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

THIRD ROUND DETAILED ASSESSMENT REPORT ON ESTONIA

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

SUMMARY[1]

Memorandum
prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs

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EXECUTIVE SUMMARY

1. Background Information

1. This report provides a summary of the AML/CFT measures in place in Estonia as at the date of the on-site visit from 3 to 9 February 2008 or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). It also sets out Estonia's levels of compliance with the FATF 40 plus 9 Recommendations (see Table 1). The evaluation also includes Estonia's compliance with *Directive 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* (hereinafter "3rd EU AML Directive") and the *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* (hereinafter "Implementing Directive 2006/70/EC"). However, compliance or non-compliance with the 3rd EU AML Directive and the Implementing Directive 2006/70/EC has been described in a separate Annex but it has not been considered in the ratings in Table 1.

2. Since the last evaluation there have been significant changes. On 28 January 2008 the new Money Laundering and Terrorist Financing Prevention Act (MLFTPA) entered into force. One of the goals of the new MLTFPA was to harmonise Estonian legislation with the requirements of the 3rd EU AML Directive and Implementing Directive 2006/70/EC. Though it is too early to evaluate the effectiveness of this law, it can already be said that it will significantly strengthen the AML/CFT regime of Estonia. It seems that Estonia now has a sound legal and institutional AML/CFT system and also the results achieved on the basis of the previous legislation are respectable. This assessment is also supported by the fact that there was a good understanding of AML/CFT issues from representatives of the private sector with which the evaluation team met.

3. Turning to the money laundering situation, Estonian authorities advised that it is difficult to establish what crimes have to be considered as typical predicate offences for money laundering in Estonia; the difficulty with such a statement is the small number of money laundering cases so far which does not allow on the identification of trends and typologies. However, in the cases which have been undertaken, violation of the procedure for handling alcohol and/or tobacco products, larceny of forest, computer-related fraud, theft, accepting gratuities and accepting bribes have been predicate offences. Current investigations also indicate that fraud (especially internet fraud), tax crime and drug offences are predicate offences in a number of money laundering cases. In many ongoing cases the predicate offences are committed abroad or the victims are abroad (especially concerning Internet fraud cases).

4. Concerning terrorist financing, the Estonian authorities advised that so far no cases of terrorist financing or any other offences connected with terrorism are known to have been committed on the territory of Estonia or via Estonia. According to Europol's "Terrorist Activity in the European Union: Situation and Trends Report (2006)"[2], Estonia belongs (with 6 other countries) to the least threatened EU countries by terrorism and activities supporting terrorism. It was stated by the Estonian authorities that there were no active terrorist groups in Estonia at the end of 2006 or supporters or financiers of international terrorist organisations. Although such activities cannot be excluded for the future, the Estonian authorities consider it very unlikely.

[2] http://www.statewatch.org/news/2006/may/europol-terr-rep-2004-2005.pdf.

2. Legal Systems and Related Institutional Measures

5. Since the last MONEYVAL evaluation, Estonia has improved its legal framework for the criminalisation of money laundering. The rewording of the definition of the money laundering offence brought it very close to the language of the international conventions on the physical aspects of the offence. Estonia applies an all crimes approach and all the designated offences under the FATF Recommendations can be predicate offences for money laundering, including terrorist financing (as far as it is criminalised in Estonia; concerning the deficiencies in implementation see below para 10).The law now clearly criminalizes money laundering if predicate criminal activity has taken place abroad. It is also positive that the reference to laundered proceeds as property acquired as a direct result of an act punishable pursuant to criminal procedure has been removed. Thus, Estonia may prosecute now for money laundering if the property at stake is acquired directly or indirectly by crime. Money laundering is punishable both with regard to natural and legal persons if committed intentionally (negligent money laundering is not criminalised).

6. There was unanimity amongst prosecutors and judges and also court practice showed that self-laundering is prosecutable in Estonia. However, no such unanimity could be established on the term "*criminal activity*" which replaced the term "*crime*" as underlying criminality for money laundering. The intention of the law drafters (Ministry of Justice) was to relieve the practitioners from the burden of a prior or simultaneous conviction for the predicate offence as required by the previous MLTFPA (which is also mirrored by the fact that all money laundering convictions so far were prosecuted together with the relevant predicate offences or after a conviction for the respective predicate offence). Both the judges and prosecutors would have preferred different language clearly stating that a conviction for the predicate offence is not a prerequisite for the money laundering offence. It is too early to see how practice will interpret this and what level of proof for the underlying predicate crime will be required for a money laundering conviction, i.e. whether a conviction or at least indictment for the predicate offence is a prerequisite for a money laundering conviction. Thus, there are some uncertainties whether the changes in legislation will now allow the conviction of somebody for money laundering without a prior or simultaneous conviction for the predicate offence.

7. Estonian law covers attempt, aiding and abetting, facilitating, and counselling the commission of money laundering. However, Estonia has not yet introduced the full concept of conspiracy for the money laundering offence.

8. Between 2005 and February 2008, 8 convictions for money laundering were achieved in Estonia. 12 natural persons and 1 legal person were convicted. The predicate offences covered various types of crimes (see above para 3). The penalties imposed were between 2,6 to 5 years of imprisonment (all on probation or partially on probation) and the compulsory dissolution of a legal person. Considering the size of the country, the number of inhabitants and the money laundering threats it is exposed to, the number of convictions can be described as satisfactory though more would be preferable.

