YEARBOOK 2015

OVERVIEW OF THE WORK OF THE FINANCIAL INTELLIGENCE UNIT IN 2015

TALLINN 2016

CONTENTS

FOREWORD

DEAR READER OF THE FINANCIAL INTELLIGENCE UNIT YEARBOOK!

When looking back into the year 2015, we must state that unfortunately the situation has not become any more secure over the world. The growing terrorist attacks in the entire world have also given a lot of subject for thought to those engaged in preventing terrorist financing and have led to further efforts to ensure the security. The question, how to profile persons and payments in order to establish the transactions with suspicion of money laundering as early as possible, has become an important question, especially taking into account the fact that the majority of the sums spent on financing of terrorist attacks have almost always been very small. In 2015, the first criminal matter with the accusation in terrorist financing was sent to court; in May 2016 a court judgement of second level was made in this criminal matter, the judgement was appealed and has not entered into force yet. In this case the amounts used for terrorist financing are rather small. Establishing transfers with characteristics of terrorist financing is one of the major tasks in the globalized world.

Cybercrimes are still one of the major predicate offences to money laundering in Estonia. The role of Estonia is mostly to be a transiting corridor, in which the so called dirty money moves via Estonia to perpetrators of criminal offences. In addition to *phishing*-type criminal offences, a lot of work of the FIU last year formed the analysis of transactions connected with fraud, which were committed through PayPal. Criminal proceedings have been commenced for investigating these frauds and the number of transactions and the sums used in the scheme are remarkable. The more specific aspects will be established in the criminal proceedings.

Despite of the first terrorist financing case and money laundering trends, the situation in Estonia can be considered to be good. As of May 2016, the Basel Institute on Governance set Estonia on the second place if looked from the side of minor risks.[1] Likewise, KnowYourCountry, a website of money laundering risk assessment associated with the countries, placed Estonia on a high fifth place in May 2016.[2] It is not possible to fully avoid money laundering and terrorist financing, but all Estonian interested parties have done a good job in performance of the preventing system thereof. We believe that the positive results are due to the very good cooperation between the public and private sectors in preventing money laundering and terrorist financing.

1 Confer the results at https://index.baselgovernance.org/ranking and the review of the methodology at https://index.baselgovernance.org/methodology

2 Confer the table at http://www.knowyourcountry.com/1ratingtable.html and the methodology at http://www.knowyourcountry.com/riskdefs1.html

1. THE FINANCIAL INTELLIGENCE UNIT

The Financial Intelligence Unit (FIU) started operations on 01.07.1999, today it is a structural unit of Central Criminal Police of the Police and Border Guard Board. The FIU is a member of the Egmont Group, which assembles similar units of such states, whose activities correspond to international standards. The main task of the financial intelligence units is to obtain information regarding transactions with suspicion of money laundering and terrorist financing, to analyse such information and, in the event of identifying suspicion of criminal offence, to forward the information for making a decision as regards commencing pre-trial investigation. Such notices are basically sent by all persons who come across or may come across with possible suspicion of money laundering – above all the financial sector, such as banks and payment institutions, but also many others – for instance notaries, attorneys and auditors. In case of need, the FIU will impose restrictions on the use of property.

The uniqueness of the FIU lies in the fact, that persons, who are normally obligated to keep confidentiality of their clients, notify under certain conditions self-initiatively about certain clients and/or transactions even in such case if the information being forwarded is, for instance, information subjected to banking secrecy. The FIU shall retain the received information as confidential and shall forward to investigative bodies, prosecutor's office and court only the information needed for prevention, establishing and investigation of criminal offences. The FIU shall never disclose the notifying person. Investigative bodies and prosecutor's office establish money laundering in proceeded criminal matters, while the FIU establishes possible money laundering cases on the basis of

financial information from private sector.

The supervision over compliance with the requirements of the Money Laundering and Terrorist Financing Prevention Act is shared by the FIU, the Financial Supervision Authority over the persons acting on the basis of permits issued by the Financial Supervision Authority, and the Estonian Bar Association and the Chamber of Notaries over their members.

In addition to the above, the FIU also supervises the compliance by the subjects of the International Sanctions Act with the requirements of implementation of financial sanctions in accordance with the Act. With regard to international financial sanctions, the FIU is the central authority coordinating the performance of relevant sanctions, restricting the disposition of funds and assets if necessary, and granting, in case of need, an exceptional permit for making transactions subjected to sanctions.

One of the tasks of the FIU is also the issue of authorisations. These are authorisations to financing institutions, which do not hold an activity licence issued by the Financial Supervision Authority, as well as authorisations to trust fund and company, currency exchange, alternate means of payment and pawnbroker service providers, as well as to persons engaged in buying-in and wholesale of precious metals and precious stones. The tasks of the FIU also include tracing of criminal proceeds, cooperation with foreign FIUs, cooperation with investigative bodies and prosecutor's office, raising the awareness of general public and informers, misdemeanour proceeding and many other tasks.

2. THE YEAR 2015 IN THE PREVENTION SYSTEM OF MONEY LAUNDERING IN ESTONIA

2.1. ABOUT THE NEW DIRECTIVE ON THE PREVENTION OF MONEY LAUNDERING

The so called IV directive of the European Union on the prevention of money laundering must be transposed buy the beginning of summer 2017. This gives about a year for adjustment of laws and other legislation, which is not a very long period. Although the IV directive takes a long step forward in comparison with the current one, still, a large part of it is already covered by law or actually functioning in Estonia, e.g. considering of tax crimes as predicate offence of money laundering, preparation of strategical analyses by the FIU and use of national money laundering prevention risk assessment for the development of the money laundering prevention system. At the same time, several countries still need to implement these requirements.

The obligated persons and the amendments which affect their clients at most, are the following.

1. **Politically exposed persons**. According to the present regulation, enhanced due diligence measures must be taken with regard to politically exposed persons of foreign countries, the new commitment is to apply the same requirements also to domestic politically exposed persons. As of May 2016, it is not entirely clear how many persons it concerns, but the persons obligated to apply the anti-money laundering rules need to make ancillary operations. The amendment concerns almost everyone, as most people are using services of financial sector on a daily basis and eventually clients must take into account

that there will be additional relevant questions from their service providers. The impact is even wider, as, besides the financial sector, this obligation concerns all the obligated persons listed in the Money Laundering and Terrorist Financing Prevention Act.

2. **Register of the beneficial owners**. The state must keep a register of the beneficial owners of legal persons and the managing bodies must know who are the beneficial owners of the company. If today, for example, it is possible to find from the commercial register the owners of a company, who, generally, are also the beneficial owners, then, it is not always so easy. In a situation, where a shareholder of a company is a foreign legal person, it is not possible to see the beneficial owners. For resolving this requirement, it can be considered whether to supplement the data collected and provided in the commercial register, or some other option, for example, to create a separate register. As an innovation, the IV directive provides in certain cases a possibility to regard members of management bodies also as beneficial owners.
3. Today the margin set for traders for establishing persons identity is cash transactions amounting to 15 000 euros. According to the new directive, this margin will diminish to 10 000 euros.
4. Currently the list of equivalent countries is held. This includes the countries, the legislation of which is considered equivalent with the Member States of the EU. According to the new directive, the list of equivalent countries will be replaced with a list of such countries which have significant drawbacks in money laundering and terrorist financing prevention.
5. The possibility of supervisory authorities to publish the violations and punishments in money laundering and terrorist financing prevention is recommended as a preventive activity of money laundering.
6. There is an obligation to increase the pecuniary punishments for violating money laundering and terrorist financing requirements. The maximum punishments must reach up to one million euros and for credit and financing institutions up to 5 million euros or up to 10% of annual turnover.

