
MODULE 1. Proceeds of crime related to money laundering

Members of the working group

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1. Brief overview of the methodology

The task of the working group was to analyze seizures made in the framework of money laundering proceedings and confiscations made in court decisions related to money laundering. It was based on the World Bank methodology, i.e. the table in Excel format, which was adapted to the Estonian conditions. First, the crimes mentioned in the Penal Code were grouped according to their nature from the point of view of money laundering into 53 groups, which have been listed in Annex 1.

Subsequently, extracts were made from the court information system, register of criminal proceedings and database of the Tax and Customs Board on money laundering proceedings and court decisions in the period of 2010-2012. In 2010 the Police and Border Guard Board initiated the total of 56 money laundering proceedings, in 2011 63 and in 2012 35 money laundering proceedings. The course of the procedure, i.e. mergers and divisions, was clarified. Thus, as of May 2013, an entry was formed for each proceeding which was the basis for further analysis. Information on the status of the proceedings (in proceedings, in court proceedings, the ones that have reached the court decision) and on seizures made in the framework of the proceedings and confiscations upon reaching a court decision was compiled on the basis of databases.

The World Bank table was supplemented by adding columns that made it possible to distinguish in money laundering proceedings whether a predicate offence of money laundering had been committed

in Estonia or abroad. The analysis was based on the division of money laundering proceedings on the basis of a predicate offence.

2. Main results of the analysis

By far the most common predicate offence in terms of money laundering crimes in Estonia in the period of 2010-2013 was **computer fraud**.

- As regards 53 money laundering proceedings initiated in 2010 (as many as in May 2013, there were so many money laundering proceedings that were not merged with other proceedings), computer fraud was a (suspected) predicate offence in 34 cases, i.e. almost 2/3 of the proceedings.
- As regards 54 money laundering proceedings initiated in 2011, computer fraud was a (suspected) predicate offence in 31 cases, i.e. 58% of the proceedings.
- As regards 24 money laundering proceedings initiated in 2012, computer fraud was a (suspected) predicate offence in 11 cases, i.e. 46% of the proceedings.

Computer frauds, which are the predicate offences of money laundering, **are mostly committed abroad**. The analysis of court decisions suggests that in most cases the perpetrator of computer fraud is not identified and in **Estonia the following persons are convicted in money laundering** - either

- **men of straw**, i.e. people who give (usually for a relatively small amount) their bank account password and other documents related to the account for use by those who use the account for money laundering, or
- **intermediaries**, i.e. persons who have not committed a computer fraud abroad but who have contributed to money laundering by employing men of straw or otherwise assisting perpetrators of computer fraud in carrying out money laundering.

Based on the results of the analysis of court decisions, the amount they have received for making their account available is usually confiscated from the men of straw. As the perpetrators of computer fraud are unknown, the victim will generally get the property being the object of money laundering back, if the bank has suspended the withdrawal or transfer transaction. Thus, in the crimes related to computer fraud, Estonia is mainly used as a transit country to which money obtained as a result of computer fraud is transferred, cash is taken out here and its future fate is unknown to convicts, as they deliver it to person X, in case of whom they usually only know the (first) name. The perpetrators of a crime are generally left unidentified. Thus, even **in proceedings where the predicate offence is a computer fraud, the amounts confiscated are small compared to the property being the object of money laundering**.

Compared to computer frauds, the share of other predicate offences of money laundering is relatively small. In the period of 2010-2012, the second most common predicate crime of money laundering after computer fraud is **fraud/embezzlement** (§ 201 and § 209 of the Penal Code, these are closely related), there were six such procedures in 2010, seven in 2011 and five in 2012 (in addition in 2011 in one case also investment fraud (§ 211 of the Penal Code) and embezzlement (§ 202 of the Penal Code)).

In these criminal proceedings, property has been seized in individual cases and, as a rule, the amounts seized are large, but as the cases have not yet reached court, the money has not been confiscated.

In addition to computer frauds and frauds/embezzlements, other criminal offences have been the predicate offences of money laundering in only few cases. Other suspected predicate offences have also been¹:

- illegal handling of large quantities of narcotic drugs and psychotropic substances (§ 184 of the Penal Code) - once in 2010 and once in 2012;
- belonging to a criminal organisation (§ 255 of the Penal Code) - once in 2011;
- use of a falsified document (§ 333, 334, 345-347 of the Penal Code) - once in 2010;
- unlicensed and prohibited economic activities (§ 372 of the Penal Code) - once in 2010 and three times in 2012;
- tax frauds (§ 389¹ of the Penal Code) – once in 2011 and twice in 2012.

Seizures and confiscations have been carried out in few cases in these matters.

Thus, as a summary of the analysis results, it can be concluded that the circle of crimes that are predicate offences of money laundering is limited in Estonia, these are mostly fraud (and embezzlement) or computer fraud. The seizure of property is not a rule in money laundering proceedings within the framework of criminal proceedings, although there are examples where this has been done. Property is increasingly being confiscated pursuant to court decisions, but the amounts confiscated are generally small compared to the amount of the (alleged) predicate offence, as only small sums received by men of straw for making their accounts available are confiscated in case of computer fraud. In other single cases (e.g. cases where the predicate offence of money laundering is a tax offence), the court has also confiscated larger sums or money laundering funds.

