

FICIL Position Paper No. 8

Foreign Investors' Council in Latvia on the Improvement of Combating Economic and Financial Crime

10 September 2020

Introduction



The Latvian Government's 2019 response to the report of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), which showed Latvia's commitment to dealing with economic and financial crime and provided for a clear plan to restore the reputation of the financial sector destroyed in 2018, has not gone unnoticed in the local and international community. The follow-up MONEYVAL report at the beginning of 2020 acknowledged that the Latvian regulatory framework for the prevention of money laundering and terrorism and proliferation financing (AML/CFT) largely complies with the international standards set by the Financial Action Task Force (FATF). Entrepreneurs in Latvia also awaited the evaluations of MONEYVAL and FATF with great interest, as this would significantly enhance investor confidence in the Latvian financial sector and ensure the stability of the business environment.

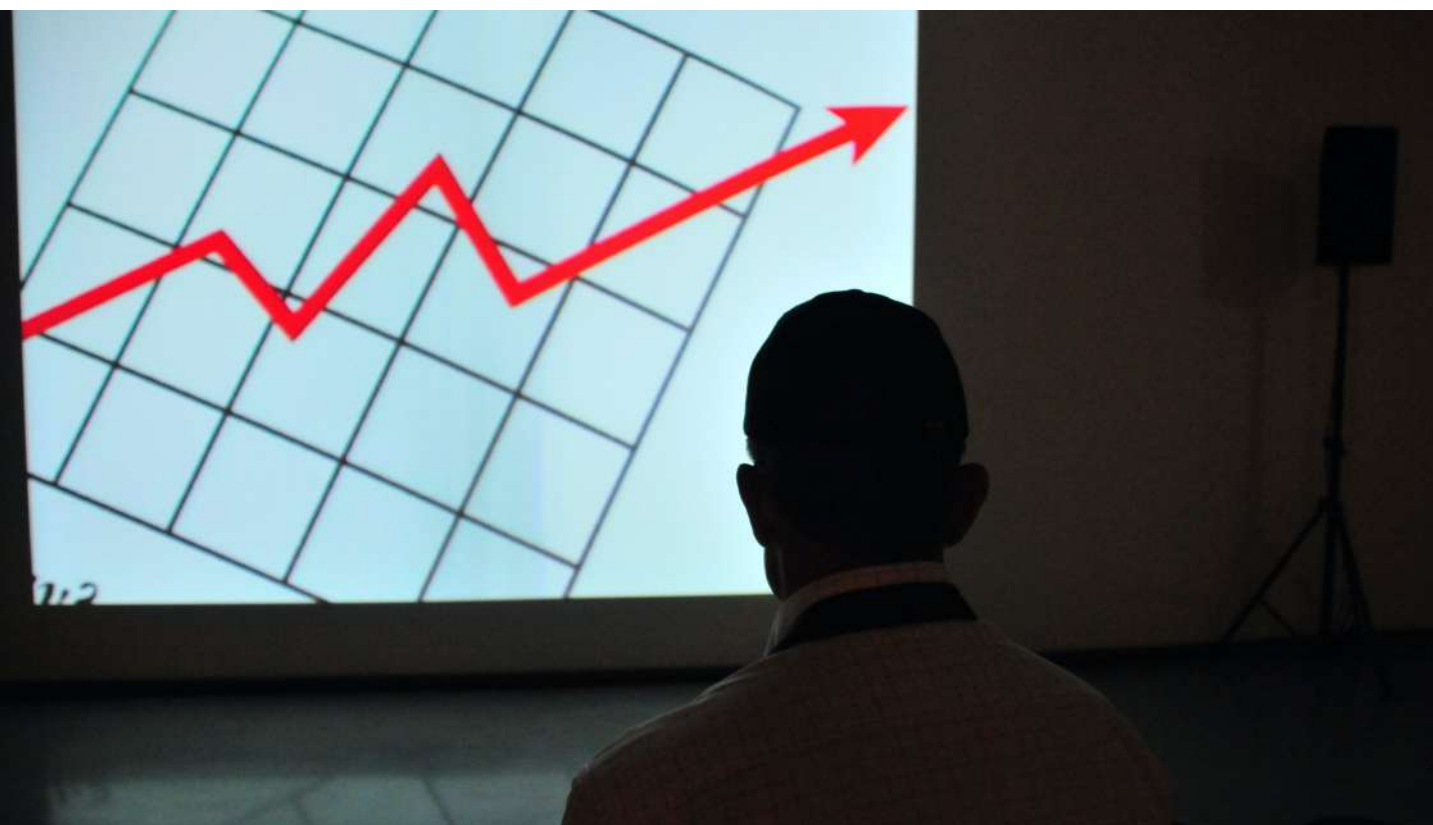
Latvia has demonstrated that in a short period of time it is able to implement all the necessary recommendations to adjust the AML/CFT framework and improve the efficiency of the existing system, including by implementing the necessary reforms in the functioning of the supervision of the financial sector. By fully implementing the norms of the AML Directive IV and V of the European Parliament and of the Council, Latvia has opened a new chapter in the culture of financial and business relations, which includes measures for in-depth research of clients, certain non-financial enterprises and corporations; the regulation and supervision of financial institutions, certain non-financial enterprises and corporations, and other measures.

