COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM (MONEYVAL)

MONEYVAL(2009)37

Estonia

Progress report[1]

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[1] First 3rd Round Written Progress Report Submitted to MONEYVAL

Estonia is a member of MONEYVAL. This progress report was adopted at MONEYVAL's 31st Plenary meeting (Strasbourg, 7-11 December 2009). For further information on the examination and adoption of this report, please refer to the Meeting Report (ref. MONEYVAL(2009)44) at http://www.coe.int/moneyval

1. General overview of the current situation and the developments since the last evaluation relevant in the AML/CFT field

1.1 General developments

The third evaluation visit of Estonia by MONEYVAL took place from 3rd to 9th February 2008. The final report was adopted by the MONEYVAL Committee at its 28th Plenary Session in Strasbourg (8th – 12th December 2008).

The most important developments arising from the adopted mutual evaluation report include the amendments to the MLTFPA. The amendments consist of both changes to the law made under recommendations of the MER and arising from application of the law so far. Also the new draft of International Sanctions Act has been prepared and submitted to Parliament.

The conclusions and recommendations of the third MONEYVAL evaluation report were discussed at the Governmental committee for the coordination of issues concerning the prevention of money laundering and terrorist financing (hereinafter *Governmental Committee*) on 21st January 2009 and at the Advisory Committee on Prevention of Money Laundering and Terrorist Financing (hereinafter *Advisory Committee*). Governmental Committee adopted action plan for 2009 to achieve a progress in implementing the recommendations. The priorities were: drafting the new version of the International Sanctions Act, amendments to the Money Laundering and Terrorist Financing Prevention Act (MLTFPA) and Customs Act; issuing guidelines and different actions to achieve better cooperation and awareness of anti-money laundering obligations.

Governmental Committee discussed this year's developments on its meeting 9th November 2009. The Advisory Committee discussed this matter on its meeting 17th November 2009.

The MLTFPA has been implemented for 1,5 years by now. The market participants have adapted the new requirements to their everyday activities and national co-operation has improved considerably (agreement of cooperation between FIU, Chamber of Notaries and Bar Association as well as Police Board, Prosecutors Office and FSA have been the concrete tools enabling that).

The MLTFPA has specified that the Minister of Finance shall issue secondary law for areas with low money laundering or terrorist financing risks according to (§ 18 (5) MLTFPA) and regarding AML/CFT-specific internal rules of procedure for credit and financial institutions (§ 31 (6). Minister of Finance Regulation no 10 "Requirements for the Rules of Procedure established by credit and financial institutions and for their implementation and verification of compliance" and no 11 "Criteria of low risk of money laundering and terrorist financing which allows the application of simplified customer due diligence measures" were adopted on 3 April 2008. As both came into force only on 11 April 2008 (date of the publication in the Official Gazette) and moreover the Minister of Finance Regulation No 10 stipulates in its § 30 that "*Credit and financial institutions must bring their activities and documents into compliance with the provisions of this Regulation by no later than 1 November 2008*", it was not taken into account in the descriptive part and for rating purposes.

For the time being, the regulations of Minister of Finance have come into force and credit and financial institutions have brought their internal procedures largely in accordance with new specified regulations.

The law amending the MLTFPA has been drafted and is at the moment in Parliament of Estonia (the adoption is planned to take place on 26th November 2009). The amendments are in line with the

recommendations made to Estonia in the MONEYVAL report. Some additional changes were made according to the practitioners' proposals to improve the regulation even further

1.2. Training

Since January 2008 when the new MLTFPA entered into force, Estonian FIU has actively organised training seminars to obliged persons. In 2008 25 training seminars were organised (number of participants 964), as of October 14, 2009 the respective numbers were 17 and 1012. For law enforcement agencies 10 training seminars (number of participants 2559 and for judges 2 training seminars (50 participants) were organised in 2008. In 2009 1 training seminar was organised to law enforcement agencies (34 participants).

FSA has arranged several training sessions to introduce the principles of the new MLTFPA and its advisory guidelines for compliance officers of credit and financial institutions. In cooperation with Estonian Banking Association FSA has provided 1-day training for AML/CFT officers of credit institutions.

Ministry of Finance has provided training to auditors and trust and company service providers.

1.3. Other developments

On the 22 October 2008 the Management Board of the Financial Supervision Authority approved advisory Guidelines by the Financial Supervision Authority "Additional Measures for Preventing Money Laundering and Terrorist Financing in Credit and Financial Institutions". In course of drafting the guidelines, several meetings with supervised entities were held and, if justified, their comments and suggestions were taken into account. In the process of drafting the guidelines the experts from different ministries and from University of Tartu were involved. The advisory guidelines were published on the webpage of FSA, sent to all supervised entities and took effect 1 April 2009.

Also, FSA has issued a circular giving guidance to supervised entities on 3rd country equivalence enacted in MLTFPA.

FIU, Chamber of Notaries and the Bar Association have issued several guidelines in order to give guidance for implementation of the MLTFPA.

National co-operation on the field of AML/CFT has been enhanced by renewed co-operation agreement between Police Board (including FIU), Prosecutors Office and Financial Supervision Authority. The new agreement provides clearer format for providing an expertise in order to improve the prevention, hindering, disclosing the illegal activities and conduct proceedings. The new agreement describes in more detail the instruments of cooperation in the field AML/CFT supervision and exchange of information.

2. Key recommendations

Please indicate improvements which have been made in respect of the FATF Key Recommendations (Recommendations 1, 5, 10, 13; Special Recommendations II and IV) and the Recommended Action Plan (Appendix 1).

Recommendation 1 (Money Laundering offence)	
Rating: LC	
Recommendation of the MONEYVAL Report	*It should be made clear in the law or by way of guidance and training that the prosecution of money laundering does not require a prior or simultaneous conviction for the predicate offence.*
Measures taken to implement the Recommendation of the Report	The PC and MLTFPA does not require a prior or simultaneous conviction for the predicate offence. MLTFPA uses the concept of *criminal activity*. It is obligatory to the prosecution to ascertain criminal activity which corresponds to the crimes provided in PC, but it does not require a conviction. In march 2009 was held special round-table meeting where participated prosecutors, investigators, judges, specialists from FIU, Ministry of Finance and professors of criminal law from the Law Faculty of the University of Tartu to discuss the concept of criminal activity.
Recommendation of the MONEYVAL Report	*Estonia should introduce the full concept of conspiracy for the money laundering offence.*
Measures taken to implement the Recommendation of the Report	According to Estonian penal law attempt of all offences is punishable and something preceding the stage of attempt has no penal character. An attempt is an intentional acti the purpose of which is to commit an offence. An attempt is deemed to have commenced at the moment when the person, according to the person's understanding of the act, directly commences the commission of the offence (§ 24 PC). Therefore conspiracy/preparation of an offence – if no steps have been taken to commence the commission of the offence – shall not be punished. It is true that Estonian Penal Code contains some instances for very serious offences (terrorism, drug offences), preparation of which constitute separate offences. Similarly, conspiracy for some serious offences which are punished by imprisonment for more than 12 years, shall be punished under some conditions (§ 22-1 PC). Money laundering, being punished by maximum ten years does not belong into that category and establishing a separate offence for conspiracy for money laundering is not proportionate. Thus mere talks, or even planning of or negotiations for money laundering cannot be punished, if the persons have not directly commenced the commission of the offence.
(Other) changes since the last evaluation	

Recommendation 5 (Customer due diligence) I. Regarding financial institutions	
Rating: LC	
Recommendation of the MONEYVAL Report	*The obliged entities are allowed to rely on CDD information received inter alia from a credit institution who has been registered or whose place of business is in a contracting state of the European Economic Area or a third country where requirements equal to those provided in the MLTFPA are in force. In the absence of further guidance on this issue, Estonian authorities should at least issue guidance regarding the question of which countries satisfactorily fulfil these requirements.*
Measures taken to implement the Recommendation of the Report	Obligated persons have to specify, if a third country can be considered equivalent. MLTFPA sets a definition that an equivalent country should have requirements in place equal to those provided in MLTFPA. On 18th April 2008 countries attending the European Commission Committee on the prevention of money laundering and terrorist financing approved the list of countries[1] considered equivalent in the meaning of 3rd AML Directive[2]. The list expresses the common understanding of Member States. The text of the agreement of Member States with a translation into Estonian is published on the webpage of FSA (http://www.fi.ee/?id=1726) and on the webpage of FIU http://www.politsei.ee/?id=1760. In order to give guidance to credit and financial institutions on how to apply the list, FSA issued a circular on 28.01.2009 on third country equivalence. The fact that a country does not appear in the list does not refer to low-level standards of AML/CFT laws and due diligence measures and does not demand qualifying the country as non-equivalent. FSA underlined that obligated persons have to give their own evaluation using available up-to-date information on a country. Besides relying on its knowledge and experience, an obligated person has to take into account the assessments of FATF, IMF and The World Bank, memberships in other organizations presuming meeting to the requirements on certain level, factors arising from the context of the situation, trade density with that country and other relevant circumstances. Additional information on the AML/CFT measures in different countries can be found on the web pages of FATF[3] and MONEYVAL[4], including also published evaluation reports of countries. Both FATF and MONEYVAL have also asked member states to advise the market participants of risks associated with countries whose AML/CFT laws **do not** meet the internationally recognized standards. References on those statements have been published on the webpage of FSA (http://www.fi.ee/?id=1726). It is necessary to document every decision taken to consider a country to be equivalent or apply due diligence measures in relations with costumers/persons originating from a country.

[1] Common Understanding between Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC)

[2] 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

[3] Financial Action Task Force: http://www.fatf-gafi.org

[4] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism: http://www.coe.int/t/dghl/monitoring/moneyval/

Recommendation of the MONEYVAL Report	*Concerning beneficial ownership, the law leaves some discretion in interpretation whether it also covers instances when a natural person acts for another natural person. Estonian authorities should make it clear in the law that beneficial ownership does not only refer to the first natural person in the chain but that it (also) covers natural persons who ultimately control other natural persons.*
Measures taken to implement the Recommendation of the Report	Relevant amendment to MLTFPA defines beneficial ownership in a way that leaves no discretion to the interpretation. New Art. 8 (1) and (1^1) clearly state, that a beneficial owner is a natural person who, taking advantage of his or her influence, exercises control over a transaction, act or another person, and in whose interests or favour or on whose account the transaction or act is made and a beneficial owner is also a natural person who permanently owns the shares or voting rights of the company or exercises final control over the management of a company in at least one of the following ways: 1) by owning over 25 percent of shares or voting rights through direct or indirect shareholding or control, including in the form of bearer shares; 2) otherwise exercising control over the management of a legal person.
Recommendation of the MONEYVAL Report	*Concerning criterion 5.6, § 13 (1) 4) MLTFPA requires "acquisition of information about a business relationship and the purpose of a transaction". This provision could only indirectly be sanctioned (that failure to observe these requirements indicate a failure of the institution's internal controls). Estonia should introduce a direct sanctioning regime for this provision.*
Measures taken to implement the Recommendation of the Report	Relevant amendment to MLTFPA has introduced new, more detailed sanctioning provision. According to Art. 57^1 of MLTFPA the failure of acquisition of information about business relationship and the purpose of a transaction are sanctioned. Art. 57^1 states the following: „§ 57^1. Failure to comply with requirements to obtain information (1) Failure on the part of an obligated person or its employee to comply with the requirements to obtain information on the purpose and nature of a business relationship or transaction is punishable by a fine up to 300 fine units. (2) The act specified in subsection 1 of this section, if committed by a legal person, is punishable by a fine up to 500 000 Estonian kroons."
Recommendation of the MONEYVAL Report	*The Estonian approach to address "high risk of money laundering or terrorist financing" sets the level to apply enhanced CDD to a higher level than "higher risk" in terms of the Methodology. While "high risk" is at the upper end of a level of risk, "higher risk" refers only to a situation more risky than average. Furthermore, in the categories of § 19 MLTFPA non-resident customers and private banking do not appear as higher risk situations which would require enhanced CDD measures. Estonia should change the term of "high risk" to "higher risk" and consider adding non-resident customers and private banking to the categories which require enhanced CDD measures. Furthermore, the authorities should provide financial institutions with guidance on the existing categories of high risk.*
Measures taken to implement the Recommendation of the Report	Minister of Finance Regulation no 10 "Requirements for the Rules of Procedure established by credit and financial institutions and for their implementation and verification of compliance" Art. 3 (4) enacts: "Code of Conduct for the application of customer due diligence measures must include at least the following: 4) a description of high risk transactions, including transactions concluded in private banking, as well as requirements for and procedures of the conclusion and ongoing monitoring of such transactions. Art 13 of the Regulation 10 enacts:

	"(1) Code of Conduct for the application of customer due diligence measures must provide: 1) methods for ascertaining the area and profile of the activities of a customer; 2) procedures for monitoring and analyzing transactions concluded by a customer with the credit or financial institution and with a credit or financial institution belonging to the same consolidation group as the credit or financial institution, based on which there shall be a distinction made between low risk transactions and high risk transactions, including transactions belonging to the area of private banking; 3) directions for the case where there is a suspicion of money laundering or terrorist financing in relation to low risk transactions; 4) other measures necessary for implementing the principle ´know your client´. (2) Measures specified in paragraph 1 must distinguish between: 1) directions for monitoring business relationships where the customer is subjected to the provisions of Articles 17 and 18 of the Money Laundering and Terrorist Financing Prevention Act; 2) directions for monitoring business relationships where the customer is subjected to the provisions of Article 19 of the Money Laundering and Terrorist Financing Prevention Act. Art 19 of MLTFPA enacts: "(1) If a situation involves a high risk of money laundering or terrorist financing, an obligated person shall apply enhanced due diligence measures. (2) An obligated person must apply the enhanced due diligence measures specified in subsection (3) if: 1) a person or customer participating in a transaction or official act performed in economic or professional activities has been identified and verified without being present at the same place as the person or customer; 2) upon identification or verification of a person suspicion arises of the truthfulness of the data or authenticity of the documents submitted or of the identification of the beneficial owner or the beneficial owners; 3) a person or customer participating in a transaction or an official act performed in economic or professional activities is a person specified in subsection 21 (1). (3) In the events specified in subsections (1) and (2) an obligated person shall apply in addition to the diligence measures specified in this Act § 13 (1) 1)-4) also at least one of the following enhanced due diligence measures: 1) identification and verification of a person on the basis of additional documents, data or information, which originate from a reliable and independent source or from a credit institution or the branch of a credit institution registered in the Estonian commercial register or a credit institution, which has been registered or has its place of business in a contracting state of the European Economic Area or in a country where requirements equal to this Act are in force, and if in such credit institution the person has been identified while being present at the same place as the person; 2) application of additional measures for the purpose of verifying the authenticity of documents and the data contained therein, among other things, demanding that they be notarised or officially authenticated or confirmation of the correctness of the data by the credit institution specified in clause 1), which issued the document; 3) making the first payment relating to the transaction through an account opened in the name of a person or customer participating in the transaction in a credit institution which has its place of business in a contracting state of the European Economic Area or in a country where requirements equal to those provided for in this Act are in force.

	(4) In the events specified in subsections (1) and (2) an obligated person shall apply the due diligence measures specified in clause 13 (1) 5) more frequently than usually. (5) An obligated person is responsible for proper application of the due diligence measures." According to the amendments to § 30 (3) 2) of the MLTFPA all obligated persons have the obligation to describe in their rules of procedure transactions of a higher risk level, including risks related to means of communication, computer network or other technological development and establish the appropriate requirements and procedure for entering into and monitoring such transactions. Additionally, an amendment of the MLTFPA addresses the issue of high risk. New Art. 29 (1^1) enacts: "(1^1) Upon performance of the obligations provided for in subsection (1), an obligated person shall draw a higher attention if the place of location or business of a subsidiary, branch or representative office with a qualifying holding of the obligated person is in a third country where insufficient measures for prevention of money laundering and terrorist financing have been applied or if that country does not cooperate internationally in the prevention of money laundering and terrorist financing or is a territory with a low tax rate." FSA Advisory Guidelines address the issue as well. Art 5.3.2 provides the following: "5.3.2. When determining and substantiating the risk levels of a party or customer participating in a transaction11, the obligated subject shall take into account, for instance, the following risk factors: *Customer risk*, whose risk factors result from the customer's person, including: – the legal form, management structure, area of activity, including trust funds, partnerships or other such contractual legal entities, legal persons having bearer shares; – whether this is a politically exposed person; – whether the party is represented by a legal person; – the residency of the party, including whether this is a party registered in an region with a low tax rate; – the possibility of classifying the customer as a typical customer in a certain customer category; – circumstances (including suspicious transactions identified in the course of a prior business relationship) resulting from the experience of communicating with the customer, its business partners, owners, representatives and any other such persons; – the duration of the activity, the nature of the business relations. *Product or service risk*, whose risk factors result from the customer's business activity or the exposure of a specific product or service to potential money laundering risks. Examples of a higher product or service risk: – private banking, personal banking – currency exchange, conversion transactions – mediation of alternative means of payment and electronic money; – founding, sale, administration of companies; *Country risk*, whose risk factors arise from the differences in the legal environments (whether legal provisions meeting international standards are applied in the country to prevent money laundering and terrorist financing), crime levels, including drug crime and corruption levels, of countries, including also whether international sanctions have been applied against this country or persons in this

	country (relevant lists have been published on the webpage of the European Commission, http://ec.europa.eu/external_relations/cfsp/sanctions/list/consol-list.htm). Obligated persons may use also other means of classifying risk factors recognized in banking." FIU has issued guidelines of rules of procedures for traders part 4 provides that when determining the risk levels, three risk factor shall be taken into account: country risk, customer risk and transaction risk and describes different factors of higher risk. FIU guidelines are available on: http://www.politsei.ee/?id=1626 and
Recommendation of the MONEYVAL Report	*§ 18 MLTFPA allows for the application of simplified CDD measures in case of credit or financial institutions located in a contracting state of the European Economic Area or a third country, which in the country of location is subject to requirements equal to those provided for in this Act and the performance of which is subject to state supervision. At present, no guidance from the Estonian supervisory bodies exists specifying which third countries fulfil these criteria. Though simplified CDD is not mandatory under the Methodology but in case of applying such a system, the requirements of criterion 5.10 have to be met which is not the case in Estonia.*
Measures taken to implement the Recommendation of the Report	Obligated persons have to specify, if a third country can be considered equivalent. MLTFPA sets a definition that an equivalent country should have requirements in place equal to those provided in MLTFPA. On 18th April 2008 countries attending the European Commission Committee on the prevention of money laundering and terrorist financing approved the list of countries[5] considered equivalent in the meaning of 3rd AML Directive[6]. The list expresses the common understanding of Member States. The text of the agreement of Member States with a translation into Estonian is published on the webpage of FSA (http://www.fi.ee/?id=1726)) and on the webpage of FIU http://www.politsei.ee/?id=1760. In order to give guidance to credit and financial institutions on how to apply the list, FSA issued a circular on 28.01.2009 (see http://www.fi.ee/failid/Guidelines_on_3rd_country_equivalence.pdf) on third country equivalence. The fact that a country does not appear in the list does not refer to low-level standards of AML/CFT laws and due diligence measures and does not demand qualifying the country as non-equivalent. Obligated persons have to give their own evaluation using available up-to-date information on a country. Besides relying on its knowledge and experience, an obligated person has to take into account the assessments of FATF, IMF and The World Bank, memberships in other organizations presuming meeting to the requirements on certain level, factors arising from the context of the situation, trade density with that country and other relevant circumstances. Additional information on the AML/CFT measures in different countries can be found on the web pages of FATF[7] and MONEYVAL[8], including also published

[5] Common Understanding between Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC)

