

## MODULE- 2 NATIONAL VULNERABILITY SUMMARY

### 1. Members of the working group:

- (Ministry of Finance, head of the working group)
- (Financial Intelligence Unit)
- (Financial Intelligence Unit)
- (Ministry of the Interior)
- (Police and Border Guard Board)
- (Ministry of Justice)
- (Ministry of Foreign Affairs)
- (Tax and Customs Board)
- (Tax and Customs Board)
- (Internal Security Service)
- (Internal Security Service)

In addition to the members of the working group, the following contributed to this module:

- Financial Supervision Authority<sup>1</sup>
- Institutions of the Ministry of the Interior (relevant departments and prefectures of the Police and Border Guard Board through the Ministry of the Interior).

### 2. Composition of Module 2

Module 2 consists of the following documents:

- **Module 2:** includes assessments and justifications from the relevant authorities<sup>2</sup> (according to the World Bank methodology the justifications are presented as separate bullets);  
**Module 2 summary:** i.e. this summary;

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<sup>1</sup> The Financial Supervision Authority provided inputs by e-mail.

<sup>2</sup> The members of the respective subgroup provided input in Estonian to the Module 2 (in English).

- **Annex of Module 2:** illustrates the framework underlying the national vulnerability module and explains the interactions between the variables to be assessed;
- **Excel tables of Module 2:** shows the risks generated by the national vulnerability module in tabular form.

### 3. The aim of the module and description of the structure

The aim of this module (Module 2) is to analyze and assess the circumstances affecting national vulnerability as to money laundering and terrorist financing. Risks are different, including the perceptions of individuals regarding risk assessment and their effects. Therefore, the aim of this module is not to assess and identify risks in such a way that these can be compared with the risks of other countries. Instead, this module analyzes and identifies national risks so that their effects can be better understood. It is important to carry out a similar assessment on a regular basis so that it is possible to monitor whether the risks are increasing or decreasing.

In this module, variables had to be assessed on the basis of the criteria set out in the World Bank methodology<sup>3</sup>. It is important to justify your choices, as the risk assessment is regularly updated and the source data is necessary to maintain consistency. If the next risk assessment is prepared based on the same variables and same criteria, it is possible to compare the results and assess whether the "national vulnerability" has increased or decreased.

According to the guidelines given by the World Bank at the seminar, the rationale for the assessments can be briefly described and structured as bullet points. Instead of short descriptions, important or problematic places are explained in more detail in the module instead of short descriptions. In addition, the expert assessments and recommendations of MONEYVAL Estonia's 4th round of evaluation (hereinafter referred to as the MONEYVAL report or report)<sup>4</sup> are described in important issues and the relevant extracts from the report are included, but they did not affect these assessments. A more thorough analysis, including a more detailed description of the inputs received, will provide a better overview of the current situation and problem areas. It is also possible to draw better conclusions and assessments on the basis of a more in-depth analysis and to update the risk assessment in the future. Module 2 also includes the proposals of the working group, which may be modified or specified in the action plan as necessary in cooperation with the relevant authorities. Module 2 also uses the explanations given in the other modules in case the criteria overlapped.

In this summary the variables of Module 2 and the estimates given have been briefly described. More detailed justifications have been provided in the document of Module 2.

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<sup>3</sup> See pages 4-5 of the module for detailed instructions.

<sup>4</sup> MONEYVAL Estonia's 4th round of evaluation and its summary can be found on the MONEYVAL website:

[http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Estonia\\_en.asp](http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Estonia_en.asp)

## 4. Assessment

### 4.1. Policy making and implementation

This variable required an assessment of policy making and implementation, including whether and how the state conducts money laundering and terrorist financing risk assessment and how to respond to the risks. The main inputs were provided by the Ministry of Finance (hereinafter referred to as RAM) and the Financial Intelligence Unit (hereinafter referred to as RAB).

Until now, the main focus of risk analysis has been the Government Committee on the Prevention of Money Laundering, and the authorities have assessed the risks of money laundering and terrorist financing individually. So far, this system has worked effectively. In the future it is planned to assess the risks of money laundering and terrorist financing in a more coordinated, regular and systematic manner - for the first time, Estonia will prepare a national cross-agency risk assessment of money laundering and terrorist financing by using the World Bank methodology (hereinafter *risk assessment*). It is planned to update the completed risk assessment regularly (every 3-5 years). In the MONEYVAL report, the evaluators have praised Estonia for starting to prepare cross-agency risk assessment.