According to the analysis “Crime in Estonia 2013” prepared by the Ministry of Justice, 2,451 frauds (of which 470 computer frauds), 701 financial crimes (tax evasion and tax fraud), 1,019 drug crimes and 322 corruption crimes were registered in 2013. **In the light of these statistics, the range of the main predicate offences for money laundering could be significantly wider²**

3. Assessment

Annex 1 includes a summary assessment of the risk of offences contained in the Penal Code from the aspect of money laundering based on the results of the analysis. The ratings are designed as follows:

¹ In Estonia, the so-called “*all crimes approach*” applies, ie virtually any crime can be a predicate offence of money laundering.

² The methodology of module 1 does not stipulate that the working group should separately analyze why the circle of predicate offences of money laundering is as it is and the reasons may lie in several circumstances (see eg module 2).

low	No proceedings have been initiated where the offence was a (suspected) predicate offence of money laundering in the period of 2010-2012
medium	At least one proceeding has been initiated where the offence has been a (suspected) predicate offence of money laundering in the period of 2010-2012
high	Money laundering investigations have been included in at least 5% of proceedings in the period of 2010-2012

The choice of such an analysis methodology was based on the result that the range of the crimes that are (suspected) predicate offences of money laundering is very limited in Estonia. As there have been few seizures and confiscations in these proceedings, the assessment was based not on the number of seizures/confiscations, but on the seriousness of the offence in terms of money laundering.

1. The offences which have not been the subject of any money laundering proceedings have been assessed as "low".
2. The offences that have been (allegedly) predicate offences of money laundering at least once in the period of 2010-2012 were assessed as "medium". However, it should be borne in mind that these are indeed single cases, so in the future it should be considered whether to include these in the "low" category.
3. These offences, which in a significant number of cases had been a (suspected) predicate offence of money laundering, were rated as "high". This included only computer fraud, where in 2010 in almost a tenth of cases the proceedings were accompanied by suspicion of money laundering (the total of 381 proceedings were initiated on the basis of § 213 of the Penal Code; in case of money laundering computer fraud was a suspected predicate offence 34 times). It should be taken into account that the definition of predicate offences was based on the data of the Financial Intelligence Unit, if it was not possible to understand on the basis of the data of the register of criminal proceedings which predicate offence was related to the money laundering criminal case. Thus, in practice, the number of proceedings dealing with both computer fraud and money laundering is even lower, and in the future it should be considered whether to include it in the "medium" category.

4. Proposals for adapting the methodology

As a result of the analysis the working group sees the need to adapt the World Bank's methodology in order to be able to draw meaningful conclusions about the risk of money laundering in the country.

- As only a few offences are (suspected) predicate offences of money laundering, a larger grouping of the offences listed in Annex 1 should be considered.
- Consideration should be given to adding columns to the World Bank table containing information on the status of persons and proceedings. Such additional information is needed to analyze, on the basis of money laundering proceedings initiated, which predicate offences are in fact at high risk of money laundering and how many persons and proceeds of crime are involved.

- If possible, the analysis of risks could also take into account the amount of so-called proceeds of crime in a certain area. While only frauds are currently identified as the most risky, due to confiscation statistics, drug offences and possibly tax offences should also be at higher risk of money laundering. It is not only the cases where money laundering proceedings have already been initiated that can be taken into account, but also the things that generate the most proceeds of crime.

The table could include the following information:

- phase of criminal proceedings

		Proceeding									
		Number of registered crimes	Number of proceedings where the offence has been a suspected predicate offence of money laundering	... including a predicate offence committed domestically	... including a predicate offence committed abroad	... The place where the predicate offence was committed is unknown	Number of persons who have been prosecuted for both the predicate offence and money laundering	Number of persons against whom the proceedings have been initiated only in money laundering	Number of money laundering proceedings where the procedure has been completed as of X.	Number of seizures made by law enforcement authorities in money laundering proceedings	Total amount of seizures by law enforcement authorities in money laundering proceedings (EUR)
§ 114	Murder										
§ 133, ...	Human trafficking...										