[6] 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

[7] Financial Action Task Force: http://www.fatf-gafi.org

[8] Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism: http://www.coe.int/t/dghl/monitoring/moneyval/

	evaluation reports of countries. Both FATF and MONEYVAL have also given opinions on countries whose AML/CFT laws do not meet the internationally recognized standards. References on those statements have been published on the webpage of FSA (http://www.fi.ee/?id=1726). It is necessary to document every decision taken to consider a country to be equivalent or apply due diligence measures in relations with costumers/persons originating from a country.
Recommendation of the MONEYVAL Report	*The MLTFPA requires all obligated persons to have rules of procedure which ensure that the legal CDD requirements as set out in the MLTFPA are followed. Though not explicitly mentioned, the Estonian authorities are of the opinion that this language covers also all instances in which a business relationship begins prior to full CDD. The Minister of Finance is obliged to issue a decree specifying further requirements for such rules of procedure. Such guidance was not yet in existence at the time of the on-site visit and should be done as soon as possible.*
Measures taken to implement the Recommendation of the Report	Minister of Finance Regulation No 10 of 3 April 2008 "Requirements for the Rules of Procedure established by credit and financial institutions and for their implementation and verification of compliance" that came into force on 11 April 2008 enacts explicitly, that obligated persons should have rules of procedures in place ensuring application of CDD measures where a business relationship begins prior to full CDD. According to Art. 4 (2) of the referred Regulation: "Code of Conduct for the application of customer due diligence measures shall provide the procedures and specify the cases where it is allowed to establish a business relationship, including opening an account or carrying out a transaction, at the request of the person participating in the transaction prior to the full application of customer due diligence measures."
Recommendation of the MONEYVAL Report	*The MLTFPA should clearly require financial institutions to terminate a business relationship and notify the FIU in instances in which a request for additional documentation arising only from ongoing due diligence remains unfulfilled (part of criterion 5.16).*
Measures taken to implement the Recommendation of the Report	Relevant amendment to MLTFPA clearly states the required obligation. According to the new wording of Art. 27 (3) of MLTFPA if a person or customer participating in a transaction concluded in economic or professional activities does not, regardless of a respective request, submit documents and relevant information necessary for performance of the obligation specified in this Act § 13 (1) 1)–4), it is deemed to be a fundamental breach of contract and the obligated person has the obligation for extraordinary cancellation of a long-term contract being the basis of a business relationship The amended wording of Art 27 (6) requires obligated persons to register relevant information: "(6) an obligated person shall register and preserve pursuant to the procedure provided for in § 26: 1) the information on the circumstances of refusal of the obligated person to establish a business relationship or conclude a transaction; 2) the circumstances of refusal at the initiative of a person participating in a transaction or professional act, a person using a professional service or a customer to establish a business relationship or conclude a transaction if such refusal is related to the application of due diligence measure by the obligated person; 3) the circumstances of the termination of a business relationship in the event provided for in subsection (3) of this section;

	Art 27 (3) establishes the following: In a long-term contract serving as the basis of a business relationship, an obligated person shall stipulate the right to terminate it extraordinarily without following the term of advance notification, if a person or customer participating in a transaction concluded in economic or professional activities does not, regardless of a respective request, submit documents and relevant information or if the submitted documents and data do not eliminate the obligated person's suspicion that the purpose of the transaction or business relationship may be money laundering or terrorist financing. Amended Art. 30 (3) 5) sets the requirement to have relevant rules of procedure in place, stating that "(3) The rules of procedure shall: …5) set out the requirements and procedure for application of § 27 (6)." The basis for notifying FIU of such cases comes from the Art. 32 (1) and (2) (the latter is amended) which enact: "(1) If, upon performance of economic or professional activities or when carrying out an official act, an obligated person identifies an activity or circumstances which might be an indication to money laundering or terrorist financing or in case the obligated person has reason to suspect or knows that it is money laundering or terrorist financing, the obligated person shall immediately notify the Financial Intelligence Unit thereof. (2) Subsection (1) shall also be applied in the events specified in § 27 (6) 1)-3)."
(Other) changes since the last evaluation	

Recommendation 5 (Customer due diligence) II. Regarding DNFBP[9]	
Recommendation of the MONEYVAL Report	*As the relevant provisions of the MLTFPA apply both to financial institutions and DNFBP in the same way, the comments and observations made for credit and financial institutions under Recommendation 5, 6, 8, 9, 10 and 11 equally apply for DNFBP (with the exception of criterion 8.2 of the FATF Methodology). Thus the Recommendations there are also valid concerning DNFBP.*
Measures taken to implement the Recommendation of the Report	The amendments to the MLTFPA are applicable to all obligated persons, including DNFBP-s. Hence, our comments to the Recommendation 5 concerning financial institutions are generally applicable to the DNFBP-s as well. Amended section 18 (4) of the MLTFPA (**Conditions of the application of simplified due diligence measures)** is worded as follows: "(4) An obligated person may apply simplified due diligence measures in a transaction if all the following conditions are met: 1) a written long-term contract has been concluded with a customer; 2) a payment is made through the account of a person or customer participating in a transaction, which has been opened in a credit institution or the branch of a foreign credit institution registered in the Estonian Commercial Register or in a credit institution which has been registered or has its place of business in a contracting state of the European Economic Area or in a country where requirements equal to those provided by this Act are in force: 3) the obligated person has established by rules of internal procedure beforehand that the annual total value of performance of financial obligations arising from transactions of that type does not exceed the maximum limit of 200 000 Estonian kroons.”;

[9] i.e. part of Recommendation 12.

	Amended section 27 (3) of the MLTFPA is worded as follows: "(3) If a person or customer participating in a transaction concluded in economic or professional activities does not, regardless of a respective request, submit documents and relevant information necessary for performance of the obligation specified in this Act § 13 (1) 1)–4), it is deemed to be a fundamental breach of contract and the obligated person has the obligation for extraordinary cancellation of a long-term contract being the basis of a business relationship."; According to the Art 30 the rules of procedure shall describe transactions of a higher risk level and establish the appropriate requirements and procedure for entering into and monitoring such transactions. Amended Art. 30 (3) 5)) sets the requirement to have relevant rules of procedure in place, stating that "(3) The rules of procedure shall: …5) set out the requirements and procedure for application of § 27 (6)." Amended section 32 (2) of the MLTFPA is worded as follows:: "(2) Subsection (1) of this section shall also be applied in the events provided by § 27 (6) 1)-3)."
Recommendation of the MONEYVAL Report	*§ 30 (6) MLTFPA applies only to financial institutions but not to DNFBP. The evaluators recommend that also DNFBP should be required through means of secondary legislation (i.e. Minister of Finance's regulation) to set up comprehensive internal control mechanisms for managing AML/CFT risks having regard to the sort, scope and complexity of their activities.*
Measures taken to implement the Recommendation of the Report	FIU has issued the guidelines to (available in Estonian in FIU's web site): – auditors and providers of accounting services: http://www.politsei.ee/files/rab/Audiitorite_poolt_esitatava_teate_esitamise_juhend_EST_RUS.pdf – traders: http://www.politsei.ee/files/rab/Kauplejad_protseduurireeglid.pdf – pawn houses; http://www.politsei.ee/files/rab/Protseduurireeglid_naidids_pandimajapidajad.pdf – casinos: http://www.politsei.ee/files/rab/tegevusjuhend_kasiinod.pdf – notaries public (in cooperation with Chamber of Notaries) http://www.politsei.ee/files/rab/Notarite_poolt_rahapesu_andmeburoole_esitatava_teate_koostamise_juhend_juuni_2008.pdf The advisory guidelines issued by Chamber of Notaries and Estonian Bar Association have been coordinated with FIU. At the moment the advisory guideline to the distance casino service providers is at the process of drafting since the articles regulating the remote gambling activities will enter into force on 1 January 2010. According to § 47 section 3 MLTFPA the Estonian Bar Association Board carries out supervision over association members' compliance to MLTFPA and acts issued on the basis of the act according to Bar Association Act taking into consideration the stipulation of MLTFPA. According to same paragraph section 4 the Ministry of Justice carries out supervision over notaries' compliance to MLTFPA and acts issued on the basis of the act according to Notaries Act, taking into consideration the stipulation of MLTFPA. According to MLTFPA the Ministry of Justice has delegated supervision rights to the Chamber of Notaries (Notaries Reglement section 82 (9). Cooperation between the Chamber of Notaries and Financial Intelligence Unit is efficient. The Camber of Notaries has entered into Cooperation Memorandum with

	Financial Intelligence Unit. In 2009 representatives of both of the aforementioned establishments have convened on one occasion. The representatives have frequently discussed problems arisen from practice – such as filing reports, new criminal trends etc. A representative of the Camber of Notaries is active in the work of Monetary Laundering Council acting under the Ministry of Finance. The meetings of the Council take place four to six times per year. According to § 44 Notaries Act the Chamber of Notaries prepares guidelines for the harmonization of the practice of notaries related to office. The Chamber of Notaries has passed their own guidelines on 1st November 2008. Training took place after the implementation of the new MLTFPA and during the imposing of guidelines. Supervision over notaries has been done in the course of periodic supervision. No deficiencies were discovered. On May the 20th 2009 Advisory Committee and Estonian Bar Association have signed a cooperation memorandum to - impede and forestall the use of Estonian monetary system and economy for monetary laundry and financing of terrorism and organize cooperation in this regard. - Bar Association Board has passed guidelines on September the 9th 2008 on procedural rules to fulfill the duties of impeding and forestalling monetary laundering and financing terrorism. The act is recommendable and law offices are free to use that as an example to develop their own directive considering their specifics. In December 2008 the Bar Association Board carried out supervision to see whether law offices have implemented the procedural rules of diligence measures to fulfill their duties according to MLTFPA. In the course of supervision random selection of law offices were supervised. The selection covered approximately 9 % of law offices. In the course of supervision 15 law offices over Estonia were examined. During supervision one law office out of 15 did not have the aforementioned rules of procedure, other 14 law offices did have the rules of procedure. The law office with shortcomings was asked to conduct their business in accordance with the law and an additional examination followed in January 2009. During the additional examination it was discovered that the law office had implemented the requested procedural rules. The Bar Association Board has pointed out to the members of the association the significance of the subject and the need to implement the aforementioned rules in their offices. The Bar Association Board did not discover any violation of MLTFPA or the guidelines implemented on the basis of the act by the members of the association and therefore has not had the need to apply punishment to members. Review of the results of the supervision has been presented to Financial Intelligence Unit on April the 14th 2009. In February 2009 training was organized by the Bar Association on the subject of money laundering, under which different topics were addressed (prevention of money laundering, what does an entrepreneur have to know about MLTFPA, lawyers and money laundering). During a joint meeting in 2008 it was decided to enforce corresponding meeting annually where the following topics can be discussed: the review of last year's supervision, experiences on the subject, problems emerged in the course of everyday work.
Recommendation of the MONEYVAL	*Though DNFBP are required under § 19(2) MLTFPA to apply enhanced due*

Report	*diligence procedures for business relationships or transaction with non face to face-customers, no guidance is provided as to the possible enhanced due diligence measures that DNFBP should take to mitigate the risks for non-face-to face relationships and transactions. Estonian authorities should issue such guidance.*
Measures taken to implement the Recommendation of the Report	According to amendments to § 30 (3) 2) the rules of procedure of **all** obligated persons have to describe transactions of a higher risk level, including risks related to means of communication, computer network or other technological development and establish the appropriate requirements and procedure for entering into and monitoring such transaction. FIU has issued the guidelines which apply to DNFBP (available in Estonian on FIU's web site) and provide guidance as to the possible enhanced due diligence measures that DNFBP should take to mitigate the risks for non-face-to face relationships and transactions. FIU Example rules of procedure for traders for fulfilling the AML obligations specifies also the measures for enhanced CDD (http://www.politsei.ee/?id=826). Similar principles are provided by Chamber of Notaries and the Bar Association guidelines.
Recommendation of the MONEYVAL Report	*Casinos should be required not only to identify but also to verify the name of a client who engage in financial transactions equal or above the threshold given by criterion 12.1 of 3 000 USD/EUR; though not required by the Methodology, it may be easier simply to amend the law by using the existing (lower) threshold of the MLTFPA which is 30 000 EEK (1 917.34 EUR).*
(Other) changes since the last evaluation	As of the beginning of 2009 the new Gambling Act came to force in Estonia requiring to identify, verify and register all visitors of casinos. The Gambling Act § 37 (7)—(11) provide that the organizer of a game of chance is obliged to identify the persons entering the venue of game of chance. For identifying the persons the following information shall be recorded: 1) given name and surname; 2) personal ID code, or if this is not present, date of birth; 3) title and serial number of the ID, date and place of issue; 4) time and date of arrival to the venue of game of chance. Information shall be registered upon the first entering of the venue of game of chance by a person on the basis of an ID. The page of the ID with personal information is photocopied, and the information listed in section 5 is filed with an electronic database. Before the person is admitted into the venue for game of chance the organizer of gambling checks the information on the person in the database for persons visiting the venue of game of chance on the basis of ID, and records the time and date of arrival of the person in the casino The information may be viewed, copies of it received or queried using a computer-based data exchange network or data security method agreed on with the organizer of the game of chance only by: 1) supervisory body upon carrying out state supervision; 2) court during a procedure; 3) institution carrying out criminal investigation; 4) Tax and Customs Board in connection with the procedure of a particular tax case; 5) Financial Intelligence Unit; 6) Security Police Board in connection with proceedings for state secrets access permits;

	7) the person with regard to data about themselves. Information entered in the database on a person shall be stored for at least 5 years starting from the last visit of the venue of game of chance by the person. Additionally, the MLTFPA § 16 (1) provides that the organizer of games of chance is obligated to identify and verify the data specified in subsection 23 (3) regarding all persons who pay or receive in a single transaction or several related transactions an amount exceeding 30,000 kroons or an equal amount in another currency.

Recommendation 10 (Record keeping) I. Regarding Financial Institutions	
Rating: LC	
Recommendation of the MONEYVAL Report	*There is no requirement in law or regulation to keep documents longer than five years if requested by a competent authority.*
Measures taken to implement the Recommendation of the Report	The requirement to keep documents longer than five years if requested by a competent authority is met by the following provision of Code of Criminal Procedure. **Code of Criminal Procedure** § 215. Obligation to comply with orders and demands of investigative bodies and Prosecutors' Offices (1) The orders and demands issued by investigative bodies and Prosecutors' Offices in the criminal proceedings conducted thereby are binding on everyone and shall be complied with throughout the territory of the Republic of Estonia. (3) A preliminary investigation judge may impose a fine of up to sixty minimum daily rates on a participant in a proceeding, other persons participating in criminal proceedings or persons not participating in the proceedings who have failed to perform an obligation provided for in subsection (1) of this section by a court ruling at the request of a Prosecutor's Office. The suspect and the accused shall not be fined.
(Other) changes since the last evaluation	

Recommendation 10 (Record keeping) II. Regarding DNFBP[10]	
Recommendation of the MONEYVAL Report	*There is no requirement in law or regulation to keep documents longer than five years if requested by a competent authority.*
Measures taken to implement the Recommendation of the Report	The requirement to keep documents longer than five years if requested by a competent authority is met by the following provision of Code of Criminal Procedure. **Code of Criminal Procedure** § 215. Obligation to comply with orders and demands of investigative bodies and Prosecutors' Offices (1) The orders and demands issued by investigative bodies and Prosecutors' Offices in the criminal proceedings conducted thereby are binding on everyone and shall be complied with throughout the territory of the Republic of Estonia. (3) A preliminary investigation judge may impose a fine of up to sixty

[10] i.e. part of Recommendation 12.

	minimum daily rates on a participant in a proceeding, other persons participating in criminal proceedings or persons not participating in the proceedings who have failed to perform an obligation provided for in subsection (1) of this section by a court ruling at the request of a Prosecutor's Office. The suspect and the accused shall not be fined.
(Other) changes since the last evaluation	

Recommendation 13 (Suspicious transaction reporting) I. Regarding Financial Institutions	
Rating: LC	
Recommendation of the MONEYVAL Report	*It should be clarified in the MLTFPA, that all attempted transactions have to be reported.*
Measures taken to implement the Recommendation of the Report	Relevant amendment to MLTFPA clearly states the required obligation. The amended wording of Art. 27 (6) ((1-2)) of MLTFPA requires obligated persons to register the details of attempted transactions and enacts: "(6) An obligated person shall register and preserve pursuant to the procedure provided for in § 26: 1) the information on the circumstances of refusal of the obligated person to establish a business relationship or conclude a transaction; 2) the circumstances of refusal at the initiative of a person participating in a transaction or professional act, a person using a professional service or a customer to establish a business relationship or conclude a transaction if such refusal is related to the application of due diligence measure by the obligated person;" The obligation to notify FIU derives from the Art 32 (1) and (2) (the latter amended) that state: "(1) If, upon performance of economic or professional activities or when carrying out an official act, an obligated person identifies an activity or circumstances which might be an indication to money laundering or terrorist financing or in case the obligated person has reason to suspect or knows that it is money laundering or terrorist financing, the obligated person shall immediately notify the Financial Intelligence Unit thereof. (2) Subsection (1) of this section shall also be applied in the events provided by § 27 (6) 1)-3)."
Recommendation of the MONEYVAL Report	*The definition of financing of terrorism as provided for by § 5 of the MLTFPA is linked with the definition as provided for by § 237³ PC (the terrorist financing offence) and thus it has the same limitations as the terrorist financing offence and there is no reporting obligation in case of:* *1. financing of an individual terrorist;* *2. collecting of funds for the purpose of terrorist financing;* *3. the provision of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist;* *4. those conducts of Art 2 of the Terrorist Financing Convention and addressed in the specific UN terrorist conventions which are not covered in the Estonian terrorist offence (§ 237 PC).* *It is recommended that the reporting obligation will be broadened and brought into line with SR. IV.*
Measures taken to implement the Recommendation of	It is now clearly stated in 237³ of the Penal Code (entered into force 6.04.2009) that financing of an individual terrorist and collecting of funds for the purpose of terrorist financing is punishable.

the Report	The Penal Code: § 237[3]. Funding and supporting a terror crime and its execution (1) If a person has assisted, funded or consciously supported in any other way a crime described in Sections 237 (acts of terrorism), 237[1] (terrorist organisation) or 237[2] (preparation of and encitement to acts of terrorism) of this Penal Code or an organization or **person** whose activity is directed towards committing a crime described in Section 237 of this Penal Code; or has enabled the use of or collected resources with the knowledge that these resources will be used to partially or fully commit a crime described in Sections 237, 237[1] or 237[2] of this Penal Code; then the person will be punished with an imprisonment sentence of 2 to 10 years. (2) If a legal person has committed the same crime, the legal person will be punished with a monetary fine or forced liquidation. (3) The court will implement extended property seizure for the property gained through crime described in this Section according to Section 83[2] of this Penal Code. [RT I 2009, 19, 114<https://www.riigiteataja.ee/ert/act.jsp?id=13163245> – entered into force 6.04.2009].
Recommendation of the MONEYVAL Report	*Savings and loan associations as well as insurance sector sent no STRs so far. This shows that there is presumably either a lack of understanding or awareness of anti-money laundering obligations of these entities. The FIU should provide more guidance and training to these entities that they better understand their reporting obligations.*
Measures taken to implement the Recommendation of the Report	As of the 01.09.2009 there were 11 savings and loan associations (SLA) operating in Estonia. The market share of SLAs is relatively small, constitutes ca 0,056% of the total assets of credit institutions. The scope of activities is limited by law to deposit taking from its own members and subordination of government loans and foreign aid funds to their members**.** The total balance of all SLAs is approx. 179 mil EEK (ca 11,4 mil EUR), therein ca 1/3 of the liabilities consists the loan resource for specific purposes and ca 1/3 statutory reserves and share capital**.** The SLAs are subject to the reporting obligation according to the MLTFPA. FIU has sent to all savings and loan associations operating in Estonia a circular letter where FIU has called savings and loan associations' attention to the changes made in the MLTFPA (compared to the old MLTFPA). In 2008 FIU received one STR from savings and loan association. Estonia has analysed the activities of the savings and loan associations. Since in Estonia savings and loan associations are relatively young and they are mainly focused to financing agricultural activities at the local (i.e. parish) level and the scale of the funds administered is rather small, the ML risks in this sector are low. FIU received 2 reports in 2008 and 1 report in 2009 from insurance agencies. Since the high-ML-risk insurance services are not popular in Estonia, this is estimated that the risk of being abused in ML schemes is low for the insurance sector. Therefore, it is estimated that the number of STRs received from this sector will not increase considerably in next few years. FSA has issued guidelines "Additional measures for prevention of money laundering and terrorist financing in credit and financial institutions" on 22 October 2008 and published on the web-site of the FSA. Guidelines are addressed to all credit and financial institutions under the AML/CFT supervision of FSA, **including insurance sector** (life-insurance providers are subject to MLTFPA). Guidelines were sent to all obligated persons and also published on the webpage of FSA (http://www.fi.ee/failid/Soovituslik_juhend_RTRTS_2008_EN.pdf). Chapter 9 of the guidelines describes action in case of suspicion of money laundering, including reporting obligation.