Although the current system (so-called internal risk assessments) has so far been sufficient for risk assessment, the cross-agency risk assessment is a better way to assess risks, as it analyzes risks more systematically (based on the World Bank methodology).

Based on the above, the variable is estimated at **0.90, i.e. medium/high**.

#### Proposals:

- Regular risk assessments are important for a better overview and the risk assessment should be regularly updated.<sup>5</sup>

### 4.2. Criminalization of money laundering

Within the framework of this variable, it had to be assessed whether money laundering is sufficiently criminalized and the main inputs were provided by the Ministry of Justice (hereinafter referred to as JUM) and RAM. The recommendations of MONEYVAL III report have been also reflected.

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<sup>5</sup> Estonia has the right to use the World Bank's methodology for risk assessment in the future also free of charge and without restrictions, incl. we can always supplement the existing methodology according to our own needs.

Money laundering has been criminalized in accordance with § 394 of the Penal Code. Conspiracy is now also criminalized. **It should be further analyzed whether money laundering in case of negligence could also be criminalized. This requirement arises** from the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (hereinafter referred to as the *Warsaw Convention*), which Estonia signed on 7 March 2013, but has not yet ratified. The ratification of the Warsaw Convention is possible when the Estonian legal system is fully aligned with the Warsaw Convention. The ratification of the Warsaw Convention should be addressed as a matter of urgency, as most Council of Europe countries have already ratified the convention to date or are about to do so.

In the report the experts have recommended reviewing the definition of money laundering in § 4 of the Money Laundering and Terrorist Financing Prevention Act (hereinafter referred to as RahaPTS). The elements of the composition of the money laundering crime in § 4 of RahaPTS need to be better aligned with Vienna and Palermo Conventions and options for reducing the burden of proof need to be considered in order to remove obstacles in practice in convictions in autonomous<sup>6</sup> money laundering cases.

At the same time, it can be said that the shortcomings in the criminalization of money laundering are not big, incl. MONEYVAL experts have assessed the implementation of FATF Recommendations 1 and 2<sup>7</sup> according to LC<sup>8</sup> and C, however, given the importance of the topic and the difficulties of implementation in practice, this variable is estimated **at 0.7, i.e. medium/ high.**

#### Proposals:

To achieve the compatibility of the legal system with Vienna, Palermo and Warsaw Conventions and eliminate practical difficulties with regard to the burden of proof by relevant trainings or by clarifying the regulations<sup>9</sup>.

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<sup>6</sup> In case of an autonomous money laundering crime, there is no conviction for a predicate offence.

<sup>7</sup> Rec 1 and 2 of the old FATF recommendations.

<sup>8</sup> In round III of MONEYVAL, the recommendation 1 was rated LC and in round IV the score did not change. In round III of MONEYVAL, the recommendation 2 was rated C, and in round IV this recommendation was not re-evaluated. Rating scale: LC, i.e. in English *largely compliant* means *suuresti täidetud* in Estonian, C i.e. in English *compliant* means *täielikult täidetud* in Estonian, PC, i.e. partially compliant in English means *osaliselt täidetud* in Estonian.

<sup>9</sup> For example, eliminating different interpretations of the concept of money laundering and developing more uniform procedural practices by opening up terms (e.g. criminal activity, concealment of origin/true nature).

### 4.3. STR data analyses

Within this variable, it had to be assessed whether the Financial Intelligence Unit effectively collects, stores, analyzes and distributes suspicious transaction reports. The main input was provided by the Ministry of the Interior (hereinafter referred to as SIM) and the SIM institutions KAPO, RAB, PPA, including prefectures (hereinafter referred to as SIM institutions).

The compliance with FATF recommendations 26 (Financial Intelligence Unit), 30 (resources, integrity and training), 31 (international cooperation) and 32 has been assessed by the experts of MONEYVAL round IV at LC<sup>10</sup>. The experts have pointed out in the report as the main shortcomings the insufficient possibilities of the Financial Intelligence Unit to request additional information from lawyers and the risks of data confidentiality when requesting information from persons outside the scope of RahaPTS. RAB is recommended to collect better statistics on on-the-spot evaluation visits and inquiries to RAB in the future. In addition, RAB's IT systems should be supplemented accordingly (more detailed analysis in the module). As the period of 2010-2012 was assessed in the framework of this risk assessment, the recommendations of the above-mentioned round IV have not been directly taken into account in determining the rating of this variable. The analysis contained in the module shows that the messages transmitted are largely correct. NGOs, bailiffs and trustees in bankruptcy make fewer reports. Regarding the quality of suspicious reports, paying agencies still have room for improvement, which is why this variable has been assessed with a score of **0.70, i.e. medium/high**.

