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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 LITHUANIA*

# *SUMMARY*

[1] Adopted at the 12th Plenary meeting of Committee MONEYVAL (Strasbourg, 30 June - 4 July 2003).

1. Lithuania was the 8th Moneyval member state whose anti-money laundering regime was assessed in the framework of the second round of mutual evaluations conducted by the Committee. A Moneyval team of examiners, accompanied by a colleague from the Financial Action Task Force (FATF), visited the Vilnius from 25 to 28 March 2002. The objectives of the second evaluation round were to take stock of developments since the first round evaluation, to assess the effectiveness of the anti-money laundering regime in practice and to examine the situation in those areas which had not been covered during the first round evaluation.

2. The crime situation has not changed significantly since the first round evaluation. Drug trafficking, fraud, contraband, smuggling and financial crimes are still considered to be the main sources of illegal proceeds to be laundered. Financial crimes often have an international character and their number is increasing. Offshore companies are often involved in economic crimes and usually have an account in Lithuania used to transfer money abroad.

3. Organised crime is believed to be involved in committing predicate offences and also in money laundering operations. The current economic situation seems to provide favourable conditions for the influence of organised crime in several sectors of the economy, such as the (illegal) trading in highly taxed commodities. The use of offshore company accounts and the fact that lawyers subject to a secrecy requirements are at times involved as agents or nominees in the management of these offshore structures adds a further layer of complexity to money laundering investigations.

4. Since the first round, the Lithuanian authorities have continued updating and expanding their anti-money laundering legal framework in accordance with their international commitments and domestic policy. Thus, the Law on the Prevention of Money Laundering has been extended to entities organising games (e.g. casinos) so that these entities are now obliged to identify clients under certain conditions, keep records and report transactions to the Tax Police Department (TPD). Moreover, at the time of the on-site visit several legislative amendments were under preparation, including a draft Bill amending the Law on the Prevention of Money Laundering, and the entry into force of the new Criminal Code and new Code of Criminal Procedure was pending. These new Codes will extend the scope of corporate criminal liability, amend the provision on money laundering and revise the regime of confiscation and provisional measures. The Lithuanian authorities have also adopted a Programme for the Prevention of Organised Crime and Corruption which identifies measures to improve the prevention regime of money laundering.

5. Since the first round Lithuania has established the Gaming Control Authority for supervising the gaming sector, as well as a Working Group to ensure coordination between the institutions responsible for the prevention of money laundering and the coordination and implementation of the Government's policy in this area. Furthermore, in 2001 the Government approved a policy plan for the years 2001-2004 on the reorganisation of the law enforcement sector. Accordingly, the Government submitted to Parliament a draft Law transforming the TPD into a new body called the "Financial Crime Investigation Service", which was passed with draft consequential amendments to related laws in March 2002.

6. With regard to the money laundering offence (Article 326 of the Criminal Code), there has not been any change since the first round evaluation. In terms of practical application, there have been 9 money laundering cases prosecuted since 1999 under Article 326, but all these cases have either been terminated without indictment or suspended. To date no convictions were yet obtained for money laundering. This situation may be explained by the inability to

obtain the evidence necessary for successful prosecution, given that the predicate offences or other parts of money laundering offences often take place abroad, usually in offshore jurisdictions, and the procedures for legal assistance take too long in many countries if there is cooperation at all. The Lithuanian authorities consider that due to such lack of evidence most money laundering prosecutions are bound to fail and they prefer to prosecute the underlying (financial) crimes or the offence of receiving stolen goods. Money laundering by negligence and the failure to report suspicions of money laundering are not criminalised under the current regime.

7. The new Criminal Code, which was due to enter into force on 1 May 2003, amended the definition of money laundering in order to cure several shortcomings of the old offence, such as the limitation of the types of proceeds that can be laundered to monetary means, the lack of explicit criminalisation of self-laundering and the practical difficulty of applying the money laundering offence to corporate entities for lack of specific penalties applicable to them. Notwithstanding these changes, the evaluation team recommended that the definition of money laundering be brought fully in line with the international standards, including the possibility of inferring knowledge from objective, factual circumstances and considering the criminalisation of negligent laundering.

8. Corporate criminal liability was introduced in 2002 by amending Article 11 (1) of the old Criminal Code and has also been provided for under Article 20 of the new Criminal Code in similar terms. The provision has not yet been applied in practice, but it is broadly conform to international standards. The evaluation team recommended in this respect that corporate entities be prosecuted systematically in money laundering cases where a connection exists with such entities.

