascar has not taken action, with a view to identify natural or legal persons that carry out MVTs without a license or registration; CEM has not been subjected to monitoring for AML/CFT compliance. **Consequently, there is no re-rating for Rec. 14.**

3.1.5. Recommendation 32 – Cash Couriers (Originally rated PC – no re-rating)

28. Under its Second Round MER, Madagascar was rated Partially Compliant with the requirements of this Recommendation. The deficiencies highlighted were that non-resident travelers are allowed to re-export means of payment denominated in foreign currency that they have not used, with

proof. In practice, these provisions are not implemented and travelers do not receive a document to fill out the cash declarations on leaving the territory of Madagascar. In addition, there was no specific text that establishes coordination among competent authorities, including immigration services. Lastly, there was an absence of international cooperation in case of false declaration, non-declaration or suspicion of money laundering in Madagascar.

29. The Malagasy Custom Administration in collaboration with Treasure Administration issued Circular No. 0755/2018 MFB / SG / DGY / DOF / SFE of 30/08/18 which requires every traveler to declare in writing to the Border Customs Service the means of payment in foreign currency which they import or export when their amount is 7,500 Euros or more or its equivalency. There are also notices for the attention of the public at Ivato International Airport in order to inform travelers on this requirement. The system of written declaration partly addresses the deficiency identified in the MER as it only applies to foreign currency of 7,500 Euros or its equivalency but not extending to Bearer Negotiable Instruments (BNIs).
30. The Malagasy authorities have issued Decree N° 2013-710 concerning the organization of the Civil Aviation Administration and fixing the functions of structures. This Decree enables the Civil Aviation Authority to ensure that a National Civil Aviation Facilitation Committee is established to coordinate facilitation activities among the different ministries, institutions and other national bodies that are responsible for various aspects of civil aviation, as well as aerodrome and aircraft operators. The National Facilitation Committee was established on 27 June 2019 in accordance with Order No. 12 584/2012 but was not operational due to the change of the heads of the public entities. In order to overcome this issue a local facilitation committee was established following decision No. 211 DGE / SGE / DSU of June 24th 2016. The coordination by the National Civil Aviation Facilitation Committee, however, seems to be for purposes of Civil

Aviation and does not clarify whether it also relates to the specific issues covered by R 32.¹

31. SAMIFIN shares information to its FIU counterparts with whom a MoU have been signed, otherwise international cooperation and assistance is done through MLA. There is no evidence to suggest that the nature of information to be retained relates to (a) declarations exceeding 7,500 Euro, (b) false declarations, and (c) suspicions for ML/TF. Although with the launching of the online platform the domestic competent authorities are able to share information, the deficiency with respect to international cooperation is still to be fully addressed by the Malagasy authorities.

Weighting and Conclusion

32. Madagascar has not made sufficient progress to address the outstanding deficiencies highlighted in its MER under this Recommendation. The declaration system only applies to foreign currency or its equivalent amount excluding BNIs; The coordination by the National Civil Aviation Facilitation Committee seems to be for purposes of Civil Aviation and does not clarify whether it also relates to the specific issues covered by R 32; and there is no evidence to suggest that the nature of information to be retained relates to (a) declarations exceeding 7,500 Euro, (b) false declarations, and (c) suspicions for ML/TF. Consequently, there's no re-rating for Rec. 32.

IV. CONCLUSION

33. Despite Madagascar enacting a new AML/CFT Law, the country has made little progress in addressing the technical compliance deficiencies identified in its MER.
34. While the steps taken to address the deficiencies identified under R. 5 (initially rated PC), 12 (initially rated PC), 13 (initially rated PC), 14 (initially rated PC) and 32 (initially rated PC) have been noted, the

¹ In March 2020 Malagasy authorities established a centralized digital platform (called HAY ZARA) at SAMIFIN which is accessible to the competent authorities where different agencies can share and transmit information.

information currently provided does not indicate that the country has made sufficient progress to warrant re-rating. On this basis, it was agreed that ratings for R.5, R.12, R.13, R. 14 and 32, should remain as PC.