9. With regard to the criminalisation of terrorist financing, it can be noted that Estonia has ratified the United Nations Convention on the Suppression of Terrorist Financing. In recent years Estonia significantly improved its legal framework for criminalising the financing of terrorism. There is a clear provision dealing with the financing of terrorist acts and also the financing of terrorist organisations is present in Estonian legislation. Financing of terrorism is also a predicate offence for money laundering (as a consequence of the all crimes approach). The sanctions envisaged for terrorist financing offence seem to be effective, proportionate and dissuasive; however, in absence of terrorist financing prosecutions they have never been applied.

10. However, there are some elements of the international requirements which are not covered explicitly enough. One of the major shortcomings is that the financing of individual terrorists is missing. This was also acknowledged by the Estonian authorities who had at the time of the on-site visit already prepared a draft law to remedy this shortcoming. Furthermore, a more detailed provision on financing of terrorism would be preferable to cover explicitly the various elements of the international requirements in a consistent way and with a sufficient degree of legal certainty; e.g. the Penal Code does not cover "*collecting of funds*". The law also does not specifically criminalise the provision of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist. In addition, some conducts as referred to in Art 2 of the Terrorist Financing Convention and addressed in the specific UN terrorist conventions are not covered.

11. The evaluation team also noted progress in the legislative framework covering confiscation. As of 1 February 2007, confiscation of proceeds of crime is mandatory (§ 83^1 Penal Code) and (according to the firm and unanimous interpretation of judges and prosecutors) may extend to direct and indirect proceeds of crime and to proceeds belonging to third parties. A possibility for *extended confiscation* was introduced where the principle of reversed burden of proof is applied (§ 83^2 Penal Code): in such cases the accused person has to establish the lawful origin of the alleged proceeds of crime.

12. The legislative framework for provisional measures has been improved as well. The new provisions on seizure and confiscation were assessed very positively by practitioners (investigators and prosecutors) and are being widely used by them. This applies also for international co-operation – there are good examples of provisional measures, confiscation and sharing assets with foreign countries in recent Estonian practice.

13. However, there are still some important elements missing in the confiscation and provisional measures regime:
    - laundered property, where money laundering is the only offence being proceeded with, is not covered by the Estonian mandatory confiscation regime;
    - confiscation of instrumentalities used or intended to be used is non mandatory and applies to only part of the designated offences;
    - instrumentalities used or intended to be used in the commission of a crime are not subject to value confiscation;
    - there is no 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).

14. Estonia implements the United Nations Security Council Resolutions 1267(1999) and its successor resolutions and 1373(2001) through European Union legislation. However, the definition of "funds" as provided in European Union legislation is not broad enough as required by the aforementioned Resolutions: EC Regulation 881/2002 requires the freezing of all funds and economic resources belonging to, owned or held by a designated person but does not cover funds controlled by them or persons acting on their behalf or at their direction (as required by UNSCR 1267 and 1373). In addition, there is no national system in place which provides for internal implementation of UN Resolutions. Thus, apart from banks no other financial institutions or DNFBP are aware of the procedure to be followed in order to implement the UN Resolutions. There are no publicly-known procedures in place for de-listing, unfreezing or granting access to funds for living expenses. However, the Estonian authorities are aware that the regulation of publicly known procedures for de-listing, unfreezing or granting access to funds for living expenses is undetermined. Thus, a working-group is preparing a draft for a new International Sanctions Act which will address these issues.

15. The Estonian Financial Intelligence Unit (FIU) is a police-type FIU and was established as a separate division under the Criminal Investigation Department of the Police Board on 1 July 1999.

With the coming into force of the previous MLTFPA (1 January 2004), the FIU was made an independent structural unit of the Central Criminal Police. At the time of the on-site-visit, there were 18 staff in place and 6 vacancies. The FIU has all the investigative techniques to fulfil its functions. It has access to various databases and the potential to link data is impressive. It appears to be fully operational, but for exercising its very wide supervision duties in a satisfactory manner it may be necessary to increase staff (going beyond than filling the vacancies). Art. 36 of the MLTFPA is intended to provide independence of the FIU by stating that the FIU is an independent structural unit of the Central Criminal Police. Though the law says that the FIU has to be provided with sufficient funds for performance of its functions, it does not further expand on this, and the FIU has no own budget and depends on the Central Criminal Police when it comes to budgetary issues: The Police Board provides the Financial Intelligence Unit with funds necessary for the performance of the functions provided by law. This means that the FIU is dependent on the Central Criminal Police on budgetary issues such as hiring the staff, salaries and trips to foreign countries. The FIU may have certain influence on the budget as it can make a yearly calculation of expenses or give some explanations of the use and purposes of the necessary amount to the chief commissioner of the Central Criminal Police, but does not have any influence on the final decision. Though this does not appear to be a problem at present, a separate budget would certainly strengthen the independence of the FIU.

16. The FIU cooperates with other authorities both on a domestic and an international level. It is also well regarded by the obliged entities and provides good feedback. The FIU is an active member of the Egmont Group. It has the capacity to exchange information on any data and all relevant banking information with all types of FIU. It is entitled to request additional information from the obligated institutions; only advocates are not covered by this obligation.

17. In general, Estonia has a comprehensive system for reporting suspected money laundering and terrorist financing. The reporting obligation covers reporting of suspicious transactions and - also since 28 January 2008 - above threshold cash transactions (500 000 EEK; 31 955.82 EUR) with certain exceptions. However, some shortcomings exist which should be remedied:
    - Not all kind of attempted transactions are clearly covered by the reporting obligations.
    - There is no reporting obligation in case of:
        a) financing of an individual terrorist;
        b) collecting of funds for the purpose of terrorist financing;
        c) the provision of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist;
        d) 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).