3 FICIL Position on Proposals for the Improvement of Combating Economic and Financial Crime

FICIL welcomes the progress achieved in the adjustment of the AML/CFT legal framework and the system efficiency, as well as improvements in the work of the Financial Intelligence Unit (FIU), but there are still shortcomings in the effective exchange of information and in the cooperation between all competent institutions involved in AML/CFT measures. As a priority, FICIL calls for the assessment and prevention of all possible restrictions resulting from existing legislation preventing prompt and effective criminal proceedings carried out by the law enforcement agencies, the public prosecutor's office and the court. At the same time, FICIL calls for proposals to be made for legislation that would promote the elimination of the perception of impunity. Referring to the article *How to Avoid Paying the State 300 Million* in the magazine *IR* and hearing about similar fraud schemes in the public space, FICIL concludes that law enforcement measures are not working effectively enough, as a result not contributing to Latvia's economic growth and prosperity. FICIL welcomes the interdisciplinary training carried out in recent years in the field of combating financial and economic crime, but there is still a need to improve the quality and effectiveness of the investigation, prosecution and hearing of these crimes.

The main objective of the FICIL Position Paper 2020 is to continue to address issues related to the prevention of money laundering and financial and economic crime, namely:

1. prevention of money laundering;
2. prevention of corruption and bribery;
3. promoting the quality and effectiveness of criminal proceedings.



Content

Introduction

pp. 2-3



Recommendations

pp. 5



Rationale for
recommendations

pp. 6-11



Recommendations

Prevention of money laundering

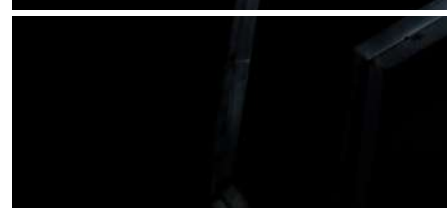
- To apply prevention based measures: "First time - warning, next time - penalty".
- To educate the public on AML/CFT issues through informational campaigns, promoting intolerance to money laundering.
- To attract adequate resources to law enforcement in order to reduce the overwork of the staff involved, improve the quality of the fight against economic crime and prevent delays, including by providing adequate physical capacity and technical infrastructure.

Prevention of corruption and bribery

- It is necessary to promote a proactive approach to combating corruption and bribery by identifying high-risk projects.
- By stepping up cooperation and exchange of information between different national authorities, to implement more effectively a risk-based and proactive approach, complementing actions resulting from information provided by external whistle-blowers and sources.
- To achieve a result in high priority corruption cases of public interest within a reasonable time period, informing the public of the progress of such cases in the judicial system.
- To analyse available data to assess the effectiveness and impact of existing anti-corruption policies.

Promoting the quality and effectiveness of criminal proceedings

- To increase the capacity of law enforcement authorities by reviewing regulatory obstacles to the effective completion of criminal proceedings and by implementing key performance indicators for the authorities involved.
- To promote the active involvement of the supervising prosecutor in the early stages of criminal proceedings.
- To ensure that attachment of property cases are dealt with as soon as possible.
- To develop a summary of case-law in proceedings on criminally acquired property.
- To strengthen the mechanism for the protection of the acquirer in good faith in criminal proceedings.