2.2. PREVENTION OF TERRORIST FINANCING

In 2015 Estonia turned a new page in terrorist financing prevention. When formerly the terrorist financing prevention was merely limited to preventive measures, then, in 2015 a criminal procedure was conducted in Estonia in a matter of financing and supporting terrorist crime and the activities aimed at the committing of this crime. By the time of the publication of the yearbook, two court levels have made a guilty verdict in this matter against two Estonian residents, but the decision has not entered into force yet. Similar to cases in other countries, in this matter the amounts of money were also not large. This actually makes the prevention of terrorist financing much more complicated and, when choosing the tactics, prevention and raising the awareness of obligated persons need to be accentuated.

In 2015 the main focus of the anti-money laundering workforce (Financial Actions Task Force - FATF) was the prevention of terrorist financing, in the course of which materials related to this sphere were published on the website of FATF to be examined by everyone interested and for raising the awareness.

2.3. (DIGITAL) SERVICES AND E-RESIDENCY

In 2015 discussions related to planned amendments in legislation associated with e-residency became more active. Development of the services and their move to the Internet and smart-phones brings along a strong pressure to change the present viewpoint in many spheres. There has been much talking in the media about the fact that the services provided by Uber, which is a revolution in the operation of taxis, (do not) fit within the bounds of current regulations. Obviously the Uber service, which has become popular, needs a fresh approach by legislation, because today analogous services are provided by many companies all over the world. The question whether it changes completely the operation of the taxis as it is functioning and regulated to this day, is a common topic.

The same question is faced by the financial sector, in which there appear constantly new types of payment intermediaries and develop services related to daily settling of accounts and international transfers. Due to that, the question, how to grant proportional approach to those offering traditional banks as well as to the ones offering new types of smart solutions, is under consideration. Should identity be established and means of diligence be applied and how? Is the face-to-face identification of client an out of date requirement or is it needed in order to grant principal identification of front men in a situation when Estonian financial system is used as a transiting corridor for the so-called dirty money with the help of front men? The discussions of work-groups engaged in the transposition of the new directive in these issues will be interesting. Most certainly, a balance should be achieved, so that the development of services will not be restricted vainly and the competitiveness of Estonia will not be reduced thereby, yet, on the other hand, the rise of risks of money laundering and the use of new and changing products and services for money laundering and terrorist financing in the globalized crime must be avoided.

These same issues are connected with the e-residency project: how to make e-residency attractive for initiative and honest persons and to avoid situations that a private limited company established through the Web and, in the future, a bank account opened without appearing in person, will be used, for example, for forwarding funds of cyber-crimes or for laundering corrupt money? Naturally, measures must be taken to prevent Estonian companies from turning into attractive bodies whose alleged beneficial owners are front men of some distant country, bringing of whom into justice in Estonia is absolutely a dead-end.

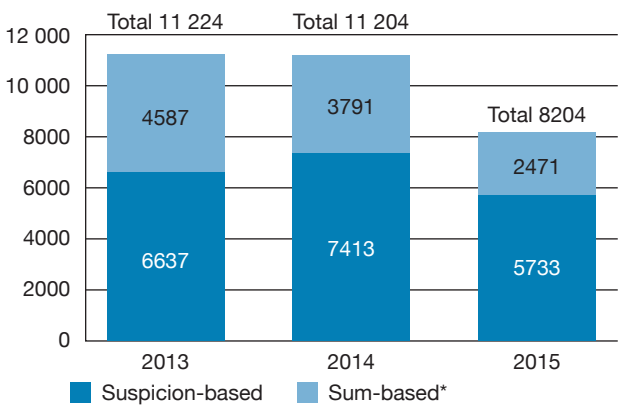
The role of the Financial Intelligence Unit in all these topics is to support those designing the politics and the legislator, and, above all, to accentuate the associative money laundering and terrorist financing risks.

3. OVERVIEW OF THE WORK RESULTS OF THE FINANCIAL INTELLIGENCE UNIT IN 2015

3.1. OVERVIEW OF THE REPORTS RECEIVED BY THE FIU AND THEIR ANALYSIS

In 2015 the FIU received 8204 reports, nearly 70% of these, similar to the previous year, were suspicion-based (see Chart 1).

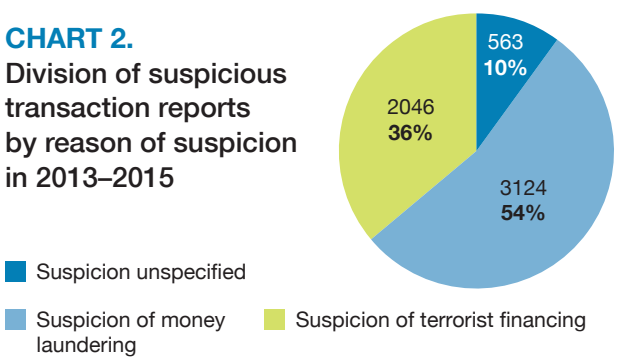
CHART 1. The number of reports received by the FIU in the years 2013–2015



*Comment: *the sum-based reports include also those reports where suspicion was unspecified. In 2013 there were 9 reports of such kind, in 2014 the number was 16 and in 2015 the number was 15.*

From amongst the suspicion-based reports nearly 55% were transactions with suspicion of money laundering and nearly 36% were reports with suspicion of terrorist financing, in the remaining reports the suspicion was unspecified (Chart 2). The majority of the reports with unspecified suspicion were received from foreign authorities responsible for the prevention of money laundering. The reason of big number of reports with suspicion of terrorist financing is the aspect that the financial institutions of certain type are obligated to notify the FIU about suspicious transactions related to the countries with increased suspicion of terrorist financing.

CHART 2. Division of suspicious transaction reports by reason of suspicion in 2013–2015



Similar to previous years, in 2015 the FIU also received the majority of reports from financial and credit institutions, in comparison with 2014 the number of reports received from either of the reporting group decreased (table 1). The reason for the decrease in the number of reports from state authorities is the amendment in the methodology: since 2015, the intelligence collected by a FIU is not considered a report any more.

One of the main reasons for the decrease in the number of reports in recent years, according to the estimation by the FIU, is the increasing level in applying diligence measures and the rising awareness in furnishing a suspicion of money laundering, therefore the richness of content of the reports has risen. In cooperation with the supreme reporting persons, the reports have been analysed and feedback has been provided, in order to focus the reporting persons on sending substantially suspicion based reports instead of automatic reporting of transactions which meet the criteria. Because of this, the total number of the reports has decreased, but the content quality of the reports has increased. By the same reason the number of reports is also expected to decrease in 2016.

