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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 ESTONIA

SUMMARY

Views expressed do not represent official views of the Commission of the European Communities.

1. A PC-R-EV team of evaluators, accompanied by colleagues from the Financial Action Task Force (FATF), visited Tallinn between 18-21 January 2000.

2. The Republic of Estonia is bordered to the east by the Russian Federation and to the south by Latvia. Its extensive Russian border and regular import of Russian currency makes it vulnerable to cash smuggling and money laundering. Its proximity to Russia and Scandinavia also makes it a transit country and vulnerable to trafficking of drugs.

3. Crime is increasing in Estonia: In 1999 there was an 11% rise, mostly in crimes against property and drugs offences. Organised crime groups are known to operate in Estonia and include persons of various national origins, including Russians, Chechens and Azerbaijans. These groups are thought to be involved in drug trafficking, theft, robbery, prostitution and traffic in contraband. Organised crime groups are also thought to be involved in money laundering – which is considered principally to be an external threat. The banking sector is currently thought to be the most frequent money laundering target at the placement stage. However the Estonian authorities recognise the real vulnerability to cash money laundering of the 160 bureaux de change (all of which are unsupervised) and of the 130 casinos.

4. The main focus of Estonian anti-money laundering policy is currently one based on prevention. To this end the Money Laundering Prevention Act (MLPA) and necessary amendments to the Criminal Code and Administrative Offences Act entered into force on 01.07.99. Therefore the MLPA had only been in force for six months at the time of the on-site visit. Developments in the six months before the visit included: the creation of a small FIU, the introduction of reporting obligations to the FIU and the creation of specific offences relating to money laundering. At the time of the on-site visit the Estonian authorities were conscious of many of the deficiencies of the existing law and plans were in place to remedy several of them.

5. Estonia signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) on 25.06.99, and the draft law to ratify the Strasbourg Convention was being debated in the Parliament during the on-site visit[1]. Similarly amendments were being made to the Criminal Code and Code of Criminal Procedure at the time of the on-site visit[2]. Estonia has not ratified the 1988 UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention)[3].

6. The definition of money laundering is provided in Section 2 of the MLPA as "the conversion or transfer of, or the performance of legal acts with property acquired as a direct result of an act punishable pursuant to the criminal procedure, the purpose or consequence of which is the concealment of the actual owner or the illicit origin of the property". Money laundering is penalised by virtue of Article 148 [15] with basic penalties of up to 4 years imprisonment and up to either 7 or 10 years, where there are aggravating features. The offence has the merit of not

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1 The evaluators have since been advised that this was adopted on 08.03.2000 and will enter into force on 01.09.2000.

2 A number of these were brought into force on 17.04.2000.

3 The evaluators have been advised that since the on-site visit an act on the accession to the Vienna Convention was adopted by the Estonian Parliament on 31.05.2000.

being tied to any particular predicate crime, and it is helpful that convictions for the predicate offence do not appear to be required. However it is necessary for the Estonian authorities to agree a common approach to the level of proof required for the underlying criminality. Though it is not expressly stated in the law, the Estonian authorities thought that they could exercise jurisdiction for money laundering where the predicate offence is committed abroad (and that it could also be proved by circumstantial evidence). That said, the examiners consider that the present definition of money laundering is too restrictive and needs widening both for the pursuit of domestic prosecutions and for international co-operation purposes. An amendment which clearly encompasses all the language of the existing international conventions on the physical aspects of the offence would be highly beneficial. "Own proceeds" laundering is not covered and it is recommended that provision is made for this. Consideration should also be given to Article 18 of the Criminal Code to ensure it is not an obstacle to money laundering prosecutions. The mental element of the offence needs revisiting – particularly consideration should be given to the introduction of the concept of negligent money laundering, as envisaged by the Strasbourg Convention.

7. The active consideration of corporate criminal liability in the money laundering context (and generally) is encouraged.

8. The Estonian authorities pointed to Article 33 of the Criminal Code as the relevant general provision currently dealing with confiscation. The confiscation system is based on a criminal conviction and does not allow for civil forfeiture. The current regime is too restrictive. It is property based and no parts of it, at the time of the on-site visit, were value based. It is, and is planned to remain, basically a discretionary system. The list of offences for which confiscation is possible is, at present, very limited. A domestic confiscation regime which, unlike the present position, ensures that both direct and indirect proceeds (as widely defined in the Strasbourg Convention) are potentially confiscatable should be put in place. The regime should increase the mandatory element and be available in a wider range of offences and be incapable of frustration by transfer to third parties including family members. Provision should be made for value confiscation[4]. The Estonian authorities should also seriously consider introducing appropriate provisions reversing the onus of proof so the prosecution would not have the burden of proving which property is the proceeds of the offence. Consideration could be given also to invoking the civil standard of evidence when establishing the lawful origin of alleged proceeds. The current provisional measures regime is not really geared towards preserving assets likely to be confiscated as proceeds of crime. An ability to take such provisional measures domestically and on behalf of foreign states, and to be able to provide a wide range of investigative assistance, is necessary.