(Other) changes since the last evaluation	

Recommendation 13 (Suspicious transaction reporting) II. Regarding DNFBP[11]	
Recommendation of the MONEYVAL Report	*The same deficiencies in the implementation of Recommendations 13, 15 and 21 in respect of financial institutions apply equally to DNFBP and the Recommendations there concerning financial institutions are also valid in the context of Recommendation 16.*
Measures taken to implement the Recommendation of the Report	Relevant amendment to MLTFPA clearly states the required obligation. The amended wording of Art. 27 (6) ((1-2)) requires obligated persons to register the details of attempted transactions and enacts: "(6) An obligated person shall register and preserve pursuant to the procedure provided for in § 26: 1) the information on the circumstances of refusal of the obligated person to establish a business relationship or conclude a transaction; 2) the circumstances of refusal at the initiative of a person participating in a transaction or professional act, a person using a professional service or a customer to establish a business relationship or conclude a transaction if such refusal is related to the application of due diligence measure by the obligated person;". The obligation to notify FIU derives from the Art 32 (1) and (2) (the latter amended) that state: "(1) If, upon performance of economic or professional activities or when carrying out an official act, an obligated person identifies an activity or circumstances which might be an indication to money laundering or terrorist financing or in case the obligated person has reason to suspect or knows that it is money laundering or terrorist financing, the obligated person shall immediately notify the Financial Intelligence Unit thereof. ((2) Subsection (1) of this section shall also be applied in the events provided by § 27 (6) 1)-3) According to amendments to § 14 of the MLTFPA an obligated person draws in his or her economic or professional activity higher attention to business relations or transactions if the place or residence or location of a customer or a person participating in the transaction or a person using the professional service, or the place of location of a payment service provider of a beneficiary is in a third country or on a territory where sufficient measures for prevention of money laundering and terrorist financing have not been applied, or if that country or territory does not cooperate internationally in the prevention of money laundering and terrorist financing or is a territory with a low tax rate."
Recommendation of the MONEYVAL Report	*Some DNFBP seem less aware of their obligations; e.g. lawyers, real estate dealers as well as accountants and auditors sent only a very small number of STR so far. Further outreach to these entities that they better understand their reporting obligations is necessary.*
Measures taken to implement the Recommendation of the Report	After adoption of MER FIU has organised 13 training seminars where all obligated persons' categories have been represented (in total 361 participants). Unfortunately there is no disaggregated statistics available. In addition, FIU has organised 6 training seminars to auditors and accounting services providers (322 participants), 1 training seminar to lawyers (100 participants) and 1 training seminar to bailiffs (40

[11] i.e. part of Recommendation 16.

	participants). To increase the awareness, FIU has made 29 on-site inspections to real estate agents, and 47 on-site inspections to bailiffs, 84 to trustees and 227 to other legal services providers. According to the statistics, the incidence of reporting has somewhat increased in those sectors after inspections. In 2008 auditors and accounting services providers sent 6 report to FIU, as of 30 September 2009 the number was 14. The number of reports sent by other legal services providers sent was 2 and 6, respectively. Real estate providers have sent only 2 reports since 1.01.2008 since the transactions are drawn up by notaries public. The analysis of the reports received by notaries public clearly indicates that most of the STRs received involve real estate transactions. FIU does not forecast the vast increase of the reports form those sector in next few years.
(Other) changes since the last evaluation	

Special Recommendation II (Criminalisation of terrorist financing)	
Rating: PC	
Recommendation of the MONEYVAL Report	*It is recommended to amend the legal text criminalising terrorist acts and the provision criminalising terrorist financing in a way that they would be broad and detailed enough to cover, besides the financing of terrorist organisations, also all terrorist acts as required by the UN Conventions and the financing of individual terrorists.*
Measures taken to implement the Recommendation of the Report	Financing of an individual terrorist in now clearly stated in 237³ of the PC (entered into force 6.04.2009) The Penal Code: § 237^3. Funding and supporting a terror crime and its execution (1) If a person has assisted, funded or consciously supported in any other way a crime described in Sections 237 (acts of terrorism), 237^1 (terrorist organisation) or 237^2 (preparation of and incitement to acts of terrorism) of this Penal Code or an organization or person whose activity is directed towards committing a crime described in Section 237 of this Penal Code; or has enabled the use of or collected resources with the knowledge that these resources will be used to partially or fully commit a crime described in Sections 237, 237^1 or 237^2 of this Penal Code; then the person will be punished with an imprisonment sentence of 2 to 10 years. (2) If a legal person has committed the same crime, the legal person will be punished with a monetary fine or forced liquidation. (3) The court will implement extended property seizure for the property gained through crime described in this Section according to Section 83^2 of this Penal Code. [RT I 2009, 19, 114<https://www.riigiteataja.ee/ert/act.jsp?id=13163245> – entered into force 6.04.2009].
Recommendation of the MONEYVAL Report	*These provisions should also:* • *clearly cover the various elements required by SR.II, in particular the collection of funds by any means, directly or indirectly, and their use in full or in part for terrorist financing purposes;* • *clarify that it is not necessary that funds were actually used to carry out terrorist acts or be linked to a specific terrorist act.*
Measures taken to implement the Recommendation of	Financing of an individual terrorist in now clearly stated in 237³ of the PC (entered into force 6.04.2009)

the Report	The Penal Code: § 237[3]. Funding and supporting a terror crime and its execution (1) If a person has assisted, funded or consciously supported in any other way a crime described in Sections 237 (acts of terrorism), 237[1] (terrorist organisation) or 237[2] (preparation of and incitement to acts of terrorism) of this Penal Code or an organization or person whose activity is directed towards committing a crime described in Section 237 of this Penal Code; or has enabled the use of or collected resources with the knowledge that these resources will be used to partially or fully commit a crime described in Sections 237, 237[1] or 237[2] of this Penal Code; then the person will be punished with an imprisonment sentence of 2 to 10 years. (2) If a legal person has committed the same crime, the legal person will be punished with a monetary fine or forced liquidation. (3) The court will implement extended property seizure for the property gained through crime described in this Section according to Section 83[2] of this Penal Code. [RT I 2009, 19, 114<https://www.riigiteataja.ee/ert/act.jsp?id=13163245> – entered into force 6.04.2009].
Recommendation of the MONEYVAL Report	*Current law does not specifically criminalize the provision of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist.*
Measures taken to implement the Recommendation of the Report	As the "individual terrorist" and funding and supporting of terrorism is covered other requirements are applicable automatically (please refer to the previous answers).
(Other) changes since the last evaluation	

Special Recommendation IV (Suspicious transaction reporting) I. Regarding Financial Institutions	
Rating: LC	
Recommendation of the MONEYVAL Report	*The definition of financing of terrorism as provided for by § 5 of the MLTFPA is linked with the definition as provided for by § 237[3] PC (the terrorist financing offence) and thus it has the same limitations as the terrorist financing offence and there is no reporting obligation in case of:* *1. financing of an individual terrorist;* *2. collecting of funds for the purpose of terrorist financing;* *3. the provision of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist;* *4. those conducts of Art 2 of the Terrorist Financing Convention and addressed in the specific UN terrorist conventions which are not covered in the Estonian terrorist offence (§ 237 PC).* It is recommended that the reporting obligation be broadened and brought into line with (all essential criteria for) SR. IV.
Measures taken to implement the Recommendation of the Report	As the "individual terrorist" and funding and supporting of terrorism is covered other requirements are applicable automatically (please refer to the previous answers). The Penal Code: § 237[3]. Funding and supporting a terror crime and its execution (1) If a person has assisted, funded or consciously supported in any other way a crime described in Sections 237 (acts of terrorism), 237[1] (terrorist organisation) or 237[2] (preparation of and incitement to acts of terrorism) of this Penal Code or an

	organization or person whose activity is directed towards committing a crime described in Section 237 of this Penal Code; or has enabled the use of or collected resources with the knowledge that these resources will be used to partially or fully commit a crime described in Sections 237, 237^1 or 237^2 of this Penal Code; then the person will be punished with an imprisonment sentence of 2 to 10 years. (2) If a legal person has committed the same crime, the legal person will be punished with a monetary fine or forced liquidation. (3) The court will implement extended property seizure for the property gained through crime described in this Section according to Section 83^2 of this Penal Code. [RT I 2009, 19, 114<https://www.riigiteataja.ee/ert/act.jsp?id=13163245> – entered into force 6.04.2009].
(Other) changes since the last evaluation	

Special Recommendation IV (Suspicious transaction reporting) II. Regarding DNFBP[12]	
Recommendation of the MONEYVAL Report	*The same deficiencies in the implementation of Recommendations 13, 15 and 21 in respect of financial institutions apply equally to DNFBP and the Recommendations there concerning financial institutions are also valid in the context of Recommendation 16.*
Measures taken to implement the Recommendation of the Report	As the "individual terrorist" and funding and supporting of terrorism is covered other requirements are applicable automatically (please refer to the previous answers). The Penal Code: § 237^3. Funding and supporting a terror crime and its execution (1) If a person has assisted, funded or consciously supported in any other way a crime described in Sections 237 (acts of terrorism), 237^1 (terrorist organisation) or 237^2 (preparation of and incitement to acts of terrorism)of this Penal Code or an organization or person whose activity is directed towards committing a crime described in Section 237 of this Penal Code; or has enabled the use of or collected resources with the knowledge that these resources will be used to partially or fully commit a crime described in Sections 237, 237^1 or 237^2 of this Penal Code; then the person will be punished with an imprisonment sentence of 2 to 10 years. (2) If a legal person has committed the same crime, the legal person will be punished with a monetary fine or forced liquidation. (3) The court will implement extended property seizure for the property gained through crime described in this Section according to Section 83^2 of this Penal Code. [RT I 2009, 19, 114<https://www.riigiteataja.ee/ert/act.jsp?id=13163245> – entered into force 6.04.2009].
Recommendation of the MONEYVAL Report	*Some DNFBP seem less aware of their obligations; e.g. lawyers, real estate dealers as well as accountants and auditors sent only a very small number of STR so far. Further outreach to these entities that they better understand their reporting obligations is.*
Measures taken to implement the Recommendation of the Report	After the adoption of the MER FIU has organised 13 training seminars where all obligated persons' categories have been represented (in total 361 participants). Unfortunately there is no disaggregated statistics available. In addition, FIU has organised 6 training seminars to auditors and accounting services providers (322

[12] i.e. part of rec. 16

	participants), 1 training seminar to lawyers (100 participants) and 1 training seminar to bailiffs (40 participants). To increase the awareness, FIU has made 29 on-site inspections to real estate agents, and 47 on-site inspections to bailiffs, 84 to trustees and 227 to other legal services providers. According to the statistics, the incidence of reporting ha somewhat increased in those sectors after inspections. In 2008 auditors and accounting services providers sent 6 report to FIU, as of 30 September 2009 the number was 14. The number of reports sent by other legal services providers sent was 2 and 6, respectively. Real estate providers have sent only 2 reports since 1.01.2008 since the transactions are drawn up by notaries public. The analysis of the reports received by notaries public clearly indicates that most of the STRs received involve real estate transactions. FIU does not forecast the vast increase of the reports form those sector in next few years.
(Other) changes since the last evaluation	

3. Other Recommendations

In the last report the following FATF recommendations were rated as "partially compliant" (PC) or "non compliant" (NC) (see also Appendix 1). Please, specify for each one what measures, if any, have been taken to improve the situation and implement the suggestions for improvements contained in the evaluation report.

Recommendation 8 (New technologies and non face-to-face business) I. Regarding Financial Institutions	
Rating: PC	
Recommendation of the MONEYVAL Report	*Estonia should introduce specific provisions in the law which address the risk of misuse of technological developments in money laundering or terrorist financing schemes.*
Measures taken to implement the Recommendation of the Report	Estonian authorities underline that § 15 (1) MLTFPA prohibits Estonian financial institutions to open new accounts or first use of another service without a face to-face identification. According to § 4 of the Regulation of the Minister of Finance No 10 (of 3 April 2008) the rules of procedure for the application of customer due diligence measures must provide for requirements for the identification and verification in case of conducting transaction through means of communication with persons with whom the credit or financial institution has a business relationship. Relevant amendment to MLTFPA clearly addresses the risk of misuse of technological developments. According to the amended wording of Art. 30 (3) ((2)) "The rules of procedure shall:…2) describe transactions of a higher risk level, including risks related to means of communication, computer network or other technological development and establish the appropriate requirements and procedure for entering into and monitoring such transaction;" The Guidelines of FSA also address the issue: "4.1.5. In instances accepted beforehand by the management board of the obligated person and the circumstances of which have been clearly formulated in the rules of procedure of the obligated person, a business relationship may be established

	without direct contact or being present with the customer at the same place. As part of a business relationship established without direct contact, services may be provided on a full scale only after the requirements set out in the MLTFPA have been attended to completely. In case of a business relationship established without direct contact, the parties shall be identified and the due diligence measures applied in a reasonable period of time. In such instances, the party shall be identified and any information verified by means of communications or some other technology, and the business relationship may be established only if the party has the first amount deposited into its account from the account of the same party opened in credit institutions of another country party to the European Economic Area ("EEA" hereinafter) or a third equivalent country (country where requirements equivalent to the provisions of the MLTFPA are applied). 4.1.6. The instances and procedure for the establishment of business relationships without direct contact shall be specified separately by relevant rules of procedure6, including any measures for the subsequent application of due diligence measures and the management of concomitant risks. The rules of procedure for the establishment of a business relationship without direct contact shall establish the procedure by the application of which it shall be possible to ensure compliance with the conditions set out in Subsection 4, § 15 of the MLTFPA. The rules of procedure shall describe at least: · a code of conduct for accepting payment instructions or a demand for payment from the customer prior to the application of all the due diligence measures; · a code of conduct for the situation where the due diligence measures are not applied fully (identifying and other details effected by means of electronic means of identification); · a code of conduct for the situation where the required due diligence measures cannot be observed (identifying a party not managed within the time period prescribed by the obligated person), as a result of which the customer's declarations of intention cannot be accepted; · a code of conduct for terminating a business relationship established without direct contact. 4.1.7. For the establishment of a business relationship without direct contact, there may be used intelligibly legible information that has been transmitted in writing or electronically, on the basis of which it is possible to: – verify the signature, based on a certified copy of an identity document or an electronic signature; – verify the personal identification code, registry code, representatives of a company, address, credit card number, by means of information disclosed by the obligated subject itself and/or public databases; – use electronic means of identification, for instance an ID card, mobile telephone ID. An obligated person may use other intelligibly legible documents to identify a person, including certifications by other credit institutions, notaries, foreign missions, administrative agencies, foreign business partners, etc."
(Other) changes since the last evaluation	According to amendments to Penal Code unlawful use of identity of other person is criminalized now. According to § 157^2 of Penal Code for an unlawful use of personal data which can be used for identification purposes is punishable by a pecuniary punishment or up to 3 years' imprisonment. The new regulation entered into force on 15 November 2009. Ministry of Economic Affairs and Communications has issued the new draft version

	of the State IT Security Framework (SITSF) (*Riigi IT koosvõime raamistik*) in October 2009. The SITSF provides general framework and guidelines for state and public entities to build up interoperability framework, to address the associated risks in order to reduce the abuse of technological developments, to protect civil and human rights in virtual space, to promote prevention of the abuse of the virtual space for criminal purposes, to promote cooperation between public and private sector and to develop relevant legislation. On 1st of October, the department for Critical Information Infrastructure Protection (CIIP) launched at Estonian Informatics Centre within Ministry of Economic Affairs and Communications. The aim of the department is creating the defense system for Estonia's critical information infrastructure as well as running the system. Also in cooperation with Ministry of Defense the Strategy for Cyber Security for 2008-2013 has been launched. The aim of mentioned document is to assist and regulate the state and private entrepreneurs and individuals in order to minimize the computer emergence risks and maintaining the supervisory control and data acquisition systems using services via internet.

Recommendation 8 (New technologies and non face-to-face business) II. Regarding DNFBP[13]	
Rating: PC	
Recommendation of the MONEYVAL Report	*As the relevant provisions of the MLTFPA apply both to financial institutions and DNFBP in the same way, the comments and observations made for credit and financial institutions under Recommendation 5, 6, 8, 9, 10 and 11 equally apply for DNFBP (with the exception of criterion 8.2 of the FATF Methodology).* *Thus the Recommendations there are also valid concerning DNFBP.* *Estonia should introduce specific provisions in the law which address the risk of misuse of technological developments in money laundering or terrorist financing schemes.*
Measures taken to implement the Recommendation of the Report	Relevant amendment to MLTFPA clearly addresses the risk of misuse of technological developments. According to the amended wording of Art. 30 (3) ((2)) …….the rules of procedure of obligated persons shall describe transactions of a higher risk level, including risks related to means of communication, computer network or other technological development and establish the appropriate requirements and procedure for entering into and monitoring such transaction." In addition it has to be noted that according to § 10-12 of the Notarisation Act identification as indicated by the notary in a notarial deed shall be executed (identification and verification) only via face to face contact.
Recommendation of the MONEYVAL Report	*Though DNFBP are required under § 19(2) MLTFPA to apply enhanced due diligence procedures for business relationships or transaction with non face to face-customers, no guidance is provided as to the possible enhanced due diligence measures that DNFBP should take to mitigate the risks for non-face-to face relationships and transactions. Estonian authorities should issue such guidance.*
Measures taken to implement the Recommendation of the Report	FIU has issued the guidelines which apply to DNFBP (available in Estonian in FIU's web site) and provide guidance as to the possible enhanced due diligence measures that DNFBP should take to mitigate the risks for non-face-to face relationships and transactions: http://www.politsei.ee/?id=826

[13] i.e. part of rec. 12

(Other) changes since the last evaluation	According to amendments to Penal Code unlawful use of identity of other person is criminalized now. According to § 157^2 of Penal Code for an unlawful use of personal data which can be used for identification purposes is punishable by a pecuniary punishment or up to 3 years' imprisonment. The new regulation entered into force on 15 November 2009.