#### Proposals:

- To supplement RahaPTS<sup>11</sup> so that RAB has the opportunity to request additional information from lawyers and to ensure the confidentiality of data when requesting information from persons outside the scope of RahaPTS.
- Supervisors should increase their cooperation<sup>12</sup>.
- RAB could further collect better statistics on on-the-spot monitoring visits and inquiries to RAB, as well as on official requests for assistance on money laundering and terrorist financing.
- Appropriate IT systems of RAB should be developed for better statistics collection and more efficient analysis of reports and information sharing.

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<sup>10</sup> Relevant recommendations have been provided in the new standards 29, 2 and 33.

<sup>11</sup> Money Laundering and Terrorist Financing Prevention Act, i.e. RahaPTS.

<sup>12</sup> Cooperation of RAB with the Chamber of Notaries and Estonian Bar Association.

#### 4.4. Capacity of financial crime investigators

This variable assessed the capacity of financial crime investigators to investigate money laundering crimes effectively. "Capacity" in this module means the skills, experience, resources and authority to effectively investigate the relevant crimes. The main input was provided by SIM and SIM institutions (RAB and PPA, incl. prefectures). In addition, JUM, RAM and Tax and Customs Board (hereinafter referred to as *MTA*) also provided inputs.

The main shortcoming of investigators according to national experts is limited labour resources, which makes it impossible for investigators to actively deal with all pending criminal cases. Various in-service trainings have been offered to officials to specialize in the field of financial crime. At the same time, there could still be more relevant trainings, including money laundering in particular. The inputs also show that the busiest prefecture is the Northern Prefecture, where an increase in resources/restructuring of work would probably be most needed. As the Estonian case law on money laundering crimes is young and often contradictory, the prosecutors would definitely need more substantive trainings based on court decisions.

Considering the above shortcomings, this variable has been assessed with a score of **0.60, i.e. medium.**

##### Proposals:

1. To reduce high workload and change the motivation system so that investigators are motivated to investigate complex financial crimes<sup>13</sup>
2. To analyze whether it is expedient to harmonize the level of financial crime services in the investigation of financial crimes, including money laundering, and increase the resources and knowledge of investigators, especially in the Northern Prefecture, or whether the respective capabilities should be concentrated in the Central Criminal Police<sup>14</sup>.

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<sup>13</sup> The anti-corruption strategy also includes concrete actions to improve the investigation of financial crimes.

<sup>14</sup> *The developments in criminal policy in 2018 provide for the following (paragraph 28): In order to combat serious and highly damaging financial and corruption crimes, a sufficient number of investigators and prosecutors specializing in these crimes should be provided in each investigative body and district prosecutor's office. See:*

[http://www.just.ee/sites/www.just.ee/files/elfinder/article\\_files/kriminaalpoliitika\\_arengusuunad\\_aastani\\_2018.pdf](http://www.just.ee/sites/www.just.ee/files/elfinder/article_files/kriminaalpoliitika_arengusuunad_aastani_2018.pdf)

According to the remark submitted by the Ministry of the Interior, the capacity of financial crimes in the Central Criminal Police is being developed in parallel with the capacity of corruption crimes. It should be further analyzed whether it makes sense to carry out a similar capacity development in the Northern Prefecture or whether it should be concentrated in the Central Criminal Police, similarly to corruption offences.

#### 4.5. Integrity and independence of financial crime investigators

This variable assesses whether investigators are able to conduct money laundering investigations independently and without influence. Inputs were provided by SIM institutions, JUM, Prosecutor's Office, MTA and FI.

In conclusion, input providers found that financial crime investigators are generally honest and independent in their decisions and that influences (e.g. by politicians or media) have occurred, but are still rare. The proceedings shall be conducted in accordance with the instructions of the prosecutor leading the proceedings. As a problem it has been pointed out that money laundering investigators do not have additional mechanisms in place to ensure independence compared to other investigators. Investigators have high workload and motivation system that does not support solving complex and voluminous crimes (so-called scoring), but does not directly affect the integrity and independence of investigators. The same applies to the management of the prosecution's resources and proceedings.

Based on the above, the variable is estimated at **0.90, i.e. high**.

