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FINANCING OF TERRORISM  
(MONEYVAL)

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# Report on Fourth Assessment Visit – *Executive Summary*

## Anti-Money Laundering and Combating the Financing of Terrorism

# ESTONIA

18 September 2014

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## **LIST OF ACRONYMS USED**

AML	Anti-Money Laundering
AML/CFT	Anti-money laundering and counter-terrorist financing measures
Art.	Article
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CrIA	Credit Institutions Act
DNFBPs	Designated Non-Financial Businesses and Professions
EC	European Community
EEA	European Economic Area
ETCB	Estonian Tax and Customs Board
EU	European Union
EUR	Euro
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FSA	Financial Supervision Authority
FT/TF	Financing of Terrorism
ISA	International Sanctions Act
IT	Information technologies
LEA	Law enforcement agency
ML	Money Laundering
MLA	Mutual legal assistance
MLTFPA	Money Laundering and Terrorist Financing Prevention Act
NC	Non-compliant
NPO	Non-Profit Organisation
PC	Partially compliant
PEPs	Politically Exposed Persons
SR	Special recommendation
STRs	Suspicious transaction reports
UN	United Nations
UNSCRs	United Nations Security Council resolutions

## 4<sup>th</sup> Round Mutual Evaluation of Estonia

### Executive Summary

#### 1. Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in Estonia at the time of the 4<sup>th</sup> on-site visit (10 to 16 November 2013) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4<sup>th</sup> cycle of assessments is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which Estonia received non-compliant (NC) or partially compliant (PC) ratings in its 3<sup>rd</sup> round report. This report is not, therefore, a full assessment against the FATF 40 Recommendations and 9 Special Recommendations but is intended to update readers on major issues in the AML/CFT system of Estonia.

#### 2. Key findings

2. **Estonia has taken several important steps to improve compliance with the FATF Recommendations and has registered progress in several areas since the 3<sup>rd</sup> round evaluation.** Several pieces of legislation were amended and new legislative instruments and guidance were issued to address deficiencies identified in the 3<sup>rd</sup> round evaluation.
3. **In 2012, Estonia started conducting a national risk assessment, which at the time of the evaluation was still underway.** Institutional risk assessments, which are carried out on a regular basis by the Financial Intelligence Unit (FIU) and the Financial Supervision Authority (FSA), indicate that the highest ML/FT risk derives from business conducted with customers from certain neighbouring countries. Certain financial institutions and designated non-financial businesses and professions (DNFBPs), especially payment services (including alternative payment services) and traders in precious metals, are particularly vulnerable to ML/FT. The widespread use of IT in Estonia increases vulnerability to the ML/FT risk within the financial sector. The most common predicate offences are drug trafficking, fraud and tax-related offences. The authorities consider the risk of FT to be low.
4. **The money laundering offence in Estonia is broad, largely covering all the elements of the Vienna and Palermo Conventions.** The authorities have been effective in securing ML convictions for self-laundering, third party laundering and stand-alone ML. Some issues remain within the judiciary regarding the level of proof required to establish the underlying predicate criminality.
5. **The financing of terrorism offence was amended since the third round to address certain deficiencies.** However, further amendments will still be required to ensure that the offence is fully aligned with the Terrorist Financing Convention. In particular, the collection of funds to be used by an individual terrorist for any purpose other than terrorist purposes does not appear to be covered. Additionally, not all the acts which constitute an offence under the UN treaties annexed to the TF Convention are fully covered under the FT offence. Since the existing legislative framework has not been tested in practice it is difficult to assess the effectiveness of the system.
6. **The authorities have been effective in confiscating and seizing property in ML and drug-related cases, although the volume of confiscated property seems low in some cases.** The legal framework governing confiscation and provisional measures is still missing certain technical elements, such as confiscation of corresponding value to laundered property and instrumentalities in some cases. The authorities should apply confiscation and seizure measures to other serious proceeds-generating crimes on a more regular basis.
7. **Estonia has implemented the UN Security Council Resolutions mainly through EU legislation.** As a result, the requirement to apply freezing measures without delay is not met.

Estonia has not issued a domestic list to apply freezing measures to EU internals and there are still no clear publicly-known procedures for un-freezing funds and assets in a timely manner. While guidance and communication to the financial and non-financial sector are adequate, supervision is insufficient.