Recommendation 11 (Unusual transactions) I. Regarding Financial Institutions	
Rating: PC	
Recommendation of the MONEYVAL Report	*Financial institutions should be required by law, regulation or other enforceable means to investigate the background and purpose of complex/unusual large transactions and to keep a record of the written findings which will be then accessible for competent authorities and auditors.*
Measures taken to implement the Recommendation of the Report	Financial institutions are required by law to investigate the background and purpose of complex/unusual large transactions. According to § 12 (1) in economic or professional activities an obligated person shall pay special attention to the activities of a person or customer participating in a transaction or official act and to circumstances which refer to money laundering or terrorist financing or to the probable connection with money laundering or terrorist financing, including to complex, unusual and high value transactions which do not have any reasonable economic purpose. Also, according to art 32 (3) of the MLTFPA An obligated person, except a credit institution, notifies the Financial Intelligence Unit of any transaction where the financial obligation exceeding 500,000 kroons or an equal amount in another currency is performed in cash, regardless of whether the transaction is made in a single payment or several related payments. A credit institution notifies the Financial Intelligence Unit of any currency exchange transaction exceeding 500,000 kroons in cash, unless the credit institution has a business relationship with the person participating in the transaction. In accordance with the precautionary principle the Guideline of the FSA articles 5.1.-5.3. regulate the situation as well (see Annex I*).* According to the amendments to MLTFPA all obligated persons have to and to keep a record of the written findings which will be then accessible for competent authorities. Section 27 (6) of the MLTFPA is amended as follows: "(6) An obligated person shall register and preserve pursuant to the procedure provided for in § 26: 4) the information on the circumstances of refusal of the obligated person to establish a business relationship or conclude a transaction; 5) the circumstances of refusal at the initiative of a person participating in a transaction or professional act, a person using a professional service or a customer to establish a business relationship or conclude a transaction if such refusal is related to the application of due diligence measure by the obligated person; 6) the circumstances of the termination of a business relationship in the event provided for in subsection (3) of this section; the information serving as the basis of the notification obligation arising from § 32.
(Other) changes since the last evaluation	

Recommendation 11 (Unusual transactions) II. Regarding DNFBP[14]	
Recommendation of the MONEYVAL Report	*As the relevant provisions of the MLTFPA apply both to financial institutions and DNFBP in the same way, the comments and observations made for credit and financial institutions under Recommendation 5, 6, 8, 9, 10 and 11 equally apply for DNFBP (with the exception of criterion 8.2 of the FATF Methodology). Thus the Recommendations there are also valid concerning DNFBP.* DNFBP should be required by law, regulation or other enforceable means to investigate the background and purpose of complex/unusual large transactions and to keep a record of the written findings which will be then accessible for competent authorities and auditors
Measures taken to implement the Recommendation of the Report	According to § 12 (1) MLTFPA in economic or professional activities an obligated person have to pay special attention to the activities of a person or customer participating in a transaction or official act or to circumstances which refer to money laundering or terrorist financing or the connection of which with money laundering or terrorist financing is probable, including to complex, high value and unusual transactions which do not have any reasonable economic purpose. It means that according to Estonian law all obligated persons have general (all-around) duty of care. Its idea is to put onto practice a normative precautionary principle (directly applicable). According to the amendments to MLTFPA all obligated persons have to keep a record of the written findings which will be then accessible for competent authorities. Section 27 (6) of the MLTFPA is amended as follows: "(6) An obligated person shall register and preserve pursuant to the procedure provided for in § 26: 7) the information on the circumstances of refusal of the obligated person to establish a business relationship or conclude a transaction; 8) the circumstances of refusal at the initiative of a person participating in a transaction or professional act, a person using a professional service or a customer to establish a business relationship or conclude a transaction if such refusal is related to the application of due diligence measure by the obligated person; 9) the circumstances of the termination of a business relationship in the event provided for in subsection (3) of this section; 10) the information serving as the basis of the notification obligation arising from § 32.";
(Other) changes since the last evaluation	

Recommendation 12 (DNFBP – R 5, 6, 8-11)	
Rating: PC	
Recommendation of the MONEYVAL Report	*As the relevant provisions of the MLTFPA apply both to financial institutions and DNFBP in the same way, the comments and observations made for credit and financial institutions under Recommendation 5, 6, 8, 9, 10 and 11 equally apply for DNFBP (with the exception of criterion 8.2 of the FATF Methodology). Thus the*

[14] i.e. part of Recommendation 12.

	Recommendations there are also valid concerning DNFBP. Please indicate specifically the measures taken as regards rec. 6 and rec. 9 with respect to DNFBP.
Measures taken to implement the Recommendation of the Report	The amendments to the MLTFPA have been extended to all obligated persons, therefore the relevant provisions cited above are applicable to the DNFBP-s as well. New amendments of MLFTPA have extended the possibilities of direct sanctioning of violations of MLFTPA Section 57^1 is added to the MLTFPA in the following wording: „§ 57^1. Failure to comply with requirements to obtain information (1) Failure on the part of an obligated person or its employee to comply with the requirements to obtain information on the purpose and nature of a business relationship or transaction is punishable by a fine up to 300 fine units. (2) The act specified in subsection 1 of this section, if committed by a legal person, is punishable by a fine up to 500 000 Estonian kroons.”;
Recommendation of the MONEYVAL Report	*§ 30 (6) MLTFPA applies only to financial institutions but not to DNFBP. The evaluators recommend that also DNFBP should be required through means of secondary legislation (i.e. Minister of Finance's regulation) to set up comprehensive internal control mechanisms for managing AML/CFT risks having regard to the sort, scope and complexity of their activities.*
Measures taken to implement the Recommendation of the Report	The amendment to the MLTFPA has been extended to all obligated persons, therefore the relevant provisions are applicable to the DNFBP-s as well. The § 30 (3) (applicable to all obligated persons) has been amended as follows: The rules of procedure shall /…/ 2) describe transactions of a higher risk level, including risks related to means of communication, computer network or other technological development and establish the appropriate requirements and procedure for entering into and monitoring such transaction;”; /…/ 5) set out the requirements and procedure for application of § 27 (6).”;
Recommendation of the MONEYVAL Report	*Casinos should be required not only to identify but also to verify the name of a client who engage in financial transactions equal or above the threshold given by criterion 12.1 of 3 000 USD/EUR; though not required by the Methodology, it may be easier simply to amend the law by using the existing (lower) threshold of the MLTFPA which is 30 000 EEK (1 917.34 EUR).*
Measures taken to implement the Recommendation of the Report	As the new Gambling Act came to force on 1.1.2009 all customers, regardless of the amount they gamble, have to be identified and the information verified and registered before entering a gaming hall.
(Other) changes since the last evaluation	

Recommendation 17 (Sanctions)	
Rating: PC	
Recommendation of the MONEYVAL Report	*The general provisions of the Credit Institution Act used by the FSA do not provide a clear basis to issue precepts regarding those violations of AML/CFT obligations which are not directly sanctionable by §§ 57 ff of the MLTFPA.*
Measures taken to implement the	New amendments of MLFTPA have extended the possibilities of direct sanctioning

Recommendation of the Report	of violations of MLFTPA. See arts. 571-573, 591, 621) Amendment of Credit Institutions Act is also in the Parliament (in the same draft law as amendments to MLTFPA). The new wording of CrIA § 103 (1) refers to violations of laws mentioned in FSA Act § 2 or § 6 (1) ((7)). The latter refers to MLTFPA. <u>CrIA § 103 1) states the following:</u> The Financial Supervision Authority has the right to issue a precept if: "1) violations of the requirements of this Act and laws specified in subsection (2) and clause 6 (1) 7 of the Financial Supervision Authority Act and legislation adopted on the basis thereof are discovered upon exercising supervision.". <u>FSA Act § 6 (1) ((7)) reads:</u> "7) perform the functions arising from the Guarantee Fund Act, the Money Laundering and Terrorist Financing Prevention Act, the International Sanctions Act and legislation issued on the basis thereof;"
Recommendation of the MONEYVAL Report	*The sanctioning regime utilizing precepts according to §§ 103 ff of the Credit Institutions Act places sanctions at one remove, in that a precept first needs to be issued before formal sanctions, e.g. penalty payments or suspension of a license, can be imposed based on a finding of a violation of the precept.*
Measures taken to implement the Recommendation of the Report	New amendments of MLFTPA have extended the possibilities of direct sanctioning of violations of MLFTPA. (Arts. 57, 57^1-57^3, 59^1, 62^1). According to the amendments all violations of the MLTFPA are directly sanctionable. Relevant articles state: Art. 57 (1) is amended and worded as follows: "(1) Failure on the part of an obligated person or its employee to comply with the obligation, provided by this Act, to establish or verify the identity of a person is punishable by a fine of up to 300 fine units."; „§ 57^1. Failure to comply with requirements to obtain information (1) Failure on the part of an obligated person or its employee to comply with the requirements to obtain information on the purpose and nature of a business relationship or transaction is punishable by a fine up to 300 fine units. (2) The act specified in subsection 1 of this section, if committed by a legal person, is punishable by a fine up to 500 000 Estonian kroons."; „§ 57^2. Failure to comply with requirements to apply enhanced due diligence measures (1) Failure on the part of an obligated person or its employee to comply with the requirements for application of enhanced due diligence measures or failure to apply thereof, including failure to comply with the requirements for conclusion of a transaction with a third country's person with a state background is punishable by a fine up to 200 fine units. (2) The act specified in subsection 1 of this section, if committed by a legal person, is punishable by a fine up to 300 000 Estonian kroons."; „§ 57^3. Opening of anonymous bank account or savings bank book (1) Decision made by an employee of a credit or financial institution to open an anonymous bank account or savings bank book, or conclusion of a relevant contract is punishable by a fine up to 300 fine units. (2) The same act, if committed by a legal person, is punishable by a fine up to 500 000 Estonian kroons."; „§ 59^1. Failure to comply with obligation to continuously monitor business relationship (1) Failure on the part of an obligated person or its employee to comply with the obligation to monitor a business relationship provided for in this Act is punishable

	by a fine up to 200 fine units. (2) The same act, if committed by a legal person, is punishable by a fine of up to 300 000 Estonian kroons."; „§ 62[1]. Failure to comply with requirements of correspondent banking (1) Failure on the part of an employee of a credit or financial institution to comply with the requirements provided for in this Act when establishing a correspondent relationship with a credit or financial institution of a third country is punishable by a fine up to 200 fine units. (2) The same act, if committed by a legal person, is punishable by a fine up to 300 000 Estonian kroons."; Art. 63 (1) is amended and worded as follows: "(1) Failure on behalf of a director or employee of a credit institution or payment service provider, or a director or employee of a payment agent, or a payment agent who is a natural person to establish or verify information related to the payer, also failure to submit thereof or violation of the obligations of a payment service provider established by regulation (EC) No 1781/2006 of the European Parliament and of the Council with regard to information related to the payer, which shall be submitted upon money transfer, is punishable by a fine up to 300 fine units.".
Recommendation of the MONEYVAL Report	*The FIU does not have powers to withdraw or suspend registration of financial institutions in case they fail to comply with AML/CFT requirements.*
Measures taken to implement the Recommendation of the Report	The MLTFPA has been amended to eliminate this problem. To the § 55 (refusal to register and suspension of registration) the section (2) has been added: "(2) In addition to the provisions of the Register of Economic Activities Act, the authorised processor of the register shall suspend the registration on the basis of a reasoned request of the Financial Intelligence Unit until establishment of circumstances, but not longer than for up to six months".
Recommendation of the MONEYVAL Report	*The indirect sanctioning system of the MLTFPA via precepts of the FSA for provisions of the MLTFPA which are not covered by a specific sanctioning provision of the MLTFPA itself (which is the case for a number of important CDD measures) does not amount to a dissuasive, proportionate and (for all circumstances) effective sanctioning regime. This indirect sanctioning system should be revised and replaced by a direct sanctioning regime providing sanctions in the MLTFPA for all relevant AML/CFT obligations.*
Measures taken to implement the Recommendation of the Report	New amendments of MLFTPA have extended the possibilities of direct sanctioning of violations of MLFTPA (please refer to the answers above).
(Other) changes since the last evaluation	

Recommendation 21 (Special attention for higher risk countries)	
Rating: NC	
Recommendation of the MONEYVAL Report	*Estonia should introduce obligations in law or regulation or other enforceable means requiring financial institutions to* *1. give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations.* *2. to examine and monitor such transactions, if they do not have an apparent*

	economic or visible lawful purpose, and have written findings available to assist competent authorities and auditors.
Measures taken to implement the Recommendation of the Report	Minister of Finance has issued Regulation No 10 on 3 April 2008 setting out the "Requirements for the rules of procedure established by credit and financial institutions and for their implementation and verification of compliance". This regulation requires credit and financial institutions to establish written rules of procedures which should include a code of conduct for application of CDD measures. It must contain special requirements for identification and verification of customers whose place of residence or registered office is in a country where the application of AML/CFT measures are insufficient. The regulation also specifies that for the identification and verification of legal persons, whose registered office is in a third country that has not implemented sufficient AML/CFT measures or where this country has not engaged in international cooperation for AML/CFT purposes. Relevant amendment to MLTFPA clearly states the required obligation (§ 14 lg 5) "(5) An obligated person draws in his or her economic or professional activity higher attention to business relations or transactions if the place or residence or location of a customer or a person participating in the transaction or a person using the professional service, or the place of location of a payment service provider of a beneficiary is in a third country or on a territory where sufficient measures for prevention of money laundering and terrorist financing have not been applied, or if that country or territory does not cooperate internationally in the prevention of money laundering and terrorist financing or is a territory with a low tax rate." The new wording of MLTFPA requires higher attention from obligated persons on such business relationships and transactions. This requirement is accompanied by an already existing article in MLTFPA (§ 12(1)). According to § 12 (1) in economic or professional activities an obligated person shall pay special attention to the activities of a person or customer participating in a transaction or official act and to circumstances which refer to money laundering or terrorist financing or to the probable connection with money laundering or terrorist financing, including to complex, unusual and high value transactions which do not have any reasonable economic purpose. Relevant amendment of MLTFPA § 27 (6) requires registering and keep records on information giving ground to reporting obligation under § 32. A ground for reporting in such case comes from the FIU's guidelines. According to Art. § 29 (1^1) : "(1^1) Upon performance of the obligations provided for in subsection (1), an obligated person shall draw a higher attention if the place of location or business of a subsidiary, branch or representative office with a qualifying holding of the obligated person is in a third country where insufficient measures for prevention of money laundering and terrorist financing have been applied or if that country does not cooperate internationally in the prevention of money laundering and terrorist financing or is a territory with a low tax rate.";
Recommendation of the MONEYVAL Report	*Estonia should introduce specific provisions on application of counter- measures where a country continues not to apply or insufficiently applies the FATF Recommendations.*
Measures taken to implement the Recommendation of the Report	Relevant amendment to MLTFPA states (Art. 14 (5)): "(5) An obligated person draws in his or her economic or professional activity higher attention to business relations or transactions if the place or residence or location of a customer or a person participating in the transaction or a person using the professional service, or the place of location of a payment service provider of a beneficiary is in a third

	country or on a territory where sufficient measures for prevention of money laundering and terrorist financing have not been applied, or if that country or territory does not cooperate internationally in the prevention of money laundering and terrorist financing or is a territory with a low tax rate." Estonian authorities are publishing relevant FATF and Moneyval statements on the web-sites and inform obligated persons thereof (http://www.fi.ee/?id=1726 , http://www.fin.ee/index.php?id=104099).
(Other) changes since the last evaluation	

Recommendation 24 (DNFBP – Regulation, supervision and monitoring)	
Rating: PC	
Recommendation of the MONEYVAL Report	*Beneficial owners and managers of casinos should be subject to fit and proper checks at the time of licensing, transfer of ownership or taking up employment.*
Measures taken to implement the Recommendation of the Report	According to the Gambling Act which entered into force on 1.1.2009 the beneficial owners and managers of casinos (and other organisers of gambling, incl. betting, skill games and lotteries) are going through full fit&proper checks before the licence can be given (Gambling Act §§ 16—19). The terms and conditions for acquiring a qualifying holding in a gambling company, incl. the grounds for prohibition are regulated in §§ 11—15. Every change in the conditions under which the license was given has to be notified to the licensing authority.
Recommendation of the MONEYVAL Report	*The Law should require the registration of all persons providing trust and company services irrespective of whether or not the provision of such services constitute their primary professional or economic activity.*
Measures taken to implement the Recommendation of the Report	The Ministry of Justice of Estonia is concluding at the moment a legal reform on the general part of economic activities' legislation. The envisaged changes are covering all aspects of licensing, registration and notification obligations as well as the definitions of economic activity. According to the draft law the new definition for "economic activity" will be wider, covering all services provided. This will also affect the registration procedure of trust and company service providers, as the registration procedure will be replaced by a licensing procedure.
Recommendation of the MONEYVAL Report	*The Estonian Bar Association is responsible for the AML/CFT supervision of their members only. As it is not compulsory for a practising lawyer (independent legal professionals) to be a member of the Bar Association, they fall only under the supervision of the FIU which did not supervise them so far. The FIU should identify how many of such lawyers exist (e.g. by a mandatory registration requirement) and should supervise them (alternatively it could be made mandatory for these lawyers to become members of the Bar Association and that they are supervised by the Bar Association).*
Measures taken to implement the Recommendation of the Report	According to § 22 (2) of Bar Association Act, in Estonia, only members of the Estonian Bar Association may provide legal services as attorneys, unless otherwise provided in this Act. Other legal services providers have to register themselves in the commercial register and are subject to the supervision by FIU. Supervision of legal services providers was one of the priorities of FIU for 2009. As of the beginning of January 2009 there were 227 legal services providers registered in Estonian commercial register and FIU made off-site inspections to all of them. In 2008 the number of reports received from this sector was 2, as of 30 September in

	2009 6 reports. The status of lawyers as non-members of the Bar Association in a law office is determined by the Bar Association Act. According to his or her status lawyer is equal not to the attorney but equal to the employees of the law office to whom the requirements of confidentiality and the liability of the management of a law office extend. In accordance with the Bar Association Act § 55 (2) the management of a law office shall not authorise an employee of the law office who is not an attorney to provide legal services to a client or grant joint authorisation for the provision of legal services to the attorney and a person who is not an attorney. Therefore the client is represented by the attorney and attorney, not the lawyer of the law office, is responsible as regards to the client. Lawyers act under the control of attorneys and the management of a law office. Liable for the fulfilment of ML requirements are the attorneys and the management of the law office and that covers also the activities of lawyers working in the law office.
Recommendation of the MONEYVAL Report	*The Chamber of Notaries and the Estonian Bar Association should establish monitoring and supervisory mechanisms for checking compliance of their members with the AML/CFT obligations.*
Measures taken to implement the Recommendation of the Report	Please see the text above.
Recommendation of the MONEYVAL Report	*The FIU, the Chamber of Notaries and the Estonian Bar Association should prepare and issue guidelines assisting obligated entities in complying with their AML/CFT obligations.*
Measures taken to implement the Recommendation of the Report	FIU has issued guidelines for: - notaries public (in cooperation with Chamber of Notaries) http://www.politsei.ee/files/rab/Notarite_poolt_rahapesu_andmeburoole_esitatava_teate_koostamise_juhend_juuni_2008.pdf. The advisory guidelines issued by Chamber of Notaries and Estonian Bar Association were consulted with FIU prior to adoption. According to § 44 Notaries Act the Chamber of Notaries prepares guidelines for the harmonization of the practice of notaries related to office. The Chamber of Notaries has passed their own guidelines on 1st November 2008. Bar Association Board has passed guidelines on September the 9th 2008 on procedural rules to fulfill the duties of impeding and forestalling monetary laundering and financing terrorism. The act is recommendable and law offices are free to use that as an example to develop their own directive considering their specifics.
(Other) changes since the last evaluation	

Recommendation 25 (Guidelines and feedback)	
Rating: PC	
Recommendation of the MONEYVAL Report	*The FSA should update its own guidelines in the light of the requirements of the new MLTFPA*[15].
Measures taken to implement the Recommendation of the Report	FSA guidelines "Additional measures for prevention of money laundering and terrorist financing in credit and financial institutions" were adopted on 22 October 2008 and published on the web-site of the FSA. In course of drafting the guidelines, several meetings with supervised entities were held and, if justified, their comments and suggestions were taken into account. In the process of drafting the guidelines the experts from different ministries and from University of Tartu were involved. A similar procedure was followed when drafting the previous guidelines. The guidelines took effect 01 April 2009. See: http://www.fi.ee/failid/Soovituslik_juhend_RTRTS_2008_EN.pdf
Recommendation of the MONEYVAL Report	*The FIU should issue guidelines explaining the legal requirements and preventive measures described therein to its supervised entities.*
Measures taken to implement the Recommendation of the Report	FIU is updating regularly their guidelines, The guidelines are available at http://www.politsei.ee/?id=826.
Recommendation of the MONEYVAL Report	*The FIU, the Chamber of Notaries and the Estonian Bar Association should prepare and issue guidelines assisting obligated entities in complying with their AML/CFT obligations*
Measures taken to implement the Recommendation of the Report	According to § 44 Notaries Act the Chamber of Notaries prepares guidelines for the harmonization of the practice of notaries related to office. The Chamber of Notaries has passed their own guidelines on 1st November 2008. FIU is updating regularly their guidelines, available at http://www.politsei.ee/?id=826. Bar Association Board has passed guidelines on September the 9th 2008 on procedural rules to fulfill the duties of impeding and forestalling monetary laundering and financing terrorism. The act is recommendable and law offices are free to use that as an example to develop their own directive considering their specifics.
(Other) changes since the last evaluation	

Special Recommendation I (Implement UN instruments)	
Rating: PC	
Recommendation of the MONEYVAL Report	*The requirements of the UN Conventions should be reviewed to ensure that Estonia is fully meeting all its obligations under them. Particularly Estonia should* *– introduce a national mechanism to freeze the funds of EU internals.*

[15] The FSA advised that its guidelines "Additional measures for prevention of money laundering and terrorist financing in credit and financial institutions" were adopted on 22 October 2008 and published on its web-site.

