

## 11.6. Professionals: vulnerabilities of the attorneys' sector

### 11.6.1. General description of the sector

#### Description of the sector

**Table 94.** Description of the attorneys' sector.

Market participants	Number of market participants as of 31.12.2019	Number of obligated persons	Existence of a professional association or umbrella organization
Attorneys	229	conditional	Estonian Bar Association

The umbrella organization of the sector is the Estonian Bar Association. In Estonia, all persons may provide legal services. Still, only a member of the Estonian Bar Association or a foreign attorney (a person who has the right to practice as a full-fledged attorney in a Member State of the European Union) may do so under the professional title of an attorney. Attorneys in Estonia do not have a monopoly on the provision of legal services in courts and out of court. In Estonia, the provision of legal services as a lawyer is not regulated, and a law office can be established by all persons. The regulated legal services provided by attorneys are distinguishable in the market from other unregulated legal services. As of 26.02.2021, there are 1112 members of the Estonian Bar Association, 747 of them are attorneys-at-law, 362 are assistants of attorney-at-law, and 3 are associated members. The membership of 234 attorneys has been suspended on the basis of § 35 (1) of the Bar Association Act. The number and distribution of members change over time.

**Table 95.** Data from a survey conducted in the attorney's Sector.

Sector	Number of market participants	Sample volume	Sample size/ number of responses required	Number of invitations sent out	Number of responses received	Response rate
Attorneys <sup>1</sup>	239	sample	148	239	63	43%

In the attorneys' sector, there was low activity in participating in the NRA survey, while the participation of other legal services providers was much higher (65%).

#### Legal framework

The professional activities of an attorney are regulated by the Bar Association Act, the Rules of Procedure of the Estonian Bar Association, the Code of Ethics, and the instructions and procedures established by the Bar Association.

Compliance with money laundering and terrorist financing prevention requirements for attorneys is regulated by the MLTFPA and applies to attorneys only to a limited extent.

The MLTFPA apply to the professional activities of an attorney when he or she acts in the name and on account of a client in a financial or real estate transaction. This Act also applies to the professional activities of an attorney, if he or she guides the planning or making of a transaction or makes an official operation, or provides an official service related to:

- 1) the purchase or sale of an immovable, company or shares of a company;

<sup>1</sup> Law offices with the Tax and Customs Board code 69101

- 2) the management of the client's money, securities, or other property;
- 3) opening or managing payment, deposit, or securities accounts;
- 4) acquisition of funds required for the foundation, operation, or management of a company;
- 5) the foundation, operation, or management of a trust, company, foundation, or other association of persons without the status of a legal person.

The MLTFPA not apply if the attorney assesses the client's legal situation, defends or represents the client in court, challenge or other such proceedings, including advising the client on initiating or preventing the proceedings, regardless of whether the information was obtained before, during or after the proceedings. In addition, attorneys must comply with the International Sanctions Act (ISA) when complying with anti-money laundering and anti-terrorist financing requirements.

The Bar Association has also established guidelines governing the field for its members – the rules of procedure for the prevention of money laundering and terrorist financing and the risk assessment for the prevention of money laundering and terrorist financing. The Ministry of Finance and the Financial Intelligence Unit (FIU) have also developed general guidance materials for market participants (not specifically for the attorneys' sector).

### 11.6.2. Description of risk typologies

The services of an attorney are sometimes provided in the following areas, which in themselves carry a risk of money laundering or terrorist financing:

- real estate transactions
- foundation of a company
- arranging client's business
- establishment and management of charity organizations

The following theoretical risk areas were identified during the survey:

- large cash transactions, although in practice they are extremely rare today
- transactions in the public sector and PEPs
- unusual/suspicious business
- uncertainty of financial sources
- transactions with figureheads

### 11.6.3. Threats

#### 11.6.3.1. Threats of money laundering

##### **The threat of cash transactions**

Cash settlement in law firms is not common and is rarely used and, if so, in small amounts. The Bar Association is indirectly aware of individual attempts to manage cash flow from an unknown background through a law firm's bank account, in the course of which foreign persons have tried to realize bank checks issued through a law firm abroad in the past. It has not been established that this was the money of criminal origin or an attempt to finance terrorism.