Rationale for Recommendations



It is necessary to continue the work on the equal and coherent application of AML legislation to all legal entities, both financial and non-financial.

While the overhaul of the financial sector supervision could be considered complete, taking into account on-the-spot checks of individual credit institutions and severe administrative penalties for the non-compliance of the internal control system to the requirements of the AML/CSF legal framework and the recommendations developed by the Financial and Capital Market Commission (FCMC) in cooperation with the financial sector, which will serve as a practical guide for financial institutions in customer research and improvement of internal control systems, the understanding of compliance with the AML/CFT regulatory requirements in the non-financial sector and the progress of their implementation in day-to-day processes is small or insignificant.

FICIL fully supports the direction of action of the Ministry of Finance to make sure that the legal subjects (both financial and non-financial institutions) of the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing adequately apply the preventive measures of AML/CFT in accordance with their risk profile when reporting suspicious transactions. At the same time, FICIL calls for the extension of prevention measures for AML, i.e. upon receiving a report on a suspicious transaction, alerting the offenders that a report on a suspicious transaction has been received (without infringing disclosure or tipping off), thus allowing the State Revenue Service and law enforcement authorities to facilitate monitoring of the money laundering risks. Given the society's weak understanding of the Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing, warnings would lead to preventive monitoring: first time - warning, next time - penalty. In addition to receiving an alert, the offender would be obliged to undergo an appropriate AML/CFT training course.

Such a preventive policy would contribute to a more successful implementation of the AML/CFT policy, without creating the current relatively high resistance of society and entrepreneurs. Educating society and entrepreneurs on the importance of the AML/CFT area would lead to a greater intolerance to money laundering, therefore contributing to the economic growth and well-being of Latvia.

Rationale for Recommendations

Effective prevention of corruption

It has been repeatedly mentioned that corruption damages the overall economic growth and hinders the development of the country, negatively impacting good governance, increasing inequalities and can lead to instability. As a result of corruption, available resources to promote public welfare, such as health care, education, infrastructure building, etc. may also be reduced. The OECD also pointed out that corruption is the main obstacle to a free, fair and open market. In the 2019 Corruption Perceptions Index², Latvia received a two-point lower rating (56 out of 100) than in 2018; moreover in five years Latvia has improved the result by only one point. The results show that the fight against corruption continues to stagnate in Latvia. This is also confirmed by the 2019 Eurobarometer Survey³ on the perception of corruption, which found that 84% of the population believe that corruption is widespread in Latvia (the indicator has not improved significantly since 2013).

Nor has it been possible to reduce the sense of impunity over the years. This problem is highlighted by the OECD in its 2019 anti-corruption report⁴ dedicated to Latvia which recommends that Latvia amend the law, providing for the possibility of always opening a case against a legal person in cases of possible corruption. The OECD report also highlights Latvia's inability to prevent bribery of foreign officials: access to information, specialisation, protection of whistle-blowers, as well as sufficient resources to combat such cases are not ensured. It is necessary to analyse data on the effectiveness of anti-corruption measures in order to be able to assess their impact and the anti-corruption progress. It would also help to assess the resources needed for individual measures, with a strong emphasis on achieving the desired outcome.



Rationale for Recommendations

Promoting the Quality and Effectiveness of Criminal Proceedings

According to FICIL financial and economic crime should be given priority in the activities of law enforcement authorities by concentrating the resources of the institutions to this matter. We emphasise that the detection and prevention of economic crime is too important of an issue to allocate such limited budget resources as are being allocated now. We also remind of our recommendation to provide adequate resources to reduce the overwork of the staff involved and to improve the quality of combating economic crime and to prevent delays, including by ensuring adequate physical capacity and technical infrastructure.