	– *broaden the definition of funds (as it is provided for in the EU Regulations, which currently does not explicitly cover funds owned 'directly or indirectly' by designated persons or those controlled directly or indirectly by designated persons);* – *introduce a national procedure for the purpose of considering delisting requests.*
Measures taken to implement the Recommendation of the Report	A national mechanism to freeze the funds of EU internals could be described as follows: Estonia has the legal instruments for freezing the funds of EU internals. If the list of persons, groups and entities in directly applicable Council Regulation is narrower than required by UNSCR, then in addition to European Union legislation, the International Sanctions Act (ISA) enables to adopt national implementing measures. The Government of the Republic shall, on the proposal of the Ministry of Foreign Affairs, adopt a regulation on taking the measures necessary for the internal application of international sanctions (ISA § 1 (1) p 1 and p 4 in conjunction with 4(1)). In every single case the Ministry of Foreign Affairs in cooperation with national competent authorities supervising the implementation of international sanctions assesses the need for national implementing measures in addition to European Union measures. Estonia is currently in the process of updating the legislation concerning the implementation of international sanctions. The draft International Sanctions Act was approved by the Government of the Republic on October 29. The Government of the Republic will submit draft International Sanctions Act to Estonian parliament (Riigikogu).According to the draft International Sanctions Act (hereinafter draft ISA), the mechanism is in principle the same. If the list of persons, groups and entities in directly applicable Council Regulation is narrower than required by UNSCR, then in addition to European Union legislation, the draft enables to adopt national implementing measures. The Government of the Republic shall, on the proposal of the Ministry of Foreign Affairs, adopt the measures necessary for the internal application of international sanctions (draft ISA § 7 or § 8 (1)). In every single case the Ministry of Foreign Affairs in cooperation with national competent authorities supervising the implementation of international sanctions assesses the need for national implementing measures in addition to European Union measures. The definition of funds is provided as follows: The draft International Sanctions Act approved by the Government of the Republic on October 29 defines the scope of "financial sanction". According to draft ISA § 4: " (1) For the purposes of this Act, an international financial sanction means a financial sanction that fully or partially prevents a subject of international financial sanction from using and disposing of financial means or giving thereof to its possession, inter alia, it is prohibited or restricted: 1) to give loan and credit or pay financial means on any other similar basis to a subject of international financial sanctions; 2) to pay to a subject of international financial sanctions any deposits, dividends, interest income and other similar financial means in cash, including by bills of exchange, cheques or other methods and means of payment, also to transfer, pledge securities, precious metals and stones or any other such assets, and give thereof to use or disposal; 3) to open for a subject of international financial sanctions a deposit, payment,

	securities or any other account, give for their use a safe deposit box or enter into contracts for provision of such services; 4) to conclude transactions with a subject of international financial sanctions with regard to immovables, registered ships and registered movables or rights; 5) to pledge or otherwise give as a security to a subject of international financial sanctions any financial means and economic resources; 6) to enter into insurance contracts with a subject of international financial sanctions and make payments on the basis of such contracts; 7) to enter into or continue any business relations with a subject of international financial sanctions. (2) The provisions of subsection (1) of this section shall also be applied in the event if an object belongs to the common or joint ownership of several persons, of whom at least one is the subject of international financial sanctions." Both the ISA currently in force and the draft International Sanctions Act enables to adopt national measures to implement UNSCR in addition to European Union legislation (ISA § 1 (1) p 1 and p 4 in conjunction with 4(1) and draft ISA § 7 and § 8 (1)). The delisting requests*:* Estonian national authority for implementing financial sanctions is the FIU. Designated persons can submit a request for de-listing directly to the Focal Point established within the UN (UNSCR 1822 (2008) p 19). If the de-listing request is submitted to the FIU, the latter will inform the designated person of the possibility to submit the request directly to the Focal Point. When receiving the de-listing request, the FIU will deal with it on *ad hoc* basis, meaning that if Estonia is the designating state or the state of citizenship or residence of the person submitting the de-listing request, the FIU will review the request in cooperation with other relevant authorities. On the basis of the review, the FIU will in cooperation with other relevant authorities form its opinion and will indicate whether it supports or opposes the request. The Ministry of Foreign Affairs will forward the substantiated proposal for de-listing and the opinion of the FIU to the UNSC Sanctions Committee. If the de-listing request is submitted directly to the Focal Point and Estonia is the designating state or the state of citizenship or residence of the person submitting the de-listing request, the competent authority to review the request is the FIU in cooperation with other relevant authorities. When the FIU has reviewed the de-listing request and has formed its opinion in cooperation with other relevant authorities, the Ministry of Foreign Affairs will forward the opinion to the UNSC Sanctions Committee. According to the draft ISA the mechanism is the same. The FIU will deal with de-listing requests on *ad hoc* basis. According to § 19 of the draft ISA persons whose assets have been frozen in Estonia, can submit petitions to the FIU. When the FIU receives such petition, it has an obligation to determine whether the measures taken are lawful. This includes dealing with de-listing request (in cooperation with other relevant authorities) and determining whether the person subject to asset freeze is a designated person (draft ISA § 18 (3) and (4)).
(Other) changes since the last evaluation	

Special Recommendation III (Freeze and confiscate terrorist assets)	
Rating: PC	
Recommendation of the MONEYVAL Report	*Estonia should implement a national mechanism to give effect to requests for freezing assets and designations from other jurisdictions and to enable freezing funds of EU internals (citizens and residents).*
Measures taken to implement the Recommendation of the Report	<u>A national mechanism to freeze the funds of EU internals</u> Estonia has the legal instruments to freeze the funds of EU internals. If the list of persons, groups and entities in directly applicable Council Regulation is narrower than required by UNSCR, then in addition to European Union legislation, the ISA in principle enables to adopt national implementing measures. The Government of the Republic shall, on the proposal of the Ministry of Foreign Affairs, adopt a regulation on taking the measures necessary for the internal application of international sanctions (ISA § 1 (1) p 1 and p 4 in conjunction with 4(1)). In every single case the Ministry of Foreign Affairs in cooperation with national competent authorities supervising the implementation of international sanctions assesses the need for national implementing measures in addition to European Union measures. According to the draft ISA, the mechanism is in principle the same. If the list of persons, groups and entities in directly applicable Council Regulation is narrower than required by UNSCR, then in addition to European Union legislation, the draft enables to adopt national implementing measures. The Government of the Republic shall, on the proposal of the Ministry of Foreign Affairs, adopt the measures necessary for the internal application of international sanctions (draft ISA § 7 or § 8 (1)). In every single case the Ministry of Foreign Affairs in cooperation with national competent authorities supervising the implementation of international sanctions assesses the need for national implementing measures in addition to European Union measures. <u>Requests for freezing assets and designations from other jurisdictions</u> A request from non-EU member for freezing should be addressed to the Council of the European Union. The request must be agreed unanimously by the Council. If such a request is refused by the Council for example on the ground that the request does not fulfill the listing criteria and some of the members of the Council voted against it, then the ISA in principle enables to adopt national measures. The substantiated proposal for listing and for freezing assets (with all necessary documentation, including evidence proving that the person(s) meet(s) the criteria for listing) has to be sent to the Estonian competent authority. The competent authority will forward the proposal to the Ministry of Foreign Affairs, which shall, in co-operation with other relevant government agencies, prepare the draft of the Government of the Republic legislation necessary for the internal application of an international sanction, and submit such draft legislation to the Government of the Republic for resolution. The final decision whether to list and freeze the assets of the person concerned and which other measures will be necessary for the internal application of international sanctions will be taken by the Government of the Republic (ISA § 4(1)). In every single case the Ministry of Foreign Affairs in cooperation with national competent authorities supervising the implementation of international sanctions assesses the need for national measures in addition to European Union measures. Altogether, in principle Estonian Government can impose sanctions on its own initiative and on a proposal of other jurisdiction.

Recommendation of the MONEYVAL Report	*A national de-listing process should be established as part of these measures*
Measures taken to implement the Recommendation of the Report	As mentioned above (ISA § 1 (1) p 1 and p 4 in conjunction with § 4(1)) in principle Estonian Government can impose sanctions on its own initiative. Accordingly, if the person is designated and if the freezing decision has been taken by the Government of the Republic, the procedure for de-listing is as follows: The national authority for implementing financial sanctions is the FIU. All petitions and de-listing requests shall be directed to the competent authority. If the competent authority receives the de-listing request, it will deal with it on *ad hoc* basis. The competent authority will review the de-listing request and form its opinion in cooperation with other relevant authorities. If the FIU considers the request is grounded it can make a proposal for de-listing to the Ministry of Foreign Affairs. The Ministry of Foreign Affairs shall, in co-operation with other relevant government agencies, prepare the draft of the Government of the Republic legislation necessary to de-list the person or to repeal the Government act by which the financial sanction was imposed. According to the draft ISA the mechanism is principle the same. Estonian Government can impose sanctions on its own initiative (draft § 7). When financial sanction is imposed by the Government of the Republic, the competent authority for implementing financial sanctions is the FIU. Persons subject to asset freeze can submit petitions to the FIU (draft ISA § 19). If the competent authority receives the de-listing request, it will review the request and form its opinion in cooperation with other relevant authorities. If the FIU in cooperation with other relevant authorities considers that the request is grounded, it can make a proposal to the Ministry of Foreign Affairs for repealing the Government act by which the sanction was imposed or a proposal for de-listing the person. The Ministry of Foreign Affairs shall, in co-operation with other relevant government agencies, prepare the draft of the Government of the Republic legislation necessary to repeal the Government act by which the sanction was imposed or to remove a person from the list subject to asset freeze.
Recommendation of the MONEYVAL Report	*The definition of "funds" (as taken from the EU Regulations) does not explicitly cover funds owned 'directly or indirectly' by designated persons or those controlled directly or indirectly by designated persons; this should be amended and be brought in compliance with the requirements of UNSCR 1267 and UNSCR 1373.*
Measures taken to implement the Recommendation of the Report	Estonia is currently in the process of updating the legislation concerning the implementation of international sanctions. The draft International Sanctions Act (ISA) approved by the Government of the Republic on October 29 defines the scope of "financial sanction". <u>According to draft ISA § 4:</u> " (1) For the purposes of this Act, an international financial sanction means a financial sanction that fully or partially prevents a subject of international financial sanction from using and disposing of financial means or giving thereof to its possession, inter alia, it is prohibited or restricted: 1) to give loan and credit or pay financial means on any other similar basis to a subject of international financial sanctions; 2) to pay to a subject of international financial sanctions any deposits, dividends, interest income and other similar financial means in cash, including by bills of exchange, cheques or other methods and means of payment, also to transfer, pledge securities, precious metals and stones or any other such assets, and give thereof to use or disposal;

	3) to open for a subject of international financial sanctions a deposit, payment, securities or any other account, give for their use a safe deposit box or enter into contracts for provision of such services; 4) to conclude transactions with a subject of international financial sanctions with regard to immovables, registered ships and registered movables or rights; 5) to pledge or otherwise give as a security to a subject of international financial sanctions any financial means and economic resources; 6) to enter into insurance contracts with a subject of international financial sanctions and make payments on the basis of such contracts; 7) to enter into or continue any business relations with a subject of international financial sanctions. (2) The provisions of subsection (1) of this section shall also be applied in the event if an object belongs to the common or joint ownership of several persons, of whom at least one is the subject of international financial sanctions." Both the ISA currently in force and the draft ISA enable to adopt national measures to implement UNSCR in addition to European Union legislation (ISA § 1 (1) p 1 and p 4 in conjunction with 4(1); draft ISA § 7 and § 8).
Recommendation of the MONEYVAL Report	*Apart from banks, no other financial institutions or DNFBP are aware of the procedures to be followed in order to implement the UNSC Resolutions. Thus, Estonian authorities should consider providing clear and practical guidance to financial institutions and other entities concerning their responsibilities under the freezing regime.*
Measures taken to implement the Recommendation of the Report	Minister of Finance Regulation No 10 provides more clearance. Art 21 (1) ((8)): Rules of Procedure establish a Code of Conduct for the performance of the notification obligation and for informing the management, which must include at least the following: 8) the bases and procedures for obtaining information from international organizations concerning persons, groupings and units which participate in terrorist acts or concerning other subjects of international sanctions. Art 21 (2) ((2)) and ((4)): Code of Conduct for the performance of the notification obligation and for informing the management must also provide directions for: 2) communication with persons who are subjects of international sanctions; 4) procedures for the implementation of measures adopted by international organizations in respect of persons, groupings and units who participate in terrorist acts or other subjects of international sanctions, including for freezing and releasing of funds.
Recommendation of the MONEYVAL Report	*Estonia should introduce clear provisions regarding the procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.*
Measures taken to implement the Recommendation of the Report	The draft ISA approved by the Government of the Republic introduces a mechanism for unfreezing the funds or assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. According to the draft International Sanctions Act, a person (mainly obligated persons – financial and credit institutions) who has taken measures to implement financial sanctions must always inform the FIU of the measures taken (draft ISA § 12 (2) and 14 (2)). If the FIU receives such notification, it has an obligation to verify whether the measures taken are lawful (draft ISA § 18 (3)). This includes an

	obligation to verify whether the person subject to asset freeze is a designated person. If the FIU determines that the person is a designated person, it will inform the person who submitted the notification. The latter must then continue the measures taken. If the FIU determines that the person is not a designated person it will inform the person who submitted the notification. The latter must therefore unfreeze the assets. FIU has also an obligation to inform the person subject to asset freeze of the measures taken and of the possibility to submit petition (draft ISA § 18 (4)). According to the draft ISA, a person subject to asset freeze may also request the FIU to determine whether the measures taken are lawful (draft ISA § 19). If the FIU receives such request, it has an obligation to verify whether the measures taken are lawful (draft ISA § 18 (3)). This includes an obligation to verify whether the person subject to asset freeze is a designated person. If the FIU determines that the person is not a designated person it will inform the person who took measures to freeze the assets. The latter must therefore unfreeze the assets. In the course of the regular supervision of the implementation of financial sanctions the FIU may also make precepts when it determines that a person whose assets have been frozen is not a designated person (draft ISA § 21 (1) 3)).
(Other) changes since the last evaluation	Amendments to the Code of Criminal Procedure on freezing property or evidence in the European Union Member States (Please see link in Annexes).

Special Recommendation VIII (Non profit organisations)	
Rating: PC	
Recommendation of the MONEYVAL Report	*Estonian authorities should review the adequacy of relevant laws and regulations to prevent the abuse of NPOs for financing of terrorism.*
Measures taken to implement the Recommendation of the Report	The legal acts (have been reviewed and changed to improve the transparency of NPO sector. Amendments to Non-Profit Associations Act (NPAA) were adopted by Estonian Parliament on 4 July 2008 and entered into force on 10 July 2008. After the end of a financial year, the management board shall prepare the annual accounts and activity report. According to § 36.1 of NPAA the annual report of non-profit associations have to be presented to the court registrar within six months after the end of the financial year starting 2009 annual report. The annual reports will be submitted electronically. The annual report gives very detailed information about the economic activities. NPO sector has declared its awareness of the new regulation. Entries in the register are public. Everyone has the right to examine the card register, the annual report and other public files of non-profit associations and to obtain copies of registry cards and of documents in the public files of non-profit associations. The annual reports are supervised by the court register. If non-profit association fails to submit requisite annual report in time, the court register shall issue a warning on deletion from the register to such association and obligate to submit the annual report within a specified term which shall be at least six months. If, within six months after official publication in, the association has failed to submit the annual report to the registrar and failed to provide the registrar with justification for the reason which hinders the association from submitting the report, and the creditors of the association have not requested the liquidation of the company, the registrar may delete the association from the register.

	Starting 01 January 2009 the fines are much bigger than earlier. According to § 76 of the NPAA § 76 and § 46 of the Code of Civil Procedure (CCP) very member of the management board may be punished separately by a fine in the amount 5 000.- up to 50 000.- Estonian kroons for submission of incorrect information or failure to submit the information to the court register. Imposition of fine may be repeated until the corresponding deficiency is eliminated. Important amendments to NPAA were adopted by Estonian Parliament on 29 January 2009 and entered into force on 01 July 2009. One of the objectives of these amendments is to improve better management and transparency of non-profit sector. For example according to § 76 an non-profit association shall submit the telecommunications numbers (telephone number and fax number, e-mail address, etc.) of the undertaking to the registrar and may submit the address of the web-site of the undertaking. Telecommunications numbers shall also be indicated in the annual report which is submitted to the registrar. According to the amendment to § 26 a person with respect to whom a court has, pursuant to the Penal Code, imposed a prohibition on acting as a member of the management board of a legal person, a person who is prohibited from operating within the same area of activity as the non-profit association, or a person who is prohibited to act as a member of the management board on the basis of an Act or a court decision shall not be a member of the management board. According to amendments to § 36 of NPAA 1/5 members of the non-profit association may demand that auditor or controllers who have examined the annual report, have to be on the general meeting and give their explanation about the annual report. The objective of this amendment is to give more possibilities to the member of the non-profit association to get more information and transparency about the economic activities of the non-profit association. The obligations of the board members for economic activities of the non-profit association, legal bases for dissolution of non-profit associations and obligations of the liquidators was clarified. Liquidators shall deposit the documents of a non-profit association with a liquidator or an archives or other trustworthy person. If the liquidators do not appoint a depositary of documents, a court shall appoint one. The name, personal identification or registry code and, residence or location of a depositary of documents shall be entered in the register on the petition of the liquidators. In the case of a court-appointed depositary, the entry shall be made on the basis of the court judgment. The depositary of documents is responsible for the preservation of documents during the term prescribed by the law, it means not less than seven years. All these amendments guarantee the information in the register more reliable and transparent, and better supervision over the economic activities of non profit associations.
Recommendation of the MONEYVAL Report	*Estonian authorities should conduct outreach or provide guidance on terrorist financing to the NPO sector.*
Measures taken to implement the Recommendation of the Report	The representative of the Association of Non-Profit Associations is a member of the Advisory Committee on Prevention of Money Laundering and Terrorist Financing.
Recommendation of the MONEYVAL Report	*Estonian authorities should supervise or monitor the NPO sector as envisaged by the Interpretative Note to SR VIII.*
Measures taken to implement the	Please see the first answer of SR VIII above.

