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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 LATVIA

## **SUMMARY**

- 1. A MONEYVAL team of examiners, accompanied by a colleague from the Financial Action Task Force (FATF), visited Latvia between 11-14 November 2002 in the context of the second round of MONEYVAL evaluations.
- At the time of the second on-site visit the major sources of criminal proceeds continued to be drug trafficking, smuggling, corruption and fraud. Tax evasion, including VAT fraud, also generates large amounts of laundered proceeds, though the number of detected offences is relatively small.
- 3. Money laundering is not based on domestic predicate crime alone. The external threat to the Latvian financial system from crimes committed abroad is well understood by the Latvian authorities.
- 4. Latvia has continued to attract considerable foreign investment. At the time of the on-site visit the number of non-resident accounts stood at 52% of total deposits. It was understood by persons with whom the team met that the risk of money laundering was higher with regard to non-residents.
- 5. Banks remain a primary vulnerability for money laundering. They account for 90% of all suspicious and unusual transaction reports (11,398 between 2000 and 2002). Financial regulators and foreign FIUs, at the time of the on-site visit, were the next major sources of reports to the Control Service, which is the Latvian FIU. When the examiners were on-site, a much smaller number of reports had been received by the Control Service from notaries, the gambling and insurance sectors. No reports had been received from the 222 exchange houses. The Latvian authorities should place emphasis in outreach and training on the need for other vulnerable obliged persons and institutions to make reports to the Control Service particularly the so-called "gatekeepers" and the exchange houses.
- 6. At the time of the on-site visit 3 criminal prosecutions for money laundering had been brought and one other case was being prepared for filing in court. There were no completed prosecutions or convictions for money laundering.
- 7. Overall, since the first evaluation, Latvia has made some progress towards the development of a comprehensive and coherent anti-money laundering system, but progress remains slow particularly on the legal/repressive side. Much excellent work is being done by credit institutions and the Control Service, in particular in the generation and analysis of reports (which in relation to suspicious transactions are of a constantly improving quality). However the outputs from all this activity appeared very sparse. Numbers of money laundering related investigations, prosecutions, and confiscations were disappointing. Reports analysed by the Control Service, impressive as the numbers were, are not ends in themselves, and the investigation and prosecution side needs more emphasis.
- 8. On the normative side, the preventative law, the Law on the Prevention of the Laundering of Proceeds Derived from Criminal Activity (LPL) was amended on several occasions. These amendments *inter alia* extended the authority of the Control Service, changed the composition of the Advisory Board (the co-ordinating body) and targeted the financing of terrorism.<sup>1</sup>

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<sup>&</sup>lt;sup>1</sup> Since the on-site visit the Parliament adopted on 18 December 2003 additional amendments primarily aimed at further harmonisation with the Second EU Directive. These amendments came into force on 1 February 2004.

- 9. The definition of the money laundering offence has also been broadened by an extension of the list of predicate offences. However the mental element has remained that of "knowledge", which appears to require a high degree of proof for it to be satisfied. Urgent consideration should be given to the possibility of clarifying, if necessary by means of legislation, the evidentiary requirements for a conviction. In particular, consideration should be given, at least, to putting beyond doubt in legislation that a conviction for money laundering is possible in the absence of a finding of guilt for the underlying offence, and that this element can be proved by circumstantial or other evidence. The introduction of corporate criminal liability, which was proposed at the time of the on-site visit, would also be a positive development.
- 10. At the time of the on-site visit the legislation in respect of confiscation was being revisited in a new draft Criminal Procedure Code. Its enactment would indicate substantial progress in this area and eliminate some, though not all, of the current uncertainties and deficiencies highlighted in the first evaluation report. The recommendation of the first evaluation team, where a re-visiting of the confiscation regime was urged, is re-iterated by these examiners. These examiners advise that confiscation is approached in a comprehensive way (particularly with the needs of the fight against money laundering in mind). This review should include consideration of the issue of the reversal of the burden of proof (post conviction), when establishing what property was unlawfully obtained in some serious proceeds-generating offences. The Latvian authorities should also satisfy themselves that provisional measures can be taken sufficiently early at the investigative stage, and that unrealistically high degrees of proof are not required to trigger them.
- 11. On international co-operation, the provisions of the Draft Criminal Procedure Code should be re-examined to ensure that all possible assistance as required by the Council of Europe Convention 141 can be given by Latvia in the enforcement of foreign confiscation orders and provisional measures. The issue of sharing confiscated assets has been addressed in the new Criminal Procedure Code.
- 12. The Control Service remains a dedicated, professional and thorough FIU. They continue to be at the centre of the national anti-money laundering effort. They are adequately resourced and well supported by government. The examiners advise that they would benefit from the introduction of a police liaison officer(s) to optimise day-to-day co-ordination of law enforcement. The Control Service needs, and is trying, to send more reports to law enforcement.
- On the operational side it did not appear to be standard practice to investigate with a view to prosecution the money laundering offence as distinct from the predicate offence, even where the predicate is considered to be a major proceeds-generating offence. The examiners urge that in major proceeds-generating criminal cases the money laundering aspects are investigated in parallel with the investigation of the predicate offence. A greater proactive asset-oriented approach generally by law enforcement to investigations should assist the pursuit of money laundering cases where there is no STR/UTR report referred to them by the Control Service. Such an approach is urged – not only in respect of financial and fiscal crime, but also in relation to drugs investigations and organised crime investigations generally. More trained financial investigators are needed to support such an approach. Some new resources have been put into specialised investigation of money laundering emanating from the Control Service – both in the Financial Police and in the Economic Crime Bureau. Nonetheless the resource needs of law enforcement generally need reconsidering better to support the work of the Control Service, and to pursue more money laundering cases proactively. Police and prosecutors should address together the reasons for lack of success so far, and revisit their current approach to money laundering investigation and prosecution. The Advisory Board should also consider whether current legislative initiatives will fully meet the need to speed