Adjudicating attached property cases as soon as possible

In recent years, huge amounts of financial resources have been frozen and seized, in line with the orders of the Financial Intelligence Unit and the activities of law enforcement authorities. FICIL unequivocally welcomes the overall fight against money laundering in Latvia. At the same time, FICIL believes that the resolution of property issues in criminal proceedings is essential, confiscating the proceeds of crime or returning the assets with legal origin seized to the possessors. The Criminal Procedure Law currently provides for a long maximum time period of the seizure of a property, in certain cases the time limit with extensions exceeding thirty months. According to FICIL, law enforcement authorities should make every effort to resolve the property issues in financial and economic crime cases without using the maximum statutory time limits. Moreover, the time limits for extending the attachment of property would be permissible in the narrow exceptional cases provided for by law, with the investigating judge examining comprehensively and critically whether the person directing the proceedings has not allowed a delay to occur and whether the earlier completion of the proceedings was not possible due to their particular complexity.



Rationale for Recommendations

Active Involvement of the Supervising Prosecutor in the Course of Criminal Proceedings

According to FICIL, one of the most effective means of improving the quality of the financial and economic crime investigation process is a significantly more active involvement of the supervising prosecutor in the investigation of these types of crimes from the beginning of the criminal proceedings, by determining the direction of the criminal proceedings and the specific procedural actions to be taken.

The Criminal Procedure Law provides that the supervising prosecutor has the right to give binding orders to the person directing the proceedings and to request the execution of the orders given. The supervising prosecutor is also obliged to give orders on the type of procedure, the direction of the investigation and the conduct of investigative activities, if the person directing the proceedings does not ensure a targeted investigation and allows unjustified interference in a person's life or hesitation. According to FICIL, the active involvement of the supervising prosecutor and the provision of binding orders in the investigation of financial and economic crimes should be carried out in any criminal proceedings, not only in the absence of a targeted investigation. It is possible that increasing the role of the supervising prosecutor requires the improvement of the regulatory framework, but it is the practical implementation of this function that is essential.

As resources are scarce, it is necessary to define the priority categories of criminal offences in which supervising prosecutors perform this function of active participation. In the investigation of legally simpler criminal offences, a standardised approach could be sufficient, the investigator using established investigative schemes. However, priority crimes under investigation, which clearly include large-scale financial and economic crimes, should receive an increased amount of resources of the Public Prosecutor's Office.



Rationale for Recommendations



Summary of Case-law in Criminal Property Proceedings

In accordance with Chapter 59 of the Criminal Procedure Law, proceedings for criminally acquired property, which are often carried out in financial and economic crime cases, are adjudicated, in two judicial bodies: the Court of First Instance and the Court of Appeal. Consequently, in these cases of such importance, the aspects relating to the resolution of property matters are not dealt with in accordance with cassation procedures. The proceedings on criminally acquired property are also handled in a closed session, as a result, in accordance with Article 28.² of the Law on On Judicial Power only the introductory part and the operative part of the decision are generally available information and judicial decisions are not published.

Access to court decisions clearly contributes to the development of a uniform and predictable case-law. Given that the proceedings on criminally acquired property are largely carried out in parallel with the main criminal proceedings which have not yet been adjudicated, we do not believe that decisions on the criminally acquired property should be published. In such a situation, however, the development of a summary of the Supreme Court case-law would be an effective means of promoting a uniform and correct case-law. Case-law summaries are discussed in the departments of the Supreme Court, where judges, together with the authors of the study, draw conclusions and develop recommendations for solving the relevant legal issue. Accordingly, by developing summaries of case-law in criminally acquired property proceedings, the Supreme Court and its associated specialists would review the decisions of the courts and provide their assessment of the correctness of the judgements, as well as general legal knowledge that would greatly assist the appliers of legal norms.