18. Statistics show an increasing trend concerning STRs received by the FIU and cases forwarded to investigative bodies and for prosecution. It can also be concluded that there have been sufficient prosecutions arising out of reports received by the FIU. However, it can also be seen from statistics that savings and loan associations as well as the insurance sector sent no STRs, and lawyers, real estate dealers as well as accountants and auditors sent only a very small number of STRs. The reasons for this underreporting are not entirely clear but further outreach to these entities to enable them to better understand their reporting obligations may help (though it has be noted that the Estonian FIU already provided a number of training seminars to a number of these entities).

19. The number of money laundering related investigations and convictions are adequate with regard to the total number of STRs. Overall from the law-enforcement side the AML and CFT measures seem to be generally in place and effective.
20. Estonia has a new declaration system in place (following *Regulation (EC) No 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or*

leaving the Community). This covers only the transfer of cash or bearer negotiable instruments when entering or leaving the European Union territory and not between Estonia and another EU member-state, which is a requirement of Special Recommendation IX[3].

3. Preventive Measures – financial institutions

21. Turning to the preventive side, most of the provisions dealing with AML/CFT issues can be found in the new MLTFPA. § 3 MLTFPA defines the "*obligated persons*" under the Act, to which the requirements set out in the MLTFPA apply. The MLTFPA sets out a number of provisions which apply equally to DNFBP and financial institutions. Where applicable, the MLTFPA makes specific mention of "*credit and financial institutions*" when measures are required only for these entities. Additionally relevant primary legislation to which the MLTFPA makes reference and which supply additional abilities to government authorities, for example regarding their sanctioning power, exists, e.g. the Credit Institutions Act (CrIA), Insurance Activities Act, Securities Market Act, etc. Primary legislation in many cases gives the authority to create secondary legislation regarding specific subsets of the subject matter of the primary legislation. The MLFTPA has specified that the Minister of Finance shall issue secondary law for areas with low money laundering or terrorist financing risks according and regarding AML/CFT-specific internal rules of procedure for credit and financial institutions. Such secondary law was created with the Minister of Finance Regulations 11 and 10, respectively, both of 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 of the report and for rating purposes; where appropriate it was referred to it with a footnote.

22. The new MLTFPA, which transposes the requirements of the 3rd EU AML Directive into domestic legislation, remedied a large number of shortcomings in the Estonian AML/CFT regime. The new MLFTPA now brings all of the relevant professions into the remit of the legal AML/CFT requirements. This particularly relates to providers of trust and company services, providers of payment services, providers of services of alternative means of payment and pawnbrokers.

23. It is fair to say that the new MLTFPA provides a sound legal basis concerning preventive measures. Though the shortcomings of Estonia's preventive law are in the majority of cases only of minor nature, some shortcomings are more severe. A certain shortcoming of the new MLTFPA is its sanctioning regime as the MLTFPA does not provide (direct) administrative sanctions for all of its obligations. Several provisions need to become enforceable via precepts which have to be issued either by the Financial Supervision Authority (FSA) or the FIU. This way of enforcing provisions of the MLTFPA via indirect sanctioning does not amount to a dissuasive and effective sanctioning regime as it is not possible to sanction violations which already have happened; it only allows the issuance of precepts (which can be regarded from a practical point of view like warning letters) to sanction future infringements or failure to comply with the demands made in the precept. Moreover, the amount of the sanctions (a fine up to 50 000 EEK, i.e. 3 195.58 EUR, for the first occasion and 750 000 EEK, i.e. 47 878.53 EUR, for each subsequent occasion) is not proportionate, effective and dissuasive when it comes to the sanctioning of legal persons. This is particularly of concern as a number of obligations outlined in Chapter 2 of the MLTFPA (with the title "Due Diligence") are not covered by a direct sanctioning regime: e.g. constant monitoring of

[3] It has to be noted that the European Commission proposed amendments to the FATF Methodology and to consider in the context of Special Recommendation IX the European Community as one jurisdiction. As a consequence this would not be considered a shortcoming any more. This issue is currently under consideration by the FATF and was at the time of the adoption of this report not yet solved.

a business relationship, regular verification of data, opening anonymous accounts or saving books, some elements of enhanced CDD and treatment of PEPs which are not related to the identification process, correspondent banking provisions.

24. Apart from the sanction regime which amounts to a substantial deficiency of the MLTFPA, the following shortcomings with regard to implementation of Recommendation 5 should be mentioned:
    - Concerning beneficial ownership, the language in the law is not clear as to whether it also covers instances when a natural person acts for another natural person.
    - The Estonian approach to address "*high risk of money laundering or terrorist financing*" sets the level to apply enhanced CDD measures to a higher level than "*higher risk*" in terms of the Methodology. Though the difference in language seems small, it has to be highlighted that there is a difference between "high risk" and "higher risk": while "high risk" is at the upper end of a level of risk, "higher risk" refers only to a situation more risky than average. In this context it is interesting to note that non-resident customers and private banking are not outlined as higher risk situations for money laundering or terrorist financing which would require enhanced due diligence measures; this is particularly surprising concerning the geopolitical position of Estonia and its number of non-resident accounts. Thus, it is recommended that 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.

