



**FIRST ROUND MUTUAL EVALUATIONS - POST EVALUATION PROGRESS  
REPORT OF ESWATINI**

**Covering the period August 2017 – July 2018**

ESAAMLG (2018), First Round Mutual Evaluation - Post Evaluation Progress Report of Eswatini on Anti- Money Laundering and Counter-Terrorist Financing Measures.

## KINGDOM OF ESWATINI

### **A Introduction**

1. This detailed review was conducted by Review Group A, made up of experts from Angola, Botswana, Namibia, Uganda and Zimbabwe.
2. Eswatini was evaluated by the ESAAMLG. The onsite visit took place from 15 -26 February 2010 and the report was adopted by the Council of Minister's in September 2011. The table below provides the compliance ratings obtained with regard to the FATF Core and Key Recommendations

**Table 1: Ratings of Compliance with Core Recommendations**

<b>Core Recs</b>	R.1	R.5	R.10	R.13	SR.II	SR.IV
<b>Rating</b>	PC	NC	NC	NC	NC	NC

**Table 2: Ratings of Compliance with Key Recommendations**

<b>Key Recs</b>	R.3	R.4	R.23	R.26	R.35	R.36	R.40	SR.I	SR.III	SR.V
<b>Rating</b>	PC	NC	NC	NC	PC	PC	PC	NC	NC	NC

### **B Overview of Progress made by Eswatini**

3. In accordance with ESAAMLG'S Mutual Evaluation Procedures and the Terms of Reference (as approved by the Council of Ministers in August 2010), the Review Team has analyzed the progress made by the Kingdom of Eswatini for each core/key Recommendation rated NC or PC in the MER, using the information provided by the Swazi Authorities in their current progress report.
4. For the period September 2017 to April 2018, Eswatini has made some more progress in addressing some of the deficiencies in its MER, though there still remained others to be attended to. The remaining outstanding MER

recommendations were contingent on the passing by Parliament of the Prevention of Organized Crime Bill and the Sexual Offences and Domestic Violence Bill which are yet to be passed into law. In addition, there was the Witness Protection Bill which had not yet been promulgated into law. These outstanding Bills are the responsibility of the Director of Public Prosecutions (D.P.P.) and the Attorney General (A.G.).

5. Under the previous Progress Report, Eswatini is commended for further enhancing the FIU.
6. During the current period under review it is noted that The Witness Protection Act, 2018 (Act No.10 of 2018) and the Prevention of Organized Crime Act, 2018 (Act No.11 of 2018) both came into force on 2<sup>nd</sup> July, 2018 vide Legal Notices Numbers 104 and 107 of 2018. The Sexual Offences and Domestic Violence (Act No.15 of 2018) came into force on 1<sup>st</sup> August, 2018 vide Legal Notice No.127 of 2018. The Swazi authorities are congratulated on the passing of these 3 laws.
7. This report will only focus on the action items that remained outstanding as at the last Task Force meeting.

### *Analysis of progress*

#### **Building Block 1: Legal Framework-Criminalisation of ML & TF, Provisional measures/confiscation & freezing of assets**

##### *Recommendation 1 (rated PC)*

##### Criterion 1.1

8. Eswatini was required to ratify the Palermo Convention. The authorities report that this Convention has now been ratified and partially domesticated; it will be further domesticated through the enactment of the Prevention of Organised Crime Act which came into force on 2<sup>nd</sup> July, 2018.

Sufficient progress was already noted under the April 2018 report by the

reviewers, but we needed to place on record that further domestication of the Convention has now taken place.

### Criterion 1.3

9. The assessors had recommended that Eswatini should enact a law that covers the minimum range of predicate offences prescribed in each of the designated categories of offences under the FATF Glossary. The authorities enacted the ML/TPF Act and People Smuggling and People Trafficking (Prevention) Act which have criminalized some of the offences, widening the scope of predicate offences for money laundering. The authorities previously indicated that criminalization of the outstanding predicate offences will be enhanced when the Sexual Offences and Domestic Violence Bill and the Prevention of Organised Crime Bill are passed into law.
10. During the April 2018 period of review the reviewers noted that Schedule 1 of the ML/TPF Act contains all the predicate offences as per the FATF Glossary, and accepted that the section 4(1)(c) of the 2016 ML/TFP Amendment provides for an all crimes approach, and takes care of this action item. This has been enhanced now with the enactment of the Prevention of Organized Crime Act, 2018 and the Sexual Offences and Domestic Violence Act, 2018

Sufficient progress was already noted under the April 2018 report by the reviewers, but we needed to place on record the further enhancement in this regard.