TABLE 1. Division of reports received by the FIU by groups of reporting persons in the years 2013–2015

	2013		2014		2015	
	Reports	% of reporting persons	Reports	% of reporting persons	Reports	% of reporting persons
Financial institutions	7856	70,0	7790	69,5	5347	65,2
Credit institutions	2055	18,3	1984	17,7	1693	20,6
Other private undertakings	547	4,9	491	4,4	423	5,2
Professionals	233	2,1	198	1,8	193	2,4
State authorities	276	2,5	495	4,4	200	2,4
Foreign authorities	243	2,2	228	2,0	319	3,9
Other	14	0,1	18	0,2	29	0,4
TOTAL	**11 224**	**100**	**11 204**	**100**	**8204**	**100**

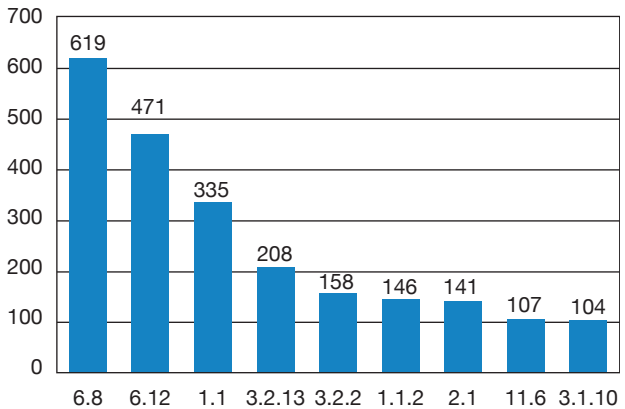
In 2015 reports on suspicion of money laundering were sent predominantly by credit institutions and financial institutions. Most of the reports with suspicion of terrorist financing were sent by financing institutions in relation with transactions made to countries with high risk of terrorist financing or made with persons originating from such countries. The majority of sum-based reports were also sent by financing institutions. There are no substantial changes in these tendencies in recent years.

TABLE 2. Division of reports received in 2015 based on the ground and sender

	Suspicion unspecified	Suspicion of money laundering	Suspicion of terrorist financing	Sum-based	TOTAL
Credit institutions	16	1650	12	15	1693
Financial institutions	6	1416	1977	1948	5347
Organizers of gambling	12	0	43	324	379
Persons making or mediating transactions with immovable properties	0	1	0	0	1
Traders	1	4	0	31	36
Other private law undertakings	5	1	0	1	7
Professionals					
… auditors	0	0	0	12	12
… providers of accounting service	2	0	0	2	4
… notaries public	5	39	1	126	171
… attorneys	3	0	0	0	3
… trustees in bankruptcy	2	1	0	0	3
State authorities	179	9	0	12	200
Foreign authorities	305	1	13	0	319
Other	27	2	0	0	29
TOTAL	**563**	**3124**	**2046**	**2471**	**8204**

In 2014 the most common reason for reports with suspicion of money laundering was the fact that a person received or transferred (wished to transfer) money in a sum exceeding 2000 euros (see Chart 3). The most common indicators of reports have not changed in recent years.

CHART 3. Main reasons for reporting in the case of suspicion of money laundering in 2015



Explanation:

6.8 the person makes transactions to other persons in different countries, which does not conform to the client's usual activities

6.12 the person makes remittance of money or the person receives a remittance of money in a sum exceeding 2000 Euros

1.1 suspicion of a fictitious person in case of a natural person

11.6 with respect to the client there exists former suspicion of money laundering

3.2.13 appearance of other features, not mentioned in the manual, concerning an unusual transaction on the account, which may indicate on illegal activities

3.2.2 single unusually large cross-border payment not conforming to normal turnover and/or not sufficiently justified

1.1.2 the person uses assistance in filling out documents or cannot fill them in

2.1 the person cannot explain the need for the service for the use of which the person called upon the credit or financial institution

11.6 with respect to the client there exists former suspicion of money laundering

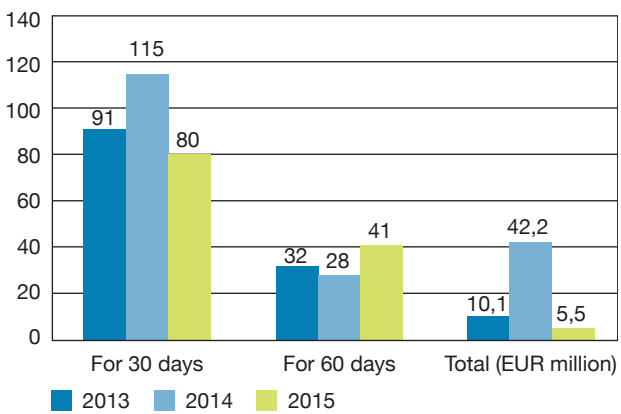
3.1.10 single major cash withdrawals (exceeding 15 000 Euros) or regular cash withdrawals also in smaller amounts from ATM, which does not conform to the client's profile

In the case of reports with suspicion of terrorist financing, the dominant reasons for reporting in the year 2015 were transmissions to countries with high risk of terrorist financing or transmissions with persons related to such countries without opening an account.

3.1.1. RESTRICTIONS ON DISPOSAL OF ASSETS

The FIU has the right to suspend a transaction or restrict the use of assets in the case of suspicion of money laundering or terrorist financing. In 2015 the FIU restricted disposals on bank accounts for 30 days in 80 times and for 60 days in 41 times (Chart 4). The total volume of the assets subject to the restriction by the FIU on disposal was EUR 5,5 million.

CHART 4. Restrictions established by the FIU on disposal of bank accounts in 2013–2015



3.2. OVERVIEW OF THE MATERIALS FORWARDED BY THE FIU

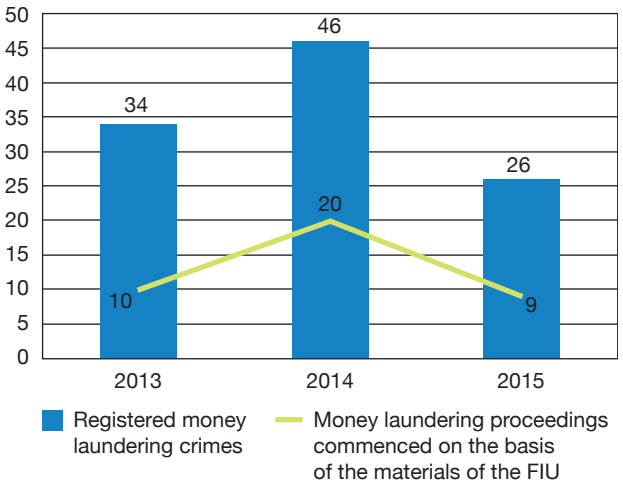
In the case if the FIU finds, as a result of analysis, that there may be a case of money laundering or terrorist financing, then the FIU will forward the materials to other law enforcement authorities. In 2015 the FIU forwarded to other law enforcement authorities 205 materials, the majority of which were inquiries, responses to inquiries or materials sent for information. 14 materials were sent to make a decision as regards commencing criminal proceedings. As of 31.12.2015 , in 12 cases investigative bodies commenced the proceedings (in 9 cases on grounds of money laundering and in 3 cases on grounds of other offence section), in one case commencement of proceedings was refused and in one case the existing materials were annexed to ongoing criminal matters. 45 materials were sent to be annexed to an ongoing criminal matter. Among the criminal matters commenced according to features of money laundering, predominantly the presumable predicate offence was computer-related fraud. In comparison with the year 2014, the number of criminal matters commenced on the basis of materials forwarded by the FIU has decreased to the regular rate. In 2014 the increase in the number of materials forwarded was caused by a number of computer crimes which arouse interest of the FIU, in 2015 the number decreased again.