##### **The threat of contributing to money laundering and terrorist financing**

The threat of contributing can be understood as the intentional non-application of inaccurate application of measures or their inaccurate application in agreement with the client. The Bar Association is not aware of any cases where this threat has materialized in practice.

To the knowledge of the Bar Association, one attorney has been suspected under the provisions of the Penal Code concerning money laundering, but according to the information, the suspicion is not related to the application of MLTFPA provisions or due diligence measures in the law firm, only in connection with participation in the business in the context of the personal friendship of that attorney. The Bar Association

monitors a specific case, and in the event of a conviction for an intentional crime, the attorney gets a disbarment from the Bar Association.

**Conclusion**

The share of turnover and cash in the legal advisory sector is small and rapidly declining. Rather, there are no additional threats for the sector. Attorneys generally do not mediate client payments, and checks are not settled in the attorneys’ sector. Supervision needs to continue to be addressed in order to prevent new risks and to continue to raise attorneys' awareness.

**Table 96.** The threat level of money laundering in the attorneys’ sector

Sector	The threat level of money laundering at the sectoral level	
Attorneys	1	<b>low</b>

In the Estonian context, the threat of money laundering in the attorneys’ sector is **low**.

**11.6.3.2. Threats of terrorist financing**

There are no specific differences in the attorneys' sector from the aspect of terrorist financing; in principle, the threats are the same as in the case of money laundering threats (see clause 11.6.3.1.).

**Conclusion**

There are no specific findings regarding the legal services of attorneys. The services of Estonian attorneys are not attractive in this respect, as there is no mediation of payments. The threats of terrorist financing mainly affect the banks and the financial sector, as well as charities, but attorneys have very little exposure with them. The threat of terrorist financing among attorneys is very low, and the threats have been managed through standard anti-money laundering due diligence measures.

**Table 97.** The level of terrorist financing threat in the attorneys’ sector

Sector	The threat level of terrorist financing at the sectoral level	
Attorneys	1.4	<b>low</b>

In the Estonian context, the threat of terrorist financing in the attorneys’ sector is also **low**.

**11.6.4. Vulnerabilities**

**11.6.4.1. Vulnerabilities of prevention of money laundering**

**11.6.4.1.1. Exposure to the threat**

- **The threat of ambiguity of beneficial owners:** Transactions with foreign clients and PEPs, clients who are members of their family or close associates carry a greater threat. The collection of information on PEPs is difficult due to the lack of databases, and public support for clarifying both the beneficial owner and the political exposure is weak. There may be difficulties with the information of the beneficial owners, i.e., the accuracy of the data published in the commercial register is not guaranteed. The identification of beneficial owner may also be difficult in the presence of complex ownership structures due to weak public support. The threat is not inherently linked to the specificity of the attorneys’ sector.

- **The threat of insufficient resources:** The resources of the Bar Association as a supervisory authority and law firms as organizations today have sufficient recourses for monitoring compliance with the requirements of prevention of money laundering and terrorist financing; the Bar Association and law firms also provide regular training and continue to raise awareness among attorneys. The threat of lack of resources is low, but it is important to maintain the focus of supervision and to enhance supervision. The threat of insufficient resources arises when the state increases the administrative burden associated with the prevention of money laundering. The sector has sufficient resources, awareness, and skills to implement measures of prevention of money laundering, so the threat of criminal organizations exploiting the sector for money laundering purposes is low. The attorney service in Estonia is essentially personal service, that means the personal control of a highly qualified attorney over the client and the task given to him or her from the beginning. At the same time, it is still necessary to strengthen supervision to prevent errors.
- **Threat arising from using digital opportunities:** There is an increased threat of fraud in relation to the digital identification of the client. In practice, it has not materialized in the case of attorneys, as awareness has been sufficient to avoid the threat, so the threat is lower than average. Also, the cash flow in the case of an attorney's service is the other way around, i.e., from the client to the law firm, that is why attorneys are generally not the target group for fraudsters. The threat is managed through the consistent implementation of due diligence measures. An attorneys' service in itself is advice or management that is not a digital service in nature. Digital opportunities relate only to secondary aspects, such as client-attorney communication channels and client identification without a face-to-face meeting. There are no specific threats to the attorneys' sector from using digital opportunities.