Rationale for Recommendations

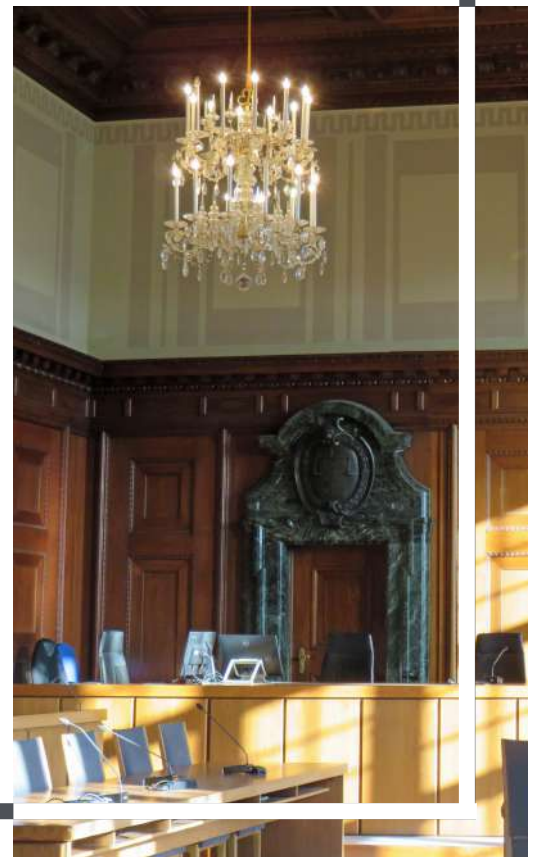
Discussion on the protection of an acquirer in good faith in criminal proceedings

The protection of an acquirer in good faith in criminal proceedings is an issue that is already relevant and will certainly continue to have a significant impact on the interests of investors, for example, when purchasing real estate. The practice of divesting these investment objects in criminal proceedings of investors acting in good faith, who have often relied on records of public registers and carried out in-depth research before acquiring these objects, poses a significant threat to the attraction of new investments.

Considering the issue of the conflict of interests of the victim and the acquirer in good faith, the Latvian criminal procedure regulation gives priority to the protection of the interests of the victim. Section 360 of the Criminal Procedure Law provides that if criminally acquired property is found with a third party it is to be returned to the owner or legal possessor of the property. On the other hand, a third party who was the acquirer or pledgee of that property in good faith has the right to bring an action for damages in civil proceedings, including against the accused or convicted person. That question was also examined in its case-law by the Constitutional Court in its judgment of 8 March 2017 in Case No 2016-07-01, declaring that the principle of the protection of an acquirer in good faith derived from the principle of public credibility may be limited for the protection of essential public interests, namely, by providing that entries made in the land register following a criminal offence cannot be recognised as legitimate.

FICIL and its members respect the position of the state, which gives priority to the protection of the interests of the victim over the rights of the acquirer in good faith. At the same time, FICIL points out that the opportunity to take action against the offenders in civil procedure often cannot be regarded as an effective legal remedy for acquirers in good faith, since these persons will not, for the most part, have access to funds to pay damages caused to the acquirers in good faith.

FICIL therefore calls on the government to begin an active discussion involving specialists from the public and private sectors in order to seek solutions to improve mechanisms for safeguarding the interests of acquirers in good faith in criminal proceedings. One possible solution would be to compensate damages from state budget for such acquirers in good faith who have relied on the principle of public credibility, meaning that the state would take over the right to claim against the offenders. Effective solutions can be found by analysing the experience of other countries in protecting the interests of acquirers in good faith.



References

- <https://ir.lv/2019/01/16/shemotaji-kanesamaksat-valstij-300-miljonus/>
- <https://delna.lv/lv/2020/01/23/latvijai-lejupslide-2019-gada-korupcijas-uztveres-indeksa/>
- <https://ec.europa.eu/commfrontoffice/publicopinionmobile/index.cfm/survey/getsurveydetail/instruments/special/surveyky/2247;jsessionid=2AE6CD3FD2D3D733E363C577B7A93048.cfusion07001?CFID=10618240&CFTOKEN=59ab009556caa428-FE0C9531-E6F7-80AB-C633FC4531ECA3FB>
- <https://ec.europa.eu/digital-single-market/en/policies/smart-cities>



FICIL Position Paper No. 8

Foreign Investors' Council in Latvia on the Improvement of Combating Economic and Financial Crime

FICIL is a non-governmental organisation that unites 37 largest foreign capital companies from various industries, 10 foreign chambers of commerce in Latvia, French Foreign Trade Advisers and Stockholm School of Economics in Riga. The goal of FICIL is to improve Latvia's business environment and overall competitiveness in attracting foreign investment, using the experience and knowledge of its members to provide recommendations to Government and state institutions.