##### Proposals:

- To analyze whether investigators can be provided with additional mechanisms to ensure even greater independence compared to other investigators.

#### 4.6. International cooperation in criminal matters

Within the framework of this variable, the activity of the state in providing and requesting international legal assistance had to be assessed. If there is international cooperation in criminal matters, criminals will be less able to escape responsibility. Inputs were provided by RAM, SIM institutions, JUM and the prosecutor's office.

In conclusion, there are no major gaps in international cooperation, i.e. all relevant authorities respond to the requests for mutual legal assistance (hereinafter MLAs<sup>15</sup>) within reasonable time and often faster than other countries. It is rather a problem to get help from certain other countries (e.g. Russia, Cyprus).

In round IV, MONEYVAL experts assessed compliance with the international cooperation standard with an LC<sup>16</sup> rating. According to experts, the requirement of dual criminality may limit international assistance, as there are some shortcomings in the criminalization of terrorist financing. The compliance with MLAs may also be limited by deficiencies identified in the implementation of FATF Standard 3<sup>17</sup>. In practice, these shortcomings have not hindered international cooperation so far, and the results of round IV have not been taken into account

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<sup>15</sup> Mutual Legal Assistance, i.e. MLA as an abbreviation means *rahvusvahelist abipalve* in Estonian.

<sup>16</sup> LC, i.e. *largely compliant*, i.e. *suuesti täidetud* in Estonian.

<sup>17</sup> Old FATF standard no. 3 regulates confiscation and other temporary restrictive measures.

in the assessment, as the period 2010-2012 was assessed in the framework of this risk assessment.

Considering the above, this variable has been assessed **with the rating of 0.81, i.e. high.**

Proposals:

- To analyze the recommendations made by MONEYVAL, in particular whether the requirement of dual criminality limits the provision of international assistance, as there are some shortcomings in the criminalization of terrorist financing and whether the compliance with MLAs may be limited by shortcomings identified in the implementation of FATF Standard 3<sup>18</sup>;
- Law enforcement authorities could be even more active in submitting MLAs to other countries in the future.

#### **4.7. Integrity and independence of financial crime prosecutors**

This variable assesses whether prosecutors specializing in financial crimes are able to perform their duties independently and without interference. Inputs were provided primarily by JUM, Prosecutor's Office and SIM institutions.

The feedback was the same as for investigators specializing in financial crime investigations. Due to problems in practice, this variable was **rated 0.9, i.e. high.**

#### **4.8. Capacity of financial crime prosecutors**

Within the framework of this variable, the capacity of prosecutors specializing in financial crimes is assessed, i.e. whether they act skilfully and effectively. The inputs were primarily provided by JUM, Prosecutor's Office and SIM institutions.

Most input providers refer to the need for more specialized prosecutors, as a specialized prosecutor is considered to be more effective. The main problem is the high workload of prosecutors, especially in the Northern District Prosecutor's Office. There are also some shortcomings in training.

Based on the above, this rating is **0.61, which is the lowest rating on the scale medium/high.**

Proposals:

- To analyze the specialization of prosecutors or increase resources and change the motivation system so that prosecutors are more motivated to prosecute more financial crimes, including money laundering crimes.
- Provide additional relevant trainings for prosecutors, including abroad.

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<sup>18</sup> Old FATF standard no. 3 regulates confiscation and other temporary restrictive measures.

#### 4.9. Domestic cooperation

Within this variable, national cooperation was assessed and all members of this subgroup provided input.

As there are few shortcomings in practice, national cooperation was assessed with the rating of **0.75, i.e. medium/high**. The shortcomings are mainly related to technical issues (e.g. access to certain information is currently limited), which can be solved in practice, but such developments would require additional resources.

##### Proposals:

- To analyze the possibilities of creating access for MTA to MIS platform, which includes information on initiated money laundering investigations.
- To analyze more precise possibilities of regulating the systematic sharing of operational information between MTA and RAB in accordance with the recommendations given by MONEYVAL experts.
- RAB could increase supervisory cooperation with the Chamber of Notaries and Estonian Bar Association.