8. **The Estonian FIU is a structurally independent unit within the Police and Border Guard Board and has sufficient human and technical resources to conduct its functions properly.** It has ample powers to request and obtain additional information both from other authorities and reporting entities. Guidance has been provided to reporting entities on the manner of reporting. On the whole, the FIU appears to be functioning effectively and efficiently.
9. **Overall progress has been made to strengthen the preventive AML/CFT system.** The Money Laundering and Terrorist Financing Prevention Act (MLTFPA) introduced the concept of the risk-based approach and includes, inter alia, provisions catering for simplified and enhanced customer due diligence (CDD) measures. CDD, record-keeping and reporting requirements are all broadly in line with the FATF Recommendations. Some weaknesses in the identification of beneficial owners by certain financial institutions were identified. The reporting level by financial institutions appears to be adequate. The legal framework for monitoring complex, unusual large transactions and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations is still deficient.
10. **The AML/CFT supervisory framework is broadly sound, especially with respect to the supervision of financial institutions subject to FSA supervision.** The authorities have used their powers to stop criminals from owning or controlling financial institutions. The FIU, which supervises financial institutions not subject to the Core Principles, needs to be strengthened further. In particular, supervisory staff at the FIU needs to be increased.
11. **The sanctioning regime for AML/CFT breaches needs to be revised as it still does not provide for the whole range of sanctions required under the FATF Recommendations.** In practice, the sanctions imposed by the FSA and the FIU are very low.
12. **The preventive measures applicable to DNFBPs are largely in place.** Overall, DNFBPs appear to be aware of their obligations. However, implementation of preventive measures varies across the sector. The weakest element in the system, insofar as awareness of preventive measures is concerned, appears to be real estate intermediaries. It is encouraging that Estonian attorneys seem to take their reporting obligation more seriously than in most countries. Supervision of DNFBPs needs to be improved, especially in terms of the number of on-site visits conducted and sanctions imposed.
13. **Cooperation and coordination between competent authorities on a domestic level appears to be conducted in an effective manner.** The government committee set up for the purpose of coordination of AML/CFT policies in Estonia has produced tangible results.
14. **The Estonian mutual legal assistance framework allows the judicial authorities to give sufficient assistance in money laundering and terrorism financing cases.** The legal provisions regulating the mutual legal assistance appear to be effectively applied in practice by Estonian authorities. The application of dual criminality may negatively impact Estonia's ability to provide assistance due to shortcomings identified in respect of the scope of the TF offence.
15. **No significant progress has been made in order to address the deficiencies relating to the transparency of legal persons identified in the third round assessment.** Accessibility to company information online has however been greatly improved.
16. **The Estonian authorities have significantly improved the legal framework regulating non-profit organisations (NPOs).** As a result of an assessment carried out by the FIU, NPOs were included under the scope of the MLTFPA and are now subject to preventive measures.

### 3. Legal Systems and Related Institutional Measures

17. The money laundering offence is broadly in line with the Vienna and Palermo Conventions. Since the 3<sup>rd</sup> round, Estonia introduced the concept of conspiracy within its Penal Code to ensure that all ancillary offences to ML are covered. The authorities have been effective in securing ML convictions for self-laundering, third party laundering and stand-alone ML. Although the ML offence does not specifically require a simultaneous or prior conviction for the predicate offence, some issues remain within the judiciary with respect to the level of proof required to establish the underlying predicate offence. The authorities should therefore continue training prosecutors and judges on evidential thresholds for establishing underlying predicate criminality and confront the judiciary with more cases where it is not possible to establish precisely the underlying offence(s).
18. The financing of terrorism offence has been amended to address some deficiencies identified in the 3<sup>rd</sup> round evaluation. However, the offence is still not entirely aligned with the Terrorist Financing Convention. In particular, the collection of funds to be used, in full or in part, by an individual terrorist for any purpose other than terrorist purposes is still not covered. Not all the acts which constitute an offence under the UN treaties annexed to the TF Convention are fully covered under the FT offence. Those acts which are covered under the FT offence are subject to an additional purposive element which goes beyond the FT convention.. In view of the deficiencies in the FT offence it is doubtful whether criminal proceedings could be initiated in Estonia where a person finances a terrorist act committed abroad.
19. Confiscation and seizure of property in ML and drug-related offences appear to be regularly utilised, although to a lesser extent for other serious proceeds-generating crimes. The volume of confiscated property appears to be on the lower end of the scale. Legislation on confiscation and provisional measures has remained unchanged since the 3<sup>rd</sup> round evaluation. While the Penal Code broadly provides for a confiscation mechanism to deprive criminals of their ill-gotten gains, some technical deficiencies still need to be addressed. Confiscation of property of corresponding value to laundered property and instrumentalities is not clearly covered. It is also unclear whether confiscation of property can be applied where the owner or possessor has not been identified. The provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation appear to be sound.
20. As a member of the European Union, Estonia implements UNSCRs 1267 and 1373 through relevant EU instruments, which are directly applicable. In addition, the International Sanctions Act was enacted in 2010 to set out the general legal framework for the application, implementation and supervision of international sanctions. As a result of Estonia's reliance on EU instruments, which are not always immediately updated following a listing by the Sanctions Committee, the requirement to apply freezing measures without delay is not met. Estonia has not issued a domestic list to apply freezing measures to EU internals. The International Sanctions Act (ISA) does not empower Estonia to examine and give effect to the actions initiated under the freezing mechanism of other jurisdictions. Guidance and communication on freezing measures to financial institutions and other persons appear to be adequate. There are no clear publicly-known procedures for un-freezing funds and assets in a timely manner. Further steps are required in order to strengthen FIU supervision of SR III requirements.
21. The FIU is a structurally independent unit within the Police and Border Guard Board. It is the central and exclusive reception point of information on suspected ML and FT activity. It also receives cash transaction reports and processes information related to ML/FT suspicions received from various state authorities and investigative bodies. Foreign FIU requests are treated as STRs. The FIU is adequately structured and has sufficient technical resources to process and analyse information to identify potential ML, associated offences and FT. Adequate guidance on the manner of reporting has been provided to reporting entities. The FIU has ample powers to request and obtain additional information both from other authorities and reporting entities. It has direct online access to 34 administrative and law enforcement databases. The power to request information from attorneys is, however, subject to some restrictions. Upon detection of elements

of a criminal offence, which is broader than ML and FT, an analytical report is disseminated to the public prosecutor. Information is also forwarded to other law enforcement authorities whenever there are no sufficient grounds yet to initiate criminal proceedings. The FIU may, subject to certain restrictions, also disseminate information when formally requested by law enforcement authorities and the courts. Although the FIU operates under strict confidentiality rules, there is a confidentiality risk involved when the FIU queries unregulated persons. Overall, the FIU appears to be conducting its functions in an effective and efficient manner.