up the process, and whether further legislative change is required to remove any remaining legal and institutional obstacles to prosecutions and major confiscation orders in these cases.

- Since the first evaluation, the Financial and Capital Market Commission (FCMC) has been set up, bringing together the licensing and prudential supervision of credit institutions, loan and savings companies, the stock exchanges, the Central Depository of Latvia, securities and brokers firms, investment companies, and insurance companies. The Central Bank of Latvia retains its licensing and supervisory role in respect of exchange houses, and plays a major role in the setting of anti-money laundering policy. The Lottery and Gambling Supervision Inspectorate (LGSI) remains responsible for licensing and supervision of the lottery and gambling market. Concrete steps are being taken to develop the regulatory and supervisory structure for all these sectors, including a particularly determined approach to licensing by FCMC. The examiners advise an even more proactive approach to inspection policy in respect of exchange houses, with dissuasive sanctions where breaches are detected.<sup>2</sup> The LGSI inspection programme should be supplemented with on-site examinations which specifically target the anti-money laundering issue generally and the LGSI guidance on this issue. The Latvian authorities should also consider what other regulatory and supervisory structures are required where there are currently no supervisory bodies. The present lower level administrative fines available to FCMC appeared to the examiners to be not very dissuasive and, in their view, should be reconsidered. Sanctions should be capable of imposition in respect of breaches of FCMC guidelines.
- 15. Turning to customer identification, the examiners recommend that there should be explicitly included in the law in all cases where business relations are established or transactions carried out on behalf of customers who are physically not present for identification purposes (non face-to-face operations) that additional measures should be taken to compensate the greater risks of money laundering arising out of such operations. Copies of relevant documents should be obtained as a matter of course to allow verification, not only for new business relations or transactions, but to the extent possible, for already accepted clients as well. Supervisors should pay particular attention in on and off-site inspections to identification procedures in place in the case of non-resident account holders.
- 16. On the identification of beneficial owners generally, the law requires that relevant institutions, if they know or suspect that a transaction is conducted on behalf of a third party, should take reasonable measures to identify the third party. The Latvian authorities responded positively to the suggestion in the first evaluation report that written declarations in this regard might assist. An "Actual Beneficiary Identification Card " is annexed to the FCMC Recommendations for the Formulation of Procedures for Identifying Clients, Unusual and Suspicious Financial Transactions. This, in the examiners' view, should now be a clearer normative obligation, and not be left to the subjective judgements of individual institutions. The Latvian authorities are also encouraged to consider issuing guidance as to the situations where it would be prudent not simply to rely on a written declaration but also to seek identification data, as well, before accepting clients. Generally, the extent to which ultimate beneficial owners are identified in account opening etc should be given special attention in supervision.
- 17. Nominee accounts are available in Latvia under the Law on Credit Institutions. It is assumed that the identities of the beneficiaries will be known to the appropriate persons in the financial

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<sup>&</sup>lt;sup>2</sup> The Latvian authorities advised at the time of the adoption of this report that the number of on-site inspections in exchange houses increased in 2003 by 30% and that the scope of checks has significantly improved.

<sup>&</sup>lt;sup>3</sup> The Law on the Prevention of the Laundering of Proceeds Derived from Criminal Activity [LPL] as amended in December 2003 makes it a clear normative obligation to request a written declaration from the client to identify the third party.

institutions where they are held, and to the supervisors, but not to persons in financial institutions handling money movement on a day-to-day basis. Guidelines on the identification of suspicious transactions in the context of the operation of these accounts would be highly beneficial.

- 18. Lastly the examiners advise that, as necessary, the Advisory Board be given a clearer formal remit to assess the performance of the system as a whole and make necessary recommendations to Government.
- 19. In this way the progress that has been made can be built on to develop a balanced operational anti-money laundering system.