TABLE 3. Materials sent by the FIU to law enforcement bodies in 2013–2015

	2013	2014	2015
materials forwarded for investigation	463	252	205
to make a decision as regards commencing criminal proceedings	17	38	14
… criminal proceedings commenced as of 31.12.	12	33	12
… incl. money laundering proceedings commenced	10	20	9
to be annexed to an ongoing criminal matter	74	38	45
responses to inquiries, sent inquiries, for information	372	176	146
related to the materials sent			
... the number of reports	1827	1040	649
... the amounts	2,56 mld	147,6 mln	400,9 mln
... the number of persons	1764	941	1001

As it can be seen from the Chart 5 the FIU gives a fine contribution to the proceedings of money launderings being commenced in Estonia.

CHART 5. Total number of money laundering crimes registered in Estonia and number of money laundering proceedings commenced on the basis of materials forwarded by the FIU to investigative bodies in the years 2013–2015



Comment: the number of registered money laundering crimes originates from the Ministry of Justice.

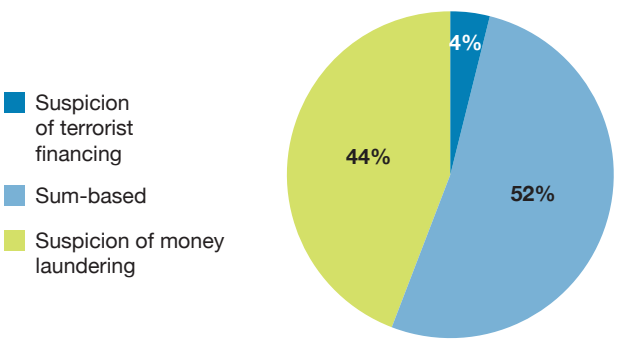
According to law, the FIU does not forward the reports received to investigative bodies or disclose the reporting person. However, statistics are kept by the FIU regarding reports serving as the basis for the forwarded materials. Similarly to the previous two years, the major part of the forwarded materials were based on information received from financial institutions, credit institutions and state authorities.

TABLE 4. Division of reports serving as the basis for materials forwarded to FIU by groups of reporting persons in the years 2012–2014

	2013	2014	2015
Credit institutions	269	155	150
Financial institutions	1350	716	350
Organizers of gambling	16	37	5
Persons making or mediating transactions with immovable properties	1	0	0
Persons engaged in precious metals and precious metal products	1	0	0
Professionals	24	16	13
… notaries public	24	16	13
… attorneys		0	0
State authorities	111	90	76
Foreign authorities	12	14	14
Other	32	22	39
TOTAL	**1816**	**1050**	**647**

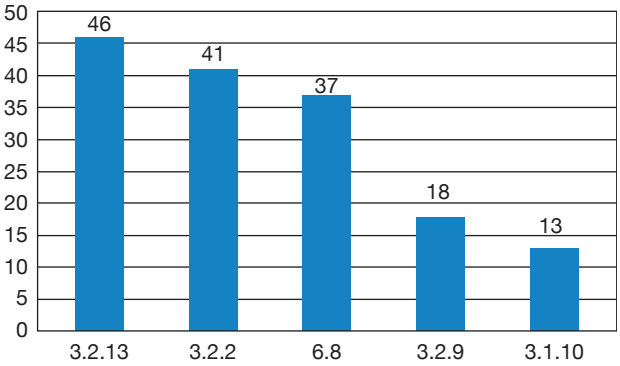
Slightly more than half of the forwarded materials were based in the year 2015 on information arising from the sum-based reporting obligation, which clearly refers to the fact, that the provision of law, which was implemented in 2008, is important from the aspect of prevention of money laundering.

CHART 6. Division of reports used in the materials forwarded by their basis in 2015



In the reports serving as basis of the forwarded materials the predominant indicator based on suspicion of money laundering is the aspect, that a person is making transfers, which do not conform to the person's usual activities (see Chart 7).

CHART 7. Prevalent reporting indicators of reports on suspicion of money laundering used as a basis for forwarded materials in 2015



Explanation:

3.2.13 appearance of other features, not mentioned in the manual, concerning an unusual transaction on the account, which may indicate on illegal activities

3.2.2 single unusually large cross-border payment not conforming to normal turnover and/or not sufficiently justified

6.8 the person makes transactions to other persons in different countries, which does not conform to the client's usual activities

3.2.9 several foreign payments arrive in a short period, thereafter the money is withdrawn in cash

3.1.10 single major cash withdrawals (exceeding 15 000 Euros) or regular cash withdrawals also in smaller amounts from ATM, which does not conform to the client's profile

3.3. NATIONAL AND INTERNATIONAL COOPERATION

In 2015 officials of the FIU conducted 17 trainings for more than 700 persons.

Cooperation partners of the FIU are the obligated persons from one side and the law enforcement authorities from the other side. One of the most important cooperation partners is the Estonian Banking Association, with whose assistance we organise cooperation with the banks. On the regular meetings of the anti-money laundering committee of the Estonian Banking Association we discuss current problematic issues, new tendencies, and we also provide special trainings to contact persons of banks, if necessary. Our cooperation partners in supervision are the Estonian Bar Association, the Chamber of Notaries and the Financial Supervision Authority. The cooperation with the latter is extremely close, as we exchange information not only about the efficiency of the supervision, but we also share experience and intelligence about the processing of authorisations and the conducting of certain acts of supervision. By participating in the work of the governmental committee engaged in prevention of money laundering, and the advisory committee of the Ministry of Finance, we are in direct contact with the formation of the national politics of money laundering and terrorist financing prevention as well as of the legislation.

TABLE 5. Trainings carried out by the FIU in 2013-2015

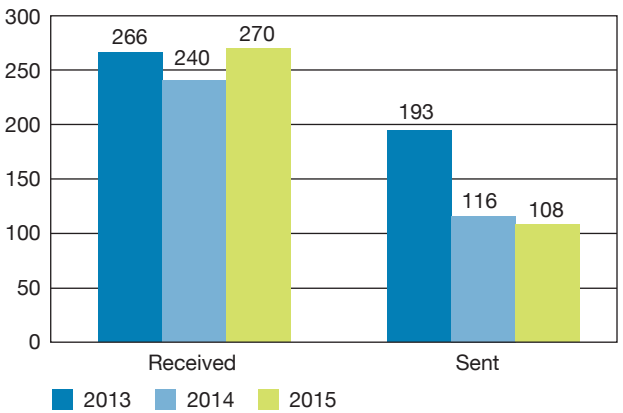
	2013	2014	2015
Number of trainings	10	9	17
Number of participants	643	460	719

The efficiency of the work done by the FIU cannot be assessed without the cooperation with the law enforcement authorities. We send reports of criminal offences to investigative bodies and we respond to their inquiries if there appear any suspicions of money laundering when investigating ordinary criminal offences. You may find a review concerning the reports of criminal offences sent to investigative bodies and of their inquiries from Table 3.