22. Since the 3<sup>rd</sup> round evaluation, the Estonian Tax and Customs Board (ETCB) has been designated as the competent authority controlling the cross-border transportation of cash. The ETCB was found to be adequately resourced and trained. Estonia, as an EU member, applies Regulation (EC) No. 1889/2005 and has adopted a declaration system of EUR 10,000 or more in cash or bearer negotiable instruments at its external EU borders. The ETCB control of goods rules are applied for the purpose of cash declarations. In case of non-declaration, a false declaration or suspicion of ML/FT, a person may be detained at the border along with cash for a maximum period of 48 hours. The temporary detention of cash is not a frequent occurrence. In case of ML/FT suspicion, the case is reported to the Customs Investigation Department and the FIU. The statistics maintained by the ETCB do not give an indication of the ensuing law enforcement outcome following a notification to the FIU. Cash declarations are reported to the FIU twice monthly. Data on cash declarations, false declarations and ML/FT suspicions is routinely maintained by the ETCB. Although the FIU has direct access to the ETCB's database there is no specific legal provision on the cooperation between the two entities. Neither instances of confiscation of cash nor freezing measures in terms of SR. III were reported in relation to transportation of ML/FT related cross-border transportation of cash. The statistics on cash declarations show a reasonable performance of the control regime. However, the lack of systematic international exchange of information, although not formally a requirement, should be addressed.

#### **4. Preventive Measures – financial institutions**

23. Estonia has taken several legislative and regulatory measures in order to address the main deficiencies identified during the 3<sup>rd</sup> round evaluation. The supervisory authorities have also issued guidelines to assist financial institutions in complying with their AML/CFT requirements.
24. The MLTFPA provides for a comprehensive framework for the application of CDD measures and requirements with respect to new and developing technologies. While requirements concerning identification and verification of identity of a beneficial owner are broadly in place, the requirement to determine whether the customer is acting on behalf of another person still needs to be included in the MLTFPA. Most financial institutions displayed good knowledge of identification and verification requirements, on-going monitoring, enhanced CDD and the assessment and management of ML/FT risk. Certain financial institutions, other than credit institutions and insurance companies, did not appear to have a solid grasp of beneficial ownership and source of funds requirements.
25. The legal provisions governing record-keeping requirements are largely in line with the FATF Recommendations. The implementation of these provisions also appears to be sound. Nevertheless, there is no provision to ensure that the mandatory record-keeping period may be extended in specific cases upon the request of competent authorities.
26. The legal framework for monitoring complex, unusual large transactions and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations is still deficient. Among other issues identified, in both cases there is no requirement to examine the nature, purpose of these transactions and keep records of the findings of the examination.
27. The reporting obligation for ML suspicions is in line with the FATF requirements. The FT reporting requirement is deemed to be too generic and does not specifically cover the requirement to report suspicions on funds linked or related to terrorism, terrorist acts or by terrorist organisations. Figures provided by the authorities show an acceptable and proportionate level of

compliance with reporting rules. The absence of disclosures made by insurance companies, which was identified as a deficiency in the 3<sup>rd</sup> round, has been addressed. Although, savings and loans associations have not submitted any suspicious transaction reports (STRs), the ML/FT risk in this sector is considered to be low. The evaluation team considers that leaving the initial transaction postponement decision to the reporting entity may negatively impact on the effectiveness of the reporting regime. Guidance on reporting has been provided by the FIU for both ML and FT.

28. AML/CFT supervision and regulation is carried out by the FSA (for those financial institutions it licences) and the FIU (for other financial institutions, which are not subject to the Core Principles). The MLTFPA provides for adequate supervisory powers to monitor financial institutions' compliance with AML/CFT requirements. However, in practice, the FSA exercises the supervisory powers set out under the Financial Service Authority Act which in some instances go beyond the powers under the MLTFPA. The legal framework providing for market entry requirements, including the application of fit and proper tests, was found to be sound and has been used effectively to prevent criminals from owning or controlling financial institutions
29. The FSA conducts its supervision on the basis of a comprehensive risk-based model which determines its supervisory priorities and the annual AML/CFT on-site inspection programme. On-site inspections are carried out according to an internal methodology and include sample testing mainly targeted at high risk customers or determined on the basis of turnover, volume and length of relationship. Off-site monitoring is based on questionnaires which may be either general or targeted specifically at areas of higher risk. The effectiveness of the supervisory programme is reviewed by an independent internal audit department. While the overall supervisory picture of the FSA appears to be positive, the ongoing supervision and monitoring of investment firms, life insurance companies and payment services providers should be subject to additional focus.
30. AML/CFT supervision by the FIU is focussed on ensuring adequate STR reporting in order to add value to the analytical function of the FIU. On-site supervision is generally undertaken to raise awareness to members of a subsector and to target individual entities selected due to intelligence collected, complaints or STR reporting behaviour. Less consideration is given to the inherent ML/FT risks of a subsector. There is no internal methodology used by staff in planning or undertaking on-site inspections. Off-site supervision has decreased significantly since 2010. The supervisory staff of the FIU does not appear to be adequate. As a result, the number of on-site and off-site supervision of financial institutions under the FIU's responsibility is not sufficient.
31. A number of deficiencies were identified with respect to the sanctioning regime for breaches of AML/CFT requirements. The range of sanctions is inconsistent across financial institutions. The maximum financial penalties envisaged under the MLTFPA are not sufficiently proportionate, dissuasive and effective. Sanctions available for legal persons that are financial institutions are not available for their directors and senior management. Moreover, the range of sanctions applied in practice by both the FSA and the FIU was found to be narrow.

