



Strasbourg, 19 January 2001

PC-R-EV (00) 19 Summ.

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
LATVIA

SUMMARY

1. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Latvia between 7-10 March 2000.
2. The Republic of Latvia is situated by the Baltic Sea and has a land border with Estonia, the Russian Federation, Belarus and Lithuania.
3. There is increasing drug related and economic crime: Latvia's geographical position makes it attractive as a transit country *inter alia* for narcotics. In the last three years smuggling offences generated the most criminal proceeds. Other than smuggling, the main sources of illicit proceeds are considered to be trafficking in drugs, trafficking in counterfeit banknotes, banking and financial fraud, corruption, unlawful business activities, racketeering, trafficking in stolen vehicles and prostitution. Approximately 2/3 of all criminality is considered to involve organised crime. These groups operate mostly in the areas of drugs offences, smuggling, car theft, prostitution, trafficking in human beings, fraud, extortion and counterfeiting.
4. The economy is still largely cash based. Particular vulnerabilities at the placement stage are the country's 228 exchange offices and 21 casinos. The Central Bank is alert to the possibilities of money laundering at the layering and integration stages given that in the banking sector half the accounts are non-resident. At the integration stage there are also vulnerabilities to money laundering arising from the privatisation process, and in respect of traders in high value goods (such as car dealers) and real estate.
5. Latvia has taken a number of significant steps to counter money laundering. They have put together a very comprehensive structure for the protection of the financial system in a regime based on suspicious and unusual transaction reporting, the latter with a range of different reporting thresholds for various institutions. This is embodied in the Law on Prevention of Laundering of Proceeds derived from Criminal Activity (the LPL), which came into force on 01.06.98. Under the LPL an administrative or intermediary FIU (the Control Service) was created, under the oversight of the Prosecutor's office for receiving, storing and analysing the suspicious and unusual transaction reports. The major elements of a separate criminal offence dealing with money laundering are set out in the LPL though it is penalised under the Criminal Law, with severe penalties.
6. It is to Latvia's credit that it has signed and ratified the 1988 UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). This Convention has been effective in Latvia since 25.05.94. Likewise Latvia has signed and ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention). It has been effective in Latvia since 01.04.99.
7. The money laundering offence appears to have several strengths, though at the time of the on-site visit there were no convictions for money laundering and, indeed, no indictments had been preferred for the money laundering offence. The Latvian authorities indicated that it was implied from the legislation that money laundering can be prosecuted even if the predicate offence is committed abroad. The Latvian authorities also indicated that in theory the perpetrator of the predicate offence could be prosecuted for laundering his own proceeds. These issues are yet to be tested in the courts. The "actus reus" follows closely the language of the Strasbourg Convention – so that the range of activities capable of constituting money laundering is appropriately wide. Article 4 of the LPL lists 14 categories of predicate crime,

which is said in total to comprise 39 offences referred to in the Criminal Law¹. The list is therefore extensive but not exhaustive. Though the enumerated list approach meets the basic requirements of the Vienna and Strasbourg Conventions in this area the Latvian authorities are strongly encouraged to consider the “all crimes” approach of the Strasbourg Convention, which would provide clarity and certainty that all serious offences which generate criminal proceeds in Latvia are adequately covered. The level of proof required to prove the predicate offence was considered to be a problem and guidance on this important practical aspect is needed for police and prosecutors. A further potential problem is that a very high standard seems necessary to establish the required intention. The examiners consider that the prospects for successful prosecutions for money laundering would be greatly enhanced if the mental element of the offence is reviewed. It should at least be made clear that inferences can be drawn from objective factual circumstances. Additionally allowing for prosecutions based on reasonable suspicion and negligence would improve the prosecutorial regime.