- phase of court proceedings

		Court proceedings						Notes
		Number of criminal cases sent to court, including money laundering	... Number of persons in matters of money laundering	Number of judgments where the persons have been convicted of money laundering	... Number of persons convicted in money laundering	... Number of confiscations	... Total amount of confiscations (EUR)	
§ 114	Murder							
§ 133, § 133 ¹ -133-3 (old 268-1)	Trafficking in human beings							

Annex 1. Division of crimes in the analysis and assessment of their risk from the aspect of money laundering

Areas*		ML Threat		
		High	Medium	Low
Predicate offences				
§ 114	Murder			
§ 133, § 133 ¹ -133-3 (old 268-1)	Trafficking in human beings (until 04/2012 enslavement), supporting trafficking in human beings, pimping, aiding of prostitution			
§ 134-136	Hostage taking and other restriction of liberty			
§ 138 - 140	Illegal conduct of human research, illegal removal of organs or tissue, inducing persons to donate organs or tissue			
§ 157 -157 ¹ ; § 243; § 316-1; § 323-1	Illegal disclosure of sensitive personal data; breach of professional secrecy which has become known in the course of professional or trade activities; communication of internal information; unlawful disclosure of information concerning pre-trial proceedings in criminal matters and surveillance proceedings; violation of confidentiality requirement			
§ 157 ²	Illegal use of another person 's identity			
§ 169 - 171, 173	Offences against the family for property			
§ 175 - 178	Aiding prostitution involving minors and use of minors in child pornography and erotic works			
§ 183 - 190	Unlawful handling of narcotic drugs and psychotropic substances			
§ 199	Larceny			
§ 200	Robbery			
§ 201	Embezzlement			
§ 202	Acquisition, storage or marketing of property received through commission of offence			
§ 206-206-1	Interference with computer data/ crime related to terminal equipment			
§ 209 - 212	Fraud (incl. benefit, investment, insurance fraud)			
§ 213	Computer-related fraud			
§ 214	Extortion			
§ 215	Unauthorized use of thing			
§ 217 ²	Abuse of trust			
§ 219 - 230	Chapter 14 Offences against intellectual property			
§ 232, 234	Treason; espionage			
§ 237 - § 237 ³	Acts of terrorism and their financing			
§ 241 - 242	Disclosure of state secrets and classified information of foreign states			
§ 255, 256	Criminal organisation and its formation			
§ 257	Arbitrary action			
§ 258, 259, § 260, § 260 ¹	Illegal crossing of state border or temporary border line of Republic of Estonia, illegal transportation of aliens across state border or temporary border line of Republic of Estonia, facilitation of stay in Estonia without legal basis, provision of employment for alien staying in Estonia without legal basis			

Areas*		ML Threat		
		High	Medium	Low
Predicate offences				
§ 280-281; 283-284	Submission of false information, submission of incorrect information to registrar of court register, Estonian Central Register of Securities, register of marital property, notary and enforcement agent; violation of land use requirements and procedure for maintaining the land cadastre; transfer of security codes			
§ 293 - § 298 ¹	Gratuities, bribe and influence peddling			
§ 291 - 292, § 299 - § 300 ²	Other offences relating to office			
§ 310 - 313, 326	Unlawful judgments and decisions			
§ 331 ¹	Failure to enforce court decision			
§ 331 ³	Knowingly unlawful seizure and sale of property by enforcement agent			
§ 319 - 321	False accusation, false testimony and perjury, false expert opinion, false translation			
§ 333 - 340	Counterfeiting, use of means of payment, security, money, revenue stamp, fineness mark, postal payment means			
§ 341, 344 - 349	Other counterfeiting and fraudulent use of the document			
§ 354 - 356	Damaging or destruction or cutting of trees and shrubs			
§ 363 - 368-2	Polluting and violation of waste management requirements			
§ 372 - 373	Economic activities without activity licence and prohibited economic activities and violation of a prohibition on business or a prohibition to work in a particular profession or position			
§ 374 - 376	Illegal production of alcohol and tobacco products, violation of alcohol handling procedures			
§ 376 ¹ - § 376 ²	Unlawful removal of additives from liquid fuel with fiscal marker and handling of liquid fuel obtained as result thereof; unlawful handling of liquid fuels not meeting the quality requirements			
§ 377 - 378	Unjustified disclosure and use of business secret			
§ 379 - 382, excl 380	Failure to submit or incorrect submission of results of audit or special audit; submission of incorrect information concerning financial situation of or other verifiable circumstances relating to company; violation of obligation to maintain accounting; submission of incorrect information to auditor or person conducting special audit			
§ 380	Failure to call meeting of shareholders and members of commercial association			
§ 384 - § 385 ¹	Causing insolvency; concealment of property in bankruptcy and execution proceedings; failure to perform obligation to submit petition in bankruptcy			
§ 389 ¹ 390	Major tax fraud, obstruction of activities of tax authority			
§ 389 ²	Major tax fraud			
§ 391 - 393	Illicit traffic; illicit import and export of prohibited goods or goods requiring a special permit; Unlawful acts with goods subject to customs preferences			
§ 394	Money laundering			
§ 395 - 396	Failure to comply with identification requirement; failure to report suspicious transaction, submission of incorrect information			
§ 397 - § 398 ¹	Offences relating to securities circulation			
§ 399 - 402	Competition offence			
§ 402 ¹	Violation of restrictions imposed on the economic activities and property of a political party			

Areas*		ML Threat		
		High	Medium	Low
<i>Predicate offences</i>				
§ 414 - 420	Offences relating to handling of firearms and explosives			