## **5. Preventive Measures – Designated Non-Financial Businesses and Professions**

32. All DNFBPs are covered by the MLTFPA. The application of preventive measures was extended to cover other businesses and professions such as traders, auditors and non-profit associations and NPOs.
33. The CDD and record-keeping requirements and requirements relating to new and developing technologies and monitoring of complex transactions in the MLTFPA, which are applicable to financial institutions, apply equally to DNFBPs. However, some specific provisions apply exclusively to certain DNFBPs (such as notaries and attorneys). The same deficiencies under Recommendation 5, Recommendation 10 and Recommendation 11 apply under Recommendation 12. Overall, the private sector demonstrated a satisfactory level of awareness and understanding of the CDD and record keeping obligations under the MLTFPA. Most DNFBPs showed awareness of sector-specific and current risks and vulnerabilities of ML and TF. They also have internal procedures in place. However, some common weaknesses were identified. In particular, it was noted the identification and

verification of the source of funds, especially in the case of higher risk customers, presented challenges to all DNFBPs. The same applies to the implementation of the risk-based approach. The weakest sectors appeared to be the real estate intermediaries and dealers in precious metals and stones.

34. The reporting mechanism for financial institutions applies equally to DNFBPs, except for professionals bound by legal privilege in those circumstances where they provide counsel on the client's legal position or represent their client in legal proceedings. The reporting behaviour of DNFBPs is variable, generally without raising any significant concerns. There are however some sectors which are under-reporting, particularly the real estate intermediaries. It is encouraging that Estonian attorneys seem to take their reporting obligation more seriously than in most countries.
35. AML/CFT supervision of DNFBPs falls within the responsibility of the FIU, except for lawyers and notaries who are supervised by the Bar Association and the Ministry of Justice respectively. The Tax and Customs Board is responsible for licensing casinos and has adequate legal and regulatory powers to stop criminals from owning or operating casinos. The supervisory powers available to the FIU under the MLTFPA are applicable to both financial institutions and DNFBP. Although the MLTFPA supervisory provisions are also available to the Bar Association and the Ministry of Justice, they apply supervisory powers set out under the Bar Association Act and the Notaries Act. None of the supervisory authorities conduct supervision on a risk-sensitive basis and the number of onsite and off-site inspections is low. The sanctioning regime under the MLTFPA, with all its deficiencies, also applies to DNFBPs. The number of sanctions imposed on all DNFBPs was found to be low.

## **6. Legal Persons and Arrangements & Non-Profit Organisations**

36. The legislative provisions governing the setting up of legal persons have not changed since the 3<sup>rd</sup> round evaluation. At the time, it was noted that while all legal persons are required to keep share and shareholder registers, their compliance with this obligation was not supervised by any authorities. Additionally, there was no verification of the accuracy and validity of the data in the registers. These deficiencies have not been addressed. In light of this and the deficiencies identified in relation to the implementation of beneficial ownership requirements by financial institutions, it is doubtful whether competent authorities are in a position to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons. On a positive note, the authorities have taken significant measures to improve the online accessibility of information on legal persons held by the registry. Information on legal persons is maintained at the Central Commercial Register, an online service which includes digital data from the commercial register. This includes a visualised business register which allows queries regarding persons related to companies and displays the results as a structure chart or diagram giving a connection between legal persons and natural persons. Market participants confirmed the value of this resource in practice.
37. Since the 3<sup>rd</sup> round evaluation, a number of measures have been taken to improve the framework governing non-profit organisations. In 2008, the Non-Profit Associations Act was amended to ensure that information on NPOs in the public register is more reliable and transparent and to require NPOs to submit annual accounts and activity reports to the registrar of NPOs. Information on NPOs, including information on the persons who own, control and direct their activities, is publicly available. As a result of an assessment of the NPO sector by the FIU, in 2012 NPOs were included under the scope of the MLTFPA, whenever a cash payment of more than EUR 15,000 is made to a NPO. NPOs are therefore now subject to some of the preventive measures applicable to financial institutions and DNFBPs. Supervision of NPOs, which falls under the responsibility of the FIU, is still not being conducted effectively. Outreach to the NPO sector is provided through the Network of Estonian Non-profit Organisations. However, the network only covers a fraction of NPOs operation in Estonia.