11. The recommendation by the assessors that there be consistency between the terms used to define offences listed in the schedule to the Serious Offences Act and those in the ML/TFP Act has been addressed by section 92 of the amended MLFTP. The deficiency has now been further addressed with the coming into force of the Prevention of Organised Crime Act, 2018 (which repealed the Serious Offences Act).

Sufficient progress was already noted under the April 2018 report by the  
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reviewers, but we needed to place on record the further enhancement in this regard.

## **Building Block 5: International Cooperation**

### ***Recommendation 35 (rated PC)***

#### **International Conventions**

12. Palermo Convention has been ratified, the 2011 ML/FTP Act was passed and the 2016 ML/FTP Amendment Act was passed. The Palermo Convention has been largely domesticated, but Article 5, 24 & 25 has not been domesticated and, as such, some of the MER recommendations under Recommendation 35 remains outstanding. During the April 2018 review period the authorities reported that that Article 5 is awaiting domestication through the enactment of the Prevention of Organised Crime Bill, while Article 24 & 25 are awaiting domestication through enactment of Witness Protection Bill. Both these Bills was passed and the MER recommendations under Recommendation 35 and implementation of the Convention have now been ADDRESSED.
13. The assessors had recommended that the Eswatini criminalise the offences on drugs and psychotropic substances to be consistent with the requirement of Art. 3(1) of the Vienna Convention. The Swazi authorities submitted that these deficiencies have been addressed through the enactment of the Medicines and Related Substances Control Act No. 09 of 2016. The Act was provided previously and authorities referred reviewers to section 38 and 39 of the Act. However, these sections must be read together with the definitions of “manufacture” and “sell”, and the law now domesticates Art. 3(1) of the Vienna Convention.
14. The deficiencies relating to witness protection, assistance to and protection of victims have been addressed by the coming into force of the Witness Protection Act, 2018; and those inhibiting cooperation by LEs to, among other things, gather information from members of organized criminal groups for purposes of carrying out their investigations and evidence gathering and in deserving situations to offer immunity from prosecution

to persons offering such information has been addressed by the Prevention of Organised Crime Act,2018.

15. The authorities previously reported that police officers, officers from SRA, officers from the DPP's office and officers from ACC have been trained on asset forfeiture, financial investigations and forensic accounting sponsored by the UNODC and ARINSA and that the training is still on-going. The authorities however still did not provide the dates of when this training was done and which training is still on-going. Most importantly, the authorities still do not indicate whether a training programme has been developed for LEAs as had been recommended by the assessors. The authorities did not provide any updates for the period under review.
16. The assessors had recommended that the authorities make clear provisions relating to extradition or mutual legal assistance requests involving fiscal matters. The authorities have submitted that "*current Act applies to fiscal matters as well*" but they are not saying which Act is this and the relevant sections to guide the Reviewers. For the period under review the authorities again submitted that Double Taxation Avoidance Agreements (DTAs) and tax information exchange agreements meet the recommendation by the assessors but they do not cite any clauses of the agreements or the actual agreements they have entered which provide for exchange of information on matters relating to MLA and extradition requests to meet the recommendation by the assessors. During the April 2018 meeting the Authorities referred the Reviewers to Art 5 of an Extradition Agreement between RSA and Eswatini as proof that fiscal matters are covered in bilateral agreements, but reviewers were of the opinion that bilateral agreements are not all the same and negotiated on terms favorable to both countries. The authorities did not provide any new information in this regard during the current period under review
  - THIS ACTION ITEM HAS NOT BEEN ADDRESSED BY THE AUTHORITIES.
17. The authorities have still not ratified and implemented the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation. The authorities during the April 2018 meeting and again

under the current period under review reported that the Protocol was ratified in August 2016, but no proof was submitted in this regard.

- SUFFICIENT PROGRESS IN RESPECT OF Rec. 35 CANNOT BE NOTED until the above has been addressed.

***Recommendation 36 & SR. V (rated PC)***

**Mutual legal Assistance (MLA) (R. 36 and SR. V)**

18. The assessors had recommended that the DPP's Office establish effective mechanisms to deal with mutual legal assistance requests in a timely, constructive and effective manner and be able to properly account for the manner in which each one of the requests is handled. The authorities previously submitted that the number of officers dealing with MLA requests in the DPP's Office has been increased from two to four and they have also provided copies of the register where they keep statistics of such requests. Previously the authorities were commended for the efforts they are making to retain statistics through a register, but they were advised that the statistics kept can still be improved on by adding information, e.g. date of receipt for incoming requests, date of allocation to an officer, if outsourcing of information relating to the request was required when the request was dispatched and when the information was received, the quality of the information received, etc. The copy of DPP register submitted for the current period under review has improved, but there are still finer details of the information, particularly on MLA requests which are still missing. As previously stated, a holistic approach to maintaining of such information would help Reviewers/Assessors to determine whether the requests are being attended to in a timely, constructive and effective manner as required under the FATF Standards.

