Strasbourg, 29 November 2006

MONEYVAL (2006)12 Summ
English

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

SELECT COMMITTEE OF EXPERTS
ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT ON LITHUANIA [1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Summary

[1] Adopted by MONEYVAL at its 21st Plenary meeting (Strasbourg, 27 November – 1 December 2006)

Executive Summary

Lithuania possesses a legal and institutional AML/CFT system which is quite sound on paper. Various legal or practical adjustments are needed inevitably, given the numerous requirements of the new methodology, in particular with regard to financial and other institutions subjected to the preventive mechanisms. For the time being, the few measurable results remain modest and the examiners could not conclude that the preventive and repressive mechanisms do produce all the expected results.

1. Background Information

The Lithuanian economy experiences a constant growth. The country remains affected by corruption and organised crime activities.

The Lithuanian authorities indicated that there have been no significant changes, since the second evaluation round, concerning the main sources of criminal proceeds. These are still trafficking in drugs, smuggling, production of counterfeit money and securities, trafficking in human beings, car theft, extortion of property, crimes related to VAT (fraud, VAT embezzlement).

VAT fraud has become a particular area of concern for the Financian Crimes Investigation Service (FCIS) since 1999. A special group was created within the FCIS, the work of which has shown that the damage to the state budget amounted to millions of Litas and that "VAT embezzlement" is mostly common in relation with large supply of goods (timber, oil products, metals), but also services. The most common scheme involves fictitious companies, falsifying accounting documents, carrousels type operations etc. The Lithuanian authorities also referred to this scheme as a way to launder assets.

The Lithuanian (criminal) police do not carry out assessments on the financial importance of criminal activities, including of organised crime groups. They acknowledge, on the basis of data for 2004, the existence of 10 well structured organized criminal groups, and 78 groups which are less structured. Whilst the vast majority of them are involved in racket, thefts and drugs, three groups have specialised in money laundering. Different "*obschaks*" (criminal fund) are present in Lithuania, which allow criminal groups to handle money in cash without using the financial system.

There was little information available on money laundering trends and techniques apart from the scheme described in relation with VAT fraud. At the time of the on site visit, there were at least 5 cases brought to court for money laundering as a result of FCIS' work, all of which involved VAT-related schemes. The first final conviction for money laundering was obtained in 2005.

The Lithuanian authorities indicated that they have had no financing of terrorism case so far (apart from the assets of one suspect appearing on the UN/EU lists, which have been frozen) and they consider the country's financial and other operators not exposed to, or involved in financing of terrorism.

2. Legal Systems and Related Institutional Measures

The "Law on Prevention of Money Laundering" (hereinafter AML Law) was adopted in June 1997 and last revised in November 2003 (entered into force on 1 January 2004), in the light of the 2nd EU Directive on money laundering. It was also, to some extent, extended to financing of terrorism.

Money laundering is criminalised in the Penal Code under Article 216 on *Legalisation of money or property acquired in a criminal way* and Article 189 on *Acquirement or realisation of property obtained from criminal activity*. None of these definitions provide for a wording broad and systematic enough to cover the various material elements of the international definitions. A third money laundering definition, provided for in the AML Law, is more comprehensive but the examiners were concerned about the current lack of consistency and suggested to unify the penal law provisions, in line with the administrative definition. Lithuania has adopted the all crime approach and with the first conviction for money laundering, it has become accepted that money laundering is an autonomous offence.

Provisions for confiscation and temporary measures are quite sound. Overall statistics are not available, which would allow to conclude that the authorities are targeting the proceeds of crime (whatever the criminal activity) to deprive the criminals from their benefits.

Financing of terrorism is criminalised under Article 250 para.5 and 6 of the Penal Code on *Act of terrorism* and covers only the support provided to a group involved in terrorist activities. Lithuania relies to a large extent on the (directly applicable) EU regulations to implement the international anti-terrorist sanctions. The examiners had some doubts as to whether these measures are sufficiently known within the country. So far, only one FT-related report was made to the FIU and temporary measures have been applied in respect of the listed person concerned.

The FCIS, which has responsibility for the investigation of a wider series of economic offences, is formally designated to act as the Lithuanian Financial Intelligence Unit (FIU). It is a member of the Egmont group. One of its structures, the Money Laundering Prevention Division (MLPD), is centralising and analysing the reports on suspicious transactions and those above a certain threshold. The evaluators found that the MLPD should be given more autonomy and own powers, and that the regulatory framework applicable to the use of information collected should be clarified.

The examiners found that there is over-reliance on the FCIS as regards AML responsibilities and the police are not looking at possible money laundering schemes as part of its own work. The effectiveness of the police and prosecution work needs to be reviewed since the current structure and characteristics of criminal activities indicate no real improvements in recent years.

Lithuania has a system in place for cross-border declaration – at least at external EU border - but it is limited to cash. Generally speaking, the Customs and Border Guard services need to be more involved in AML/CFT efforts.