Recommendation of the Report	
Recommendation of the MONEYVAL Report	*Mechanisms should be introduced for a prompt sharing of information among all relevant competent authorities when there is suspicion that a particular NPO is being exploited for terrorist financing purposes.*
Measures taken to implement the Recommendation of the Report	According to MLTFPA § 45 the Financial Intelligence Unit and the Security Police Board shall cooperate in investigation of transactions suspected of terrorist financing through mutual official assistance and exchange of information. The Director General of the Security Police Board has appointed a contact person who has an equal right to the official of the Financial Intelligence Unit to receive information of all notices of suspicion of terrorist financing and to make proposals to request additional information where necessary. The contact person of the Security Police Board has the right to exercise supervision specified in the law jointly with the Financial Intelligence Unit. In practice the FIU and the contact person of the SPB are working in close cooperation.
Recommendation of the MONEYVAL Report	*Estonia should establish special points of contact or distinguished procedures to respond to international requests for information regarding particular NPOs.*
Measures taken to implement the Recommendation of the Report	The special point of contact is Estonian FIU. According to the MLTFPA § 37. Functions of Financial Intelligence Unit (1) The functions of the Financial Intelligence Unit are: 1) to gather, register, process and analyse information received pursuant to §§ 32 and 33 of this Act. In the course thereof, the significance of the information submitted to the Financial Intelligence Unit for the prevention, identification or investigation of money laundering, criminal offences related thereto and terrorist financing are assessed; /---/ 8) organisation of foreign communication and exchange of information The FIU and other police offices have online access to the Non-profit Associations and Foundations Register, the Citizens Register, etc. – all the registers required for identification of legal persons involved in an NPO.
(Other) changes since the last evaluation	Estonian authorities stress that no cases of terrorist financing or any other offences connected with terrorism are known to have been committed. According to the latest risk-review (in 2009) by the Security Police Board the terrorist financing risks remains low in the NPO sector.

Special Recommendation IX (Cross border transactions)	
Rating: PC	
Recommendation of the MONEYVAL Report	*There are no legal provisions ensuring that there is under the circumstances of Special Recommendation IX at any time a designated competent authority which is authorised to stop or restrain currency or bearer negotiable instruments when there is a suspicion of money laundering or terrorist financing.*
Measures taken to implement the Recommendation of the Report	Relevant amendments to the Customs Act are envisaged to take effect in 2010. The amendment to paragraph 9 of Customs Act reads as follows: "In order to carry out customs control or ascertain relevant circumstances and facts customs has the right to retain cash for 48 hours in the following cases: 1) person has infringed the obligation to declare cash set down in Regulation 1889/2005 article 3 or 2) there is a suspicion of money laundering or terrorist financing."

	According to the above formulation, customs has the right to stop cash irrespective of the amount (above or below the threshold). As the competent authority to proceed the money laundering or terrorist financing cases is FIU, then in cases of suspicion of money laundering customs informs FIU and decision for further action is taken by FIU
Recommendation of the MONEYVAL Report	*There are no legal provisions ensuring that there is under the circumstances of Special Recommendation IX at any time a designated competent authority to seize cash when there is a suspicion of money laundering or terrorist financing.*
Measures taken to implement the Recommendation of the Report	Relevant amendments to the Customs Act are envisaged to take effect in 2010. The amendment to paragraph 9 of Customs Act reads as follows: "In order to carry out customs control or ascertain relevant circumstances and facts customs has the right to retain cash for 48 hours in the following cases: 1) person has infringed the obligation to declare cash set down in Regulation 1889/2005 article 3 or 2) there is a suspicion of money laundering or terrorist financing." According to the above formulation, customs has the right to stop cash irrespective of the amount (above or below the threshold). As the competent authority to proceed the money laundering or terrorist financing cases is FIU, then in cases of suspicion of money laundering customs informs FIU and decision for further action is taken by FIU.
Recommendation of the MONEYVAL Report	*As the disclosure system has been established only in mid 2007, there are not yet comprehensive statistics available. Thus, it is not yet possible to assess the effectiveness of the system.*
Measures taken to implement the Recommendation of the Report	**Cash declarations on border from III quarter of 2007 to III quarter of 2009** Quarter | Total Number of Declara-tions | Amounts Declared (EUR) | Number of Export Declara-tions | Amounts Exported (EUR) | Number of Import Declara-tions | Amounts Imported (EUR) 2007 III | 195 | 95 733 897 | 189 | 95 062 774 | 6 | 671 123 2007 IV | 245 | 154 145 510 | 233 | 151 687 977 | 12 | 2 457 533 2008 I | 189 | 172 866 002 | 181 | 172 693 589 | 8 | 172 413 2008 II | 164 | 71 532 162 | 155 | 69 832 861 | 9 | 1 699 301 2008 III | 283 | 130 365 909 | 277 | 130 234 859 | 6 | 131 051 2008 IV | 342 | 205 674 657 | 325 | 202 623 700 | 17 | 3 050 957 2009 I | 218 | 207 329 186 | 204 | 205 360 294 | 14 | 1 968 892 2009 II | 134 | 59 315 950 | 125 | 57 721 184 | 9 | 1 594 766 2009 III | 169 | 24 543 466 | 163 | 23 847 443 | 6 | 696 023 In 2008 the Estonian Tax and Customs Board (ETCB) sent to FIU 28 notifications and during the first 9 months of 2009 the respective number was 26 notifications. As of 9 December 2008 the Order No 20-P of the Director General of ETCB established amendments in the procedure for communication the information to FIU on suspicions regarding the money laundering. According to the amendment the officials which disclosed money laundering shall fill in a notification in the internet environment, in an electronic format available on the web page of FIU: https://rab.kripo.ee/rabis/app and subsequently notify by e-mail the centre of management of ETCB of communicating a notification to FIU. The amended procedure ensures that the information shall be communicated directly to FIU database in good quality and without delay.

Recommendation of the MONEYVAL Report	*EC regulation No. 1889/2005 and relevant national legislation do not cover the transfer of cash or bearer negotiable instruments between Estonia and another EU member state.*
Measures taken to implement the Recommendation of the Report	National legislation does not cover the transfer of cash or bearer negotiable instruments between Estonia and another EU member state.
(Other) changes since the last evaluation	

4. Specific Questions

a) Please indicate the measures taken to cover all essential criteria of recommendation 8 (new technologies and non face-to-face business)
In order to meet the mentioned comment the clause 30 (3) 2) of the MLTFPA was amended and worded as follows: "The rules of procedure shall: 2) describe transactions of a higher risk level, including risks related to means of communication, computer network or other technological development and establish the appropriate requirements and procedure for entering into and monitoring such transaction;" According to amendments to Penal Code unlawful use of identity of other person is criminalized now. According to § 157^2 of Penal Code for an unlawful use of personal data which can be used for identification purposes is punishable by a pecuniary punishment or up to 3 years' imprisonment. The new regulation entered into force on 15 November 2009. Please see also answers provided above for Recommendation 8 (New technologies and non face-to-face business), pg 30-33.
b) Please indicate the measures that were taken in relation to supervision of trust and company service providers?
Until now case based approach has been applied to trust and company service providers. According to the plan of activities for 2009-2010 FIU will make on-site inspections to those service providers.
c) Please indicate the supervisory action taken by the FIU and other supervisors? How many supervisory visits to the reporting entities and the action taken pursuant to those visits?
<u>FSA</u> In 2008-2009, the supervision of the prevention of money laundering and terrorist financing was focused primarily on the control of due diligence measures applied by market participants and on assessment of the effectiveness of relevant internal procedures and management information systems. Also, the procedures and practice of establishment of relationships with non-resident customers was constantly monitored. The efficiency of the application of amendments related to the enforcement of the new MLTFPA was evaluated in almost all credit institutions. Thorough on-site inspections were carried out in 2008 in two[16] two banks and one investment firm, in order to assess the conformity of internal procedures of these financial institutions with applied legislation and international practices as well as the application of due diligence measures in case of clients registered in low-tax regions. An on-site inspection of one credit institution (Estonian subsidiary of a

[16] The total number of credit institutions in Estonia was 6 in 2008. The banking industry is highly concentrated; market share of two major banks is asset-wise ca 65%.

foreign bank) was carried through in cooperation with the foreign supervisory authority. One percept was issued requiring obligated person to amend its internal procedures to be compliant with the latest requirements of the law. In 2009 similar on-site inspections were carried through in two banks (one of them is in the state of issuing the on-site inspection report) and one branch of foreign bank[17].
In addition to that internal procedures of 6 investment service provider and 1 credit institution were assessed in course of general examination of obliged entities.

FIU's supervisory measures 2008-2009:

Sector	**Off-site control 2008/2009.9**	**On-site control 2008/2009.9**	**Misdemeanors 2008/2009.9**	**Prescriptions 2008/2009.9**
Loans		28/37	2/8	8/8
Leasing		0/7		
Casinos		50/25		4/0
Money exchange		34/19	14/9	4/3
Real estate		27/2		
Pawnbrokers		60/81	29/28	43/1
Payment intermediaries		8/8	4/4	4/4
Traders		22/11	0/3	8/0
Bankruptcy trustees	84/0			
Bailiffs	47/0			
Other legal services	0/227			
Total	**131/227**	**229/190**	**49/52**	**71/16**

Bar Association Board has passed guidelines on September the 9th 2008 on procedural rules to fulfill the duties of impeding and forestalling monetary laundering and financing terrorism. The act is recommendable and law offices are free to use that as an example to develop their own directive considering their specifics.
In December 2008 the Bar Association Board carried out supervision to see whether law offices have implemented the procedural rules of diligence measures to fulfill their duties according to MLTFPA. In the course of supervision random selection of law offices were supervised. The selection covered approximately 9 % of law offices. In the course of supervision 15 law offices over Estonia were

[17] There are 7 banks, 11 branches of foreign banks, 5 life-insurance companies (non-life insurance companies are not subject to MLFTPA) 17 fund management companies, 7 investment firms in Estonia as of 01.09.2009.

examined. During supervision one law office out of 15 did not have the aforementioned rules of procedure, other 14 law offices did have the rules of procedure. The law office with shortcomings was asked to conduct their business in accordance with the law and an additional examination followed in January 2009. During the additional examination it was discovered that the law office had implemented the requested procedural rules. The Bar Association Board has pointed out to the members of the association the significance of the subject and the need to implement the aforementioned rules in their offices. The Bar Association Board did not discover any violation of MLTFPA or the guidelines implemented on the basis of the act by the members of the association and therefore has not had the need to apply punishment to members. Review of the results of the supervision has been presented to Financial Intelligence Unit on April the 14th 2009.
The Chamber of Notaries has passed their own guidelines on 1st November 2008. Training took place after the implementation of the new MLTFPA and during the imposing of guidelines.
Supervision over notaries has been done in the course of periodic supervision. No deficiencies were discovered.

d) Please indicate the coordination and cooperation procedures between the supervisory agencies?

Government Committee for Coordination of Issues concerning prevention of Money Laundering and Terrorist Financing (hereinafter: Government Committee) includes representatives of all AML/CFT supervisory bodies. The committee holds regular meetings 4 times in a year.
Estonian FIU is co-operating closely with the Financial Supervision Authority through regular meetings.
Police Board (incl FIU), Prosecutor's Office and FSA concluded a Memorandum of Understanding on 28.09.2009. According to the Art. 2 of the MoU, the purpose of the Memorandum is hindering exploitation of the financial sector for criminal purposes, also preventing, hindering, disclosing and fast and professional processing of offences related securities' circulation and subjects of state financial supervision (incl. money laundering and financing of terrorism through financial sector).
The MoU has an Appendix 1 "Agreement between Police Board and FSA on prevention of money laundering and financing of terrorism". According to Art. 2 of Appendix 1, the purpose of the Agreement is to specify the co-operation between Parties on the prevention of money laundering and financing of terrorism related to credit and financial institutions subject to state financial supervision of FSA.
Appendix 1 specifies contact persons of Parties, the accepted means of communication, the time limits for answering requests. Appendix 1 also enacts that Parties have to co-operate to ensure uniform application of AML/CFT legal acts and notify each other of any problems or difficulties arising from application of AML/CFT legal acts or guidelines. According to the Appendix 1, parties have regular meetings on the matters of the scope of the Appendix 1 two times in a year. Ad hoc meetings will be held, when necessary. The Appendix 1 also sets an obligation of the Parties to present annually to the other Party a report on breaches found and punishments applied. Appendix 1 also sets ground for co-operation of Parties in the field of international co-operation.

e) Please report on measures to ensure updating of information on ownership and control of legal persons?

Measures to ensure updating of information on ownership and control of legal persons are provided in Commercial Code:
§ 71. Liability of undertaking
(1) The registrar may, pursuant to the procedure provided by the Code of Civil Procedure, impose a fine on an undertaking and any other person required to submit the information to the register who fails to submit information provided by law or submits incorrect information to the registrar, regardless of whether or not such information is subject to entry in the register.
§ 35. Notification obligation of administrative agencies
The courts, state and local government agencies, notaries, bailiffs and auditors are required to notify the registrar of any incorrect information in the commercial register or of any information which has not been submitted to the register that they become aware of.

f) Please report on international cooperation request, numbers of received requests and answers provided?

In 2008 FIU received 204 foreign enquiries and sent 107 enquiries. In 2009 the respective figures are 141 and 157. The enquiries sent to Latvia and Russia have increased considerably.
Mutual legal assistance:

	Applications for mutual legal assistance from foreign countries	**Applications for mutual legal assistance applied by Estonia**
2008	561	264
01.01.2009-1.11.2009	451	171

	Applications for mutual legal assistance from foreign countries regarding money laundering	**Applications for mutual legal assistance applied by Estonia regarding money laundering**
2005	6	0
2006	5	2
2007	35	4
2008	36	31
01.01.2009-1.11.2009	29	17

	Applications for mutual legal assistance from foreign countries regarding terrorism financing	**Applications for mutual legal assistance applied by Estonia regarding terrorism financing**
2005	0	0
2006	3	1
2007	0	0
2008	0	0
01.01.2009-1.11.2009	0	0

	Property arrests in money laundering cases	**Applications for mutual legal assistance applied by Estonia**

		regarding terrorism financing
2008	1	0
01.01.2009-1.11.2009	0	0

Estonia has completed all applications for mutual legal assistance, which have been sent to Estonia in years 2007 and 2008. 6 applications during year 2009 are under way. 2 applications for mutual legal assistance applied in 2008 by Estonia to Germany regarding money laundering have not yet been answered. 12 applications for mutual legal assistance applied by Estonia in 2009 regarding money laundering have not yet been answered.

5. Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC)18

Implementation / Application of the provisions in the Third Directive and the Implementation Directive	
Please indicate whether the Third Directive and the Implementation Directive have been fully implemented / or are fully applied and since when.	The MLTFPA entered into force on 28th January 2008. One of the goals of this act was to harmonize Estonian legislation with the requirements of the 3rd EU AML Directive and Implementing Directive 2006/70/EC.

Beneficial Owner	
Please indicate whether your legal definition of beneficial owner corresponds to the definition of beneficial owner in the 3rd Directive[19] (please also provide the legal text with your reply)	*MLTFPA* section 8 (1) is amended and worded as follows: "(1) A beneficial owner is a natural person who, taking advantage of his or her influence, exercises control over a transaction, act or another person, and in whose interests or favour or on whose account the transaction or act is made."; Section (1^1) is added to section 8 of *MLTFPA* in the following wording: "(1^1) A beneficial owner is also a natural person who permanently owns the shares or voting rights of the company or exercises final control over the management of a company in at least one of the following ways: 1) by owning over 25 percent of shares or voting rights through direct or indirect shareholding or control, including in the form of bearer shares; 2) otherwise exercising control over the management of a legal person.";

Risk-Based Approach	
Please indicate the extent to which financial institutions have been permitted to use a risk-based approach to	This is a general principle in the MLTFPA subsection 14. In compliance with *MLTFPA* subsection 14 (3), an obligated person may use the risk-based approach and with sufficient measures to verify the identity of the beneficial owner in order to make certain that the obligated person knows who the beneficial owner is in the business relationship or transaction. In the case of fulfilment of this requirement

[18] For relevant legal texts from the EU standards see Appendix II.
[19] Please see Article 3(6) of the 3rd Directive reproduced in Appendix II.

discharging certain of their AML/CFT obligations.	obligated persons have been given various choices: 1) to what extent to use public data about shareholders or members to that end; 2) to what extent to ask for the relevant data orally and record the information received in writing; 3) in which cases to ask the customer to fill in a respective questionnaire; 4) which other possibilities can be used and are reasonable in the case of the respective obligated person. It must be taken into account that the scope of customer due diligence, incl. identification of the beneficial owner is related to the risk of money laundering and terrorist financing, which depends on the customer type, his country of origin, business relationships, the product, service or transaction. In cases where the beneficial owners of a legal entity, civil law partnership or other contractual legal arrangement, e.g. a fund or trust need to be identified and thus it is impossible to identify the beneficial owners it is sufficient to identify the circle of persons who may benefit from the fund or trust. This requirement does not include identification of individuals within the circle of persons. **Art 14** of MLTFPA establishes the general identification requirement. Subsection (1) imposes on all obligated persons the obligation to identify a person or customer participating in a transaction or official act as well as the customer's representative and the beneficial owner and verify their identity. The obligated person identifies the aforementioned person on the basis of submitted documents and verifies whether the submitted identification information is correct or not. The requirements for documents used in the course of identification and verification have been provided in §§ 23 and 24 of MLTFPA. If the information used upon identification originates from the identified person either in the form of oral statements or submitted unattested written documents, the information must be verified through a reliable and independent source. It is a general provision, which has several derogations in MLTFPA, depending on the area of activity of the obligated person, the services provided and the goods sold, etc. Derogations are primarily related to the timing of application of due diligence measures. It must be noticed that the requirements of identification and verification are equally applicable to all obligated persons, unless the derogations provided for in MLTFPA stipulate otherwise. According to subsection (2), an obligated person must fulfil the identification requirement immediately in the case of entering into or intermediating transactions on an occasional basis whereby the transaction amount is EEK 200,000 or more as soon as the obligated person learns that the said limit has been exceeded. According to subsection (3), upon application of due diligence measures obligated persons may use risk-based approach, except in single instances provided in law, which concern primarily the so-called amount-based notification obligation of obligated person pursuant to subsection 32 (3) of the MLTFPA. Obligated persons must take all the due diligence measures specified in subsection (1) of the section under view, but the scope and intensity of application of due diligence measures depends on the specific business relationship, customer or party to a transaction or risk level arising from a transaction. Each obligated person should recognise the risks arising from its activities – to known and be able to recognise in practice a situation where the obligated person might be used as a channel of money laundering or terrorist financing and introduce reasonable measures for prevention or reduction of such risks. The measures applied by an

	obligated person must take the specifics of the area of activity into account. Due diligence measures are suitable and have sufficient scope if they can be used for identifying transactions aimed at money laundering and terrorist financing or if the at least contribute to the attainment of the goal. The risk-based approach is not applicable if a customer or a person participating in a transaction or official act has been entered in the list of persons on whom international sanctions have been imposed. If a risk arising from a business relationship, customer or party to a transaction is low and the conditions provided for in § 18 of the MLTFPA are present, an obligated person may apply the due diligence measures pursuant to the simplified procedure, but may not leave the due diligence measures unapplied. However, if the risk level is high, strengthened due diligence measures must be applied in accordance with §§ 19, 21 or 22 of the MLTFPA. Such an approach ensures a flexible regulation and allows for more rational use of the resources of obligated persons.