#### 4.10. Integrity and independence of presiding officers

Within the framework of this variable, integrity and independence of presiding officers<sup>19</sup> had to be assessed. Inputs were provided by the Ministry of Justice, Prosecutor's Office, Tax and Customs Board, Ministry of the Interior and its institutions

The input providers consider that presiding officers are independent and unaffected in their work. Following the example of corrupt judges, acts have been taken for personal gain rather than by influence. (see <http://www.korruptsioon.ee/orb.aw/class=file/action=preview/id=53634/Eesti+kohtunike+ja+prokur%F6ride+m%F5jutamine.pdf>). The greatest tangible influence is through media. Political pressure is not perceptible. Due to the separation of powers and also the actual situation, politicians and other influential persons are not able to influence the course of money laundering by their intervention. The lifetime term of office of presiding officers guarantees their independence.

For the reasons mentioned above, this variable is rated with a high **rating of 1.00, i.e. high**.

#### 4.11. Capacity of presiding officers

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<sup>19</sup> According to the explanations of World Bank, within this variable the "*presiding officers*" should be understood as judges in our legal system.

Within the framework of this variable, the capacity of presiding officers, i.e. knowledge and skills, had to be assessed. Inputs were provided by JUM, Prosecutor's Office, MTA and SIM institutions.

Judges receive training, but the specialization of judges is only partial, which means that criminal cases can also fall on a judge who has not previously dealt with complex financial matters or who does not have sufficient expertise. It is found that there is a clear need for in-service training and specialized judges. The solutions to money laundering offences are often different and also subject to different interpretations. It can be concluded from the latter that judges also interpret violations differently for themselves and may need further training in this area. It seems to some investigators that money laundering is currently viewed in a very narrow sense, although the composition arising from the Penal Code would allow it to be viewed more broadly (this would not be in conflict with FATF). The performance of judges in the pre-trial phase is assessed as good. Judges make decisions quickly during the pre-trial phase and there have been no obstacles to procrastination. In court proceedings, however, things tend to drag on. Due to the lack of specialization, the bottlenecks are currently overcome as a rule by involving specialists.

Based on the above, the rating given to this variable is **0.60, i.e. medium**.

#### Proposals:

- To provide appropriate trainings for judges on a regular basis.
- To consider opportunities for the specialization of judges and increase resources to ensure faster casework and competent decisions.

#### **4.12. Criminal penalties**

Within the framework of this variable, it was necessary to assess whether the existing criminal penalties are sufficient. Inputs were provided by the Ministry of Justice, Prosecutor's Office, MTA and institutions of the Ministry of the Interior.

According to the Ministry of Justice and Prosecutor's Office, the penalties imposed on persons in case of conviction are adequate. At the same time, for example, the Tax and Customs Board has found that the levels of punishment provided by law are sufficient, but the punishments imposed by courts are too lenient, which is probably a matter of general penal policy. MONEYVAL experts have not directly criticized the adequacy of the criminal penalties. The other institutions that participated in the working group have not referred to any problems either.

Based on the above, the rating given to this variable is **0.80, i.e. the highest rating on the scale medium/high**.

The members of the working group did not propose to change the penalty rates. At the same time, the leniency of the sentence imposed depends on the decisions of the judges, including the general penal policy and case law.

#### **4.13. Asset forfeiture laws**

Within the framework of this variable, it had to be assessed whether the current regulation of forfeiture of property was sufficient and effective. Inputs were provided by JUM, Prosecutor's Office, MTA and SIM institutions.

In case of forfeiture of property, the fact that a person has received the proceeds of crime, but has used it up and has knowingly "transferred" his or her legal property to the third party to avoid the replacement of confiscation, has often proved problematic, so it is not possible to confiscate this property from the third party. According to SIM and its institutions, in order to carry out a purposeful fight, the legislation needs to be streamlined, i.e. the grounds for applying confiscation and the list of criminal offences need to be expanded. According to JUM, the amendments to the Penal Code that entered into force on 8 March 2014 are a step in the right direction, but at the same time there are still weaknesses, such as the issue of realization of confiscated property. According to JUM, the "ball" is in the hands of SIM regarding the sale of confiscated property. The revision of the regulation of asset forfeiture is also necessary for the ratification of the Warsaw Convention<sup>20</sup>.

In the context of MONEYVAL round IV, the experts also made recommendations for improving the regulation of asset forfeiture, which should be taken into account in the future, but the recommendations made in the assessment of this variable were not taken into account as the current risk assessment focused on the assessment of 2010-2012.

Based on the above, the rating given to this variable is **0.60, i.e. medium**.

#### Proposals:

- To analyze the shortcomings of the confiscation and forfeiture regime, including the recommendations made by MONEYVAL experts in the round IV report, and ensure that the legal system complies with the Warsaw Convention.
- To raise awareness through appropriate trainings and guidance.