25. The MLTFPA exempts from its definition of politically exposed persons such persons who have not performed any prominent public functions for at least a year. Such an exemption is not in line with FATF Recommendation 6 and should be removed. In practice, at least one of the smaller local banks, at the time of the on-site visit, did not conduct independent background checks on their customer's possible role as a politically exposed person. The larger, internationally active banks generally check one or more of the relevant private-sector databases during their client take-on procedures, which should generate information indicating whether a customer is a politically exposed person.

26. There are no *specific* provision in the law which address financial institutions to have policies in place or take such measures as may by needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

27. With regard to FATF Recommendation 11, it has to be noted that financial institutions are not required to examine the background and the purpose of complex/unusual large transactions and thus to keep a record of the written findings which will be accessible for competent authorities/auditors.

28. The existing legal provisions do not adequately address the requirements of FATF Recommendation 21. Credit and financial institutions are not explicitly required to give special attention to business relationships and transactions with persons from countries which do not or insufficiently apply FATF Recommendations. The existing legal and regulatory framework contains general requirements regarding business relationships and transactions with persons from countries which insufficiently apply FATF Recommendations but does not adequately cover the essential criteria of FATF Recommendation 21. Furthermore, there are no requirements with regard to possible measures for advising credit and financial institutions of concerns and weaknesses in the AML/CFT systems of other countries, the investigation of unusual transactions and the application of counter measures against countries with deficient AML/CFT systems.

29. Concerning Special Recommendation VI, the evaluators were informed that no on-site visits have been made by the FIU to money transmitters and providers of alternative means of payment other

than the Estonian Post, and no system for monitoring their operations has been introduced. Overall it has to be assumed that there is a lack of effective supervision of payment service providers.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

30. As for financial institutions, the core obligations for DNFBP are based on the MLTFPA. The coverage of DNFBP in the MLTFPA is very complete and in line with both international standards and the 3rd EU AML Directive. Additionally Estonia has also added pawnbrokers (which are not required by international norms) to the obliged entities. The latter is the only class of professionals covered by the MLTFPA which goes beyond the EU Directive's requirements.

31. Since the core obligations for both DNFBP and financial institutions are based on the same law (i.e. the MLTFPA), it can be noted, that the obligations and also the deficiencies in the AML/CFT preventive measures framework as described for financial institutions apply to DNFBP in the same way as for financial institutions. To recap, DNFBP are obliged to perform client identification; gather and keep information on transactions; submit cash transaction reports and suspicious transaction reports to the FIU; and keep information confidential. A particularity and also a shortcoming concerning DNFBP is that they are not required to set up comprehensive internal control mechanisms for managing AML/CFT risks.

32. Another shortcoming of the law is that casinos are only required to identify but not to verify the name of a client who pays or receives in a single transaction or several related transactions an amount exceeding 30 000 EEK (1 917.34 EUR) or the equivalent in another currency.

33. Concerning effective implementation, it can be noted that the interviewees with whom the evaluation team met were also aware of the new MLTFPA (though not necessarily with its content as it came into force shortly before the on-site visit).

34. Concerning supervision of DNFBP with regard to AML/CFT issues some shortcomings have to be noted:
    - The Estonian Bar Association and Chamber of Notaries have now been assigned as supervisory bodies for its members but there are some deficiencies concerning effective implementation:
        a) Neither the Estonian Bar Association nor the Chamber of Notaries have yet established mechanisms for supervision.
        b) It is not compulsory for a practising lawyer (independent legal professionals) to be a member of the Bar Association which means that they do not fall under the supervision of the Bar Association; for these lawyers, the FIU would be responsible for supervision but so far the FIU did not yet supervise any of them and it was also acknowledged that the number of lawyers acting outside may be higher than 116.
    - The MLTFPA makes the Estonian FIU responsible for supervising compliance with the provision of the MLTFPA by organisers of games of chance (i.e. casinos and gambling houses), real estate agents, pawnbrokers, auditors, accountants, tax advisors and trust and company service providers. In 2007, the FIU made more than 200 on-site visits. As a result of this supervision activity, the number of STRs from these sectors increased significantly. However, as noted below (para 46), the evaluators have some doubts about whether the resources of the FIU are sufficient with regard to the high number of entities falling under its supervision competence. It is considered that, currently, the FIU lacks the required manpower to undertake appropriate supervision (as it is commonly understood) of all these entities.

5. Legal Persons and Arrangements & Non-Profit Organisations

35. There are various forms of companies established in Estonia for the purpose of undertaking business and they are required to be registered. The transparency with respect to the legal persons is provided through the register proceedings. Information on the shares of private limited liability companies is available in the Commercial register. The ownership of shares in public limited companies could be traced at the Estonian Central Register of Securities where the issuance of shares and their transfer are registered. As regards management and control, all commercial companies are required to provide this information to the Commercial Register. The Commercial register is maintained by the Registration departments of County Courts. It contains information on sole proprietors, general partnerships, limited partnerships, private limited companies, public limited companies, commercial associations, European companies and branches of foreign companies. The register is maintained electronically. Entries in the commercial register are public. Everyone has the right to examine the card register and the business files, and to obtain copies of registry cards and of documents in the business files.

36. On the positive side it has to be noted that there are some safeguards in Estonian legislation that the information kept in registers is up to date. Measures are in place to ensure that companies submit their annual accounts, and lack of compliance with this may be sanctioned. There are even penal sanctions for submission of incorrect information to the registrars. However, while this seems to provide efficient measures on the side of the applicants, there are no similar requirements for registrars: though the registrar may demand supplementary documents from the undertaking if these are necessary to determine the facts which are the basis for an entry, but there is no obligation for verification of documents or any kind of ongoing supervision concerning whether the data in the registers is still valid and accurate. Thus, there are no sufficient measures to ensure updating of information on ownership and control of legal persons.