3. Preventive Measures – Financial Institutions

Customer identification procedures are generally covered through articles 10 and 11 of the AML Law. Some key elements of the CDD requirements are not provided through primary/secondary legislation and no reference is made to full CDD measures except for identification procedures. Restrictions exist in relation to the identification of beneficial owners of legal persons. There is no risk based approach.

Correspondent banking relationships are adequately covered by the banking regulations but there are no special regulations on Politically exposed persons and threats from new or developing technologies are mostly addressed in the banking sector.

A narrow interpretation of paragraph 1 of Article 10 of the AML Law is that it is not permissible in Lithuania for obliged entities to rely on intermediaries or third parties to perform the client identification. By virtue of other regulations, introduced business is allowed only to a limited extent in the insurance sector and third party reliance may be directly allowed in relation to non face-to-face business transactions. The evaluators found that the concept of the customer/agent relationship in the identification process needs to be re-addressed.

The issue of the lifting of confidentiality in the financial sector such that it facilitates the implementation of the FATF Recommendations is treated differently under the respective laws of the Republic of Lithuania. Although the "safe harbour" provision of Article 16(4) of the AML Law gives the necessary protection for the lifting of confidentiality, yet the different ways that the issue is treated under the different laws for the industry raises some concerns related to consistency. Furthermore, the lifting of confidentiality for the regulatory authorities, with the exception of the Insurance Supervisory Commission, is meant to address prudential information i.e. information on the soundness of an institution, rather than AML related information.

Record keeping procedures for the financial sector are adequately covered through the provisions of Article 12 of the AML Law. The comprehensive data that is required to be kept on the Register of Operations is adequate and sufficient for the authorities to reconstruct individual transactions for evidence in prosecutions. The provisions of SR VII on wire-transfers are not directly addressed but various pieces of legislation seem to be relevant to different aspects. The Lithuanian authorities acknowledge this and expect to fully comply with SR VII once the relevant EU Regulation is adopted.

The requirement for financial institutions to pay special attention to all complex, unusual large transactions, and all unusual patterns of transactions, that have no apparent economic or visible lawful purpose is partially addressed through the STR criteria in Government Resolution N°929 but there is no specific obligation to examine the background of large, complex transactions and to keep written records accordingly.

The AML Law is silent on the issue of business relationships and transactions with persons, including companies and financial institution, from countries which do not or insufficiently apply AML/CFT measures. The issue is addressed in Resolution 183 of the Bank of Lithuania but it is restricted to customers of credit institutions and there is no specific obligation to examine the background of large, complex transactions.

Under the AML Law, obliged entities are required to report suspicious transactions (article 9) and transactions above certain thresholds (article 13). The obligation to report does not clearly address reporting of attempted transactions or reasonable grounds to suspect money laundering. In the case of financial institutions it is limited to financial operations. Furthermore, there is no direct obligation to report financial operations suspected to be linked or related to the financing of terrorism.

Protection for disclosure and the prohibition of tipping off are provided for in article 16 of the AML Law. Feedback to reporting entities is not a legal requirement for the FCIS but it does take place in practice.

The legal obligation for financial institution to develop AML/CFT internal programmes exists through Article 15 of the AML Law. The extent to which such programmes are defined and established, however, varies. The relevant authorities and the industry have confirmed that appropriate procedures are in place. The major institutions have established comprehensive internal controls which include the appointment of compliance officers, the internal audit function and training requirements. Such procedures are examined by the competent authorities in the course of their supervisory work. No statistics on training have however been provided. The applicability of internal control procedures to cross-border branches and subsidiaries is mostly addressed through supervisory and prudential requirements as could be applied for AML/CFT issues. Consequently, most of the essential criteria are not met. On a materiality basis, the Lithuanian authorities have informed that no financial institution registered in Lithuania has established cross-border branches or subsidiaries, except for representative offices, which do not undertake financial activities. However, if this situation were to change, the obligations necessary to comply with Recommendation 22 would not be in place.

Resolution 183 of the Bank of Lithuania and the provisions of the Law on Banks adequately cover the prohibition for the establishment and use of shell banks and banks in Lithuania seem very aware of the dangers of establishing correspondent relationships with shell banks, even though the industry puts more focus on reputation risks.

The prudential regulatory and supervisory regime for the financial sector in the Republic of Lithuania in general appears to be adequate, efficient and complies with acceptable international standards. This is particularly true for the banking sector. Market entry conditions are strict, requiring appropriate due diligence procedures on promoters, shareholders and senior management. Statistics confirm an ongoing supervisory process with the relevant supervisory authorities being adequately resourced to undertake examinations and fulfil their legal responsibilities. However, the evaluators found that some improvements are needed as regards notably the system of sanctions, the coordination of supervision between the FCIS and financial regulators to ensure guidance is consistent and targeted AML/CFT controls are more systematic.