The threat of attorneys being involved in criminal schemes is very low, as the background is checked prior becoming an attorney, and a person who has committed crimes in the past is not admitted to the Bar. Persons who are convicted of an intentional criminal offense are also expelled from the Bar and cannot act as attorneys. The personal composition of attorneys in Estonia is thus well controlled and has a clean background.

#### 11.6.4.1.2. Risk awareness

##### **Management commitment and leadership**

The survey revealed that most law firms carry out background checks on new employees and that they are obligated to train their employees in terms of the prevention of money laundering and terrorist financing. The background check of a person entering the Bar Association has been performed by the Bar Association, and a person who has committed an intentional criminal offense in the past cannot become a member of the Bar Association. However, according to the law, persons who are not members of the Bar Association may not provide legal services via a law firm. Awareness is, among other things, high due to the instructions of the umbrella organization or Bar Association<sup>2</sup>.

The Management Board of the Bar Association takes positions on the appeals submitted by the members of the Bar Association in this field, organizes training, and if necessary, contacts state authorities regarding compliance with money laundering and terrorism prevention requirements if attorneys have questions regarding compliance with MLTFPA requirements. This information is also forwarded to the members of the Bar Association.

According to the statistics of the Financial Intelligence Unit, attorneys have submitted 8 notifications in 2019, which is a small number compared to other obligated persons. However, it cannot be concluded from that, there are money laundering and terrorist financing cases in this sector, that are not reported.

<sup>2</sup> Rules and internal control rules established by the Management Board of the Bar Association for the mitigation and management of money laundering and terrorist financing risks established on the basis of § 12 clauses 8, 9 and 18 of the Bar Association Act and risk assessment of money laundering and terrorist financing accompanying the activities of attorneys

First, in the Estonian legal system and market experience, most of the legal transactions subject to the regulation of the MLTFPA, are directed either through notaries and/or the first point of contact are banks or other service providers. For example, in order to purchase real estate, to establish a private limited company or a public limited company, or to purchase their holdings, it is generally not necessary to involve attorneys at all. However, credit or financial authorities are used for financial transactions. In the Estonian market, there is also a clear distinction between corporate service providers in a separate sector (not attorneys) and law firms that operate little in this field, and the so-called shelf companies are generally not sold in law firms. Accordingly, reports of suspicion of money laundering can come mainly from banks and notary offices but also from company service providers, that is the reason why suspicious transactions do not often reach the law firm through such a "filter." Secondly, the main activity of the vast majority of attorneys is to represent clients in court and out-of-court proceedings or in connection with other legal services for which MLTFPA does not apply, and therefore it is not possible to file a notice or report.

#### **Brief summary**

There are regulations at the legislative level in the attorneys' sector. The awareness of the sector regarding compliance with the money laundering and terrorist financing prevention requirements is high due to, among other things, the guidelines issued by the umbrella organization and the regular training provided. The Ministry of Finance and the FIU have also developed general guidance materials for market participants (not specifically for the attorneys' sector).

### **11.6.4.1.3. Legal framework and control**

#### **Quality of supervision**

Level of regulation:

The level of regulation in the attorneys' sector is comprehensive and adequate. Regulations exist at both the legislative and umbrella organization levels. There is no need for additional regulations. The sector's self-regulation is effective and ethical standards are high.