37. Though the Estonian legal system does not allow for the creation of trusts or similar legal arrangements, it is possible for foreign trusts to operate in the country. However, there are no measures in place to access information on the beneficial ownership and control of these foreign trusts.

38. Concerning Special Recommendation VIII, in May 2007, the Security Police Board together with the Ministry of Justice reviewed the activities, size and other features of the domestic NPO-sector. As mentioned above, Estonia is said to belong to a group of countries which are the least threatened EU countries by terrorism and activities supporting terrorism, although some radical groups do seem to be trying to establish contacts in Estonia and neighbouring countries. However, there was no review of the adequacy of relevant laws and regulations to prevent the abuse of NPOs for the financing of terrorism which should be done as soon as possible. Moreover, there is no adequate system of supervision or monitoring concerning NPOs as envisaged by the Interpretative Note to SR VIII. The registers are electronically based and public, but the information they contain is not reliable: it is not checked and the registrars put in only the information sent by the respective persons. There is no clear supervisory power over the activity of the NPOs. With the exception of the audits conducted by tax authorities, there appears to be no active compliance monitoring by the authorities to ensure that the obligations of NPOs to submit information, keep records, etc are in fact complied with. There are not enough measures in place to prevent terrorist organisations from posing as legitimate non-profit organisations or to prevent funds or other assets collected by or transferred through such organisations being diverted to support the activities of terrorists or terrorist organisations, as required by Criteria VIII.2 and VIII.3.

6. National and International Co-operation

39. In order to improve the domestic AML/CFT legal and institutional framework, Estonian Government established in 2006 a so-called "Government Committee for Coordination of Issues Concerning Prevention of Money Laundering and Terrorist Financing" (hereinafter: Government Committee). It was intended that all the agencies engaged in the prevention of money laundering and terrorist financing are represented in this Committee. It is chaired by the Minister of Finance and consists of the following institutions:
    - Ministry of Finance
    - Ministry of Interior
    - Ministry of Foreign Affaires
    - Ministry of Justice
    - FIU
    - Advisory Committee of stakeholders
    - Bank of Estonia
    - FSA
    - Police Board
    - Security Police Board
    - Prosecutors' Office
    - Tax and Customs Board

40. The functions of the Government Committee include:
    - coordinating legislation on prevention of money laundering and terrorist financing and analysing the competence and capacity of the related institutions;
    - analysing the implementation of the MLTFPA in force and coordinating drafting a new legislation;
    - making proposals to the Government of Estonia for improving the measures for prevention of money laundering and terrorist financing and for amendments of the respective legislation;
    - coordinating international co-operation on prevention of money laundering and terrorist financing, including coordinating making the respective policy of the EU at the national level.

41. In 2006, Estonia established also a so-called "Advisory Committee on Prevention of Money Laundering and Terrorist Financing" (hereinafter: Advisory Committee) in order to improve the awareness of the private sector on money laundering issues, to take part in the development of the system for the prevention of money laundering and also assisting in drafting of the legal instruments related to money laundering and terrorist financing. One of the major goals of the Advisory Committee is to involve the private sector in elaborating regulations which concern them and to exchange information and to express opinions to the Government Committee.

42. The evaluators were advised that the Estonian FIU liaises on supervision issues with the FSA through regular meetings. There is also an agreement of mutual co-operation for combating financial crime between the FSA, the Police Board, including the FIU and the Prosecutors Office which was signed on 20 January 2003 and provides ground for co-operation on supervisory and mutual training issues. However, the evaluators did not see an English version of this agreement and it is unclear to what extent it is dealing with AML/CFT issues (and not only with financial crimes in general). Leaving aside this uncertainty concerning formal procedures, it can be noted that there is apparently in practice good co-operation between the FIU, Customs, the Police Board, the FSA and the Prosecutors Office.

43. A shortcoming in Estonian national co-operation in AML/CFT issues is that there are now new supervisory authorities (Estonian Bar Association; Chamber of Notaries) and so far the co-operation and coordination between these and the pre-existing supervisory authorities does not yet seem to be formally structured.

44. Concerning international co-operation, Estonian authorities have the power and resources to respond to requests for legal assistance from abroad in a timely, constructive and effective manner. The Ministry of Justice is the central authority for co-operation on criminal matters; it has enough instruments and legal possibilities at its disposal to handle the incoming requests, to check them for compliance and to co-operate with the judicial authorities thus enabling Estonia to handle MLA requests in a timely manner. There is also a mechanism available for prioritizing and expediting assistance in urgent cases. When Estonia is submitting MLA requests to a foreign state and the case is urgent, the request may also be submitted through Interpol and communicated concurrently through the judicial authorities. However, international co-operation in the area of money laundering and terrorist financing could in some instances suffer from certain gaps in the national legislation, in particular in respect of the dual criminality requirement and the deficiencies concerning the criminalisation of money laundering and terrorist financing. Furthermore, there are no arrangements for coordinating seizure and confiscation action with other countries.