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<sup>20</sup> Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

#### **4.14. Capacity of asset forfeiture investigators**

Within the framework of this variable, the competence and skills of investigators involved in the forfeiture of property in performing forfeiture operations had to be assessed. Inputs were provided by JUM, Prosecutor's Office, MTA and SIM institutions.

It was found that specialized officials generally existed. There is currently a natural process of gaining experience and training. The experience of the prefectures with the investigators of proceeds of crime is positive and the analyses and observations prepared by them are up-to-date and correct. There are no big problems, but there could be more trainings.

MONEYVAL evaluators have identified some weaknesses and made relevant recommendations in round IV regarding the compliance with the relevant FATF standards, but these recommendations and assessments have not been taken into account in the assessment of this variable, as this risk assessment focused on the assessment of the period of 2010-2012.

Based on the above, the rating given to this variable is **0.70, i.e. medium/high**.

##### Proposals:

- To analyze and, if possible, implement the relevant recommendations of MONEYVAL experts.
- To organize in-service training for investigators.
- To improve existing technical tools.

#### **4.15. Integrity and independence of asset forfeiture investigators**

This variable required an assessment of the integrity and independence of the investigators involved in the forfeiture of property. Inputs were provided by the Ministry of Justice, Prosecutor's Office and Ministry of the Interior and its institutions.

Collectively, investigators have been found to be independent and honest in their decisions. Decisions are based on the law and there has been no pressure from politicians (incl. investigators have not perceived this). The assessments given in the work are in place both subjectively and objectively for the investigators of proceeds of crime. According to the authorities that provided the inputs, there are no cases where the officials concerned have been affected or there is such a real risk.

Based on the above, the rating given to this variable is **1.00, i.e. high**.

#### **4.16. Asset forfeiture orders**

Within the framework of this variable, the decisions on forfeiture of property and their so-called quality had to be assessed. Inputs were provided by MTA and SIM institutions (prefectures).

The confiscation requests are substantiated in their content and there have been no objections. Confiscation capacity has increased within recent years. Legislation allows for separate confiscation proceedings in case of special complexity and volume of circumstances related to confiscation pursuant to § 403<sup>1</sup> of Code of Criminal Procedure. MTA has initiated 2 confiscation proceedings in 2010-2012, of which 1 has been completed. Problems have been with the long retention periods of property confiscated or seized to secure confiscation (high storage costs) and the fact that it takes a very long time to realize after the judgment (impairment of property). To sum up, the handling of seized and confiscated property is very costly for the state. The relevant court orders are coming soon, but the problem is that the legislation does not allow the so-called confiscation of property from bona fide third parties. It is difficult to prove a criminal third party and this is the responsibility of the person conducting the proceedings.

Based on the above, the rating given to this variable is **0.60, i.e. medium**.

#### Proposals:

To analyze the possibilities of changing the safekeeping of confiscated property or the ones seized to ensure confiscation (long deadlines and high storage costs) and the possibilities of making the asset realization system more efficient (for example, the problem is the realization of seized or confiscated property after the court decision, which takes a lot of time, which in turn causes impairment of the asset and additional costs in the proceedings).<sup>21</sup>

#### **4.17. International cooperation in asset forfeiture**

Within the framework of this variable, international cooperation related to forfeiture of property had to be assessed. Inputs were provided primarily by SIM institutions (prefectures).

International cooperation was highly rated (LC<sup>22</sup>) by MONEYVAL evaluators in both rounds III and IV. The deficiencies observed were minimal. The prefectures confirmed the existence of good cooperation. Estonia effectively cooperates internationally and responds to requests for assistance from other countries in almost twice as short period than other countries, although the respective procedures need to be formally improved (internal procedures of the Prosecutor's Office). Estonia has rather problems receiving assistance from certain countries (e.g. Cyprus, Russia, etc.), but this shortcoming does not depend on Estonia in any way.

MONEYVAL evaluators have identified some weaknesses and recommendations in round IV regarding the compliance with the relevant FATF standards, but these recommendations and

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<sup>21</sup> These issues also need to be analyzed in order to ratify the Warsaw Convention.

<sup>22</sup> LC, i.e. largely compliant.

assessments have not been taken into account in the assessment of this variable, as this risk assessment focused on the assessment of the period 2010-2012.

Based on the above, the given rating is **0.90, i.e. high**.

#### Proposal:

To analyze and, if possible, implement the recommendations given by MONEYVAL experts.

