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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**SELECT COMMITTEE OF EXPERTS ON THE EVALUATION**  
**OF ANTI-MONEY LAUNDERING MEASURES**  
**MONEYVAL (PC-R-EV)**

***SECOND ROUND EVALUATION REPORT ON***  
***LIECHTENSTEIN***

***SUMMARY***

1. Liechtenstein was the eleventh 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 team of Moneyval examiners, accompanied by two colleagues from a Financial Action Task Force (FATF) member state visited Liechtenstein from 27 to 30 May 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. Liechtenstein does not face the common forms of organised crime, nor certain forms of ordinary crime (assaults, robberies etc.), but drug trafficking has been detected in a few cases and white-collar crime, in particular investment fraud and embezzlement, seems to be a relatively frequent type of proceeds-generating criminality at domestic level.
3. As a well established offshore financial centre, Liechtenstein provides a range of financial and corporate services, in particular in the area of (private) banking, asset management, investment advice and the setting up of trusts, companies and other legal entities. These services make Liechtenstein vulnerable to money laundering, particularly in the layering and integration phases, as international criminals, including organised crime groups, may misuse its financial and banking facilities for money laundering purposes. At the time of the on-site visit, 74 cases were under investigation by the police, a large majority involving Liechtenstein trustees. Proceeds in those cases typically originated from predicate offences committed abroad, including fraud, misappropriation, breach of trust, organised crime, drug trafficking and fraudulent bankruptcy.
4. On the legal side, Liechtenstein has revised the Criminal Code by introducing a new definition of money laundering, criminalising self-laundering and broadening the range of predicate offences. The 1993 Mutual Legal Assistance Act has been repealed and replaced by a new Mutual Legal Assistance Law. As a result, the possibilities of appeal have been reduced and the delivery of assistance became more expeditious.
5. On the law enforcement side an independent financial intelligence unit has been established in March 2001 under a new FIU Act. The judiciary and prosecution structures have been strengthened with the addition of extra judges and prosecutors. Besides courts, a new office under the auspices of the Ministry of Justice is in charge of mutual legal assistance issues and international co-operation. A new police unit against economic and organised crime (EWOK) has been set up in June 2000 to complement the law enforcement structure. All this has resulted in an increase in the number of suspicious transaction reports and related investigations/prosecutions, both domestically and in international cooperation.
6. On the preventive side effective measures have been taken to address issues related to due diligence. The Due Diligence Act has been substantially revised and the 1997 Due Diligence Ordinance has been replaced. The new Due Diligence Executive Order set forth detailed duties of due diligence and processes for financial institutions to establish their own due diligence controls. Furthermore, in October 2001, a Due Diligence Unit, which is responsible for monitoring and supervising due diligence compliance, was established. This unit has taken over due diligence responsibilities formerly vested in the Financial Services Authority.

7. Financial intermediaries have also been heavily involved in implementation of these changes in the financial sector. This involved the cleaning up of old files, e.g. the retroactive identification of beneficial owners and the setting up of client profiles, and progress in compliance culture. This is welcomed by the evaluation team.
8. At the time of the visit, the Government indicated that it was planning further legislative changes, as required for the implementation of the second European Directive and the FATF 8 Special Recommendations on terrorist financing, as well as the setting up of a single regulator for Liechtenstein's financial markets (IFSA).
9. Overall, since the first round evaluation, Liechtenstein has made a very significant progress towards consolidating its anti-money laundering regime. Liechtenstein has positively responded to most of the recommendations made in the first round evaluation report and a number of important legislative, policy and practical measures have accordingly been taken. Apart from those mentioned above, it should be emphasized that the Strasbourg Convention has been ratified, that the possibilities of confiscation have expanded and that several new institutions were set up and most existing ones were reinforced by additional staff and resources. Liechtenstein has thus implemented in a record period of time a substantial package of legal and institutional reform, which the evaluation team welcomes wholeheartedly.
10. The new anti-money laundering regime already delivers results, which shows that the reform was worthwhile: some prosecutions for money laundering have been brought and currently await trial, significant amounts of assets were seized and, to a lesser degree, forfeited or confiscated, the number of suspicious transaction reports is on the rise and so is the general level of awareness and compliance culture in the financial industry.
11. Against the broadly positive picture, there are certain issues which still need addressing, the most important are the following : 1) the powers of the FIU to access information and gather intelligence necessary for its analysis of STRs are insufficient; 2) mutual legal assistance in purely tax-related criminal cases is still impossible to obtain; 3) there is still resistance to criminalising negligent money laundering; 4) tipping-off can still not be completely excluded in the system; 5) certain aspects of the reporting obligation are still unclear and there is over-reliance on the FIU's advice 6) the apparent compliance culture may prove superficial and temporary in some quarters; 7) the time period for the FIU's analysis of STRs and subsequent reporting to the PPO is too short; 8) the continued existence of bearer accounts (passbooks).
12. With regard to the offence of money laundering, the examiners believe that the Liechtenstein authorities should consider the possibility of further extending the list of predicate offences to cover all criminal offences, i.e. including all misdemeanours, but at least those that are covered by the second European Directive. They also recommend that self-laundering and professional laundering be treated in the same manner under Article 165 of the Criminal Code and the deletion of the provision restricting the liability for self-laundering under paragraph 5 of this Article. Furthermore, the examiners find the penalty levels for money laundering too low in general, e.g. when compared to other jurisdictions, but also within the Criminal Code's penalty levels for economic crimes, and recommend raising them. The Liechtenstein authorities may wish to take also into account the approach of EU member States, which made a uniform decision concerning the penalties applicable to the money laundering offences referred to in Article 6, paragraph 1 (a) and (b) of the Strasbourg Convention.
13. Given the attraction of Liechtenstein as a financial centre, the examiners encourage the Liechtenstein authorities to consider the criminalisation of negligent money laundering, which