45. According to information from the Estonian authorities, there is also a good level of international co-operation in AML/CFT issues between the FSA, FIU, the Police and respective foreign bodies. This can also be seen by the fact that the Estonian FSA carried out joint on-site inspections (covering inter alia AML/CFT preventive issues) of financial institutions with the financial supervisory authorities of Finland, Sweden, Latvia and Lithuania. The FIU has been a member of the Egmont Group since 2000 and it actively participates in its work; it uses the Egmont secure web site for information exchange and though the FIU can exchange information directly and spontaneously with other FIUs even without having a Memorandum of Understanding in place; it has signed a number of such Memoranda of Understanding.

7. Resources and Statistics

46. Though the resources of the FIU have been significantly strengthened since the 2nd evaluation, both the FSA and the FIU still appear to lack the manpower required to assure a proper level of on-site and off-site supervision in relation to the number of supervised entities. On one hand, the FIU has been granted a number of additional positions (though not all posts are filled). On the other hand, the FIU is now also required to supervise an increased number of entities. The FIU has taken an effective and pro-active approach through outreach programs. It also conducted a considerable number of on-site visits, though the majority of these visits had obviously awareness raising and training purposes and cannot be considered as on-site supervision as commonly understood.

47. The competent Estonian authorities keep comprehensive, informative, user-friendly and up-to-date statistics concerning AML issues (and as far as they occur, also on CFT issues): data concerning convictions, confiscation orders, persons involved and sentences imposed is maintained by the Ministry of Justice in the framework of general criminal statistics. This database allows the Ministry of Justice to produce statistics in case of need. In addition to the database of the Ministry of Justice, the FIU keeps (in order to analyze the effectiveness of the Estonian AML/CFT-system) detailed statistics in the form of an excel spreadsheet concerning investigations, the amount of property frozen, seized and confiscated, prosecutions, convictions, persons involved and sentences imposed in money laundering cases; for this purpose it uses the information from the database of the Ministry of Justice. This statistics of the FIU are updated on a quarterly basis. With regard to statistics only the following shortcomings could be observed:
    - Statistics in MLA-matters are not kept on the predicate offences.
    - The evaluation team was not provided with statistics showing the timeframe in which Estonia responded to extradition requests.
    - There was no statistical information available on the exchange of information of the FSA with foreign counterparts.

TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

For each Recommendation there are four possible levels of compliance: Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC). In exceptional circumstances a Recommendation may also be rated as not applicable (N/A). These ratings are based only on the essential criteria, and defined as follows:

Compliant	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country *e.g.* a particular type of financial institution does not exist in that country.

Forty Recommendations	Rating	Summary of factors underlying rating[4]
Legal systems		
1. Money laundering offence	**LC**	• Unclear if money laundering may be convicted without a prior or simultaneous conviction for the predicate offence. • Conspiracy to commit money laundering is insufficiently covered in legislation.
2. Money laundering offence Mental element and corporate liability	**C**	
3. Confiscation and provisional measures	**LC**	• Laundered property, where money laundering is the only offence being proceeded with, is not covered by the Estonian mandatory confiscation regime. • Confiscation of instrumentalities used or intended to be used is non mandatory and applies to only part of the designated offences (among which neither money laundering nor terrorist financing offences are included). • Instrumentalities used or intended to be used in the commission of a crime are not subject to value confiscation. • There is no 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), which leaves some uncertainty in this regard.

[4] These factors are only required to be set out when the rating is less than Compliant.

Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• The provisions allowing the sharing of information between financial institutions where this is required by R. 7, R. 9 and SR VII are drafted in a complicated way and leave some discretion and uncertainty in interpretation which may hamper their practical application.
5. Customer due diligence	**LC**	• The obliged entities are allowed to rely on CDD information received *inter alia* from a credit institution which has been registered or whose place of business is in a country (outside the European Economic Area) where requirements equal to those provided in the MLTFPA are in force. There is no guidance available for financial institutions on which countries satisfactorily fulfil these requirements. • Concerning beneficial ownership, the language in the law is not clear as to whether it also covers instances when a natural person acts for another natural person. • The Estonian approach to address "*high risk of money laundering or terrorist financing*" sets the level to apply enhanced CDD measures to a higher level than "*higher risk*" in terms of the Methodology. The categories which require enhanced CDD measures seem insufficient and there is also no guidance on the existing categories. • The 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. • There is not yet guidance from the Minister of Finance specifying the requirements for rules of procedure of the obliged entities dealing with situations in which a business relationship begins prior to full CDD. • The MLTFPA does not require termination of the business relationship in instances in which a request for additional documentation arising only from ongoing due diligence remains unfulfilled.
6. Politically exposed persons	**LC**	• The MLTFPA exempts from its definition of politically exposed persons such persons who have not performed any prominent public functions for at least a year. • At least one of the smaller local banks, at the time of the on-site visit, did not 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).
7. Correspondent banking	**LC**	• There is no specific provision in Estonian law which explicitly requires understanding the respondent bank's business. • There is no clear legal requirement to obtain approval from senior management before establishing new correspondent relationships. • The MLTFPA allows to apply simplified CDD measures for correspondent banking relationships with financial institutions of EU member countries (an exception which is not provided for by FATF Recommendation 7). • Financial institutions are only required to detail the banks' obligations in the application of due diligence measures for prevention of money laundering and terrorist financing but not all the respective AML/CFT responsibilities of each institution.
8. New technologies and non face-to-face business	**PC**	• There are no specific provision in the law which address financial institutions to have policies in place or take such measures as may by needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.
9. Third parties and introducers	**LC**	• There is no clear requirement for obligated persons to ensure that timely reproduction of the necessary documentation from third parties is possible. • Concerning criterion 9.4, there has been no guidance issued by the Estonian authorities to advise financial institutions on 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. • It seems that in the exceptional cases provided for by §14 (4) MLTFPA, the ultimate responsibility for customer identification and verification does not remain with the financial institution relying on a third party.
10. Record keeping	**LC**	• There is no requirement in law or regulation to keep documents longer than five years if requested by a competent authority.
11. Unusual transactions	**PC**	• Financial institutions are not required to examine the background and the purpose of complex/unusual large transactions and thus to keep a record of the written findings which will be accessible for competent authorities/auditors.
12. DNFBP – R.5, 6, 8-11	**PC**	• The same concerns in the implementation of Recommendations 5, 6, 8 – 11 apply equally to DNFBP (see section 3 of the report). • There are no Regulations/Directives to DNFBP laying down requirements for internal control procedures for managing AML/CFT risks.