International cooperation is one of the pillars of the FIU of Estonia, because money laundering is often a supranational offence where, for the purpose of hiding traces, illegal income gained by criminal offence in one country is transferred fast by transaction chains through several countries. The FIU of Estonia has participated on a regular basis at several international meetings in the Egmont Group, in the European Council expert committee MONEYVAL (Select Committee of Experts on the Evaluation of Anti Money Laundering Measures) and at the FIU Platform. Among other, a representative of the FIU participated at the MONEYVAL coordinated Jersey 4 mutual evaluation, the final report of which was defended in December 2015.

Altogether, in 2015 the FIU received 270 inquiries from 43 foreign states and sent 108 inquiries to 34 foreign states (Chart 8). Most of the foreign inquiries were received from Finland, Moldova and Latvia, while most of the foreign inquiries were sent to Latvia, Russia, Lithuania and Cyprus. In comparison with previous years, the international exchange of intelligence concerning cases with suspicion of money laundering has become remarkably more frequent. The average time in the FIU for response to a foreign inquiry was nearly 11 days, which has been stable in recent years.

CHART 8. The number of foreign inquiries received and sent by the FIU in 2013–2015



The large number of received inquiries shows that the FIU helps to prevent money laundering and terrorist financing not only domestically but also internationally.

Within the technical assistance program TAIEX of the European Commission, the FIU hosted in December 2015 the delegation of the Ukraine in order to exchange best practices and introduce the experience of Estonia in risk-based assessment and building of analysis capacity in the combat against money laundering and terrorist financing. In August 2015 the FIU arranged a meeting with colleagues from the Ukraine and Latvia in Tallinn. The meeting was focused on checking out mutual capacities and discussing cooperation in preventing money laundering and terrorist financing which derives from corruption.

The FIU participated in the exchange program for officials, coordinated by CEPOL, in cooperation with a partner organization from Portugal and introduced latest trends and the approach of Estonia in the combat against money laundering and terrorist financing at the conferences and workshops arranged in different countries abroad.

3.4. SUPERVISION

In 2015 the Supervision Division of the FIU had to adapt to the new situation, where the main focus of the duties of the division was the proceedings related to authorisations. By the end of 2015, undertakings held in total 590 valid authorisations of the FIU.

In 2015 the Supervision Division of the FIU conducted in total 66 supervision proceedings (Chart 9). The main focus in supervision was on the undertakings operating on the basis of an authorisation by the FIU. The total number of supervision proceedings of undertakings holding authorisations was 50. In addition to supervising the compliance with the requirements pro-

vided in the Money Laundering and Terrorist Financing Prevention Act, the FIU also performed supervision on the performance of the requirements set out in the International Sanctions Act.

As a result of the inspections, five misdemeanour procedures were commenced and 11 precepts were issued for eliminating the deficiencies. The main deficiencies in the implementation of the requirements for prevention of money laundering and terrorist financing were related to establishing the identity of clients and with the performance of the obligation to register and store data.

In the supervising procedures more importance was paid on notifying the obligated persons about the performance of the requirements of the prevention of terrorist financing as well as of the performance of international sanctions. When in previous years it was possible to tell the obligated persons that persons holding an Estonian ID code were not involved in terrorist financing, then, in 2015 it had to be admitted, that there is a ground to suspect persons related to Estonia in terrorist financing.

In 2016 the taking of supervision measures more widely amongst the undertakings obligated to have an authorisation shall be continued. In the course of these proceedings, besides adherence to the requirements of the Money Laundering and Terrorist Financing Prevention Act, more attention is also paid to adherence to the requirements of the International Sanctions Act and the General Part of the Economic Activities Code Act. We also plan to pay more attention to the traders and non-profit organisations with whom large cash transactions are made.

The themes which need more focussing are the prevention of terrorist financing and the taking of due diligence measures to non-residents.

The biggest number of on-site inspections were carried out in pawnshops and financial institutions.

CHART 9. Supervisory inspections and misdemeanour proceedings in 2013-2015

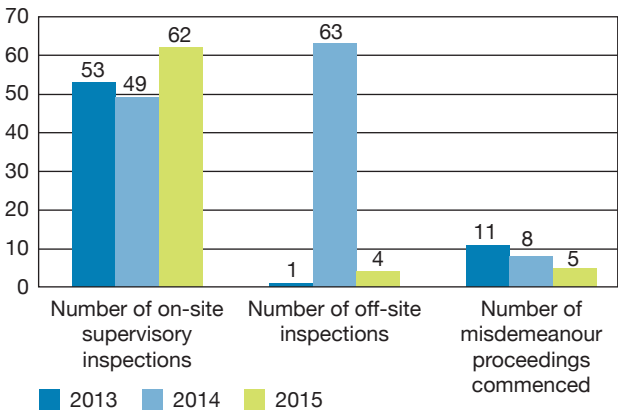


TABLE 6. Division of inspections carried out by the FIU in 2015, based on the spheres of activities of the inspected persons

Sphere of activity of the inspected person	2014	2015
Pawnbrokers	16	34
Financial institutions	17	14
Organizers of gambling	7	8
Traders	4	6
Persons engaged in precious metals and precious metal products	8	3
Other persons		1
Persons making or mediating transactions with immovable properties	45	
Credit institutions	15	
TOTAL	**112**	**66**

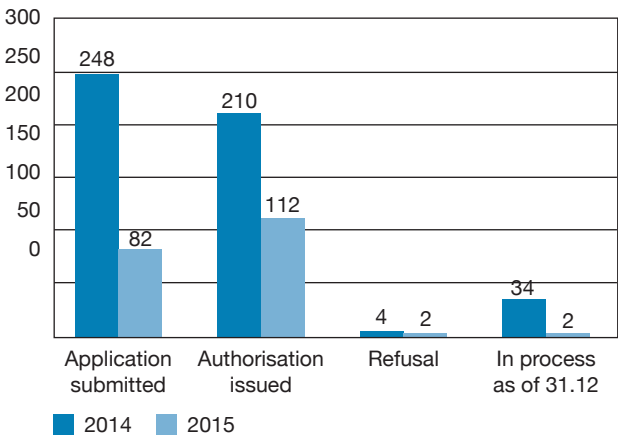
3.5. ISSUE OF AUTHORISATIONS

The year 2015 was the first year for the FIU when the number of proceedings for changing authorisations (92) exceeded the number of the applications for authorisations (82). In 2015 the FIU issued 112 authorisations, out of which 34 applications were submitted in 2014. As of 31 December 2015, two applications for authorisations were pending. In 2015 the FIU issued authorisations to 46 financial institutions, 20 undertakings engaged in the buying-in or wholesale of precious metals, precious stones, 20 engaged in currency exchange, 17 trust and company service providers, 6 pawnbrokers and 3 providers of services of alternative means of payment. In 2015 the FIU refused to issue an authorisation to 2 financial institutions.