The role of the supervisory authority is performed by the Bar Association, which exercises its cross-member control over compliance with the money laundering and terrorist financing prevention requirements. Each year, the Bar Association supervises 25 law firms through on-site inspections, applying a random sample and a risk-based approach. The number of law firms inspected has increased over time; starting in 2019, 25 offices have been inspected through on-site inspections instead of the previous 20 offices. In order to strengthen and improve the supervision system, it is planned to introduce additional remote control of money laundering, similar to notaries. Remote control would allow more law firms to be inspected for compliance with money laundering and terrorist financing prevention requirements than just regular inspections and more offices to be selected for on-site inspections. One attorney and one assistant of attorney are partially involved in supervision in the Bar Association, and the Secretary-General and the Management Board of the Bar Association deal with supervision issues on *an ad hoc* basis.

In addition to the above, the Bar Association has introduced a system for applying for and issuing quality management certificates of law firms since 2015, in which law firms applying for such certificates are subject to additional requirements and regular on-site audits by the Bar Association, which includes, inter alia, a review of anti-money laundering procedures. There are currently six such offices that voluntarily meet the high standard with a total of about 209 attorneys.

In addition to the Bar Association, as a first level, the activities of attorneys, including the implementation of money laundering prevention due diligence measures, are also supervised by the law firms themselves, where the attorneys operate.

The FIU also supervises compliance with the requirements of the MLTFPA. Cooperation between the FIU and the Bar Association is possible to the extent that it does not conflict with the requirements of the

autonomy of the Bar Association, the independence of the legal profession, and the requirement of professional secrecy of attorneys.

If deficiencies are found in the course of the Bar Association's supervision in connection with compliance with the MLTFPA or the requirements of the Bar Association, then the law firm will be given guidelines and a deadline for rectifying the deficiencies and, as a rule, they will be rectified, and there will be no grounds for instituting court proceedings. The Bar Association has not identified any violations which comprise the necessary elements of a misdemeanor, and no penalties have been imposed on the attorneys or law firms arising from the Bar Association Act, because the deficiencies found by the Bar Association during the supervision have been eliminated within the given term.

The inspection revealed, for example, that the law firm did not formally approve the rules of procedure for the prevention of money laundering and terrorist financing prepared by the Bar Association or was not aware of the obligation to prepare a risk assessment or follow the risk assessment approved by the Bar Association. It has happened that, at the time of the inspection, the client contracts did not contain a clause stating that the law firm or the attorney had the right to cancel the contract exceptionally without advance notice, when a person or client involved in a transaction in the course of economic or professional activity does not provide, despite a request to that effect, documents and relevant information or unless the documents and information provided do not remove the suspicion of the obligated persons that the purpose of the transaction or business relationship may be money laundering or terrorist financing. In a few cases, this case needed to be clarified.

Sometimes the law firm has not appointed a member of the Management Board responsible for enforcing money-laundering rules, although the Bar Association has generally requested the appointment (the Bureau has more than one board member). Or the office has appointed a contact person, but in the course of the inspection, the office manager could not explain the function of the contact person and also whether the FIU and the Bar Association have been notified of the appointment of a contact person. It has also happened that the office has appointed a contact person (although there was no such obligation) and had not informed the FIU and the Bar Association thereof. In other respects, the members of the Bar Association have not been identified as violating the requirements of the MLTFPA and legislation established on the basis thereof, and the Management Board of the Bar Association has not received any complaints about possible violations of the MLTFPA.

During the follow-up, in the course of supervision, law firms are provided with recommendations and suggestions as necessary to eliminate deficiencies and/or to implement money laundering and terrorist financing prevention rules. The Bar Association has also considered it important to cooperate fully and assist members when they have money-laundering prevention issues, and such cooperation has been effective and purposeful in view of the objective. The motivation of attorneys to behave correctly is high, and it is not necessary to apply the court of honor procedure to influence them if it has been enough to make a remark.

### **Brief summary**

All in all, the assessment of the regulations and supervision in force in the sector is high.