9. In the legal framework of provisional measures and confiscation, no changes occurred since the first round. The Criminal Code (Article 35) still provides for mandatory confiscation, upon conviction, of all or part of the convicted person's property in relation to a large number of criminal offences listed by the provision. Confiscation is still an additional penalty, which therefore supposes a main criminal sanction. At the time of the on-site visit no specific data concerning the application of provisional measures and confiscation orders relating to the proceeds of crime were made available to the examiners, and authorities admitted that their data-collection system needs to improve. There has been a single case of money laundering since the first round in which provisional measures were taken, but no confiscation order was so far issued. The new Criminal Code will bring certain changes in the confiscation regime as well, in particular change its nature from a "punishment" to a "measure". These changes are welcomed by the evaluation team.

10. Since the first evaluation, Lithuania signed treaties on mutual legal assistance in criminal matters with the United States of America, Kazakhstan and China, as well as a bilateral cooperation agreement with Germany to combat organised crime, terrorism and other serious offences. The number of formal requests relating to money laundering matters made by or to Lithuania is very low. The authorities referred to some problems with the authentication of foreign evicence, which the evaluation team suggested to solve by a clear legal provision in the Code of Criminal Procedure. Moreover, the authorities complained about the lack of cooperation from jurisdictions with which they have no bilateral treaty relationship, particularly if these jurisdictions are considered as offshore jurisdictions. There have so far been no requests concerning external confiscation orders made to or by Lithuania. A small number of formal requests for assistance with provisional orders (freezing) made to Lithuania have been fulfilled. On the basis of the mutual assistance treaties concluded with the United States of America and China, the Government of Lithuania has the authority to share

confiscated assets with other governments whose assistance contributed to the success of confiscation action. So far there were no actual cases of sharing assets under these treaties.

11. Since the first round, the Lithuanian FIU has joined the Egmont Group (in 1999), and signed seven bilateral memoranda of understanding with foreign FIUs on exchange of financial intelligence or information related to money laundering. The examiners noted that the volume of exchange of information on an FIU-to-FIU basis is steadily increasing from year to year, which they welcomed. The number of requests sent is much smaller.

12. Lithuania's anti-money laundering framework is based on the Law on the Prevention of Money Laundering, which is regularly updated, as well as on various resolutions of the Government addressing specific issues in the Law (e.g. on the procedure of client identification and submission of information on monetary operations, the criteria for identifying suspicious transactions, keeping of a register of monetary transactions, etc.) as well as on Methodological Recommendations of the Board of the Bank of Lithuania, which are regularly updated and provided to credit institutions with the aim of assisting them in properly implementing legal requirements for the prevention of money laundering in their operations. Similar guidance was issued in March 2002 to the securities sector by the TPD. Despite this sound legal framework, the evaluation team expressed some concern about the lack of its implementation across the financial sector, due to problems of coordination and supervision.

13. In fact, the supervisory regime of the anti-money laundering legislation remains ambiguous. The FIU is involved in the process of supervision, but this appears to be case-related *ad hoc* inspection in lieu of supervision. The examiners were informed that as a result of this inspection activity of the TPD, 4 banks were fined for non-compliance with the Law and 45 cases of infringement of related laws were also detected. The Bank of Lithuania focuses on prudential supervision and its on-site inspections are not specifically targeted at ensuring compliance with the anti-money laundering legislation. It also conducts "fit and proper" tests on the directors and management of banks and approves their appointment. The evaluation team considers that this supervisory regime needs strengthening and recommended that a single or main supervisor be appointeed as a matter of urgency.

14. The "know-your-customer" principle was introduced by Article 9 of the Law on the Prevention of Money Laundering, which requires that credit and financial institutions identify customers if the monetary operations carried out by the customer involve a sum in excess of LTL 50,000 or equivalent in foreign currency and that this identification take place prior to the start of the monetary operation. Identification requirements do not oblige credit and financial institutions to take additional measures in case of non face-to-face identification. It is therefore possible to open accounts and establish a business relationship without such contact. The evaluation team recommended enhanced due diligence measures in this regard and that originator and beneficiary information be required for wire-transfers.

15. While no changes have taken place in the system of the reporting of suspicious and/or unusual transactions since the first round, the number of suspicious transactions, which in general seems rather low, decreased over the years, e.g. those filed by financial and credit institutions. In the period 1998-2001 the TPD received 222 suspicious transactions, in contrast to over 1.5 million reports on monetary transactions above the reporting threshold. The usefulness of this reporting regime is unclear to the evaluation team, as it seems that most of the money laundering investigations were not initiated by the TPD on the basis of the suspicious transaction reports or the threshold reports but rather on other police intelligence and foreign requests. The evaluation team expressed concern that the current reporting system does not seem to yield sufficient material to enable successful money laundering investigations and the

lack of evidence, e.g. in cases that involve offshore jurisdictions, leads to the suspension of most investigations formally instituted. The situation of the FIU, in terms of human and financial resources, also raised concerns and the evaluation team recommended its restructuring and proper ressourcing.