Among the undertakings applying for authorisation, persons who buy or establish a company in Estonia, yet do not commence economic activities in Estonia or do it in the web, catch the eye. The number of Estonian companies whose whole management board is outside the European Union, above all in Asia, has also increased. In 2015 the FIU issued the first authorisation to an undertaking whose management board member was an e-resident.

Whereas the obligations of an undertaking in economic activities, above all, the obligation to notify of change of circumstances related to economic activities, are new for many undertakings, therefore the FIU constantly brings the obligation to attention of the undertakings.

CHART 10. Overview of the applications for authorisations in 2014-2015



4. COURT JUDGEMENTS IN MONEY LAUNDERING CASES IN 2015

From amongst the criminal proceedings commenced on the basis of the information sent by the FIU, seven cases reached guilty verdict in 2015.

Still, the most frequent money laundering court cases in Estonia are the ones in which persons are convicted because they granted access to their bank account or gave their identity documents to the possession of criminals or assisted criminals in withdrawal of funds received abroad for computer-related criminal offences from banks. The FIU adjures everybody that any abetment to such acts is deemed to be participation in money laundering and it is punishable under penal law.

On 22 June 2015 the Supreme Court made an important adjudication 3-1-1-94-14 from the standpoint of the money laundering prevention system. The court pointed out, that **convicting a person in money laundering presumes that the court establishes criminal activity (predicate offence)** in the meaning of subsection 4 (1) of the Money Laundering and Terrorist Financing Prevention Act. Thus, a predicate offence is a necessary characteristic element of money laundering, because without the predicate offence it is not possible to speak about money laundering in the meaning of subsection 394 (1) of the Penal Code, but **convicting a person in money laundering does not presume a previous judgement of conviction** (the same opinion was given by the Criminal Panel of the Supreme Court in its 11 April 2011 ruling in the criminal matter No. 3-1-1-97-10).

The Supreme Court pointed out in this judgement, that upon establishing money laundering the purpose of the disposal of money is of significant importance.

Namely, for realizing the necessary elements of money laundering, the concealing of the illegal origin and the actual owner of the assets must play an important role in the legal operations made with the assets acquired through crime. We cannot speak about money laundering, if concealing the illegal origin and actual owner of the assets in the operations made with such assets is only a secondary purpose or result (the same opinion was given by the Criminal Panel of the Supreme Court in its 27 June 2005 ruling in the criminal matter No. 3-1-1-34-05 clause 25). This does not mean that the economical content of disposal of assets always excludes money laundering - a disposal of assets made for performance of an actual claim can also be money laundering. This can be in a situation when a person has legal money and money acquired through crime and the person uses namely the illegally acquired money. In such case, in the context of section 394 of the Penal Code, generally the focus of the disposal of assets can be seen not on the performance of the claim in itself, but on the decision to perform the claim with dirty money instead of clean money, and in such a transaction the central role of concealing the illegality of the money must be affirmed.

The Supreme Court has stated that **solely the concealing of ones business activities from other persons does not constitute money laundering**. We can speak about money laundering, if a person, by diminishing or concealing his or her role, misleads other persons in the meaning of subsection 4 (1) of the Money Laundering and Terrorist Financing Prevention Act.

The Supreme Court has come to a conclusion, that the necessary elements of clause 394 (2) 4) of the Penal Code absorbs in subsection 256 (1) of the Penal Code. A person can be punished on the basis of clause 394 (2) 4) of the Penal Code alongside with subsection 256 (1) of the Penal Code only in such case, if the person committed an act corresponding to the necessary elements of clause 394 (2) 4) of the Penal Code, which does not correspond to the necessary elements of subsection 256 (1) of the Penal Code. According to subsection 5 (2) of the Penal Code, such an act must currently correspond to subsection 255 (1) of the Penal Code.

Based on sections 831 and 84 of the Penal Code, only the assets acquired through money laundering as an object of the criminal proceedings can be confiscated; the court may also order payment of an amount of money only for the replacement of the already spent criminal income (cf. 31 October 2013 ruling of the Supreme Court in the criminal matter No. 3-1-1-97-13 clause 19). This means, among other, that in the criminal proceedings the assets acquired through a predicate offence cannot be confiscated from a person on the basis of section 831 of the Penal Code and the confiscation of the assets acquired through predicate offence cannot be replaced on the basis of section 84 of the Penal Code. **However, property acquired through computer-related criminal offences as predicate offences can be an object of money laundering and it can be confiscated on the basis of subsection 83 (2) of the Penal Code in concurrence with subsection 394 (5) of the Penal Code**.

The Panel has thoroughly analysed the issue of assets acquired through money laundering in its judgement. **The direct object of money laundering** is the assets acquired through criminal activities or the property acquired instead of that, the true nature, source, location, disposition, movement, right of ownership or other rights related to property which the person who committed the money laundering has concealed or disguised, or what he or she has conversed, transferred, acquired, possessed or used with a purpose to conceal or disguise the illicit origin of the property or to assist a person who is involved in criminal activity, so that he or she could evade the legal consequences of his or her action (subsection 4 (1) of the Money Laundering and

Terrorist Financing Prevention Act). **Assets acquired through money laundering crime** is considered to be the assets which the person who commits money laundering has acquired as a result of an activity considered to be money laundering (eg. reward for conversion of criminal income, interest or other financial income earned from the object of money laundering in the course of money laundering, etc). In general, there is no ground to believe that the assets which are the direct object of a money laundering crime are also the assets acquired through money laundering by the person who commits money laundering in the meaning of section 831 of the Penal Code. However, sometimes this may be the case, above all in such case, for example, when the person who commits money laundering, acquires as a result of money laundering all the assets that were the object of money laundering (cf., for example, the ruling of the Supreme Court in the criminal matter No. 3-1-1-97-13 clause 20). Besides that, the Supreme Court has explained in its 31 October 2013 ruling in the criminal matter No. 3-1-1-96-13, that the assets which have already turned into an object of money laundering by any other actions, shall not cease to be an object of money laundering merely due to the fact that such money was used for personal needs after the money laundering. Therefore, making any additional operations with this object, for example, directing it to consumption, shall not affect considering the assets acquired as a result of that as an object of money laundering. Accordingly, the assets which are acquired by obtaining immovable properties or vehicles for assets acquired through crime are considered as object of money laundering.

The Panel has consented, that, on the occasion of those natural and legal persons who occupied the assets as a result of money laundering and who are not imputed to have committed acts corresponding to predicate offences, the assets to be confiscated can be at the same time an object of money laundering as well as income acquired through money laundering, and in such case it is possible to impose confiscation based on section 83[1] of the Penal Code as well as the substitution of confiscation based on section 84 of the Penal Code if assets have been spent. At the same time the Panel has taken the standpoint that **in the case of those natural persons who, according to the accusation, were engaged in committing of predicate offences and at the same time also occupied the assets as a result of money laundering, this income is not income acquired by money laundering**. In a situation where a person acquires proprietary gain by a criminal offence and thereafter sort of begins to launder it, the assets acquired as a result of money laundering cannot be considered as criminal gain acquired by money laundering, because the assets were already acquired by committing the predicate offence. An exception to that is a situation where, as a result of money laundering, the value of the assets increases or some assets are added to the initial ones by other means.

