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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures
(PC-R-EV)

FIRST MUTUAL EVALUATION REPORT ON CROATIA

SUMMARY

1. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Croatia between 14-17 September 1999.

2. The transition to a market economy was accompanied by new types of criminal activity, notably organised and economic crime. Organised crime groups do operate in Croatia and are involved in extortion, racketeering, theft and smuggling of motor vehicles, prostitution, smuggling of goods, human beings and weapons, counterfeiting as well as drug trafficking. Organised crime is thought to be involved in money laundering. Drug trafficking proceeds account for a considerable amount of illegal proceeds from foreign sources.

3. The Croatian economy is still heavily cash based. This, coupled with the existence of numerous banking and non-banking financial institutions, renders those institutions vulnerable at the placement stage of money laundering. In particular there is currently a lack of controls over bureaux de change, making them vulnerable to infiltration by organised crime. The real estate sector is vulnerable at the layering and integration stages.

4. Croatia has taken a number of important steps to combat money laundering. It ratified the UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) in 1990 and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) in 1997. Since 01.01.98 money laundering has been criminalised as a separate offence in Article 279 of the Criminal Code (with more than adequate penalties). This offence is in addition to a concealing/receiving offence in Article 236 of the Penal Code – though prosecutors need guidance on the distinction between the two offences. On the preventive side the laws are basically well conceived and in some areas very comprehensive. The Prevention of Money Laundering Act came into force on 01.11.97. It applies to a wide range of credit and financial institutions including insurance companies, bureaux de change and casinos, and Article 2(2) extends obligations *inter alia* to lawyers and accountants, real estate agents and dealers in some high value goods. The list of undertakings subject to anti-money laundering obligations goes beyond existing international standards. The law imposes a range of obligations which include: identification procedures; record keeping procedures; designation of compliance officers ("the responsible party"); establishing lists of indicators of suspicious transactions; provision of up to date and regular staff training on money laundering issues; reporting of suspicious transactions and large transactions where identification requirements apply (generally transactions in cash, foreign currency, notes of value and precious metals and gems which amount to 105,000 Kuna or more[1]). The Preventive strategy also resulted in the creation on 04.12.97 of the office of the Prevention of Money Laundering (AMLD), an administrative unit, responsible directly to the Minister of Finance. While laws are basically sound the area of most concern to the examiners is how the whole legal structure is being operationalised in practice.

5. While there have been 15 investigations for money laundering and 1 indictment preferred there have been no convictions yet under Article 279 of the Criminal Code. Croatia urgently needs some successful prosecutions and major confiscation orders.

6. Though Article 279 has considerable strengths (e.g. express provision for prosecutions where predicate offences are committed abroad and clear provision permitting prosecution of

[1] Approx. 30,000 DM.

defendants for both the predicate offence and money laundering) the examiners none-the-less consider that the relevant Croatian authorities together should review carefully the effectiveness of the criminal provisions, and in particular the reasons for the lack of money laundering convictions. Prosecutors need clear and consistent guidance on the minimum level of proof thought to be needed currently for a prosecution for money laundering to be commenced. The Ministry of Justice could be more active in this area.

7. The *actus reus* of Article 279(1) appears to limit the money laundering offence to acts that occur in banking or other economic operations. While the examiners were advised that the term "other economic operations" would be widely interpreted, the examiners had reservations and consider it would be preferable to use the broad language of the Strasbourg Convention. Predicate crimes can be any offences for which imprisonment for 5 years or more can be imposed (which includes fraud, acceptance of bribes and tax evasion). However some offences which may be relevant in the Croatian context, e.g. offering a bribe, are not covered. When reviewing the list of predicate offences consideration could be given to the "all crimes" approach of the Strasbourg Convention which may also make proof of the predicate crime element of the money laundering offence easier. Apart from offences of imprisonment of 5 years or more any other offence is considered to be a predicate if it is committed by a member of a group or criminal organisation, though proving this element of the offence does add a layer of complexity to the criminal offence. The *mens rea*, firstly, contemplates an actual knowledge standard though, again, the minimum level of proof needs articulating for prosecutors. It is positive that the offence can also be committed negligently, though the Croatian authorities might wish to consider whether a further mental element such as reasonable suspicion could be helpful (with lower penalties for its commission).

8. Careful consideration should be given to the introduction of corporate criminal liability, and the Croatian authorities should ensure that conspiracy to commit money laundering is covered.

9. The Croatian authorities advised that if the Article 279 offence was not made out it would still be possible to impose an administrative penalty for breach of the definition of money laundering in Article 1(2) of the Prevention of Money Laundering Act. The relationship between this and Article 279 needs articulating, though the priority should be to ensure that Article 279 is capable of proof.