## **7. National and International Co-operation**

38. The Government Committee for Coordination of Issues Concerning the Prevention of Money Laundering and Terrorist Financing serves as the mechanism for cooperation and coordination domestically for the development and implementation of AML/CFT policies and activities. The committee coordinates the drafting of any legislation concerning AML/CFT and monitors the implementation of the MLTFPA. One of the priorities of the committee is the collection and analysis of statistics to detect possible shortcomings in the Estonian AML/CFT regime. On an operational level, the authorities (law enforcement, FIU, Prosecutor's Office and FSA) coordinate domestically on the basis of cooperation agreements. According to the authorities, cooperation takes place on a daily basis. Nevertheless, it was noted that cooperation between the supervisory authorities needs further strengthening.
39. Estonia has signed and ratified the United Nations Convention against Transnational Organised Crime (Palermo Convention), the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) and the United Nations Convention for the Suppression of the Financing of Terrorism (Terrorist Financing Convention). There remain some implementation issues in respect of the Conventions. As noted above, there are also shortcomings in respect of the implementation of S/RES/1267 and 1373.
40. Estonia can provide a wide range of mutual legal assistance in investigations, prosecutions and related proceedings concerning money laundering and the financing of terrorism, in application of the multilateral and bilateral agreements to which it is a party or otherwise based on the national framework provisions. However, the application of dual criminality may negatively impact Estonia's ability to provide assistance due to shortcomings identified in respect of the scope of the TF offence. Estonia appears to respond to requests for assistance in an efficient and effective manner. Informal international cooperation by the FIU with its counterparts appears to be conducted efficiently. No conclusions could be reached on cooperation by the supervisory authorities and law enforcement agencies (LEAs), since no statistical information was made available.

## **8. Resources and statistics**

41. In general, all competent authorities involved in the prevention of ML/FT are adequately structured, funded, staffed and provide with sufficient technical and other resources. The FIU supervisory staff was however found to be insufficient to meet the expected demands of its tasks. All staff are required to maintain high professional standards, including standards of confidentiality, and are appropriately skilled. Relevant training on AML/CFT issues is provided on an ongoing basis.
42. Overall, statistics maintained by all Estonian authorities are adequate. However, it was noted that, with respect to ML convictions, the Ministry of Justice does not maintain detailed information on convictions. Further detailed statistics should also be maintained by the ETCB and the FIU to monitor effectiveness, even though not formally required by the FATF Recommendations.

## RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to Estonia. *It includes ratings for FATF Recommendations from the 3<sup>rd</sup> round evaluation report that were not considered during the 4<sup>th</sup> assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating <sup>1</sup>
<b>Legal systems</b>		
1. Money laundering offence	<b>LC</b>	<ul style="list-style-type: none"> <li>The purposive elements of concealing and disguising the illicit origin of the property narrows the scope of use in self-laundering cases;</li> <li>The full concept of terrorist financing is not a predicate offence to money laundering;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>Concerns over evidential thresholds to establish underlying predicate criminality.</li> </ul>
2. <i>Money laundering offence Mental element and corporate liability</i>	<i>C</i>	
3. Confiscation and provisional measures	<b>PC</b>	<ul style="list-style-type: none"> <li>Confiscation of property of corresponding value to instrumentalities is not fully provided for;</li> <li>Confiscation of property of corresponding value to laundered property is not fully provided for;</li> <li>Unclear whether confiscation of property can be applied where the owner or possessor has not been identified;</li> <li>The confiscation of instrumentalities intended to be used in the commission of financing of terrorism offence is not fully provided for under Estonian law;</li> <li>The deficiency identified in the criminalisation of the FT may limit the ability to freeze and confiscate property;</li> <li>Technical limitations in relation to confiscation of instrumentalities and value confiscation extend to seizure;</li> </ul>

<sup>1</sup> These factors are only required to be set out when the rating is less than Compliant.

		<p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Low number of confiscation orders with respect to proceeds-generating crime;</li> <li>• Low volume of confiscated assets overall.</li> </ul>
<b>Preventive measures</b>		
4. Secrecy laws consistent with the Recommendations	<b>LC</b>	<ul style="list-style-type: none"> <li>• Provisions relating to sharing of information between financial institutions where this is required by R.7, R.9 and SR VII, are drafted in a manner that leaves some uncertainty in interpretation.</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Some uncertainty amongst financial institutions regarding whether sharing of information was permitted on a statutory basis or on the basis of a customer mandate.</li> </ul>
5. Customer due diligence	<b>LC</b>	<ul style="list-style-type: none"> <li>• No clear requirement to determine whether the customer is acting on behalf of another person (C.5.5.1);</li> <li>• No requirement to apply CDD requirements to existing customers (c.5.17);</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Some shortcomings in the identification and verification of beneficial owners (especially on indirect ownership and control) by certain categories of financial institutions;</li> <li>• Some shortcoming in the identification and verification of the source of funds by certain categories of financial institutions.</li> </ul>
6. <i>Politically exposed persons</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• 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;</li> <li>• 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).</li> </ul>
7. <i>Correspondent banking</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• There is no specific provision in Estonian law which clearly requires understanding the respondent bank's business;</li> <li>• There is no clear legal requirement to obtain approval from senior management before</li> </ul>