#### **4.18 Auditing and accounting standards and practices**

Within this variable, it had to be assessed whether the relevant auditing and accounting standards have been implemented by the state and whether they are complied with in practice. The inputs were provided by RAM and MTA.

Estonia applies IAS and ISA standards, but, for example, according to MTA, the discipline of complying with national and international standards is not good. In Estonia, failure to submit and incorrect submission of the results of audits and special audits is criminalized pursuant to § 379 of the Penal Code; violation of accounting obligations pursuant to § 381<sup>1</sup> of the Penal Code. At the same time, there are no convictions, at least with regard to auditors. Thus, Estonia has room for development here.

As part of the evaluation of the OECD's Foreign Bribery Convention, external experts have found that auditors are well aware of due diligence measures to prevent money laundering and terrorist financing. MONEYVAL evaluators were also satisfied with the awareness of auditors and accountants in round IV.

Based on the above, the rating given to this variable is **0.81, i.e. high**.

#### **4.19. Identification infrastructure**

Within the framework of this variable, it was necessary to assess which are the possibilities for identifying persons. The Ministry of the Interior is responsible for the creating and development of the identity documents and identity management policy of the Republic of Estonia. Based on the above, the Ministry of the Interior provided input within the framework of this variable.

The identity documents (incl. digital) issued by the state in the Republic of Estonia are strictly distinguished from the documents issued by the private sector. This means that in Estonia identity documents are issued with a state guarantee - the state has a monopoly, an exclusive right to identify a person and confirm his or her identity in future procedures for issuing identity documents, including issuing identity documents (also certificates, which are identity documents within the meaning of the Identity Documents Act (ITDS)) that confirm to the other party the identity of a person "created" (or identified) by the state. This means that since only

the state has the right to establish a person's public identity, identity management is centralized in Estonia. Thanks to centralized identity management, it is not possible for a person once identified to use another identity, as his or her personal data is stored centrally in a database of identity documents.

It can be seen from the above that the principle “1 person = 1 identity”, centralized identity management and also the online possibility to check the validity and identity of a document (incl. certificates) are essential in the Estonian ID system because these are basic tools to avoid double identities. The measures described also help to combat identity theft and the use of false identities and to detect the misuse of data.

The data in the database of identity documents shall be kept as secure as possible and the data quality shall be constantly monitored. One important and complex part of identity management is the verification of the authenticity of the basic documents submitted by aliens, which largely depends on the answers and quality of inquiries made by individuals to the countries of nationality.

Based on the above, this variable is rated **1, i.e. high**.

#### **4.20. Availability of independent information sources**

Within the framework of this variable, it had to be assessed whether a suitable system has been established in Estonia for verifying the submitted or collected data from independent sources, as well as which are the rules for data storage, etc. The inputs were provided by RAM, FI and MTA.

Estonia has a suitable system in place to verify the data submitted or collected from independent sources. Taking into account the norms of RahaPTS, it can be said that in Estonia the legislation specifies exactly which information should be collected regarding the client or the person participating in the transaction. The provisions of this law also comply with the European Union directives and international standards.

Based on the above, this variable has been rated **1, i.e. high**.

#### **4.21. Corporate and trust transparency**

Within the framework of this variable, laws and systems that ensure the transparency of legal entities and trusts had to be assessed. The inputs were provided by RAM and FI.

The identification of the beneficial owner depends to a large extent on the availability of data based on the supervisory findings. In complex ownership structures, it is difficult to identify the beneficial owner through the direct or indirect holding or control of shares, stocks or

voting rights, including in the form of bearer shares. In this case, there is also a problem in identifying the beneficial owner who otherwise controls the management of the legal entity. However, in case of complex ownership structures, verification in another way is one of the main ways to identify the beneficial owner.

In the report of MONEYVAL's 4th round of evaluation of Estonia, the experts assessed the compliance of FATF recommendation no. 33 (transparency of legal entities and beneficial owners) with the rating of PC and special recommendation no. VIII (non-profit organizations) with the rating of LC. While in the case of non-profit organizations, experts criticized only the limited information activities and lack of supervision, more extensive recommendations were made regarding the transparency of legal entities and the system for identifying the beneficial owners, including the business register. The biggest shortcomings mentioned by experts are the lack of verification of the data included in the business register, which in turn means that the accuracy of the data included in the business register is not guaranteed.

Based on the above, the variable is estimated at **0.50, i.e. medium**. The problems that arose in practice during the assessment were decisive in the assessment of the period 2010-2012, and MONEYVAL round IV assessments were not taken into account in the assessment of this variable, but these have been considered in making the proposals.