		• 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. • Casinos are required to identify but not to verify the name of a client who pays or receives in a single transaction or several related transactions an amount exceeding 30 000 EEK (1 917.34 EUR) or the equivalent in another currency.

13. Suspicious transaction reporting	**LC**	• Not all kind of attempted transactions are clearly covered by the reporting obligations.
		• 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).
		• Savings and loan associations as well as the insurance sector sent no STRs so far which is presumably caused by a lack of understanding or awareness of their reporting obligations.

14. Protection and no tipping-off	**C**	
15. Internal controls, compliance and audit	**LC**	• The absence of supplementary Regulation by the Ministry of Finance under the new act on details of the internal controls and procedures causes some uncertainty regarding the completeness of Estonian financial institutions' internal rules of procedure concerning AML/CFT issues which, at the time of the on site visit, were based on a Regulation of the Minister of Finance issued under the previous law. • Financial institutions are not required to have guidance in their internal rules concerning the detection of unusual and suspicious transactions. • Limited requirements concerning screening procedures for new employees. • Financial institutions are not required to include in their training of employees current AML/CFT techniques methods and trends.
16. DNFBP – R.13-15 & 21	**PC**	• The same deficiencies in the implementation of

		Recommendations 13, 15 and 21 in respect of financial institutions apply equally to DNFBP. • Lawyers and real estate dealers as well as accountants and auditors have sent only a very small number of STR so far.
17. Sanctions	**PC**	• 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. • 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. • The FIU does not have powers to withdraw or suspend registration of financial institutions in case they fail to comply with AML/CFT requirements.
18. Shell banks	**LC**	• The CrIA does not clearly prohibit the establishment or continuous operation of shell banks in Estonia which are operated from outside of the European Economic Area (EEA).
19. Other forms of reporting	**C**	
20. Other DNFBP and secure transaction techniques	**C**	

21. Special attention for higher risk countries	**NC**	• There are no 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.
		• There are no specific provisions on application of counter- measures where a country continues not to apply or insufficiently applies the FATF Recommendations.

22. Foreign branches and subsidiaries	**LC**	• No specific requirement on the financial institutions to require the application of AML/CFT measures to foreign branches and subsidiaries beyond customer identification and record keeping. • There is no requirement to pay special attention to situations where branches and subsidiaries are

		based in countries that do not or insufficiently apply FATF Recommendations. • The MLTFPA does not explicitly require branches and subsidiaries in host countries to apply, when the minimum AML/CFT requirements of the home and host countries differ, the higher standard to the extent that local laws or regulations differ.
23. Regulation, supervision and monitoring	**LC**	• There are no legal provisions to explicitly prevent persons with a prior conviction for terrorist financing from holding or being the beneficial owner of a significant or controlling interest or holding a management function. • For financial institutions which are not supervised by the Estonian FSA pursuant to § 2 of the FSA Act no registration requirements apply[5].
24. DNFBP - Regulation, supervision and monitoring	**PC**	• Lack of fit and proper checks to beneficial owners and managers of casinos. • Not all trust and company service providers required to be registered. • Lawyers acting outside the Bar Association (independent legal professionals) are not subject to effective supervision by the FIU. • Lack of adequate mechanisms for supervision by the Estonian Bar Association and Chamber of Notaries. • Lack of sufficient supervisory staff in the FIU.
25. Guidelines and Feedback	**PC**	• 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 FIU has not yet issued guidelines explaining the legal requirements and preventive measures described therein to its supervised entities. • Insufficient guidance to DNFBP by supervisory bodies (FIU, Bar Association, Chamber of Notaries).
Institutional and other measures		
26. The FIU	**C**	
27. Law enforcement authorities	**C**	
28. Powers of competent authorities	**C**	
29. Supervisors	**LC**	• There is no explicit provision empowering the FIU to compel the off-site production of records from supervised entities for supervisory purposes absent

[5] It has to be noted that in principle § 52 MLTFPA also requires financial institutions which are not supervised by the Estonian FSA pursuant to § 2 of the FSA Act to register within the register of economic activities (as described in para **Error! Reference source not found.**). However, the requirement to register only came into force for these institutions on 15 June 2008 (§ 66 of the MLTFPA) which is outside the relevant period.