8. The Article 42 confiscation provision, taken together with Article 66 confiscation, may in theory be capable of meeting some of the policy objectives of the Strasbourg Convention. However, in practice, the examiners were not convinced that there is an effective confiscation regime in place which fully meets all the objectives of the Strasbourg Convention. The Latvian authorities should review the confiscation regime to ensure that it is capable, in a broad range of criminal offences, of depriving offenders of the proceeds of their crimes (as “proceeds” is widely defined in the Strasbourg Convention) or property the value of which corresponds to such proceeds. Equally the regime should not be capable of being frustrated by transfer to third parties (subject to the rights of the bona fide purchaser for value). Serious consideration should be given to a reversal of the onus of proof in order to establish [post conviction] to the necessary standards what are direct or indirect proceeds of crime.
9. The current regime of provisional measures appears to be used infrequently. In the pending money laundering investigations no provisional measures had been taken. Articles 120 and 121 of the Criminal Procedure Code appear to inhibit the obtaining of provisional measures either by police or prosecutors in appropriate cases. The Latvian authorities need to address this issue urgently to ensure that there is a workable provisional measures regime and in particular that the legal structure does not prevent necessary action being taken quickly to freeze accounts. The Control Service should also be given legal power to postpone transactions for a suitable period, in order for preliminary examinations and procedural decisions to be taken, without reliance on the provision of advice to the banks to this effect (which may not always be followed).
10. Latvia is a party to a large number of multilateral agreements which should provide them with a firm basis for international co-operation. However the widening of the range of predicate offences may also assist in the context of international assistance. A considerable number of international requests for judicial assistance have been received and none have so far been refused.
11. The number of authorities covered by anti-money laundering obligations is very wide and goes much further than the present international standards. There is an extended definition of financial institution which catches all those conducting financial transactions. While this formula provides for flexibility it does, in the examiner’s view, require additional clarification in order to list those undertakings which clearly have reporting obligations. The all-embracing coverage presupposes that substantial efforts should be made and ample resources should be

¹ Further amendments were brought into force after the on-site visit on 11.07.00 extending the list of predicate crimes to 41 including a further refinement of the bribery predicate offences.

made available for ensuring all those relevant undertakings are made aware of their obligations. The Latvian authorities need to satisfy themselves that they do have the large resources and adequate structures comprehensively to supervise and enforce such a wide obligation. The Control Service, in particular, needs to be properly resourced for its critical work on outreach as well as all its other tasks.

12. Between 01.06.98 and 01.01.00 the Control Service received 1634 unusual and 424 suspicious transaction reports, 90% of which emanated from banks. The Bank of Latvia should consider carefully the spread of reporting in the banking sector and the lack of reporting so far from the exchange houses. The Latvian authorities might also like to reflect on whether some of the information currently received as unusual transactions could now be better focused in the light of experience.
13. The reporting obligation needs underpinning to ensure that failure to report attracts criminal liability and that senior management in obliged entities are made fully responsible and answerable for their internal systems. Responsibility for compliance issues is generally vested in a compliance officer whose status is not currently in line with FATF Recommendations.
14. Basic customer identification requirements are in place. The examiners were advised that it is impossible to keep anonymous accounts. However numbered accounts are permissible, though their extent is unknown. The Latvian authorities will need to have regard to the risk that comprehensive control procedures for identifying suspicious transactions can be greatly restricted by the handling of numbered accounts. Customer identification of corporate customers needs to be reviewed to ensure full compliance with FATF Recommendation 10. Equally legal requirements with regard to customer identification where a credit or financial institution is aware or suspects that accounts are being opened or transactions conducted on behalf of third parties should be strengthened in order to fully comply with FATF Recommendation 11 to ensure underlying beneficiaries are identified.
15. The Supervisory authorities should be assigned the duty of assessing the level of compliance of the entities falling under their responsibility with anti-money laundering obligations under the LPL. Programmes for regular inspections should be commenced quickly. Consideration should be given to including exchange offices in such examinations. Guidance should be developed on warning signs and indicators of suspicious transactions to assist financial institutions in detecting suspicious patterns of behaviour by their customers.
16. The commitment of the Control Service is beyond doubt. However, it is important that they develop direct access to police databases. The focus of the Control Service in the future should be on prioritising suspicious transaction reports and the speedy processing of financial intelligence into actual criminal cases. At the time of the on-site visit only 39 files had been passed to the prosecutor for further consideration and examination.
17. The legal process appeared to be slow and was described as “bureaucratic”. Work needs to be done to speed up the investigation and prosecution process. Latvia urgently needs some completed money laundering enquiries, some successful prosecutions and major confiscation orders. Where the legal structure is impeding police investigation unnecessary obstacles to the full use of investigative and special investigative techniques at the earliest possible stage should be removed.
18. A number of the cases passed to the police involve predicate offences of unregistered business. While this is doubtless important, more effort needs to be devoted by law enforcement generally in the money laundering context to more traditional criminal activity

that generates significant proceeds, such as drug trafficking and other profit generating crimes perpetrated by organised crime.

19. Much has been done by Latvia in a very short time for which credit is given. There is still, however, more to do, building on the solid progress that has so far been made, to make the system fully operational. The Advisory Council, bringing together most of the main players in the anti-money laundering regime at a senior level, is one of the several very positive features of the system. It would, however, benefit from adopting a more strategic role, to include the periodic review of how the system as a whole is operating. The monitoring of the speed with which money laundering investigations move through the system and are turned into prosecution cases is an issue which could usefully be taken up by this body, as the anti-money laundering regime develops.

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