### **Effectiveness of compliance control systems and reporting**

Across countries, the following can be pointed out: there is a reporting obligation in the attorneys' sector, but the lack of reporting has been identified as a problem. In the case of Estonia, the reason is not the inefficiency of supervisory authorities (including umbrella organizations) or the lack of instructions. In Estonia, there are guidelines, which would also include instructions on the conduct in case of money laundering or terrorist financing suspicion, regular training of attorneys is carried out, cooperation with the umbrella organization and (state) supervisory authorities is established.

In Estonia, the reporting obligation is provided for in the MLTFPA, according to which attorneys also have an obligation to notify the FIU in certain cases. The Bar association submits to the FIU an overview of the supervisory activities performed by the Management Board of the Bar Association by 15 April each

year. The number of notifications submitted by attorneys to the FIU is small. First of all, it must be kept in mind that the main work of the vast majority of attorneys is to participate and advise clients on proceedings that are excluded from money laundering prevention regulation. Secondly, in the Estonian legal system and market experience, most legal transactions under the regulation of MLTFPA are directed either through notaries and/or the first point of contact is banks or other service providers - i.e., other obligated persons are at the forefront who make the respective notifications. For example, it is not directly necessary to involve attorneys in order to purchase real estate, to establish a private limited company or a public limited company, or to purchase their holdings. However, credit or financial authorities are used for financial transactions. In the Estonian market, there is also a clear distinction between corporate service providers in a separate sector (not attorneys) and law firms that operate little in this field. So-called shelf companies are generally not sold in law firms. Accordingly, reports of suspicion of money laundering can come mainly from banks and notary offices but also from company service providers, which is why suspicious transactions do not often reach the law firm through such a "filter."

As a result of the feedback from the survey of market participants, appears that about 20% of the responded law firms invest in risk management technologies, especially in programs/software and paid databases. In the remaining offices, background checks are carried out, and actions are implemented on a case-by-case basis, so-called manually, using data collected separately for this case as a background check. This percentage distribution is logical, as most offices do not usually provide advice that falls under the list set out in the MLTFPA, for which the law would apply to attorneys at all. At the same time, it is important to note that the offices vary greatly in size; in particular, the investment into technologies is predominantly made by large offices with a large number of attorneys and where there is more work related to transactions. The obligated subjects are attorneys; therefore, it is important to keep in mind that, for example, the 20 largest law firms in Estonia cover approximately 550 active attorneys, i.e., 65% of the active members of the Bar Association.

For the identification of politically exposed persons, Internet searches and its free sources are mainly used, as well as paid databases and the client's own declarations and confirmations. Nearly 35% of respondents indicated that these sources are not sufficient to identify PEPs, as the sources may not reflect reality or provide all information, and there is no database on PEPs and their family members. Nearly 24% of respondents were of the opinion that it is difficult for them to identify and monitor PEP, mainly due to insufficient information, unreliable databases, and lack of access to data. Another reason is the vagueness and fragmentation of the definition of PEP family members and close associates. In other words, the uncertainty surrounding PEPs is not specific to the attorneys' sector but is a fundamental problem of the directive and the law.

Guidelines for identifying complex or unusual transactions are established in law firms. Various control and due diligence measures are applied to clients.

Taking into account all responses, it should be kept in mind that they do not provide a complete overview of the sector as not all law firms provided feedback.

### **Brief summary**

In conclusion, based on the feedback, it is most difficult to implement control and due diligence measures for PEPs due to the lack of reliable sources of information and databases, but this is not a sector-specific issue, as general public sector support in this question is weak in Estonia and elsewhere.