16. The evaluation team considers that while in general the foundations of Lithuania's anti-money laundering regime are sound, progress needs to be made with regard to the supervision of the financial and non-financial sectors, as well as the effectiveness of the law enforcement authorities, including the FIU. The focus in the reporting regime on tax crimes should be reconsidered and the STR regime strengthened. The anti-laundering legislative and regulatory framework needs to be consolidated and brought fully into conformity with the relevant international standards.

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[2] On 26 September 2000 the Parliament of Lithuania (Seimas) adopted the new Criminal Code, which entered into force together with the new Code of Criminal Procedure and the new Code of Execution of Punishments on 1 May 2003.

[3] This group was set up on 6 December 1999, in accordance with decree No 548 of the Prime Minister. See detailed description under 'Coordination' at paragraph 32.

[4] At the time of the on-site visit, the draft Law on the Financial Crime Investigation Service was not yet approved by Parliament. It was adopted on 28 March 2002 and came into force on 1 April 2002.

[5] On 28 March 2002 Parliament passed the Law on Amending the Law on the Prevention of Money Laundering.

[6] Subsequent to the on-site visit, this Decree was adopted on 6 September 2002.

[7] Subsequent to the on-site visit, these Decrees were adopted on 6 and 26 September 2002 respectively.

[8] Confiscation can be imposed under the old Criminal Code as a sanction since in the new one it becomes a measure. See footnote 26 for details.

[9] The authorities subsequently advised that since the first round in one case of money laundering instituted by the TPD the arrest of property (seizure) was applied to property of a value of 170,000 Litas and to bank account in sum of 160,000 Litas.

[10] See paragraph 183 for further discussion.

[11] The new Code of Criminal Procedure was adopted on 14 March 2002 and entered into force on 1 May 2003.

[12] The last two sentences of this new provision were added to new Code of Criminal Procedure on 10 April 2003.

[13] The authorities subsequently advised that this is based on the Law on International Treaties of Lithuania, which provides for the supremacy of international treaties over the Lithuanian legislation (see Annex 8).

[14] The authorities subsequently advised that part 3 of Article 94 of the new Code of Criminal Procedure provides that "On grounds and in accordance with the procedure specified in an international agreement of the Republic of Lithuania, where there is a request from a foreign institution, the court can pass a decision that, after the judgment becomes effective, items and valuables acquired in a criminal way can be handed over to a foreign institution for the purposes of returning them to legitimate owners provided such owners have been identified and provided this does not violate legitimate interests of other individuals. Items, the turnover of which has been banned, shall not be handed over to the foreign institution."

[15] The litas was pegged to the Euro on 2 February 2002 at a fixed exchange rate (3,4528 litas per 1 Euro).

[16] The authorities subsequently advised that in their internal regulations on the opening of accounts commercial banks establish requirements providing that a customer, wishing to open an account, or his/her representative should present an adequate identification document.

[17] The authorities subsequently advised that the balances of all non-resident (including tax-free (offshore)) companies make up 3–4 per cent of total liabilities in the Republic of Lithuania.

[18] The authorities subsequently advised that when carrying out international payments credit institutions follow internal regulations establishing what data on the payer and the beneficiary have to be provided to the credit

institution, i.e. names of the payer and the beneficiary, names of legal persons, addresses and account numbers; in addition, they follow international agreements and practices, i.e. payer and beneficiary identification requirements set by international payment systems.

19 The authorities subsequently advised that the majority of "responsible persons" are actually appointed at a level of Head of Division/Department.

20 The authorities subsequently advised that on 24 October 2002 the Board of the Bank of Lithuania issued new Methodical Recommendations on the Prevention of Money Laundering for Credit Institutions which entered into force on 10 November 2002.

21 The authorities subsequently advised that on 19 April 2002 the State Insurance Supervision Authority under the Ministry of Finance approved the Methodical Recommendations for Insurance Companies and Insurance Brokers to deal with issues related to money laundering which entered into force on 25 April 2002.

22 The authorities subsequently advised that the Credit Division of the Bank of Lithuania had filed 2 suspicious transaction reports in the period 1999 – 2000".

23 Under Article 172 of the Code of Administrative Violations of the Law "Violation of the Procedure of Implementation of the Measures for the Prevention of Money Laundering"

24 The authorities subsequently advised that the Bank of Lithuania notes cases of non-compliance with the relevant legislation established during bank inspections in the inspection material and draws the attention of the relevant commercial bank to the fact; also, taking into account the scope of the violation, the Bank of Lithuania considers application of enforcement measures. In early 2003 the Bank of Lithuania informed the Financial Crimes Investigation Authority about one case of non-compliance with legal requirements by one commercial bank that was established during an inspection..

25 The examiners note that this condition was not mentioned in Lithuania's instrument of ratification of the Strasbourg Convention and the judges interviewed did not fully confirm this interpretation. In their opinion, authenticated copies of documents are sufficient to be accepted in evidence.

