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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Select Committee of Experts on the evaluation of anti-money laundering measures

MONEYVAL

SECOND ROUND EVALUATION REPORT ON ESTONIA

SUMMARY

1. A MONEYVAL team of examiners, accompanied by a colleague from the Financial Action Task Force (FATF), visited Estonia between 5 November 2002 and 8 November 2002, in the context of the second round of MONEYVAL evaluations.

2. At the time of the second on-site visit, the major sources of criminal proceeds were reported as tax fraud (including tax evasion), smuggling, theft and corruption. Money laundering is still considered to be largely an external threat, though domestic money laundering does occur.

3. The financial sector is developing quickly. The banks continue to be regarded as highly vulnerable to money laundering, though considerable progress in regulation, supervision and enforcement in this sector has taken place since the first report was adopted. The Estonian authorities are conscious of the potential vulnerability to money laundering within the banking sector arising from the proportion of non-resident accounts, which is rising (approximately 12% of deposits at the time of the second on-site visit).

4. Exchange offices, money remitters and real estate are all increasingly profitable businesses in Estonia, though at the time of the on-site visit, they remained without any supervisory oversight for anti-money laundering purposes.[2] The exchange houses have no licensing procedure in place to verify the 'fitness and properness' of the owners and managers of these institutions and that should be remedied.

5. The securities and insurance markets are growth areas and present money laundering vulnerabilities.

6. At the time of the on-site visit, there were no completed prosecutions for money laundering, though 2 investigations had resulted in the institution of criminal proceedings.[3]

7. Article 394 of the new Penal Code replaces the money laundering criminalisation in Article 148[15] of the previous Penal Code. It is an all-crimes offence. In general terms, the structure of the criminal offence has remained the same. The major changes involve a readjusting of the criminal penalties and the very welcome introduction of corporate criminal liability. Article 394 refers back to the definition of money laundering (in the MLPA), which remained as it was at the time of the first report.

8. At the time of the on-site visit, one of the main concerns of the first evaluation team in respect of the definition of money laundering still needed to be addressed, namely an amendment to the definition which ensured that money

[2] By amendments to the Money Laundering and Terrorism Financing Prevention Act (hereafter the MLPA), which came into force on 1 January 2004, exchange offices, money remitters and real estate businesses are subject to supervision by the FIU.

[3] In April 2004, 4 cases were before the courts for money laundering.

laundering charges could be brought in respect of acts in relation to property constituting indirect proceeds, as well as direct proceeds.[4]

9. The first evaluation team also had concerns about how wide the physical elements would prove to be in practice, and this evaluation team considered that an amendment, which clearly encompasses all the language of the existing international conventions on the physical aspects of the offence would be highly beneficial.[5]

10. There has been a shift in legal thinking since the first evaluation in that, then, it was considered that the prosecution of an author of the predicate offence for 'own proceeds', laundering was not possible, but now the Estonian authorities consider this is possible. However it has not been tested in practice. Given that, the examiners strongly advise that the issue is put beyond doubt in legislation.

11. On the mental element of the offence, earlier plans to criminalise negligent money laundering have been abandoned, which is regretted by the examiners. In a further review of the mental element, the examiners would encourage a reconsideration of this issue, together with consideration of a lesser mental element of subjective suspicion.

12. The proof, in money laundering prosecutions, of underlying predicate offences appears now to be problematic. While it appears to be accepted that an investigation for money laundering can be initiated in the absence of a conviction for the predicate crime, a conviction for the predicate crime apparently has to precede the end of the proceedings. The examiners advise that the Estonian authorities should consider bringing money laundering prosecutions where a conviction for the predicate offence is not available, on the basis of circumstantial or other evidence sufficient to establish the predicate offence to the criminal standard. Written guidance for prosecutors and investigators on minimum levels of evidence generally for money laundering prosecutions, as suggested by the first evaluation team, would be useful – to encourage a more proactive approach to money laundering investigation and prosecution.[6]

13. Tipping off has been de-criminalised (though administrative penalties are available) since the first evaluation and the current examiners believe that tipping off in all its forms would be more effectively sanctioned by criminal penalties.

14. The range of offences to which confiscation can be applied appears largely unchanged, and could be widened. Confiscation of laundered property or

[4] The new definition of money laundering in the 2004 amendments has removed the word 'direct' and refers to various acts done with property acquired as a result of a criminal offence.

[5] The definition of money laundering since 1 January 2004 covers the acquisition, possession, use conversion or transfer of or the performance of transactions or operations with property acquired (as a result of a criminal offence) or in return for participation in such an offence, the purpose or consequence of which is the concealment of the actual owner or the illicit origin of the property.

[6] The Estonian authorities have advised that it is now their practice to bring money laundering prosecutions in the absence of a conviction, but this has not been tested by the courts. Consideration should be given to putting this beyond doubt in legislation.

property of corresponding value (and income from laundered property) should be made mandatory in money laundering cases, and consideration should be given to making confiscation generally more mandatory in specific serious profit-generating offences. The examiners advise incorporating into Estonian law elements of practice which have proved of value elsewhere, including the reversal of the onus of proof regarding the lawful origin of alleged proceeds in particular serious profit-generating offences. The examiners had the impression that provisional measures were taken more frequently to secure civil actions rather than to ensure that proceeds were available (which could be subject to criminal confiscation). The Estonian authorities should review their provisional measures regime to ensure that it fully enables the freezing and seizing of all criminal proceeds swiftly. Comprehensive statistical data should also be kept in order to evaluate the effectiveness of the provisional measures regime.