10. The Croatian confiscation system is conviction based and does not allow for civil forfeiture. The system has elements of both property and value based systems. A wide range of complex provisions in two different legal Codes were pointed to by the Croatian authorities as constituting their regime of confiscation and provisional measures. Moreover differences of opinion between the Prosecution Service and the Ministry of Justice on some parts of their interpretation, coupled with a lack of practical experience, make it difficult to form a judgement about their overall effectiveness. All these provisions need properly testing in practice, and prosecutors would benefit from guidance on their effect.

11. In Article 279(6) there is special provision for laundered money or property to be forfeited. If this is a confiscation measure it appears limited to money and direct proceeds, and does not appear to allow for value confiscation. Its meaning and extent need to be reviewed and its ambit also tested in practice. The general confiscation regime is found firstly in Article 82 of the Criminal Code (confiscation of pecuniary benefit) and Article 80 (provisional seizure of instrumentalities). These provisions are essentially discretionary and strengthening the

mandatory element would undoubtedly increase their effectiveness. Whether indirect proceeds could be confiscated under Article 82 was subject to different opinions. These differences should be resolved as a matter of urgency in order to ensure that the confiscation of proceeds, as widely interpreted in the Strasbourg Convention, occurs in practice. Article 82 appears to allow for value confiscation, which is positive. In order that the regime is used more in practice some joint training of relevant prosecutors, investigating judges, and the Judiciary on the objectives and evidential requirements for an effective confiscation system fully in line with the Strasbourg convention would be of value. In particular consistent guidance is required as to the minimum level of proof that is thought to be necessary to pursue a confiscation order. The Ministry of Justice should also consider whether further modifications would assist the regime, including practices which have been of value in other jurisdictions, such as the reversal of the onus of proof, and/or application of the civil standard of proof. Prosecutors need to be more proactive in the use of the available provisional measures. While the examiners were assured that seizure of funds and the freezing of bank accounts were possible the examiners advise that consideration should be given to a legislative amendment which explicitly states what is capable of being the subject of provisional measures and when (particularly so far as provisional seizure/freezing by the Police at an early stage of enquiries is concerned). Additionally the Office's power to postpone transactions should be reviewed and should be at least 24 hours.

12. Generally the Croatian rules on international co-operation, including mutual legal assistance, are soundly based though experience is limited. A positive feature is that legal assistance can be provided where the money laundering offence abroad would not be an offence in Croatia, and execution of foreign confiscation orders and execution of provisional measures on behalf of foreign states are possible. The AMLD can exchange information with anti-money laundering authorities of foreign states regardless of whether they are judicial or police type units, which also is a positive feature.

13. On the financial side, the present customer identification requirements so far as transactions are concerned could be strengthened by extending the obligations in Articles 4(2) and 4(3) when conducting one-off transactions also to those of a non-cash nature at or above the prescribed threshold. It appears there is no legal obligation to identify the underlying beneficial owners of a company where an account is opened or transaction conducted. Beneficial owners of corporate accounts should be identified.

14. The Croatian National Bank, as bank supervisor, needs to develop special audit programmes for more thoroughly testing the anti-money laundering system put in place by banks. Beyond this, large areas of the non-banking financial sector are largely unsupervised for anti-money laundering purposes. This is a particular vulnerability for Croatia. A clearer structure needs to be developed in the non-banking financial sector for regular anti-money laundering supervision by clearly assigned supervisory authorities. Guidance notes need to be developed by those supervisory authorities in each sector which are specific to the operations which they supervise. Urgent attention needs to be given, in particular, to the bureaux de change: There is no regime of licensing, authorisation or registration. An effective system should be introduced whereby the existence of all persons performing exchange transactions is known and consideration should be given to a formal authorisation system and effective monitoring mechanisms should be established.

15. The issue of feedback needs addressing generally.

16. Since its inception AMLD has received 364 suspicious transaction reports, almost exclusively from the Agency for Financial Transactions and banks. 14 STRs have been passed to the prosecutor and the Police. Of the 110,000 cash transaction reports 27 have been examined by AMLD, but none have been sent to law enforcement. While the AMLD seems to be working well investigations and prosecutions seem to be taking a very long time. The Croatian authorities need to examine whether parts of the law enforcement procedure are slowing the whole process down unnecessarily. The Croatian authorities should also examine whether there is not too much reliance placed on the STR reporting regime: A more proactive money laundering investigatory approach is needed by the Criminal Police and greater involvement of the Customs Service should be considered.

17. Greater co-ordination is needed at the working level between institutions involved in anti-money laundering. Beyond this there is a need for co-ordination of thinking at the strategic level, and consideration should be given to a body, drawn from all the main players in the anti-money laundering regime chaired at a suitably senior level, to review periodically how the system as a whole is operating in practice.

18. By taking stock now the Croatian authorities can build on their basically sound legal structure and make their system a fully operational one.

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