19. The recommendation by the assessors for the Criminal Matters (Mutual Assistance) Act to be amended to enable provision of mutual legal assistance to non-designated countries has not been attended to by the authorities. The authorities again indicate in *their* progress report for the period under review that section 3 of the Criminal Matters (Mutual



Assistance) Act empowers the Minister to designate any country through publication in the Gazette. We maintain that this provision does not meet the requirement by the assessors given that MLA requests due to their nature have to be attended to timeously and considering the kind of consultations which have to be made by the Minister before acceding to the request to designate such a country, the provisions of this section would certainly not meet this requirement. Furthermore, this provision should have been there at the time of Eswatini being assessed and the assessors were not satisfied that it adequately provided for provision of timely MLA to non-designated countries. May be the matter would have been approached differently, if the discretion to provide MLA in such cases was left to the Central Authority, this in some way would have ensured timeous responses to such requests. During the face-to-face meeting in April 2018 the authorities submitted that designation can be gazetted in a few hours by way of an extraordinary gazette. Authorities were asked to provide the Reviewers with legal provisions that provides for an extra ordinary gazetting process, before the next meeting, but this was not done.

20. The assessors had recommended that the authorities put measures in place to determine the time it takes to provide assistance on provisional measures including confiscation. The authorities have submitted that *“guidelines provide 90 days duration for assistance on provisional measures including confiscation”*.
21. However, during face-to-face meeting in April 2018, the authorities stated that the previous reference to 90 days’ turnaround period was not correct. They pointed out that Section 17 of MLA Act states that requesting country must provide the deadline/time by which a response should be given. The reviewers pointed out that the crux of the matter is the turnaround time within which an MLA request is responded on in practice; this should be a speedy or timeous process. Authorities must provide the reviewers with some information to show that MLA requests are dealt with timeously. This information was not provided during the previous period under review, nor the current period under review.

- SUFFICIENT PROGRESS CANNOT BE NOTED

## ESWATINI'S PROGRESS ON HIGH LEVEL MISSION REPORT

22. Due to the slow progress made by Eswatini a High Level Mission was authorized by the Council of Ministers to visit Eswatini, to convey to the Authorities the Council's concerns with the slow progress and to determine the challenges hampering the jurisdiction from addressing the deficiencies noted in the MER. The High Level Mission took place from 04-05 August 2016.
23. At the end of the visit the Mission and the Authorities agreed on the following immediate or short terms actions:
  1. Passing of the ML/TF (Prevention) Amendment Bill and AML Regulations to implement the UNSCR's 1267 & 1373 by August 2016,
  2. Passing the Prevention of Organised Crime Bill and the Witness Protection Bill by end of 2016,
  3. Appoint FIU Board by August 2016,
  4. Recruit critical staff, especially heads of key units, within 6 months of the Mission,
  5. Second competent staff to the FIU from other competent authorities for a period of minimum 2 years, and
  6. Obtain necessary tools for FIU to discharge its duties by August 2017.
24. Since the High Level Mission Report was adopted by the Council of ministers in September 2016, the Reviewers are obliged to follow up on the progress made in respect of the short term actions. Action items 1, 2, 3, 4 & 5 have now all been complied with.
25. During the previous period under review, the Swazi authorities raised an argument that was not raised before, neither orally nor in the 2 Progress Reports submitted ahead of this meeting.
26. At the time the Reviewers did not have the time to consider this argument with the necessary attention that it deserves, but with the enactment of the 2 outstanding Bills there is no need to consider this argument anymore.

## **CONCLUSION**

27. The Kingdom of Eswatini has made significant progress by amending its ML/TPF law in 2016 and the issuance of the Anti-Money Laundering (UNSCR) Regulations, 2016 which substantially addressed the deficiencies in the MER.
28. The passing and enactment of the POCA Act and Witness Protection Act addressed the remaining crucial deficiencies, as well as the only outstanding short-term goal of the High Level Mission Report.

## **RECOMMENDATIONS**

29. It is recommended that Eswatini exits reporting on recommendations of the HLM Report but continue implementing the other remaining recommendations of the HLM.
30. However, Eswatini should continue to report biannually and at the next meeting on the remaining outstanding key and core recommendations, as well as on the outstanding non-key and non-core recommendations.