Money and value transfer services do not raise particular problems, with the exception of those offered by post offices that need to be better controlled.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

Under the AML Law (article 2(3)), the following activities are considered as DNFBP: 1) auditors; 2) accounting undertakings or undertakings providing tax advice services; 3) notaries and persons licensed to perform notarial acts; 4) lawyers and lawyers assistants (when they engage in certain types of services); 5) persons engaged in economic-commercial activities related to trade in real estate, precious stones, precious metals, works of art, antiques and other property, the value of which is in excess of LTL 50,000 (Euro 15,000) or an equivalent sum in foreign currency where payment is made in cash; 6) gaming companies; 7) providers of postal services who provide services of domestic and international money transfers. The term "other entities" under Article 2 also includes three other categories, i.e: insurance undertakings and insurance broker companies; investment companies with variable capital; management companies.

Regarding the CDD process, the strengths and weaknesses for the financial sector apply also for DNFBPs. Additional weaknesses or shortcomings identified include the timing and verification of the identification process, in particular in the gaming sector, and the basis of the applicability of the identification procedures in relation to the threshold limit. Like for the financial sector, PEPs are not addressed and there is a complete lack of awareness of the risks involved, increased awareness is needed regarding threats from new or developing technologies, the industry needs to be more aware of the threats of money laundering arising out of large complex transactions that may not have economic reasons. Record keeping procedures appear to be globally adequate.

With some exceptions, DNFBPs are in principle subject to the same reporting obligations as financial institutions. Concerns mainly arise out of the fact that the main sectors – legal, notarial, accountancy and gaming – appear to be reluctant to be totally on-board with the programme of the Lithuanian Government in implementing the internationally accepted AML/CFT standards in Lithuania. The number of exceptions in the Law itself for the legal profession in particular is not conducive to remove the reluctance of this profession to acknowledge the important role that it can play in carrying forward the government policies in this regard. To a lesser extent, this may also be true of the gaming sector which believes that in implementing the AML measures it may be losing business. Implementing the full AML obligations to the entire sector of the DNFBPs in particular in sectors, such as real estate and persons dealing in precious specific goods, may prove difficult particularly because the Law does not provide for a risk-based approach.

In principle all DNFBPs are subject to ongoing regulatory and supervisory monitoring, although apparently to different extent due to the subjectivity of the risk based approach of the FCIS. The supervisory regime applied by the FCIS to DNFBP is quite low, guidance remains inconsistent or sometimes absent (for lawyers).

The Lithuanian Authorities acknowledge that non-financial businesses and professions other than those already captured by the AML Law could be at risk of being misused for money laundering activities. Indeed the AML Law has already extended the definition of dealers in precious items beyond that of the FATF.

5. Legal Persons and Arrangements & Non-Profit Organisations

The Lithuanian authorities advised that the concept of trusts is unknown in Lithuania.

The unavailability of information and data on current shareholders in the Register of Legal Persons poses some serious concerns. Financial institutions and other entities cannot complete the identification and verification process satisfactorily when establishing relationships with corporate bodies. Competent authorities may not be able to fulfil their responsibilities in investigating or co-operating both domestically and internationally as they do not have the means of verifying ownership of a legal person.

Non-profit organisations are governed by the Law on Charity and Sponsorship. NPOs have to be registered in the same way as private companies, with the register of legal persons. In addition, they have to register as sponsorship recipient (article 15 of the Law). The current oversight procedures for NPOs are focused on tax matters and do not take into consideration CFT.

6. National and International Co-operation

An AML Coordination Working Group was created some years ago and reactivated in 2004. The evaluators found that its role needs to be fostered and coordination made more effective.

The Republic of Lithuania has ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 1988), the United Nations Convention against Transnational Organised Crime (Palermo, 2000), the United Nations Convention for the Suppression of the Financing of Terrorism (1999), and the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990). The key requirements appear to be covered in domestic legislation. Some weaknesses have been identified earlier in this summary. As regards the implementation of the relevant UN Security Council Resolutions, uncertainties remain as to whether all efforts have been made to ensure that these are adequately known and implemented. Results appear to be very modest for the time being.

In principle, Lithuania is able to cooperate widely in the field of mutual legal assistance in criminal matters and extradition. Statistics are insufficient to assess the effectiveness in practice. There are no arrangements for coordinated seizure and confiscation actions with other countries.

FCIS can and does cooperate internationally (e.g. through the Egmont) but its ability to exchange information needs to be clarified in Law. The ability of financial supervisors and the Gaming Control Commission to cooperate internationally and exchange information in AML/CFT matters needs to be specified as well.

The State Security Department remains vigilant on CFT issues, although the exact work in the international context is difficult to assess.

7. Other Issues

The team found that legal texts in Lithuania often lack precision, in particular where they refer to provisions of other texts without naming them.