		<p>establishing new correspondent relationships;</p> <ul style="list-style-type: none"> <li>• 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);</li> <li>• 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.</li> </ul>
8. New technologies and non face-to-face business	<b>C</b>	
9. <i>Third parties and introducers</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• There is no clear requirement for obligated persons to ensure that timely reproduction of the necessary documentation from third parties is possible;</li> <li>• Concerning criterion 9.4, there has not been guidance of the Estonian authorities 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;</li> <li>• 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 the third party.</li> </ul>
10. Record keeping	<b>LC</b>	<ul style="list-style-type: none"> <li>• No provision in law or regulation to ensure that the mandatory record-keeping period may be extended in specific cases upon request of competent authorities (as preventive measures).</li> </ul>
11. Unusual transactions	<b>PC</b>	<ul style="list-style-type: none"> <li>• The requirement to pay special attention to complex, unusual large transactions does not apply to “patterns of transactions” as required by the criterion;</li> <li>• The requirement to pay special attention does not apply to transactions which have “no apparent or visible lawful purpose” as required by the criterion;</li> <li>• No clear requirement to examine the nature, purpose or background when discovering a complex or unusual transaction during transaction monitoring;</li> <li>• No clear obligation to keep records of findings</li> </ul>

		that do not lead to STR.
12. DNFBPS – R.5, 6, 8-11 <sup>2</sup>	PC	<p><b><i>Applying Recommendation 5</i></b></p> <ul style="list-style-type: none"> <li>• No clear requirement to determine whether the customer is acting on behalf of another person;</li> <li>• No requirement to apply CDD requirements to existing customers;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Weakness in the implementation of the identification and verification of source of funds, especially in case of higher risk customers and PEPs;</li> <li>• Some shortcomings in the implementation of risk-based approach (extent of CDD measures);</li> <li>• Weakness in the implementation of CDD measures by real estate agents;</li> <li>• Some deficiencies in the implementation of CDD measures of dealers in precious metals and dealers in precious stones.</li> </ul> <p><b><i>Applying Recommendation 10</i></b></p> <ul style="list-style-type: none"> <li>• No provision in law or regulation to ensure that the mandatory record-keeping period may be extended in specific cases upon request of competent authorities (as preventive measures).</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Lack of effective implementation of the record-keeping requirements with regard to real estate agents.</li> </ul> <p><b><i>Applying Recommendation 11</i></b></p> <ul style="list-style-type: none"> <li>• The requirement to pay special attention to complex, unusual large transactions does not apply to “patterns of transactions” as required by the criterion;</li> <li>• The requirement to pay special attention does not apply to transactions which have “no apparent or visible lawful purpose” as required by the criterion;</li> <li>• No clear requirement to examine the nature, purpose or background when discovering a complex or unusual transaction during transaction monitoring;</li> <li>• No clear obligation to keep records of findings</li> </ul>

<sup>2</sup> The review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3<sup>rd</sup> round report on Recommendations 6 and 9.

		that do not lead to STR.
13. Suspicious transaction reporting	<b>LC</b>	<ul style="list-style-type: none"> <li>No explicit requirement to report suspicions on funds linked or related to, terrorism, terrorist acts or by terrorist organisations;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>Leaving the initial postponement decision to the reporting entity may negatively impact on the effectiveness.</li> </ul>
14. <i>Protection and no tipping-off</i>	<b>C</b>	
15. <i>Internal controls, compliance and audit</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>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 on-site visit, were based on a Regulation of the Minister of Finance issued under the previous law;</li> <li>Financial institutions are not required to have guidance in their internal rules concerning the detection of unusual and suspicious transactions;</li> <li>Limited requirements concerning screening procedures for new employees;</li> <li>Financial institutions are not required to include in their training of employees current AML/CFT techniques methods and trends.</li> </ul>
16. DNFBPS – R.13-15 & 21 <sup>3</sup>	<b>PC</b>	<p><i>Applying Recommendation 13</i></p> <ul style="list-style-type: none"> <li>No requirement to report suspicions on funds linked or related to, or to be used for, terrorism, terrorist acts or by terrorist organisations or those who finance terrorism;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>Leaving the initial postponement decision to the reporting entity may negatively impact on the effectiveness;</li> <li>Underreporting by certain DNFBPs.</li> </ul> <p><i>Applying Recommendation 21</i></p> <ul style="list-style-type: none"> <li>Technical deficiency in relation to the application of the obligation to a customer or person from</li> </ul>

<sup>3</sup> The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3<sup>rd</sup> round report on Recommendations 14, 15 and 21.

		<p>one of the stipulated countries;</p> <ul style="list-style-type: none"> <li>• No clear requirement to examine the nature, purpose or background when discovering a transaction with no apparent economic or visible lawful involving higher risk countries;</li> <li>• No clear requirement to keep records of findings that do not lead to STR;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• No awareness-raising by the authorities to DNFBPs on jurisdictions which do not or insufficiently apply FATF Recommendations;</li> <li>• Weak awareness of this requirement by certain DNFBPs.</li> </ul>
17. Sanctions	<b>PC</b>	<ul style="list-style-type: none"> <li>• Range of available sanctions is neither effective nor proportionate for certain categories of financial institutions;</li> <li>• Maximum financial penalties do not appear dissuasive;</li> <li>• Sanctions available for legal persons that are financial institutions are not available for their directors and senior management;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Narrow range of sanctions applied in practice.</li> </ul>
18. <i>Shell banks</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The CrIA does not clearly prohibit the establishment or continuous operation of shell banks in Estonia which are operated outside from the European Economic Area (EEA).</li> </ul>
19. <i>Other forms of reporting</i>	<b>C</b>	
20. <i>Other DNFBPS and secure transaction techniques</i>	<b>C</b>	
21. Special attention for higher risk countries	<b>PC</b>	<ul style="list-style-type: none"> <li>• Technical deficiency in relation to the application of the obligation to a customer or person <i>from</i> one of the stipulated countries;</li> <li>• No clear requirement to examine the nature, purpose or background when discovering a transaction with no apparent economic or visible lawful involving higher risk countries;</li> <li>• No clear requirement to keep records of findings that do not lead to STR;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Circular letters not distributed to all financial</li> </ul>