will enable them to offer mutual legal assistance to those countries where this concept is already implemented and to which, given Liechtenstein's dual criminality principle, legal assistance would at this time be denied.

14. The examiners consider that the current system of corporate liability is not deterrent enough and recommend that the Liechtenstein authorities consider introducing corporate criminal liability. This would certainly help the private sector understand that corporate structures cannot be misused for money laundering purposes and this ultimately would enhance its participation in the overall anti-laundering effort.
15. Moreover, the non-ratification of the Vienna Convention and the obstacles to co-operation in fiscal matters are still potentially serious drawbacks in the area of international cooperation. The examiners regret that Liechtenstein has further delayed the ratification of the Vienna Convention given recent developments in Swiss drug policy. Equally, they regret that the authorities have not considered becoming a party to the 1978 Additional Protocol to the European Convention on Mutual Legal Assistance (ECMA). The evaluation team wishes to repeat the recommendation made in the first round evaluation to the effect that Liechtenstein should join both of the above mentioned international instruments and also consider joining the Second Additional Protocol to the ECMA. They further recommend that the Liechtenstein authorities reconsider their policy barring mutual legal assistance in fiscal matters, especially considering the fact that practice in the last two years shows that there were not many cases in which assistance was denied for this reason.
16. The examiners furthermore suggest that as further experience is gained on sector-specific issues of compliance with the regulatory framework for anti-money laundering prevention specific guidance be provided to each component of Liechtenstein's financial market, in particular on the recognition of suspicious transactions and related reporting requirements (list of indicators). This would enable due diligence personnel to rely more on objective criteria set out generally for a certain type of activity (banking, investment advice, trusts, insurance, etc.) and also help reduce the current tendency in some quarters to frequently hold consultations with the FIU on a personal basis prior to reporting.
17. The examiners have understood that a certain number of "old" bearer accounts (passbooks), whose beneficiary owner was unknown, still exist, even if the deposits held on these accounts were said to be not significant. The examiners consider that given their transferability, the existence of these accounts raises issues with regard to FATF Recommendation 10 and should be immediately closed down or transformed into nominative accounts. Further, they recommend that the Due Diligence Act be amended to contain an explicit prohibition of any bearer accounts (passbooks) or other financial products.
18. For the sake of clarity and in line with relevant international best practice, the examiners recommend that a clear legal requirement be introduced under the Due Diligence Act for requiring the inclusion of information on the ordering and beneficiary customers so that their name, address and account number is recorded, at least for international fund transfers, and that such information remains in the system.
19. The evaluation team also recommends, given the current regime of tipping off which allows financial institutions and intermediaries to tip off customers about STRs after a maximum period of 30 days, that the Due Diligence Act be reviewed to clearly prohibit and sanction tipping off as well as provide for appropriate penalties.

20. The examiners believe that the FIU is lacking comprehensive and direct access to relevant financial information in order to be able to efficiently fulfil its functions, so they recommend to empower the FIU to have access to all necessary information for its analysis, including information related to beneficial ownership, and provide a legal basis for its access to data bases. The examiners also recommend a substantial increase of professional staff at the FIU. In addition, law enforcement agencies should be equipped with further investigative means for conducting money laundering investigations, such as undercover operations, controlled delivery of cash and monitoring of bank accounts.
21. Finally, the examiners suggest that clear instructions be given to police officers investigating serious crimes, including drug-related and economic crimes, to search and trace assets in every case, where proceeds may be involved and also use proactively the powers and techniques available to them for investigations.
22. To sum up, the Liechtenstein anti-money laundering regime has improved very significantly since the first evaluation round, and with a rapid implementation of the recommendations in this report, Liechtenstein will be able to further refine its anti-money laundering system. It should however ensure as a matter of priority the sustainability of the progress achieved by providing for staff continuity at key positions of the anti-money laundering system and offering further training to local professionals.