26 The authorities subsequently advised that on 20 June 2002 Parliament adopted the new Law on Operational Activities which entered into force on 28 June 2002 (see Annex 9). The law sets up a completely different system of performing operational activities and different system of authorization for undertaking operational activities. To sum up, almost all operational activities may be performed only after authorization of a judge.

27 See footnote 5.

28 According to the Lithuanian authorities, the interpretation to be given to the term "money" has to be in line with the Law on the Prevention of Money Laundering, as also suggested by the non-binding commentary of the Criminal Code intended for legal practitioners (Article 326).

29 The authorities subsequently clarified that since the new Criminal Code defines "confiscation" as criminal measure, this measure, although it is not explicitly mentioned in the Article 43, can be applied in relation to legal persons as well. Part 4 of the Article 67 of the new Criminal Code provides for that

1. Criminal measures shall be aimed at facilitation of the realization of the purpose of the punishment.
2. In respect of a major person, who has been released from criminal responsibility on the grounds specified in Chapter VI of this Code or who has been released from punishment on the grounds specified in Chapter X of this Code, the following criminal measures can be imposed:
1) prohibition to use a special right;
2) indemnification or removal of property damage;
3) unpaid labour;
4) contribution of payment into the fund of crime victims;
5) confiscation of property.
3. Confiscation of property can be imposed together with the punishment.
**4. In respect of a legal entity, property confiscation can be imposed.**
5. When two or more criminal measures are imposed, their compatibility and potential to positively influence the convict are taken into account". Therefore, the wording of mentioned paragraph should be changed.

30 See footnote 5.

31 See previous footnote.

32 The Lithuanian authorities consider that their practice in mutual legal assistance would not *per se* prohibit the provision of assistance in cases where the money laundering offence of the requesting State does not correspond precisely to Lithuania's money laundering offence.

33 The authorities subsequently clarified that part 2 of Article 20 of the new Code of Criminal Procedure provides for that "1. Evidence in criminal proceedings shall be data obtained in accordance with the procedure established by laws. 2. **Whether the data obtained are admitted as evidence, in each case is decided by the judge or court, to the disposition of which the case belongs**. 3. Only such data can be considered as evidence, which corroborate or deny at least one circumstance, relevant to a fair disposition of the case. 4. Only legally obtained data, which can be verified by procedural acts specified in this Code can be considered as evidence. 5. Judges

shall assess the evidence on the basis of their conviction, founded on exhaustive and impartial examination of all the circumstances in the case, in pursuance of the law.

[34] See paragraph 70.

[35] The authorities subsequently clarified that on 28 March 2002 Parliament passed the Law on Amending the Law on the Prevention of Money Laundering, where Part 1 of Article 9 specifies that credit and financial institutions have to identify the customer prior to opening accounts, accepting deposits, providing safe custody services, entering into other kinds of agreements with the customer or performing monetary operations in excess of LTL 50 000 or an equivalent amount in foreign currency. The above Law came into effect as from 1 April 2002.

[36] See footnote 29.

[37] See footnote 19

[38] See footnote 24.

[39] The authorities subsequently advised that on 22 March 2002 the Chief Commissioner of the Tax Police Department approved Methodological Recommendations to variable capital investment companies, management companies of investment companies and financial brokerage firms with regard to the prevention of money laundering which were updated on 2 July 2002. Equally, on 19 April 2002 the State Insurance Supervision Authority under the Ministry of Finance approved the Methodical Recommendations for Insurance Companies and Insurance Brokers to deal with issues related to money laundering which entered into force on 25 April 2002.

[40] The authorities subsequently advised that the Methodological Recommendations on the Prevention of Money Laundering approved by Resolution No. 134 of the Board of the Bank of Lithuania of 24 October 2002 provide that in such cases when a transaction is performed through a representative the staff of the credit institution have to verify the necessary data on both the represented person and the representative. If the represented person is a foreign undertaking whose registration documents indicate the data for "nominal" owners, the credit institutions are recommended to verify the necessary data also on the real owners (beneficiaries).

[41] The authorities subsequently advised that Article 3 of the Republic of Lithuania Law on Payments specifies that a payment order is considered properly formed if it contains the following details: payment instrument, bank code of the payer and payer's bank name, name of the payer or his/her personal name and surname and number of bank account, name of the beneficiary or his/her personal name and surname and number of bank account, beneficiary's bank name and bank code, the transferred amount in digits and words or in digits only.

[42] The authorities subsequently advised that Article 14 of the Law on the Prevention of Money Laundering states that heads of all credit and financial institutions have to appoint persons responsible for the organisation of the implementation of measures for the prevention of money laundering and liaising with the Financial Crimes Investigation Authority. This has been done by all credit institutions, yet not in all cases such persons hold managing positions.