9. On international co-operation, the Estonian inability to provide judicial legal assistance to enforce foreign confiscation judgements of any type[5] and the inability to take provisional measures including the freezing of accounts are serious deficiencies which need urgent attention. It is vital that Estonia proceeds swiftly with the ratification of the Strasbourg[6] and Vienna Conventions. It is however very positive that the FIU can exchange intelligence

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4 In the amendments referred to at footnote 2 the evaluators have been advised that provision has been made for value confiscation.

5 The examiners have been advised that the Criminal Code and Code of Criminal Procedure Amendment Act which entered into force on 17.4.2000 now makes enforcement of foreign judgements possible.

6 See Footnote 1.

information with all other types of FIU and their application to join the Egmont Group is encouraged[7].

10. On the financial side formal laws and Regulations are generally in place.

11. According to Article 15 of the MLPA it is compulsory for credit and financial institutions and all non-financial entities subject to the MLPA where they identify a situation which might indicate money laundering to notify the FIU promptly and inform them of all suspicious and unusual transactions.

12. It is positive that a large number of institutions have been considered for the purposes of anti-money laundering obligations. That said, the legal formula for deciding whether an undertaking has obligations under the Act is complex and gives rise to considerable ambiguity. It would assist the anti-money laundering regime and aid clarity if the formula for deciding which financial institutions, and particularly non-financial undertakings, are caught by the act is reconsidered. Casinos should have clear anti-money laundering obligations on them and a clear supervisory body with responsibility for anti-money laundering compliance inspection.

13. The bureaux de change and the credit unions also need an active supervisory authority. Both these areas are dangerously unprotected at present. The Central Bank should start thorough anti-money laundering compliance inspection quickly. All the supervisory authorities need to be familiar with the level of STR reporting in their sectors and ensure that internal anti-money laundering procedures are in place including compliance officers as envisaged by FATF Recommendation 19, and that anti-money laundering training is taking place in the supervised undertakings. Central guidance notes need drawing up for all relevant sectors by the supervisory authorities, co-ordinated as necessary by the FIU, which include warning signs and indicators of money laundering in the different sectors (based on local experience).

14. The obligation to determine the identity of parties on the basis of reliable documents when establishing business relations and performing large transactions, in accordance with FATF Recommendation 10, appears largely to be met so far as credit institutions are concerned. Customer identification when establishing business relations needs addressing, however, where financial institutions are not covered by the Central Bank's Decree N°20. The MLPA places clear obligations on credit and financial institutions, where they suspect a person is acting on behalf of third parties, to obtain information as to the real identity of the person involved, but more guidance is required on how this can be achieved in practice.

15. The number of STR disclosures was modest at the time of the on-site visit (22 and only from banks – and mostly from one bank). The FIU, together with the supervisory authorities, need to monitor the spread of reporting and make contact where there is apparent underreporting. The FIU's step-by-step outreach strategy is welcomed by the evaluators. They need adequately resourcing for this work. Arrangements should be also made for appropriate feedback on a regular basis to the financial sector.

16. At the time of the on-site visit 3 cases had been passed to the police by the FIU and investigation work was ongoing. No one had been charged with money laundering. The law

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[7] The Estonian FIU has been admitted to the Egmont Group.

enforcement authorities should also consider the merits of a more proactive law enforcement policy which looks for a money laundering nexus as a natural progression of any serious crime to ensure that money laundering investigations do not depend on the STR system alone.

17. The Customs authorities should become more actively engaged with anti-money laundering issues.

18. The Ministry of Internal Affairs has the major co-ordinating role. The examiners consider there is merit in developing a permanent co-ordination body, chaired at a suitably senior level, with the capacity and authority to ensure that necessary changes, where identified, take place and which periodically can review objectively how the system as a whole is operating in practice.

19. By addressing the issues highlighted by the examiners, Estonia should be able to move from the present position, where formal measures are in place in some areas, to a position where it can develop a fully operational system which better meets all the relevant international standards in all areas.

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