35. Overall, in light of the progress made by Madagascar since the adoption of its MER, the re-ratings for its technical compliance with the FATF Recommendations were considered and approved by the ESAAMLG Task Force of Senior Officials Plenary as follows:

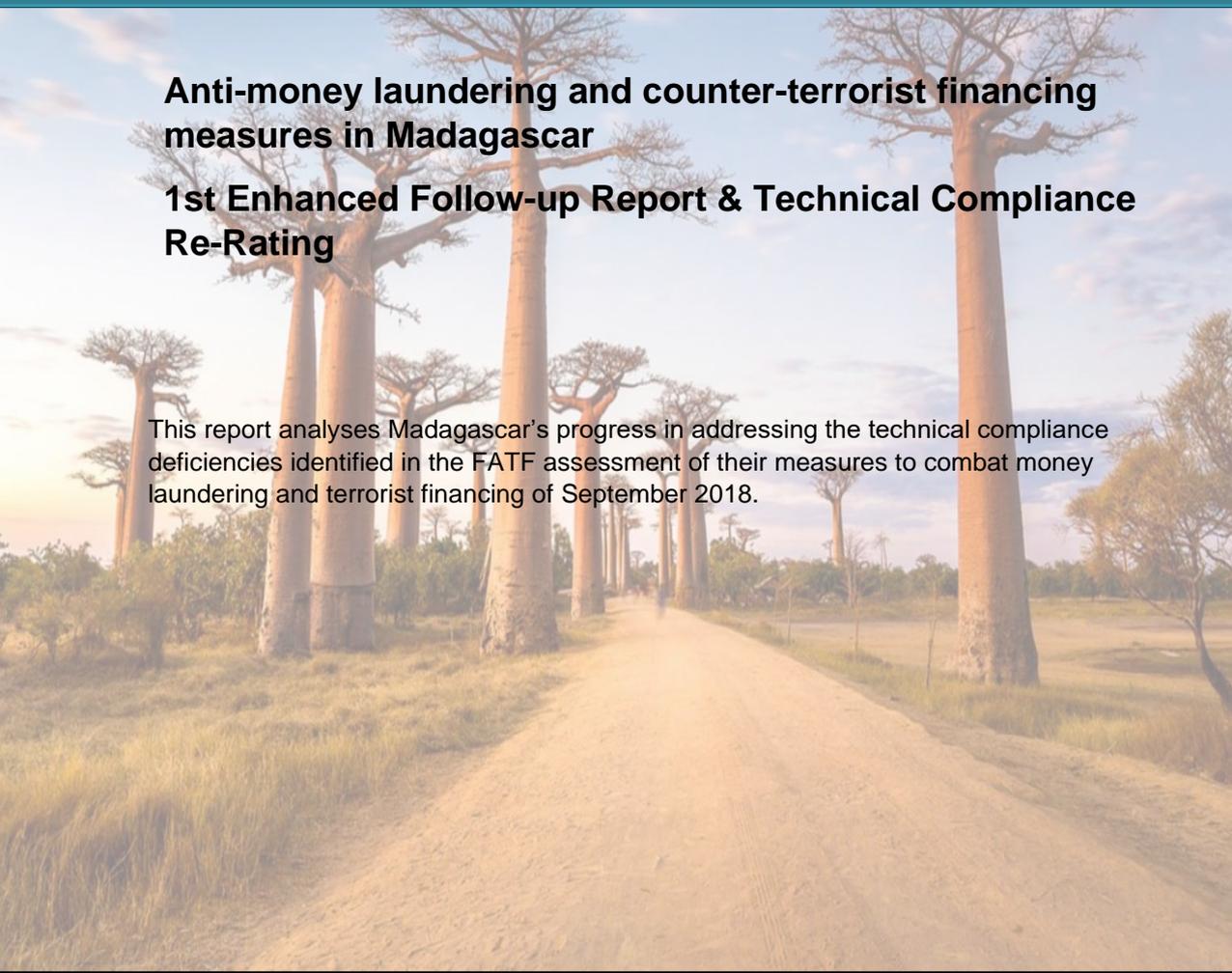
Recommendation	R. 5	R.12	R.13	R.14	R.32
MER rating	PC	PC	PC	PC	PC
Approved re-rating	PC	PC	PC	PC	PC

36. Based on the approved re-ratings above, Madagascar's TC rating status remains as follows:

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

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A photograph of a dirt road in Madagascar, lined with tall baobab trees. The road is unpaved and leads into the distance. The trees are thick-trunked and have sparse, dry-looking foliage. The sky is clear and blue.

**Anti-money laundering and counter-terrorist financing
measures in Madagascar**
**1st Enhanced Follow-up Report & Technical Compliance
Re-Rating**

This report analyses Madagascar's progress in addressing the technical compliance deficiencies identified in the FATF assessment of their measures to combat money laundering and terrorist financing of September 2018.

Follow-Up Report