Politically Exposed Persons	
Please indicate whether criteria for identifying PEPs in accordance with the provisions in the Third Directive and the Implementation Directive[20] are provided for in your domestic legislation (please also provide the legal text with your reply).	Estonian legislation for identifying PEPs is in accordance with the provisions of Third Directive and the implementation Directive. Criteria for identifying PEPs are provided for in Estonian legislation as follows. § 20 of MLTFPA: Politically exposed person (1) A politically exposed person is a natural person who performs or has performed prominent public functions, also the family members and close associates of such a person. A person who, by the date of entry into a transaction, has not performed any prominent public functions for at least a year, or the family members or close associates of such a person are not considered politically exposed persons. (2) For the purposes of this Act, a person performing prominent public functions is: 1) a head of state, head of government, minister, and deputy or assistant minister; 2) a member of parliament; 3) a justice of a supreme, constitutional or another court of which the judgments can be appealed only in exceptional circumstances; 4) a member of the supervisory board of a state audit institution or the central bank; 5) an ambassador, chargé d'affaires and senior officer of the Defence Forces; 6) a member of a management, supervisory or administrative body of a state-owned company. (3) The provisions of clauses (2) 1)-5) include positions of the European Union and other international organisations. (4) A family member of a person performing prominent public functions is: 1) his or her spouse; 2) a partner equal to a spouse under the law of the person's country of residence or a person who as of the date of entry into the transaction had shared the household with the person for no less than a year; 3) his or her children and their spouses or partners within the meaning of clause 2); 4) his or her parent.

[20] Please see Article 3(8) of the 3rd Directive and Article 2 of Commission Directive 2006/70/EC reproduced in Appendix II.

	(5) A close associate of a person performing prominent public functions is: 1) a natural person who has a close business relationship with a person performing prominent public functions or with whom a person performing prominent public functions is the joint beneficial owner of a legal person or contractual legal arrangement; 2) a person who as a beneficial owner has full ownership of a legal person or contractual legal arrangement, which is known to have been set up for the benefit of the person performing prominent public functions. § 21. Transactions with politically exposed persons of other Member States and third countries (1) Upon establishment of a business relationship or entry into a transaction or performance of an official act with a politically exposed person of a contracting state of the European Economic Area or a third country or his or her family member or close associate, an obligated person shall apply the enhanced due diligence measures provided for in § 19. (2) In the event specified in subsection (1), an obligated person shall also implement the following requirements: 1) apply appropriate risk-based internal procedures for making a decision on establishment of a business relationship or on conclusion of a transaction; 2) the management board of the obligated person or a person or persons authorised by the management board shall decide on establishment of business relationships; 3) upon establishment of a business relationship or upon the conclusion of a transaction, take appropriate measures for identification of the origin of the money or other property used; 4) continuously apply the due diligence measures specified in clause 13 (1) 5).

"Tipping off"	
Please indicate whether the prohibition is limited to the transaction report or also covers ongoing ML or TF investigations.	*MLTFPA* § 34 establishes the confidentiality requirement of persons with a notification obligation. According to subsection (1) an obligated person, the body and a member of a directing body and an employee of an obligated person who is a legal entity is prohibited to notify a person about a notification given to the Financial Intelligence Unit about the person and about precepts made by the Financial Intelligence Unit for the purpose of receiving additional information or initiation of criminal proceedings (i.e. tipping off). An obligated person may notify a person that the Financial Intelligence Unit has restricted the use of the person's account or that other restrictions have been imposed by the unit after fulfilment of the respective precept. A similar requirement can be found in the MLTFPA in force. This provision corresponds to Article 28 of Directive III and FATF Recommendation 14. § 61 of the draft Act considers infringement of the prohibition as misdemeanour for which the offender could be punished with a pecuniary penalty as well as detention. On the basis of subsection (2) the aforementioned rule is applied with regard to provision of information to third parties, unless otherwise provided in this Act. Subsection (3) contains derogations, i.e. when it is allowed to forward information about prevention of money laundering and terrorist acts to third parties. In general it is allowed to notify only competent authorities, i.e. the Financial Intelligence Unit. There are no such derogations in the act in force. Due to the dominant public interest the draft Act contains derogations which are in compliance with Article 28 of the Directive. The list of persons whom information may be given, as set out in

	the clauses of subsection (3), is exhaustive. It must be taken into account that exchange of information is not permitted between all obligated persons and according to Recital 33 of Directive III, personal data protection legislation must be taken into account upon disclosure of information. In general it is prohibited to disclose information to third parties without the consent of the data subject. An obligated person is allowed to disclose information within the consolidation group or financial conglomerate (for the purposes of §§ 187-188 of the Insurance Activities Act), provided that the same persons are subject to the obligation of professional secrecy (clause 1). It is stipulated in the draft Act that information may be exchanged only between obligated persons if the information about the specific transaction suspected, with good reason, of money laundering or terrorist financing concerns various obligated persons who operate in the same branch of the economy or profession. The prohibition of forwarding information is not applicable in the case where notaries public, attorneys or auditors act in the same legal entity (e.g. in the same law firm) or cooperation network (e.g. a network of law firms), which has the same owners, directing bodies and internal control system. Subsection (4) establishes the imperative rule that exchanged information may be used solely for the purpose of prevention of money laundering and terrorist financing. Exchange of information obtained on the basis of subsection (3) for other purposes is prohibited. According to subsection (5), the prohibition of disclosure is not applied if a notary public, attorney or auditor tries to convince the client to refrain from illegal acts. There is no analogous provision in the MLTFPA in force, but there is such a provision, for instance, in the Danish Money Laundering Prevention Act. *MLTFPA* § 34. Confidentiality obligation of the notifier (1) An obligated person, a structural unit and a member of a directing body and an employee of an obligated person who is a legal person, is prohibited to notify a person, the beneficial owner or representative of the person about a notification given to the Financial Intelligence Unit about the person and about precepts made by the Financial Intelligence Unit or initiation of criminal proceedings under § 40 or 41. An obligated person may notify a person that the Financial Intelligence Unit has restricted the use of the person's account or that other restrictions have been imposed after fulfilment of the precept made by the Financial Intelligence Unit. (2) The provisions of subsection (1) are also applied to the providing of information to third parties, unless otherwise provided in this Act. (3) An obligated person may give information to a third party if: 1) the third party belongs to the same consolidation group or financial conglomerate as the obligated person specified in clauses 3 (1) 1) and 2) of this Act and the undertaking is located in a contracting state of the European Economic Area or third country where requirements equal to those provided in this Act are in force, state supervision is exercised over fulfilment thereof and requirements equal to those in force in Estonia are applied for the purpose of keeping professional secrets and protecting personal data; 2) the third party acts in the same legal person or structure, which has joint owners or management or internal control system as the obligated person in the profession of a notary public, attorney or auditor; 3) the information specified in subsection (1) concerns the same person and the same transaction which is related to several obligated persons and the information is given by a credit institution, financial institution, notary public, attorney or auditor to a person operating in the same branch of the economy or profession who is located in a contracting state of the European Economic Area or third country where

	requirements equal to those provided in this Act are in force, state supervision is exercised over fulfilment thereof and requirements equal to those in force in Estonia are applied for the purpose of keeping professional secrets and protecting personal data. (4) Information exchanged pursuant to subsection (3) may be used only for the purpose of the prevention of money laundering and terrorist financing. (5) The prohibition provided by subsection (1) is not applied if a notary public, attorney or auditor tries to convince a customer to refrain from illegal acts.
With respect to the prohibition of "tipping off" please indicate whether there are circumstances where the prohibition is lifted and, if so, the details of such circumstances.	*MLTFPA* § 43 establishes restrictions on use of information. Notifications sent to the FIU contain personal data and information containing information subject to business and banking secrecy. The notifications are sent by credit institutions who are obligated to maintain the confidentiality of information subject to banking secrecy. The cooperation between the FIU and obligated persons is based on trust. Obligated persons must be confident that the information given by them to the FIU is protected and used strictly pursuant to the procedure provided by law. § 20 of the MLTFPA in force also imposes on the officials of the FIU the obligation to maintain the confidentiality of information made known to them in the course of their official duties, including information subject to banking secrecy. Furthermore, § 21 of the MLTFPA in force provides that only officials of the Financial Intelligence Unit shall have access to and the right to process the information in the Financial Intelligence Unit database. According to subsection (1) of the draft Act, the present legal order will remain. According to subsection (2), in order to prevent or identify money laundering or terrorist financing or criminal offences related thereto and in order to facilitate pre-trial investigation thereof, the Financial Intelligence Unit is required to forward significant information, including information subject to tax and banking secrecy to the prosecutor, the investigative body and the courts in connection with court proceedings. According to subsection (3), information registered in the Financial Intelligence Unit shall only be forwarded to a preliminary investigation authority, the prosecutor or a court in connection with a court proceeding on the basis of a written request of the preliminary investigation authority, the Prosecutor's Office or the court or on the initiative of the Financial Intelligence Unit if the information is significant for the prevention, establishment or investigation of money laundering or a criminal offence related thereto. The principles of criminal procedure are applicable to the use of information as evidence. According to subsection (4), the FIU has the right to notify the Financial Supervision Authority of infringement of the requirements established by this Act by a credit or financial institution. On the other hand, the Financial Supervision Authority, in accordance with § 49, is obligated to notify the FIU of suspicion of money laundering or terrorist financing identified upon inspection of a subject of financial supervision. Analogous provisions can be found in the MLTFPA in force as well. The FIU and the Financial Supervision Authority pursue extensive cooperation in other issues as well. Under subsection (5), the FIU shall not in any event provide information about the obligated person who submitted information for the purpose of fulfilment of the notification obligation or the members of the directing body or employees of the person. The FIU, incl. the contact person appointed by the Security Police Board, shall ensure full confidentiality of the aforementioned persons. Otherwise the FIU would lose its trustworthiness in the eyes of the obligated persons. Under Article 27

	of Directive III, Member States shall take all appropriate measures in order to protect employees of the institutions or obligated persons from being exposed to threats or hostile action. **MLTFPA § 43. Restrictions on the use of information** (1) Only the officials of the Financial Intelligence Unit shall have access to and the right to process the information in the Financial Intelligence Unit database. (2) In order to prevent or identify money laundering or terrorist financing or criminal offences related thereto and in order to facilitate pre-trial investigation thereof, the Financial Intelligence Unit is obligated to forward significant information, including information subject to tax and banking secrecy to the prosecutor, the investigative body and the court. (3) Information registered in the Financial Intelligence Unit shall only be forwarded to the authority engaged in the pre-trial procedure, the prosecutor or a court in connection with criminal proceedings on the basis of a written request of the preliminary investigation authority, the Prosecutor's Office or the court or on the initiative of the Financial Intelligence Unit if the information is significant for the prevention, establishment or investigation of money laundering, terrorist financing or a criminal offence related thereto. (4) The Financial Intelligence Unit may notify the Financial Supervision Authority of infringement of the requirements established by this Act by a credit or financial institution. (5) The Financial Intelligence Unit shall not disclose personal data of the person performing the notification obligation or a member or employee of the directing body of the obligated person. (6) The procedure for the registration and processing of the information gathered by the Financial Intelligence Unit shall be established by a regulation of the Minister of the Interior.

"Corporate liability"	
Please indicate whether corporate liability can be applied where an infringement is committed for the benefit of that legal person by a person who occupies a leading position within that legal person.	The corporate liability can be applied in specific cases if it is provided in special part in the Penal Code, for example money laundering etc. § 14 in Penal Code. Liability of legal persons (1) In the cases provided by law, a legal person shall be held responsible for an act which is committed by a body, member of a body or senior official or competent representative thereof in the interest of the legal person. There has been two indictments /2007 and 2008/ against a legal person in cases of money laundering.
Can corporate liability be applied where the infringement is committed for the benefit of that legal person as a result of lack of supervision or control by persons who occupy a	The corporate liability can be applied if the infringement is committed as a result of lack of supervision or control by persons who occupy a leading position and this does not exclude it. As an act committed by any competent representative of a legal person (agent or employee) for the benefit of the legal person may be imputed to the legal person, it is implied that every legal person has the interest to ensure that no representative thereof would commit offences for its benefit. Leading officials of a legal person have therefore a duty to supervise the activities of the representatives of the legal person according to the organisational culture and guidances of the legal person.

leading position within that legal person.	We also inform that in 2009-2010 an analysis is being carried out concerning corporate liability and further amendments of the PC, strengthening the principles of corporate liability, are possible.

DNFBPs	
Please specify whether the obligations apply to all natural and legal persons trading in all goods where payments are made in cash in an amount of € 15 000 or over.	According to the effective act, the provisions of the MLTFPA are applied to persons who act as sellers and intermediaries in transactions involving precious metals, precious stones/jewellery products, works of artistic value or other valuable goods. Enabling large cash transactions has repeatedly been something that can be easily taken advantage of for the purpose of money laundering and terrorism. Sellers of precious metals, sellers of works of art and auctioneers belong to a risk group and have been specified separately in clause 18 of the preamble of the directive and the FATF Recommendations. Therefore all traders who accept large cash payments in their economic or professional activities, e.g. dealers of cars and other motor vehicles and auctioneers, if a cash payment of no less than EEK 200,000 is made to them, are within the scope of application of the Act. The draft Act provides that the Act is applicable to a trader who receives a cash payment of EEK 200,000 or more. In concordance with clause 1 of section 2 of the Trading Act, "trader" means a person or body which, within the framework of the economic or professional activities thereof, offers for sale and sells goods or offers and provides services. Given the wide scope of the definition traders have not been specified separately by single groups of goods in the new MLTFPA. Thus, the subject can be a trader who receives the respective amount in cash starting from the receipt of the respective amount. In comparison with the act in force the draft Act changes the limits. According to the effective act, an undertaking is obliged to take preventive measures if, upon entry into transactions, the undertaking accepts, intermediates or pays over EEK 100,000 in cash and, in the case of non-cash settlements, over EEK 200,000. According to the draft Act, the Act is applied regardless of the manner of performance of a monetary obligation with regard to a trader if EEK 200,000 or more or an equal amount in another currency is paid to the trader in the course of a transaction in its economic or professional activities.

6. Statistics

a. Please complete - to the fullest extent possible - the following tables:

2005												
	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	cases	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)
ML	15	NA	NA	NA	2	NA	NA	NA	(*)[1]	NA	NA	NA
FT	0	0	0	0	0	0	0	0	0	0	0	0

2006												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	19	NA	3	6	1	1	NA	NA	(*)[2]	NA	NA	NA
FT	0	0	0	0	0	0	0	0	0	0	0	0

2007												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	16	NA	4	9	5	11	NA	NA	(*)[3]	NA	4	21020[4]
FT												

2008												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	46	NA	13	22	6	12	NA	NA	6	999 100	0	0
FT	0	0	0	0	0	0	0	0	0	0	0	0

1. The relevant statistics is not suitable here as the figures for 2005-2007 reflect the total number of seizures but not the number of cases where seizures were imposed, i.e. there could be several seizures per one case.
2. See FN 1
3. See FN 1
4. The amount does not include the value of other confiscated objects (electronic devices, cars, real estate, etc).

10 months 2009												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	55	NA	27	63	6	6	NA	NA	7	461 304	3	17 650[5]
FT	0	0	0	0	0	0	0	0	0	0	0	0

5. See FN 4

b. STR/CTR

Explanatory note:
The statistics under this section should provide an overview of the work of the FIU.
The list of entities under the heading "*monitoring entities*" is not intended to be exhaustive. If your jurisdiction covers more types of monitoring entities than are listed (e.g. dealers in real estate, supervisory authorities etc.), please add further rows to these tables. If some listed entities are not covered as monitoring entities, please also indicate this in the table.

The information requested under the heading "*Judicial proceedings*" refers to those cases which were initiated due to information from the FIU. It is not supposed to cover judicial cases where the FIU only contributed to cases which have been generated by other bodies, e.g. the police.

"C*ases opened*" refers only to those cases where an FIU does more than simply register a report or undertakes only an IT-based analysis. As this classification is not common in all countries, please clarify how the term "cases open" is understood in your jurisdiction (if this system is not used in your jurisdiction, please adapt the table to your country specific system).

2005															
Statistical Information on reports received by the FIU								**Judicial proceedings**							
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**			
								ML		**FT**		**ML**		**FT**	
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**
Commercial Banks	NA	1213	NA	1697	NA	64		3		NA		3		NA	
Insurance Companies	NA	0	NA												
Notaries	NA	10	NA												
Currency Exchange	NA	15	NA												
Broker Companies	NA	0	NA												
Securities' Registrars	NA	0	NA												
Lawyers	NA	2	NA												
Accountants/Auditors	NA	0	NA												
Company Service Providers	NA	0	NA												
Others (please specify)	NA	457	NA												
Financial institutions	NA	3	NA												
Providers of cash transfer services	NA	111	NA												
Organisers of gambling and lotteries	NA	36	NA												
Persons who carry out or act as intermediaries in transactions with real estate	NA	1	NA												
others (foreign FIUs, Estonian FIU, Ministries, Police, other government agencies, others)	NA	306	NA												

Total		**1697**													

2006															
Statistical Information on reports received by the FIU								**Judicial proceedings**							
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**			
								ML		**FT**		**ML**		**FT**	
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**
Commercial Banks	NA	1589	NA												
Insurance Companies	NA	0	NA												
Notaries	NA	47	NA												
Currency Exchange	NA	32	NA												
Broker Companies	NA	0	NA												
Securities' Registrars	NA	0	NA												
Lawyers	NA	2	NA												
Accountants/Auditors	NA	0	NA												
Company Service Providers	NA	0	NA												
Others (please specify and if necessary add further rows)	NA	931	NA	2601	NA	111	NA	7		NA		7		NA	
financial institutions	NA	90	NA												
providers of cash transfer services	NA	419	NA												
organisers of gambling and lotteries	NA	90	NA												
intermediaries of high-value goods	NA	3	NA												
others (foreign FIUs, Estonian FIU, Ministries, Police, other government agencies, others)	NA	329	NA												
Total		**2601**													

2007															
Statistical Information on reports received by the FIU								**Judicial proceedings**							
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**			
								ML		**FT**		**ML**		**FT**	
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**
Commercial Banks	NA	2208	NA	5272	NA	1821		1		NA		1		NA	
Insurance Companies	NA	0	NA												
Notaries	NA	96	NA												
Currency Exchange	NA	217	NA												
Broker Companies	NA	0	NA												
Securities' Registrars	NA	0	NA												
Lawyers	NA	6	NA												
Accountants/Auditors	NA	1	NA												
Company Service Providers	NA	0	NA												
Others (please specify and if necessary add further rows)	NA	2744	NA												
financial institutions	NA	99	NA												
providers of cash transfer services	NA	1528	NA												
organisers of gambling and lotteries	NA	567	NA												
persons who carry out or act as intermediaries in transactions with real estate	NA	1	NA												
intermediaries of high-value goods	NA	109	NA												
others (foreign FIUs, Estonian FIU, Ministries, Police, other government agencies, others)	NA	440	NA												
Total		**5272**													

30.09.09															
Statistical Information on reports received by the FIU								**Judicial proceedings**							
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**			
								ML		**FT**		**ML**		**FT**	
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**
Commercial Banks	8	1888	26												
Insurance Companies	1	0	0												
Notaries	89	32	1												
Currency Exchange	5802	23	22												
Broker Companies	0	0	0												
Securities' Registrars	0	3	0												
Lawyers	0	3	0												
Accountants/Auditors	11	0	0												
Company Service Providers	0	0	0												
Others (please specify)				678		204		0	NA	0	NA	0	NA	0	NA
financial institutions (excl. currency exchange)	1126	1141	4												
other private companies	420	10	0												
other professionals (bailiffs, other legal advisors, trustees)	2	8	0												
others (foreign FIUs, Estonian FIU, Ministries, Police, other government agencies, others)	7	235	0												
Total	**7466**	**3856**	**1158**												

APPENDIX I - Recommended Action Plan to Improve the AML / CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
2.1 Criminalization of Money Laundering (R.1 & 2)	• It should be made clear in the law or by way f guidance and training that the prosecution of money laundering does not require a prior or simultaneous conviction for the predicate offence. • Estonia should introduce the full concept of conspiracy for the money laundering offence.
2.2 Criminalization of Terrorist Financing (SR.II)	• It is recommended to amend the legal text criminalising terrorist acts and the provision criminalising terrorist financing in a way that they would be broad and detailed enough to cover, besides the financing of terrorist organisations, also all terrorist acts as required by the UN Conventions and the financing of individual terrorists. These provisions should also: – clearly cover the various elements required by SR.II, in particular the collection of funds by any means, directly or indirectly, and their use in full or in part for terrorist financing purposes; – clarify that it is not necessary that funds were actually used to carry out terrorist acts or be linked to a specific terrorist act.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Laundered property, where money laundering is the only offence being proceeded with, should be covered by the Estonian mandatory confiscation regime; • Confiscation of instrumentalities used or intended to be used should be mandatory and apply for all the designated offences; • instrumentalities used or intended to be used in the commission of a crime should be subject to value confiscation; • Estonia should introduce specific legislation concerning the rights of bona fide third parties in case of seizure orders (so far Estonia has to rely on general principles of law).
2.4 Freezing of funds used for terrorist financing (SR.III)	• Estonia should implement a national mechanism to give effect to requests for freezing assets and designations from other jurisdictions and to enable freezing funds of EU internals (citizens and residents). • A national de-listing process should be established as part of these measures. • The definition of "funds" (as taken from the EU Regulations) does not explicitly cover funds owned 'directly or indirectly' by designated persons or those controlled

	directly or indirectly by designated persons; this should be amended and be brought in compliance with the requirements of UNSCR 1267 and UNSCR 1373. • Apart from banks, no other financial institutions or DNFBP are aware of the procedures to be followed in order to implement the UNSC Resolutions. Thus, Estonian authorities should consider providing clear and practical guidance to financial institutions and other entities concerning their responsibilities under the freezing regime. • Estonia should introduce clear provisions regarding the procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.
2.5 The Financial Intelligence Unit and its functions (R.26)	• Though the rating for Recommendation 26 is compliant it has to be noted that the only concern which has the abstract potential to become a problem for the FIU is that it does not have its own budget. Though this does not appear to be a problem at present, a separate budget would certainly strengthen its independence.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• No recommended action.
2.7 Cross Border Declaration & Disclosure	• Estonia should establish an effective regime to stop or restrain currency or bearer negotiable instruments when there is a suspicion of money laundering or terrorist financing at the border (criterion IX.3 a). • There are no provisions authorising Customs to seize cash simply in the case of a suspicion of money laundering or terrorist financing. In such a situation Customs could either inform the FIU which could immediately issue a precept that the money has to be frozen or Customs could initiate criminal proceedings and inform prosecutors to get an order from the investigative judge to seize the cash. When it comes to nighttimes, weekends and public holidays, this system is not fully operational. Estonia should establish an effective system which allows that there is at any time the possibility to seize cash when there is a suspicion of money laundering or terrorist financing (in the evaluators view the easiest way to do so would be to authorise Customs to seize cash in the case of a suspicion of money laundering or terrorist financing). • EC Regulation No. 1889/2005 and relevant national legislation do not cover the transfer of cash or bearer negotiable instruments between Estonia and another EU member state.