#### Proposals:

To analyze and, if possible, implement the recommendations of MONEYVAL experts to ensure transparency of legal entities and beneficial owners.

#### **4.22. Tax disclosure**

Within the framework of this variable, it had to be assessed whether the tax system in force in Estonia ensures sufficient transparency in financial matters, persons and residents, and how the exchange of information between MTA and the relevant law enforcement bodies takes place. The inputs were provided by RAM, MTA, SIM and SIM institutions (incl. prefectures).

The Estonian tax system is transparent and systematic. The tax information concerning persons (income, turnover) is available to the tax authority, which is ensured by the legal obligation to provide data. Business-related tax data should be submitted on a monthly basis, the data related to a natural person once a year. 95% of the data processing is electronic, which ensures efficient analysis.

Other indicators related to tax compliance, the existence of property and its change can be received electronically by the tax authority from the databases of other agencies via X-Road - real estate register, vehicle register, etc. The availability of this information to other national law enforcement authorities is governed by cooperation agreements, and officials of other authorities are guaranteed access to certain types of personal tax data.

MTA can also forward this information to the law enforcement agencies of other countries pursuant to legal aid and international agreements.

Tax information is shared with law enforcement authorities online (data is accessed through the information system and data is shared with the submission deadline). The proceeds of crime and cooperation in the field of tax control have recently improved and can be seen to improve in the future as well, where it is not possible to prove the proceeds of crime of persons, but for which MTA conducts the tax proceedings.

Based on the above, the variable is estimated at **0.91, i.e. high**.

#### **4.23. Financial integrity**

Adherence to business and professional ethics had to be assessed within this variable. When business and professional ethics are observed at a high level, it is more difficult for criminals to launder money and commit other crimes. The inputs were provided by SIM institutions and JUM. Relevant explanations of the banking module (Module 3) have also been copied.

Relevant laws and the principles set out in the Code of Good Corporate Governance ensure the competence and professional ethics of the management bodies of legal entities. The Estonian economic environment is predominantly ethical and transparent, but there are also sectors that confirm the problematic nature of transparency (e.g., according to the 2010 corruption survey, technical inspection points and doctors were at risk)<sup>23</sup>.

Public procurement can also be mentioned as a problem area. The problem is the change in the ethical values and perceptions of the population (what was unethical yesterday may be ethical tomorrow), which may start to have an impact on the financial environment and its transparency.

Based on the above, the rating of this variable is **0.81, i.e. high**.

#### Proposals:

To continue to pay close attention to preventing and responding to corruption.

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<sup>23</sup> See more: WB Doing Business: <http://doingbusiness.org/data/exploreconomies/estonia>

Transparency international: <http://www.transparency.ee/>

Basel Institute of Governance:

<http://index.baselgovernance.org/Index.html#introduction>

<http://index.baselgovernance.org/Index.html#map>

<http://index.baselgovernance.org/Index.html#ranking>

ACAMS – Association of Certified Anti-Money Laundering Specialists

#### 4.24. Formalization of economy

Within the framework of this variable, the share of the black economy had to be assessed. The input was provided by MTA and RAM.

According to the calculations of MTA, the tax hole in 2011 was € 422 million, i.e. 2.6% of GDP. A year earlier, it was € 481 million. The decrease in the amount of the tax hole in 2011 is due to the decrease in the loss of income and social tax and fuel excise duty. The amount of VAT losses increased by € 8 million, but considering the general economic development, it is not significant. The hole in tobacco excise duty also increased slightly. The main change in the structure of the whole tax hole was an increase in the proportion of VAT losses above 50% of the total tax hole (VAT losses 54% of the total tax hole), mainly due to a decrease in other tax losses rather than an increase in VAT losses.

According to Estonian Institute of Economic Research (EKI), the share of the black economy in 2012 is estimated at 8% of GDP. Assessing the share of the black economy in the purchases of the population, it can be concluded that compared to 2010, the share of the consumers who base their decision only on the more favourable price of goods and services and do not pay attention to its possible illegal origin has decreased. The share of respondents based solely on the price decreased by 13% in 2011 (18% in 2010). In 2011, 17% of envelope wage earners earned their total income, which is more than in 2010 (11%).

According to the methodology, in case of Estonian indicators, the rating should be **0.9, i.e. high.**

#### Proposals:

To continue to combat the black economy.