		institutions.
22. <i>Foreign branches and subsidiaries</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>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;</li> <li>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;</li> <li>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.</li> </ul>
23. Regulation, supervision and monitoring	<b>LC</b>	<p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>Insufficient ongoing supervision and monitoring of investment firms, life insurance companies and payment service providers;</li> <li>Effectiveness issues for the FIU - low number of staff, low levels of on-site inspections, decreasing levels of off-site supervision, no proper internal methodology for conducting on-site inspections.</li> </ul>
24. DNFBPS - Regulation, supervision and monitoring	<b>PC</b>	<ul style="list-style-type: none"> <li>Sanctions available for legal persons that are financial institutions do not extend to directors and senior management;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>Insufficient supervisory resources at the FIU;</li> <li>In practice only misdemeanour proceedings are used by FIU;</li> <li>Low level of on-site visits for certain DNFBPs under FIU supervision;</li> <li>Insufficient supervision undertaken by the Bar Association and Chamber of Notaries;</li> <li>No sanctions imposed by either the Bar Association or Chamber of Notaries.</li> </ul>
25. Guidelines and Feedback	<b>C</b>	
<b>Institutional and other measures</b>		
26. The FIU	<b>LC</b>	<ul style="list-style-type: none"> <li>Insufficient power to query all relevant additional information from lawyers;</li> </ul>

		<ul style="list-style-type: none"> <li>Confidentiality risk when querying unregulated persons.</li> </ul>
27. Law enforcement authorities	<b>C</b>	
28. Powers of competent authorities	<b>C</b>	
29. Supervisors	<b>LC</b>	<ul style="list-style-type: none"> <li>No adequate sanctioning power against directors and senior management for breaches by a financial institution.</li> </ul>
30. Resources, integrity and training <sup>4</sup>	<b>LC</b>	<ul style="list-style-type: none"> <li>Insufficient supervisory staff at the FIU to carry out its functions.</li> </ul>
31. National co-operation	<b>LC</b>	<ul style="list-style-type: none"> <li>Insufficient cooperation and coordination between supervisory authorities.</li> </ul>
32. Statistics <sup>5</sup>	<b>LC</b>	<ul style="list-style-type: none"> <li>Insufficient statistics are kept by the FIU on on-site inspections;</li> <li>No statistics on whether requests made to the FIU were granted or refused;</li> <li>No statistics maintained on formal requests for assistance made or received by the supervisors relating to AML/CFT.</li> </ul>
33. Legal persons – beneficial owners	<b>PC</b>	<ul style="list-style-type: none"> <li>There is limited control over the obligations of legal persons to submit updated information on ownership and control to the register;</li> <li>Maintenance of share registers and shareholder registers by limited companies is not supervised;</li> <li>The legal framework does not ensure that information held in the Commercial Register is adequate, accurate and timely;</li> <li>It is doubtful whether competent authorities are in a position to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons.</li> </ul>
34. Legal arrangements – beneficial owners	<b>NA</b>	

<sup>4</sup> The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3<sup>rd</sup> round report on resources integrity and training of law enforcement authorities and prosecution agencies.

<sup>5</sup> The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3<sup>rd</sup> round report on Recommendations 12, 16, 20, 27, 29, 38 and 39 and Special Recommendation IX.

International Co-operation		
35. Conventions	<b>PC</b>	<p><i>Vienna and Palermo Conventions</i></p> <ul style="list-style-type: none"> <li>• The physical elements of money laundering offence do not fully correspond to the Vienna and Palermo Conventions, in particular purposive elements of concealing and disguising the illicit origin of the property narrows the scope of use in self-laundering cases (R.1);</li> </ul> <p><i>Convention for the Suppression of the Financing of Terrorism</i></p> <ul style="list-style-type: none"> <li>• The collection of funds with the intention that they should be used/in the knowledge that they are to be used by an individual terrorist for any purpose other than terrorist purposes is not unequivocally covered (SR.II);</li> <li>• The TF offence does not fully criminalise the financing of all terrorist acts required by the TF Convention in its Article 2 (1) (a) since these acts are not criminalised in the PC;</li> <li>• For conducts addressed in the specific UN treaties referred to by Art 2 of the TF Convention which are covered by Article 237, an additional purposive element is required which limits the application of TF offence;;</li> <li>• TF offence does not cover all situations where a person finances a terrorist act committed abroad;</li> <li>• The confiscation of instrumentalities intended to be used in the commission of financing of terrorism offence is not fully provided for under Estonian law (R.3);</li> <li>• The deficiency identified in the criminalisation of the FT may limit the ability to freeze and confiscate property (R.3).</li> </ul>
36. Mutual legal assistance (MLA) <sup>6</sup>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The application of dual criminality may negatively impact Estonia's ability to provide assistance due to shortcomings identified in respect to the scope of the TF offence;</li> <li>• Deficiencies identified under R. 3 may restrict the range of mutual legal assistance that can be provided (c.36.1(f)).</li> </ul>
37. <i>Dual criminality</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Requirement of dual criminality contained in the reservation to the CETS Convention 30 may impede effectiveness of the mutual legal</li> </ul>

<sup>6</sup> The review of Recommendation 36 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3<sup>rd</sup> round report on Recommendation 28.