3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)	• The obliged entities are allowed to rely on CDD information received *inter alia* from a credit institution who has been registered or whose place of business is in a contracting state of the European Economic Area or a third country where requirements equal to those provided in the MLTFPA are in force. In the absence of further guidance on this issue, Estonian authorities should at least issue guidance regarding the question of which countries satisfactorily fulfil these requirements. • Concerning beneficial ownership, the law leaves some discretion in interpretation whether it also covers instances when a natural person acts for another natural person. Estonian authorities should make it clear in the law that beneficial ownership does not only refer to the first natural person in the chain but that it (also) covers natural persons who ultimately control other natural persons. • Concerning criterion 5.6, § 13 (1) 4) MLTFPA requires "*acquisition of information about a business relationship and the purpose of a transaction*". This provision could only indirectly be sanctioned (that failure to observe these requirements indicate a failure of the institution's internal controls). Estonia should introduce a direct sanctioning regime for this provision. • The Estonian approach to address "*high risk of money laundering or terrorist financing*" sets the level to apply enhanced CDD to a higher level than "*higher risk*" in terms of the Methodology. While "high risk" is at the upper end of a level of risk, "higher risk" refers only to a situation more risky than average. Furthermore, in the categories of § 19 MLTFPA non-resident customers and private banking do not appear as higher risk situations which would require enhanced CDD measures. Estonia should change the term of "high risk" to "higher risk" and consider adding non-resident customers and private banking to the categories which require enhanced CDD measures. Furthermore, the authorities should provide financial institutions with guidance on the existing categories of high risk. • § 18 MLTFPA allows for the application of simplified CDD measures in case of credit or financial institutions located in a contracting state of the European Economic Area or a third country, which in the country of location is subject to requirements equal to those provided for in this Act and the performance of which is subject to state supervision. At present, no guidance from the Estonian supervisory bodies exists specifying which third countries

	fulfil these criteria. Though simplified CDD is not mandatory under the Methodology but in case of applying such a system, the requirements of criterion 5.10 have to be met which is not the case in Estonia[21]. • The MLTFPA requires all obligated persons to have rules of procedure which ensure that the legal CDD requirements as set out in the MLTFPA are followed. Though not explicitly mentioned, the Estonian authorities are of the opinion that this language covers also all instances in which a business relationship begins prior to full CDD. The Minister of Finance is obliged to issue a decree specifying further requirements for such rules of procedure. Such guidance was not yet in existence at the time of the on-site visit and should be done as soon as possible[22]. • The MLTFPA should clearly require financial institutions to terminate a business relationship and notify the FIU in instances in which a request for additional documentation arising only from ongoing due diligence remains unfulfilled (part of criterion 5.16). • The exemption concerning politically exposed persons that "*a person who, by the date of entry into a transaction, has not performed any prominent public functions for at least a year, or the family members or close associates of such person are not considered a politically exposed person*" (§ 20 (1) MLTFPA) is not in line with the Methodology and should be removed. • Concerning effective implementation of Rec. 6, at least one of the smaller local banks did not, at the time of the on-site visit, conduct independent background checks on their customer's possible role as a politically exposed person (in contrast to the larger, internationally active banks which seem to follow their obligations). Estonian authorities should address this shortcoming by focused supervision on these issues and consider issuing guidance in this regard. • There should be a clear requirement in the law which obliges financial institution to understand the respondent bank's business. • Estonia should introduce a clear legal requirement for financial institutions to obtain approval from senior management before establishing new correspondent relationships. • In case of correspondent banking, financial institutions should be required to document not only the respective CDD responsibilities of each institution but the whole range of AML/CFT responsibilities (e.g. notification). • Estonia should introduce specific provisions in the law

[21] A list of equivalent third countries has been established in the meanwhile.

[22] The relevant Regulation of Minister of Finance was published in the State Gazette and became effective on April 11, 2008.

	which address the risk of misuse of technological developments in money laundering or terrorist financing schemes.
3.3 Third parties and introduced business (R.9)	• The obligated persons should be clearly required to ensure that timely reproduction of the necessary documentation from third parties is possible. • Concerning criterion 9.4, Estonian authorities should issue guidance to explain the financial institutions which countries can be considered as having requirements equal to those provided in the MLTFPA in force and can be supposed to comply with Recommendation 9. • Estonian authorities should clarify that also in the circumstances of § 14 (4) MLTFPA the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party.
3.4 Financial institution secrecy or confidentiality (R.4)	• The provisions allowing the sharing of information between financial institutions where this is required by R. 7, R. 9 and SR VII should be revised: the language should be simplified to facilitate their application in practice and further guidance should be provided[23].
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• The MLTFPA (particularly § 63) needs to be amended that sanctions also apply to credit institutions and currency exchange bureaux when they breach the provisions of the said Regulation. • Measures need to be taken to ensure full awareness of by credit institutions and payment service providers of the requirements of Regulation (EC) No 1781/2006. Moreover, both the FSA and the FIU should elaborate an appropriate monitoring mechanism to ensure its proper implementation. • Neither the FSA nor the FIU have informed credit institutions and payment service providers of their obligations arising from Regulation (EC) No. 1781/2006. For the sake of a proper implementation of this EU Regulation (and consequently SR VII), it is necessary to raise awareness with its requirements concerning fund transfers. Furthermore on-site inspections and other off-site monitoring techniques should aim at ascertaining and evaluating implementation of this EU Regulation by credit institutions and payment service providers. The supervisory tools used by the FSA and the FIU should encompass the monitoring of compliance with the EU Regulation by both credit institutions and other financial business entities involved in money remittances.
3.6 Monitoring of transactions and relationships (R.11 & 21)	• Financial institutions should be required by law, regulation or other enforceable means to investigate the background

[23] This has already been done to a certain extent concerning countries which can be considered as equivalent to "*a contracting state of the European Economic Area*".

	and purpose of complex/unusual large transactions and to keep a record of the written findings which will be then accessible for competent authorities and auditors. • Estonia should introduce obligations in law or regulation or other enforceable means requiring financial institutions to – give special attention to business relationships and transactions with persons (including legal persons and other financial institutions) from or in countries which do not or insufficiently apply the FATF Recommendations. – to examine and monitor such transactions, if they do not have an apparent economic or visible lawful purpose, and have written findings available to assist competent authorities and auditors. • Estonia should introduce specific provisions on application of counter- measures where a country continues not to apply or insufficiently applies the FATF Recommendations.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• It should be clarified in the MLTFPA, that all attempted transactions have to be reported. • The definition of financing of terrorism as provided for by § 5 of the MLTFPA is linked with the definition as provided for by § 237^3 PC (the terrorist financing offence) and thus it has the same limitations as the terrorist financing offence and there is no reporting obligation in case of: – financing of an individual terrorist; – collecting of funds for the purpose of terrorist financing; – the provision of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist; – those conducts of Art 2 of the Terrorist Financing Convention and addressed in the specific UN terrorist conventions which are not covered in the Estonian terrorist offence (§ 237 PC). It is recommended that the reporting obligation will be broadened and brought into line with SR. IV. • Savings and loan associations as well as insurance sector sent no STRs so far. This shows that there is presumably either a lack of understanding or awareness of anti-money laundering obligations of these entities. The FIU should provide more guidance and training to these entities that they better understand their reporting obligations.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• The MLTFPA requires obligated persons to establish written rules of procedure for the application of due diligence measures, including assessment and management of the money laundering and terrorist financing risk, collection of information and storage of data, reporting of suspicious transactions as well as rules for checking

	adherence thereto. However, the MLTFPA follows a system that further details of these internal rules have to be established by the Minister of Finance; at the time of the on-site visit and two months subsequently, no such regulation came into force and effect. • Financial institutions should be required to have guidance in their internal rules of procedure concerning the detection of unusual and suspicious transactions. • It is recommended that the legal requirements for regular training of employees extend to cover new developments in AML/CFT matters, including information on current ML/TF techniques, methods and trends. • Estonian authorities should introduce requirements imposing an obligation on credit and financial institutions to put in place screening procedures when hiring employees beyond the ones established regarding audit employees and members of management as per the relevant articles of CrIA, IAA, Investment Funds Act and the Securities Market Act. • The MLTFPA requirements for the implementation of AML/CFT measures by foreign branches and subsidiaries of credit and financial institutions should extend beyond customer due diligence and record keeping measures. • Credit and financial institutions should be required to pay particular attention to foreign branches and subsidiaries operating in countries which do not or insufficiently apply FATF Recommendations. • Provision should be made that where minimum requirements of the host and home countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to extent that local (i.e. host country) laws and regulations permit.
3.9 Shell banks (R.18)	• The CrIA provides safeguards only concerning the establishment or continuous operation of shell banks which are operated from the European Economic Area (EEA). This restriction to the EEA should be removed and the CrIA should prohibit the establishment or continuous operation of shell banks regardless from which country they are operated (though it is clear that the Estonian FSA's practice and policy is not to license shell banks).
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• Estonia should create legal provisions clearly stating that criminal records bar applicants from becoming beneficial owners of a significant or controlling interest in a financial institution. • Estonia should introduce an effective registration regime for financial institutions which are not supervised by the Estonian FSA pursuant to § 2 of the FSA Act. • The Estonian FIU should be empowered to compel the off-site production of records from supervised entities for supervisory purposes absent a suspicion of money

	laundering or terrorist financing. • The FIU should be given the power to withdraw or suspend the registration of a financial institution falling under its supervision in case it fails to comply with AML/CFT requirements. • The indirect sanctioning system of the MLTFPA via precepts of the FSA for provisions of the MLTFPA which are not covered by a specific sanctioning provision of the MLTFPA itself (which is the case for a number of important CDD measures) does not amount to a dissuasive, proportionate and (for all circumstances) effective sanctioning regime. This indirect sanctioning system should be revised and replaced by a direct sanctioning regime providing sanctions in the MLTFPA for all relevant AML/CFT obligations. • In the light of the changes of the Estonian AML/CFT system because of coming into force of the new MLTFPA, the guidelines issued by the FSA seem already out of date. The FSA should update its own guidelines in the light of the requirements of the new MLTFPA[24]. • The FIU should issue guidelines explaining the legal requirements and preventive measures described therein to its supervised entities.
3.11 Money value transfer services (SR.VI)	• The FIU should establish a programme of on-site inspections of all payment service providers for checking compliance with their AML/CFT obligations.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• As the relevant provisions of the MLTFPA apply both to financial institutions and DNFBP in the same way, the comments and observations made for credit and financial institutions under Recommendation 5, 6, 8, 9, 10 and 11 equally apply for DNFBP (with the exception of criterion 8.2 of the FATF Methodology). Thus the Recommendations there are also valid concerning DNFBP. • § 30 (6) MLTFPA applies only to financial institutions but not to DNFBP. The evaluators recommend that also DNFBP should be required through means of secondary legislation (i.e. Minister of Finance's regulation) to set up comprehensive internal control mechanisms for managing AML/CFT risks having regard to the sort, scope and complexity of their activities. • Though DNFBP are required under § 19(2) MLTFPA to apply enhanced due diligence procedures for business

[24] The FSA advised that its guidelines „Additional measures for prevention of money laundering and terrorist financing in credit and financial institutions" were adopted on 22 October 2008 and published on its website.

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	relationships or transaction with non face to face-customers, no guidance is provided as to the possible enhanced due diligence measures that DNFBP should take to mitigate the risks for non-face-to face relationships and transactions. Estonian authorities should issue such guidance. • Casinos should be required not only to identify but also to verify the name of a client who engage in financial transactions equal or above the threshold given by criterion 12.1 of 3 000 USD/EUR; though not required by the Methodology, it may be easier simply to amend the law by using the existing (lower) threshold of the MLTFPA which is 30 000 EEK (1 917.34 EUR).
4.2 Suspicious transaction reporting (R.16)	• The same deficiencies in the implementation of Recommendations 13, 15 and 21 in respect of financial institutions apply equally to DNFBP and the Recommendations there concerning financial institutions are also valid in the context of Recommendation 16. • Some DNFBP seem less aware of their obligations; e.g. lawyers, real estate dealers as well as accountants and auditors sent only a very small number of STR so far. Further outreach to these entities that they better understand their reporting obligations is necessary (though it has be noted that the Estonian FIU already provided a number of training seminars to these entities).
4.3 Regulation, supervision and monitoring (R.24-25)	• Beneficial owners and managers of casinos should be subject to fit and proper checks at the time of licensing, transfer of ownership or taking up employment. • The Law should require the registration of all persons providing trust and company services irrespective of whether or not the provision of such services constitute their primary professional or economic activity. • The Estonian Bar Association is responsible for the AML/CFT supervision of their members only. As it is not compulsory for a practising lawyer (independent legal professionals) to be a member of the Bar Association, they fall only under the supervision of the FIU which did not supervise them so far. The FIU should identify how many of such lawyers exist (e.g. by a mandatory registration requirement) and should supervise them (alternatively it could be made mandatory for these lawyers to become members of the Bar Association and that they are supervised by the Bar Association). • The Chamber of Notaries and the Estonian Bar Association should establish monitoring and supervisory mechanisms for checking compliance of their members with the AML/CFT obligations. • The FIU, the Chamber of Notaries and the Estonian Bar Association should prepare and issue guidelines assisting obligated entities in complying with their AML/CFT

	obligations.
4.4 Other non-financial businesses and professions (R.20)	• No recommended action.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• The control over the implementation of obligations of legal persons to submit updated information on ownership and control to the commercial register should be enhanced. • The requirements that limited liability companies maintain share registers and shareholder registers should be supervised. • The legal framework should be improved to ensure adequate, accurate and timely information on the beneficial ownership and control of legal persons.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	• No recommended action.
5.3 Non-profit organisations (SR.VIII)	• Estonian authorities should review the adequacy of relevant laws and regulations to prevent the abuse of NPOs for financing of terrorism. • Estonian authorities should conduct outreach or provide guidance on terrorist financing to the NPO sector. • Estonian authorities should supervise or monitor the NPO sector as envisaged by the Interpretative Note to SR VIII. • Mechanisms should be introduced for a prompt sharing of information among all relevant competent authorities when there is suspicion that a particular NPO is being exploited for terrorist financing purposes. • Estonia should establish special points of contact or distinguished procedures to respond to international requests for information regarding particular NPOs.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	• So far there seems to be no much formal co-ordination (in terms of formal agreements, sharing of information etc.) between the supervisory bodies. To improve the national cooperation in the AML/CFT area, supervisory authorities and, in particular, the FSA and the FIU should devise a formal agreement through a Memorandum of Understanding or other means for cooperation and coordination on supervisory matters.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Estonia should implement all the provisions of the relevant international conventions it has ratified, particularly it should be made clear in the law or by way of guidance and training that the prosecution of money laundering does not require a prior or simultaneous conviction for the predicate offence.

	• It is recommended to amend the legal text criminalising terrorist acts and the provision criminalising terrorist financing in a way that they would be broad and detailed enough to cover, besides the financing of terrorist organisations, also all terrorist acts as required by the UN Conventions and the financing of individual terrorists. • These provisions should also: – clearly cover the various elements required by SR.II, in particular the collection of funds by any means, directly or indirectly, and their use in full or in part for terrorist financing purposes; – clarify that it is not necessary that funds were actually used to carry out terrorist acts or be linked to a specific terrorist act. • The requirements of the UN Conventions should be reviewed to ensure that Estonia is fully meeting all its obligations under them. Particularly Estonia should • introduce a national mechanism to freeze the funds of EU internals. • broaden the definition of funds (as it is provided for in the EU Regulations, which currently does not explicitly cover funds owned 'directly or indirectly' by designated persons or those controlled directly or indirectly by designated persons); • introduce a national procedure for the purpose of considering delisting requests..
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• Arrangements for coordinating seizure and confiscation action with other countries should be established. • Consideration should be given • to establishment of an asset forfeiture fund as well as • to sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action. • More statistical data (e.g. nature of mutual assistance requests; whether it was granted or refused; the time required to handle them; type of predicate offences related to requests) is needed to show the effectiveness of the system.
6.4 Extradition (R.39, 37 & SR.V)	• Estonia should introduce specific legislation which would require in case of refusal to extradite an Estonian national to submit the case without undue delay to the competent Estonian authorities for the purpose of prosecution of the offences set forth in the extradition request. • More statistical data (e.g. the time required to handle requests) is needed to show the effectiveness of the system.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• No recommended action.

7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• The supervisory authorities should be provided with more manpower to carry out the supervisory tasks accorded to them by law, particularly regarding on-site supervision. • The Police should be provided with more resources (human and technical) to deal satisfactorily with economic crimes. • The resources (human and technical) of the TCB should be improved. • Estonia should keep in addition to the already maintained statistics also comprehensive statistics concerning the following issues: – statistics in MLA concerning the predicate offences; – statistics showing the time in which Estonia responded to extradition requests; – statistics concerning the exchange of information of the FSA with foreign counterparts.

APPENDIX II

Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Excerpt from Commission directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

Article 2
Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:
(a) heads of State, heads of government, ministers and deputy or assistant ministers;

(b) members of parliaments;
(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
(d) members of courts of auditors or of the boards of central banks;
(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
(f) members of the administrative, management or supervisory bodies of State-owned enterprises.
None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.
The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:
(a) the spouse;
(b) any partner considered by national law as equivalent to the spouse;
(c) the children and their spouses or partners;
(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:
(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.