15. On the preventive side, some significant progress has been made. The Financial Supervision Authority (FSA) became operational on 1 January 2002 as the single prudential supervisor. Licensing of credit and financial institutions where the FSA is involved appears generally sound. The FSA issues guidelines of a quasi-binding nature that provide guidance to subjects of financial supervision, but they cannot impose any sanctions for non-compliance with their guidelines. They do issue sanctions for non-compliance with relevant legislation. Equally, the examiners advise that clearer job descriptions for contact persons should be prepared, supplementing what is now in the law and emphasising their functional independence.

16. The level of implementation of anti-money laundering measures at the time of the on-site visit was higher in the banking sector than in the insurance and securities sector. Supervision of casinos needs intensifying and further awareness-raising of anti-money laundering issues is required in the real estate market.

17. General procedures for customer identification, including the required documents, are set out in the Money Laundering Prevention Act (which has been amended on several occasions since the first on-site visit) and in the Financial Supervisory Authority Guidelines. In special cases, financial institutions can create a customer relationship without direct contact. The procedures for acting in these special cases are governed only by internal procedural rules of financial institutions and clear rules should be elaborated as to the exceptional cases where it might be possible to make identification at a distance, and which provide the necessary procedures to be carried out speedily to confirm or verify the identification of the real owners and the ultimate beneficiaries. Particular attention should be paid in supervision to the extent to which ultimate beneficiaries are identified in the establishment of business relations in accordance with FSA Guidelines, and the extent to which 'Know Your Customer' Principles generally are being put into operation, particularly with regard to non-residents.

18. Professional participants in the securities market may hold nominee accounts. While the Estonian Central Register of Securities Act obliges owners of nominee accounts to disclose information in relation to the accounts to the supervisory authority or the Registrar of the Estonian Central Register of

Securities at their request, the evaluation team considers that, with such accounts in place, the transparency of the securities market is reduced and a re-examination of the rationale for such accounts is advised.

19. It is positive that the Strasbourg and Vienna Conventions have been ratified since the first round. There has, however, been little practice in respect of international co-operation at the judicial level. Assistance on provisional measures appears overly restrictive – particularly as it appears that, unless the property is required as evidence, applications for provisional measures depend on the existence of an extradition request. This contradicts the wide obligations under the Strasbourg Convention in this respect, and should be reviewed. The FIU, as a member of the Egmont Group, appears to be co-operating satisfactorily in information exchange with other FIUs.

20. The FIU (which, at the time of the on-site visit, had 6 personnel in place, including its head (on an establishment of 7) receives an increasing number of reports:
2000: 394
2001: 1829
2002 (up to 15 September 2002): 842.

21. The bulk of these reports are from banks – indeed 60% of these reports came from one bank. The lack of reporting from the insurance and security market at the time of the on-site visit needed urgent addressing.

22. It appeared to the examiners (and to other authorities with which the team met) that the resourcing of the FIU needed re-visiting. A large number of cases remained open in the FIU at the time of the on-site visit. More sophisticated performance indicators needed developing, from which resource bids for the FIU could be made. This is particularly important as, at the time of the on-site visit, there were discussions as to whether the FIU should take on some supervisory functions in respect of vulnerable obliged institutions, which have no formal supervisory authority.[7]

23. A priority for the FIU should be to send more reports to law enforcement more quickly. It appears that, in 2001, 42 cases were passed to law enforcement for further enquiries. The Economic Crime Department of the Central Criminal Police (ECD) investigates most money laundering cases. The results on the enforcement side achieved by the ECD (and other police investigative bodies), despite adequate police powers and apparently good internal co-operation, were very modest. Only 2 money laundering cases had reached the judicial phase and 10 were still under investigation. With only 3 dedicated anti-money laundering officers in ECD, their resources were spread too thinly if they are to be the principal anti-money laundering investigators. The Estonian authorities should ensure that there is adequate provision for investigators, properly trained in financial investigations and anti-money laundering issues, both within ECD and generally within specialist squads, so that real improvements can be achieved in money laundering detection, prosecution

[7] Under amendments to the Money Laundering and Terrorism Financing Prevention Act (hereafter the MLPA), which came into force on 1 January 2004, exchange offices, money remitters and real estate businesses are subject to supervision by the FIU. Since the on-site visit, the FIU now has 11 personnel in place.

(and related confiscations). Money laundering investigation should be generated both by the STR regime and the police themselves in major proceeds-generating offences (such as drugs, crimes perpetrated by organised crime and corruption). More prosecutions and confiscations should be pursued in major profit-generating crime beyond the tax predicate.

24. At the strategic level, the work of the Inter-Departmental Co-ordinating Committee is very important and it should create some key performance indicators for the system as a whole and, in the first instance, address the issue of why there have been so few prosecutions with a view to developing a more proactive repressive strategy.

25. In this way, Estonia can move towards the development of an effective anti-money laundering system.

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