An important judgement is also the judgement No. 1-14-6618 made on 8 April 2015 by Tallinn Circuit Court , in which the court has explained thoroughly the difference between the commission of money laundering and the aiding to money laundering. According to the estimation by the court, **the establishment of indirect intent is not sufficient in the case of subsection 394 (1) of the Penal Code**. Although the explanatory memorandum to the draft money laundering and terrorist financing prevention act (137SE) states, that according to the draft law, unlike the current regulation valid at the time of preparing the draft law, money laundering can also be committed with indirect intent, the text of the law does not confirm it. Namely, similar to section 2 of the previous Money Laundering and Terrorist Financing Prevention Act, clause 4 (1) 2) of the present Act provides, that the conversion, transfer,

acquisition, possession or use of property is considered money laundering, if committed with the the purpose of concealing or disguising the illicit origin of the property or of assisting a person who is involved in criminal activity to evade the legal consequences of his or her action. **The requirement to establish the purpose means that the intent must be established in this part**.

In the matter being resolved, a person A (the accused) acted according to the instructions of a person unidentified by the proceeding, which means, that this person arranged the transactions by which the origin of the property was concealed. According to the estimation of the Circuit Court, the County Court has established correctly the fact that the property was of criminal origin and the use of the bank account of the person A occurred due to the fact that the actual managers of the money did not want to make those transfers in their own names and wanted to distance themselves from these actions. It was also established that the activities of the person A objectively aided the persons instructing A to conceal the actual origin of the money, thanks to A the connection of the finances acquired through criminal offence with the predicate offence was broken. The Circuit Court consented with the County Court in the fact that the person A at least deemed it likely that the amount of money transferred to his bank account can be a property derived from criminal activity and that using his bank account was caused due to the fact that the actual managers of the money did not want to make those transfers in their own names, and the person A accepted that. By acting such way the person A , according to the estimation by the court, provided intent physical aid to intentional illicit act of another person, which means that the person A is considered to be **an aider to money laundering** and his action must be legally assessed **under subsection 22 (3) - subsection 394 (1) of the Penal Code**.

Although in these reviewed court judgements the court practice has resolved several pending issues concerning the necessary elements and burden of proof of money laundering, there is no complete clearness in these issues yet. In practice (mostly on the occasion of cyber-crimes) there appear situations when, by different reasons, criminal proceedings and also court assessments do not cover transactions in which there is no doubt that the assets are of criminal origin. For such cases the legislator has provided administrative confiscation according to subsection 40 (7) of the Money Laundering and Terrorist Financing Prevention Act, yet, according to the viewpoints of the Supreme Court (judgements No. 3-3-1-22-12, 3-3-1-76-13, 3-3-1-77-13 of the Administrative Panel) this is not functioning and the assets remain with criminals or front men recruited by them.

4.1. ADMINISTRATIVE COURT PROCEEDINGS

As at the beginning of 2015 there were 13 pending complaints against administrative acts of the FIU and four pending applications made by the FIU to the administrative court. During the year, two more complaints against administrative acts of the FIU were added. The court has suspended the proceeding of the three applications mentioned above, the proceedings of one application reached the Supreme Court by the end of 2015. During the year, seven complaints ended by final solution, in two of them the complaint was partially satisfied and in four of these the decision was made against the State. The latter cases were wrong assessments about the balance of international liabilities of the FIU and the principles of court proceedings within the framework of one check-file. Thus, as at the end of the year, eight complaints and four applications were pending without final solution in the administrative court.

The Supreme Court found that the possibility to transfer assets to state ownership, as stipulated in subsection 40 (7) of the Money Laundering and Terrorist Financing Prevention Act, is not contradicting to the Constitution. The question concerning regulations of crypto-currency, which faced large public interest in 2015 – whether crypto-money is an alternate means of payment in the meaning of the Money Laundering and Terrorist Financing Prevention Act -, has received a positive answer from the Supreme Court by the time of publishing this book.

5. SCHEMES OF MONEY LAUNDERING

Hereunder we introduce the schemes of money laundering which were analysed by the FIU in 2015. The customary *phishing*-schemes and the "love in Internet", against which the FIU is still warning people, have also not disappeared. We discussed these schemes more thoroughly in the annual yearbook 2014 of the FIU. We pay your attention to the fact that any publishing of ones data on the internet and, especially, disclosure of financial data, should be very thoroughly considered, so that criminals cannot commit fraud.

5.1. SCHEMES OF MONEY LAUNDERING CONNECTED WITH COMPUTER-RELATED FRAUD

In 2015 the hiding and moving of criminal assets acquired by computer-related criminal offences via PayPal and TrustPay continued. The committed computer-related criminal offences and the consecutive ways of money laundering were the following.

1. Deceptive US PayPal accounts are created by stolen money and/or stolen accounts of Wells Fargo bank. From the deceptive US PayPal accounts are made bank transfers (from stolen accounts of Wells Fargo bank) or PayPal Buyer credit payments to Estonian PayPal accounts. From Estonian PayPal accounts money is transferred to TrustPay, from where it is further transferred to Estonian bank accounts and is generally withdrawn in cash.
2. Money stolen from Australian and US credit cards and money stolen from Australian, US and British

spoofed PayPal accounts is, as a rule, transferred via TrustPay again to Estonian bank accounts and is generally withdrawn in cash. Some Estonian PayPal accounts used for the afore named forwarding of money have been spoofed by criminals. Most of the PayPal accounts related to this scheme have been created by criminals.

3. In some cases criminals have deceptively sold bitcoins, electronics or valuable watches, which they never delivered to the buyers, but the money received was either transferred to credit cards (and thence to bank accounts) or via TrustPay to bank accounts. The afore named sellers of non-existing goods mostly had Estonian PayPal accounts but PayPal accounts from Germany, Cyprus, Slovenia, Saudi Arabia, Turkey, the United Arab Emirates, Lithuania and Latvia were also used. In some cases criminals purchased goods from the Internet for the stolen money and ordered it to Estonia, Russia, or, in certain cases (especially for purchases from the US) used companies located in the US which provide goods delivery service.

5.2. INVOICES WITH FALSE IDENTITY AND MONEY LAUNDERING

As a new scheme appearing in 2015, the FIU spotted cases where cyber-criminals took e-mail exchange of two companies connected in mutual business under their control. Based on the collected information, criminals presented to one of the companies deceptive invoice of the other party for a real transaction, but the money was usually requested to be transferred to a bank account different from the regular one. The transaction was asked to be made as soon as possible, providing also a credible reason for that. The payer was rushed to make the transaction, in addition to e-mails, also by phone calls, using false identity. In most of the cases detected last year the money embezzled in such way from victims in other countries arrived to accounts in Estonian banks. In one case the victim was an Estonian businessman whose business partner was located in China. As the FIU managed in most cases to hunt out all the money and the goal of the criminals did not realize, we can hope that the use of such schemes in Estonia will end.