		<p>assistance in money laundering and terrorist financing cases;</p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>
38. <i>MLA on confiscation and freezing</i>	<i>LC</i>	<ul style="list-style-type: none"> <li>• No arrangements for coordinating seizure and confiscation action with other countries are established;</li> <li>• Establishment of an asset forfeiture fund was not considered;</li> <li>• No sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action is applied.</li> </ul>
39. <i>Extradition</i>	<i>LC</i>	<ul style="list-style-type: none"> <li>• 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;</li> <li>• In the absence of detailed statistics it is not possible to determine whether extradition requests are handled without undue delay.</li> </ul>
40. Other forms of co-operation	<i>LC</i>	<p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Effectiveness was not demonstrated by law enforcement and supervisory authorities.</li> </ul>
<b>Nine Special Recommendations</b>		
SR.I Implement UN instruments	<i>PC</i>	<p><i>Convention for the Suppression of the Financing of Terrorism</i></p> <ul style="list-style-type: none"> <li>• The collection of funds with the intention that they should be used/in the knowledge that they are to be used by an individual terrorist for any purpose other than terrorist purposes is not unequivocally covered (SR.II);</li> <li>• The TF offence does not fully criminalise the financing of all terrorist acts required by the TF Convention in its Article 2 (1) (a) since these acts are not criminalised in the PC;</li> <li>• For conducts addressed in the specific UN treaties referred to by Art 2 of the TF Convention which are covered by Article 237, an additional purposive element is required which limits the</li> </ul>

		<p>application of TF offence;</p> <ul style="list-style-type: none"> <li>• TF offence does not cover all situations where a person finances a terrorist act committed abroad;</li> <li>• The confiscation of instrumentalities intended to be used in the commission of financing of terrorism offence is not fully provided for under Estonian law (R.3);</li> <li>• The deficiency identified in the criminalisation of the FT may limit the ability to freeze and confiscate property (R.3);</li> <li>• Deficiencies under SR.III.</li> </ul>
SR.II Criminalise terrorist financing	<b>PC</b>	<ul style="list-style-type: none"> <li>• The collection of funds with the intention that they should be used/in the knowledge that they are to be used by an individual terrorist for any purpose other than terrorist purposes is not unequivocally covered;</li> <li>• TF offence does not fully criminalise the financing of all terrorist acts required by the TF Convention in its Article 2 (1) (a) since these acts are not criminalised in the PC;</li> <li>• For conducts addressed in the specific UN treaties referred to by Art 2 of the TF Convention which are covered by Article 237, an additional purposive element is required which limits the application of TF offence;</li> <li>• TF offence does not cover all situations where a person finances a terrorist act committed abroad.</li> </ul>
SR.III Freeze and confiscate terrorist assets	<b>PC</b>	<ul style="list-style-type: none"> <li>• The requirement to apply freezing measures under UNSCR 1267 and 1373 without delay is not met;</li> <li>• There is no obligation for the purposes of UNSCR 1267 to freeze funds derived from funds or other assets owned or controlled; directly or indirectly by persons or entities included in the UN list or by persons acting on their behalf or at their direction;</li> <li>• No measures have been taken to freeze funds of persons formerly known as “EU internals”;</li> <li>• No legislative framework to examine and give effect to the actions initiated under the freezing mechanisms of other jurisdictions;</li> <li>• No clear publicly-known procedures for unfreezing in a timely manner funds and assets;</li> </ul> <p>Effectiveness</p> <ul style="list-style-type: none"> <li>• Lack of awareness of SR III obligations by some</li> </ul>

		<p>reporting entities;</p> <ul style="list-style-type: none"> <li>• Low number of supervisory visits in relation to the implementation of international financial sanctions and no sanctions have been imposed.</li> </ul>
SR.IV Suspicious transaction reporting	<b>LC</b>	<ul style="list-style-type: none"> <li>• No explicit requirement to report suspicions on funds linked or related to terrorism, terrorist acts or by terrorist organisations;</li> </ul> <p><b><u>Effectiveness</u></b></p> <ul style="list-style-type: none"> <li>• Leaving the initial postponement decision to the reporting entity may negatively impact on the effectiveness.</li> </ul>
SR.V International co-operation <sup>7</sup>	<b>LC</b>	<ul style="list-style-type: none"> <li>• The application of dual criminality may negatively impact Estonia's ability to provide assistance due to shortcomings identified in respect to the scope of the TF offence;</li> <li>• Deficiencies identified under R. 3 may restrict the range of mutual legal assistance that can be provided (c.36.1(f)).</li> </ul>
<i>SR.VI AML requirements for money/value transfer services</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• Lack of effective supervision of payment service providers.</li> </ul>
<i>SR.VII Wire transfer rules</i>	<b>LC</b>	<ul style="list-style-type: none"> <li>• There is no proper monitoring of Regulation (EC) No. 1781/2006 which is aimed to cover the requirements of SR VII.</li> </ul>
SR.VIII Non-profit organisations	<b>LC</b>	<ul style="list-style-type: none"> <li>• Absence of effective supervision of NPOs;</li> <li>• Limited outreach to NPOs.</li> </ul>
SR.IX Cross Border declaration and disclosure	<b>LC</b>	<ul style="list-style-type: none"> <li>• Low sanctions.</li> </ul>

<sup>7</sup> The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3<sup>rd</sup> round report on Recommendations 37, 38 and 39.