Strasbourg, 18 June 1999

PC-R-EV (99) 10 Summ.

EUROPEAN COMMITTEE ON CRIME PROBLEMS
COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS
(CDPC)

Select Committee of Experts on the Evaluation
of Anti-Money Laundering Measures
(PC-R-EV)

FIRST MUTUAL EVALUATION REPORT ON LITHUANIA

SUMMARY

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

1. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Lithuania between 24-27 November 1998.

2. The transition to a market economy since 1990 has been accompanied by a rise in criminality. Drug trafficking, in particular, has virtually doubled since 1995. Lithuania has also seen the development of domestic organised crime groups, operating at the domestic and at the international level. Money laundering is frequently used by these groups. Similarly organised crime groups abroad are known to launder money in Lithuania. Thus money laundering is seen as a real threat to the developing Lithuanian financial system, which is vulnerable at the placement, layering and integration stages. The Lithuanian authorities perceive the pressure currently is on the banking sector, but they recognise that increasingly other non-bank financial institutions and real estate will become more vulnerable.

3. Three policy objectives were identified. The first is to encourage co-operation with corresponding institutions of other countries and international organisations. The second is to bring the legal system into line with European Union requirements and international standards. In this regard, Lithuania has shown its commitment by taking the first important steps to combat money laundering. Lithuania signed, and ratified in 1995, the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime N°141 (the Strasbourg Convention). It signed and ratified the 1988 United Nations Convention against Illicit Traffic In Narcotic Drugs And Psychotropic Substances (the Vienna Convention), which came into force in 1998. The Law on the Prevention of Money Laundering [Act VIII-275] came into force on 1.1.98. It was amended shortly before the on-site visit in the light of experience. Lithuania's third policy objective is to ensure co-ordination internally between the various institutions responsible for money laundering issues. In furtherance of this an FIU was created – the Money Laundering Prevention Division, which is an independent unit within the Tax Police Department. It has analytical, investigatory and regulatory roles.

4. A new provision of the Criminal Code, specifically directed to the criminalisation of money laundering (Article 326), came into operation in July 1997. Article 326 (which carries basic penalties of 3-7 years, and 5-8 years where there are aggravating features) has the merit of not being tied to any particular predicate offence. The Lithuanian authorities are satisfied that they can exercise jurisdiction where the predicate offence is committed abroad, and that proceedings for a money laundering offence can be brought against the author of the predicate offence. Money laundering is defined for criminal purposes as "Transactions that are being carried out with the money acquired in criminal ways or the usage of money acquired in criminal ways in commercial or economic activities with the purpose of concealing or legalising such money…". This wording is not as wide as that used in Act VIII-275. Article 326 appears tightly focused on activities directly associated with financial or commercial life. As well as potentially limiting domestic money laundering prosecutions, the definition could pose problems for Lithuania in dealing with extradition requests from countries where the money laundering offence is more widely drawn. An amendment, using the language of the existing international texts, is recommended.

5. Consideration should be given to the introduction of negligent money laundering, and criminalising failing to report a suspicious monetary operation or other reportable monetary operation. It was noted that consideration is being given to the concept of corporate criminal liability, and this is encouraged.

6. Confiscation of property (or monetary sums expressing its value) is provided for under Article 35 of the Criminal Code. Confiscation is an additional *penalty* mandatorily applied to property irrespective of the lawful origin of that property. It is applied to property post conviction in a wide range of serious crime. The examiners consider that this regime would benefit from revisiting in order to satisfy themselves that there is a clear legal framework of provisional measures and confiscation directed towards the *proceeds* of crime, as contemplated by the Strasbourg Convention.

7. Lithuania has taken several steps to ensure that it can co-operate internationally. As well as being party to the Strasbourg and Vienna Conventions, it is a party to a number of other important multilateral instruments including the 1959 European Convention on Mutual Legal Assistance and its first Protocol. A range of general mutual legal assistance agreements have been, or are about to be, brought into force. Though no requests for legal assistance in the field of money laundering have been received, the Lithuanian authorities consider that Articles 194 and 195 of the Criminal Procedure Code provide a range of provisional measures which can be used on behalf of foreign governments. Equally they consider that by using Article 35 they can enforce foreign criminal confiscation orders including value confiscation orders. These are untested. In any event, the Lithuanian authorities need to make legal provision for the enforcement of civil confiscation orders and consider taking measures to provide for the sharing with other countries of confiscated assets.