5.3. INCREASED RISK OF TERRORISM AND VIOLATION OF MEDIATING STRATEGIC GOODS

In a state of abruptly increased risk of terrorism in 2015 it is also necessary to observe the compliance with the requirements for mediating strategic goods, including weapons. Otherwise it is easy to cross the line where a legal action turns into an act punishable under criminal law and the whole activity may result in a case where the actual sender of the weapons and the source of the money paid for the weapons cannot be established. The FIU has become aware of a case where an Estonian company, which held a registration but not a requested authorisation, mediated weapons to a neighbouring state of a state with risk of terrorism.

Besides that, the FIU has established cases when bank accounts of Estonian and foreign companies, opened in Estonia, receive money for strategic or military goods (goods with twofold use), in which it is not

uniquely clear whether upon mediating or sale of these goods the activity should be registered and transaction licence should be applied for. In such cases the FIU has decided separately for each activity whether such action falls under activities with strategic goods or not.

Due to the decreased security, the number of those persons has increased, for whose support different charity organisations and assistance funds have been created. Under the guise of these it is also possible to collect money for not so noble purposes or even support terrorists with money. Therefore it is necessary to be alert when donating money to different so called charity organisations or when mediating the money presented as such between different states. It must be made clear to oneself what is the certain organisation engaged in, so that there will not arise a situation that the money assumingly collected for charity is actually used for supporting terrorist groups.

As a result of the activeness of the terrorist Islamic Republic both in acts of terrorism as well as in recruiting activities, there occur more frequently cases where individuals or families in Europe, including Estonia, become victims of their propagandistic activities and go to Syria to join terrorists. At the same time there are people and organisations who collect money allegedly on humanist considerations or support directly those who leave, who have left or their family members staying here. We worn everyone that any kind of material assistance, collecting of money for the purposes of such assistance for persons who have joined the terrorists, or for their family members on whatever considerations, is in general treated according to the Penal Code as terrorist financing and is severely punished.

5.4. THE USE OF ESTONIAN REGISTERED COMPANIES AS SO CALLED OFFSHORE COMPANIES

The possibility to establish a company easily in Estonia has been more and more used for quick transfer of money between different states, which means that Estonia is becoming a convenient transiting country also for the so called dirty money. Companies have been established, where a representative of the company is a foreign resident and the only person located in Estonia is the receiver of the documents, who is not actually connected with the economic activities of the company. Often the owner of such companies is an offshore company or an employee of some limited partnership in Cyprus. The economic activities of the company often consist merely in rapid transfer of money between different countries without any actual economic reason for that. The source of the money is concealed by general commodity or loan agreements or by conventional civil court judgements. Being a transiting state for money with unknown source, there is a great risk that Estonian financial system is also used for moving criminal assets and for money laundering. Therefore the credit and financial institutions should treat Estonian registered companies, which do not show any economic activities in Estonia and whose owners are not residents, equally with the non-resident legal persons, with regard to whom enhanced due diligence measures should be taken.

5.5. OTHER OBSERVATIONS

The FIU points out the companies, whose main activity is the exchange of the money arriving to the account into cash with persons providing services of payment intermediary. Often the actual source of such money is unknown to them, as generally the persons are acting as service providers. In certain cases the activities of such companies can also be treated as providing of financial services, which would require an authorisation. Criminals often take advantage of such companies for committing tax fraud and money laundering.

6. INTERNATIONAL FINANCIAL SANCTIONS

The FIU is a competent body with regard to application of international financial sanctions in the Republic of Estonia.

From amongst the amendments in the sphere of financial sanctions in 2015, we point out two more important ones in Estonian context: namely, the European Union continued to extend the sanctions connected with the situation in the Ukraine by six-month steps and terminated the financial sanctions applied to 170 natural persons and three units during the sanction regime applied against Belarus (the corresponding decision entered into force in February 2016).

In 2015 the FIU received 15 reports in relation with suspicion that there is a possible need to apply international financial sanctions. In 2014 the number of such reports was 21 and in 2013 the number was 9.

In 2015 the FIU conducted one supervision proceeding on the adherence to the requirements of the International Sanctions Act in a financial institution providing payment services. In the course of the inspection, several service providing locations of the company were visited in order to get acquainted with their work procedures in adherence to the requirements of the International Sanctions Act, and also meetings were held with persons liable in the company for applying an international financial sanction. As a result of the supervision, certain shortcomings for securing the application of international financial sanctions were found in the provision of payment services, the management of the company started promptly to eliminate these shortcomings.

In 2015 one incident of freezing of assets for applying international financial sanction also occurred. An account was opened in a credit institution by a legal person Rossija Segodnja, which is incorporated in Russia. The head of the media company Rossija Segodnja is Dmitri Kiselev, who has been subjected to international financial sanctions by the Council of the European Union. Whereas Rossija Segodnja itself is not directly a sanctioned person, therefore, for applying a sanction, it was needed to estimate whether it might be a person controlled by D. Kiselev. A credit institution applied to a bank account of the company a measure of international financial sanctions in the form of freezing assets and the FIU estimated on the basis of the obligation stipulated in clause 18 (3) 4) of the International Sanctions Act that this is a lawful measure. The FIU has also had several contacts with the representatives of the sanctioned company and has explained to them, among other, their legal ways to appeal against the freezing of assets.

7. A LOOK INTO 2016

The year 2016 shall be interesting in many ways. The active elaboration of amendments to the Money Laundering and Terrorist Financing Prevention Act needs to be started. Needless to say, this process will concur active discussion, as the new directive by the European Union on money laundering as well as the e-residency and issues concerning the development of digital services bring along new challenges. The current act has bottlenecks, which need to be resolved. One problem, for example, is the transfer of the property without a master to state revenue (subsection 40 (7) of the Money Laundering and Terrorist Financing Prevention Act), which, in the light of current court judgements, is not actually applicable in most cases. There is also a need to resolve the issue whether and in what way to amend the law so that the burden of proof of the prosecutors concerning the criminal origin of assets would not be so big in the money laundering cases as the judges have requested so far in their judgements.

The year 2015 showed that, although the direct risk of terrorism is small in Estonia, we still have actual terrorist financing which is directly related to terrorism. Most certainly, we need to enhance the interdepartmental cooperation related to this sphere and the international cooperation. Establishing of transactions with suspicion of terrorist financing, which often occurs by funds of legal origin and in small amounts, is a serious challenge for the private sector as well as for the FIU.

In money laundering schemes, the movement of money related to cyber-crimes through the financial system of Estonia will probably continue and it must be established and blocked. There is still a risk of being a transiting channel concerning the movements of funds with unknown background on the eastern direction. As for the internal trends, the "twisting" of funds related to tax crime and illegal economic activities will probably continue. The latter can become especially actual, as most of the providers of loan and mediators must apply with the Financial Supervision Authority for a licence for further operation and this will also include the assessment of eligibility of person or the so-called fit&proper assessment. Not all the companies operating in this sphere today will maybe get the licence and part of this sector may, so to say, move underground.

We are glad to recognize that so far the Estonian money laundering prevention system has been evaluated very highly. Hopefully we shall continue the same way and are able to respond rapidly in this constantly changing world, keeping balance between development and innovation from one side and measures related to risk management from the other side.