		a suspicion of money laundering or terrorist financing.
30. Resources, integrity and training	**LC**	• The number of staff of the FIU seems insufficient with regard to its supervision duties. • The Police do not have enough resources (human and technical) to deal satisfactorily with economic crimes. • The TCB do not have enough resources (human and technical). • Supervisory authorities lack the manpower required to carry out comprehensive on-site supervision regarding all obligated persons.
31. National co-operation	**LC**	• There seems to be no much formal co-ordination (in terms of formal agreements, sharing of information etc.) between the supervisory bodies.
32. Statistics	**LC**	• The statistics on MLA are not kept on the predicate offences. • The evaluation team was not provided with statistics showing the time in which Estonia responded to extradition requests. • No statistical information was available on the exchange of information by the FSA with foreign counterparts.
33. Legal persons – beneficial owners	**LC**	• There is limited control over the implementation of obligations of legal persons to submit updated information on ownership and control to the commercial register. • Requirements that limited liability companies maintain share registers and shareholder registers are not supervised. • The legal framework does not ensure adequate, accurate and timely information on the beneficial ownership and control of legal persons.
34. Legal arrangements – beneficial owners	**NA**	
International Co-operation		
35. Conventions	**LC**	*Implementation of the Palermo and Vienna Conventions* • There are doubts as to whether a conviction or at least indictment for the predicate offence is a prerequisite for a money laundering conviction. *Implementation of the Terrorist Financing Convention* • No criminalisation of the financing of an individual terrorist; • The terrorist financing offence does not cover "collecting of funds". • No specific criminalisation of the provision of funds in the knowledge that they are to be used for any purpose by a terrorist organisation or an individual terrorist. • Some conducts as referred to in Art 2 of the Terrorist Financing Convention and addressed in the specific UN terrorist conventions are not

		covered.
36. Mutual legal assistance (MLA)	**LC**	• The shortcomings of the money laundering and the terrorist financing offence may limit mutual legal assistance based on dual criminality.
37. Dual criminality	**LC**	• Requirement of dual criminality contained in the reservation to the CETS Convention 30 may impede effectiveness of the mutual legal assistance in money laundering and terrorist financing cases. • Because of the gaps in the domestic legislation concerning the coverage of financing of terrorism and money laundering, the requirement of dual criminality for extradition would mean that not all kinds of terrorist financing and money laundering offences would be extraditable.
38. MLA on confiscation and freezing	**LC**	• No arrangements for coordinating seizure and confiscation action with other countries are established. • Establishment of an asset forfeiture fund was not considered. • No sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action is applied.
39. Extradition	**LC**	• There are no explicit provisions in Estonian 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. • In the absence of detailed statistics it is not possible to determine whether extradition requests are handled without undue delay. •
40. Other forms of co-operation	**C**	
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Lack of a national mechanism to freeze the funds of EU internals. • Limited scope of the definition of funds in the EU Regulations, which does not explicitly cover funds owned 'directly or indirectly' by designated persons or those controlled directly or indirectly by designated persons. • Lack of established national procedure for the purpose of considering delisting requests.
SR.II Criminalise terrorist financing	**PC**	• Financing of an individual terrorist is not criminalised. • The terrorist financing offence does not cover "collecting of funds". • Current law does not specifically criminalise the provision of funds in the knowledge that they are to be used (for any purpose) by a terrorist organisation or an individual terrorist.

		• Some conducts as referred to in Art 2 of the Terrorist Financing Convention and addressed in the specific UN terrorist conventions are not covered.
SR.III Freeze and confiscate terrorist assets	**PC**	• Estonia does not have a national mechanism to consider requests for freezing from other countries or to freeze the funds of EU internals. • The definition of funds (deriving from the EU Regulations) does not cover funds controlled by a designated person or persons acting on their behalf or at their direction (as it is required by UNSCR 1267 and UNSCR 1373). • Estonia does not have an established national procedure for the purpose of delisting requests. • No specific procedure for unfreezing the funds or other assets by a freezing mechanism upon verification that the person or entity is not a designated person. • Apart from banks, no other financial institutions or DNFBP are aware of the procedures to be followed in order to implement the UNSC Resolutions.

SR.IV Suspicious transaction reporting	**LC**	• 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).
		• Not all kind of attempted transactions are clearly covered by the reporting obligations.
		• In the absence of detailed statistics before 2008 it is difficult to evaluate the effectiveness of the system.

SR.V International co-operation	**LC**	• The shortcomings of the domestic legislation intended to cover the financing of terrorism may limit mutual legal assistance based on dual criminality. • The lack of a comprehensive domestic incrimination of financing of terrorism may impede the extradition possibilities of Estonia.
SR.VI AML requirements for money/value transfer services	**LC**	• Lack of effective supervision of payment service providers.
SR.VII Wire transfer rules	**LC**	• There is no proper monitoring of Regulation (EC) No. 1781/2006 which is aimed to cover the requirements of SR VII.
SR.VIII Non-profit organisations	**PC**	• No review of the adequacy of relevant laws and regulations to prevent the abuse of NPOs for financing of terrorism has been undertaken.

		• Authorities do not conduct outreach or provide guidance on terrorist financing to the NPO sector. • There is no supervision or monitoring of the NPO sector as envisaged by the Interpretative Note to SR VIII. • There are no particular mechanisms in place 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. • No special points of contact or distinguished procedures to respond to international requests for information regarding particular NPOs.
SR.IX Cross Border declaration and disclosure	**PC**	• 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. • 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. • 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. • 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[6].

[6] It has to be noted that the European Commission proposed amendments to the FATF Methodology and to consider in the context of Special Recommendation IX the European Community as one jurisdiction. As a consequence this would not be considered a shortcoming any more. This issue is currently under consideration by the FATF and was at the time of the adoption of this report not yet solved.