8. The preventive regime is underpinned by identification and reporting obligations. Basic customer identification and record keeping requirements are in place for credit and financial institutions when *monetary operations* are conducted above 50,000 Litas[1]. It is recommended that credit and financial institutions should be clearly obliged to verify the identity of both registered and beneficial owners of corporate accounts and identify company directors as envisaged by the FATF Recommendations, and the EC Directive. The Lithuanian authorities should satisfy themselves that all financial institutions are keeping all the transaction records required for evidential purposes in both cash and non-cash transactions for 5 years at least. Guidance should be given to credit and financial institutions on identification and record keeping requirements involving fund transfers by electronic payment systems. Clear guidance should also be given to all relevant bodies on the retention of copy documents on customer identification for at least 5 years after the account is closed.

9. Under Article 8 of Act VIII-275 credit and financial institutions, notaries, and persons authorised to perform notarial acts are obliged to identify the customer where they *suspect* that monetary operations may be related to money laundering (irrespective of the amount of money involved) and communicate such information to the Tax Police without delay. Under Article 12 of Act VIII-275 credit and financial institutions, notaries, or persons authorised to perform notarial acts, as well as being obliged to identify the customer if monetary operations involve a sum in excess of 50,000 Litas, are obliged to report the identification data to the Tax Police. This threshold is lowered to 20,000 Litas (US $ 5,000) where the monetary cash operation involves a single exchange of one currency into another or to 10,000 Litas (US $ 2,500) where the monetary operation involves an insurance premium.

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1 This is equivalent to US $ 12,500.

10. It is understood that the Article 8 reporting obligation covers all suspicious financial operations (and not just those where cash is involved). The examiners consider it is appropriate that the obligations under both Article 8 and Article 12 should embrace all relevant financial transactions.

11. Since its introduction in January 1998 there have been only 15 suspicious reports under Article 8. By contrast, there have been 50,000 reports to the Tax Police under Article 12, and this has placed huge administrative burdens on them. The examiners consider that more emphasis needs to be placed on the Article 8 suspicious reporting obligation. In this context, the Lithuanian authorities should consider extending the Article 8 obligation to other non-financial businesses which might be vulnerable to money laundering and consider whether the obligation should be further extended to professionals, including practising accountants and lawyers. The priority, however, on the law enforcement side must be to equip the FIU with the necessary resources (both of personnel and IT) for it to handle the reporting system effectively.

12. Despite the large volume of information the Tax Police has received only three cases have been investigated. These tax-based investigations have not emanated from the reporting system but are the result of other intelligence. The emphasis on the investigatory side needs urgently to move beyond tax offences to other important areas of criminality (such as drug trafficking) which the Lithuanian authorities know generate illicit proceeds. The Tax Police should also be legally empowered under Act VIII-275, in the light of prevailing circumstances, to order the suspension of a suspicious monetary operation. The FIU also needs to develop even closer relations with other FIUs (both criminal and administrative) and ensure that financial intelligence is routinely shared and received. The creation of Memoranda of Understanding would facilitate this process.

13. The examiners consider that, overall, too much reliance is placed on the Tax Police in the anti-money laundering regime. All other authorities believe the anti-money laundering regulatory role falls to the Tax Police. The Tax Police have not yet addressed their regulatory role because their resources are stretched on the analytical and investigative fronts. Little or no supervision of compliance is therefore taking place. There needs to be careful consideration given to the identification of other supervisory authorities to take on anti-money laundering regulatory responsibilities. As a matter of urgency programmes of on-site inspections of banks and other credit and financial institutions and relevant undertakings should then be put in place and regularly carried out.

14. In December 1997, the Bank of Lithuania issued a Resolution on the Methodical Recommendations on Prevention of Money Laundering to *credit* institutions supplementing Act VIII-275. It needs amplifying and promulgating to financial institutions and other relevant undertakings. In particular practical and detailed guidance needs drafting for discrete parts of the financial sector on identifying suspicious monetary operations and best practice in handling obligations under the anti-money laundering legislation, building on the basic but limited guidance already given. It is recommended that this is prepared by the Tax Police, in conjunction with the Supervisory authorities. Thereafter, training and awareness programmes in all parts of the financial sector, for staff at all levels, need to be implemented on a joint basis between the Tax Police and the Supervisory Authorities. Appropriate feedback systems need also to be put in place by the Tax Police to foster and develop co-operation of the private sector.

15. It is advised that a Working Group is set up, chaired at a suitably senior level, comprising representatives of all relevant actors in the anti-money laundering regime *inter alia* to ensure that the effectiveness of the anti-money laundering regime is regularly monitored and to ensure that necessary changes, once identified, are actioned.

16. Much has been done in a short time. By pausing now to review across the board all recent initiatives, and then by taking remedial action, the evaluators believe the Lithuanian authorities can build on what has already been achieved and develop an effective anti-money laundering system, which meets international standards.

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