### **Quality of the framework of due diligence measures applied with regard to clients**

General description of the due diligence measures applied by attorneys to their clients:

- Identification of the (right of representation of the) client or the person participating in the transaction (representative of the person) and verification of information on the basis of a reliable and independent source
- Identification and verification of the beneficial owner, understanding of the ownership and control structure of the client or person involved in the transaction

- Understanding the business relationship, transaction, or operation, and its purpose and collecting additional information as necessary
- Control of PEPs and collection of additional information on them if necessary
- Business relationship monitoring
- Where appropriate, the collection of information on the origin of the client's wealth

Based on the responses to the survey, it can be pointed out that the biggest number of problems are related to PEPs – there are no public or paid databases for collecting information, both in the national and cross-national view. Most law firms are very small, employing one or two people, and application of due diligence measures, background checks, and risk mitigation take place as a so-called manual work for a specific task according to need; in other words, law firms generally do not have special automated or semi-automated systems, similar to banks. Offices apply a risk-based approach, and the corresponding systems based on people and procedures are commensurate with the magnitude of the risks. The mutual control of attorneys, regarding the observance of the procedures, works informally in the micro-offices through daily cooperation. Law firms are generally not the target of financial crime because they do not mediate payments or deposit money. Some attorneys have replied that the information needed to identify and verify high-risk clients is not readily available because it is either inaccessible or difficult to find in other countries or is unreliable. The above may increase vulnerability, but it is not a risk arising from the sector or risk related to the sector, as the low availability of the necessary information affects all subjects and is related to the weakness of public sector support not only in Estonia but internationally. It should be noted that if it is impossible to mitigate the risks, the lawyer generally resigns because he or she has no obligation to serve the client, and the administrative burden for a high-risk client may not be proportionate.

#### **Brief summary**

In conclusion, due to the legislation and the existence of guidelines in the sector, due diligence and risk-based assessment requirements are known, but in some cases (especially PEPs, high-risk clients, foreign PEPs, and clients) due to lack of information and due to weak public support, obligated persons cannot perform due diligence measures in the most efficient way. This does not mean that the due diligence requirements are not met by attorneys but means that, in part, it is difficult to take action, and sometimes it is easier to refuse a client and the work than to fully find out their background. It is also important to emphasize here that the activities of many attorneys are more narrowly focused on areas that do not require the implementation of due diligence measures provided for in the MLTFPA (for example, representing clients in court proceedings, family counseling, people-to-people matters under the law of obligations, etc.) therefore, the company's money laundering prevention system must be needs-based and proportionate. Public sector support in the form of reliable free databases would help small and medium-sized enterprises to implement due diligence measures more effectively.

#### **11.6.4.1.4. Sector-specific risk assessment with the quality of sector-specific controls**

The following vulnerabilities have been identified in the analysis and assessment of sector-specific risks:

- access to information (PEPs, high-risk clients both domestically and transnationally)
- lack of effective mechanisms for identifying complex or unusual transactions
- unreliability of the information contained in the registers
- identification of the client's use of shell companies or figureheads
- various schemes for the management or acquisition/transfer of a company may emerge In bankruptcy proceedings.

#### **Brief summary**

In conclusion, vulnerabilities are mainly exacerbated by difficulties in obtaining or verifying information, as misinformation or lack of information increases vulnerabilities in any transaction.

#### 11.6.4.1.5. Quality of response to risks identified in previous evaluations

##### NRA 2015 results:

Specifically, with regard to the activities of attorneys, the following is pointed out: in complex ownership structures, it is difficult to identify the beneficial owner through the direct or indirect holding or control of shares, including 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. The biggest deficiencies mentioned by experts are the lack of verification of the data contained in the commercial register, which in turn means that the accuracy of the data contained in the commercial register is not guaranteed. The share of turnover and cash in the attorneys' sector is small, and there are no relevant additional risks for the sector. Various schemes for the management or acquisition/transfer of a company may emerge in bankruptcy proceedings.

The risk mitigation proposals were as follows: the Estonian Commercial Register also provides access to the European Commercial Register. It is possible to obtain information on the management structure of a potential client or person participating in the transaction from these commercial registers. The market participant can also make inquiries in the Central Register of Securities, where it is possible to obtain information on the beneficial owners of Estonian companies. Credit information provides information on the payment behavior of a client or a person participating in a transaction, international databases on PEPs, and subjects of international sanctions.

The results of the NRA 2015 showed that the level of vulnerability of the sector was low during the previous assessment period. It was suggested that the focus in this sector should be on maintaining the level achieved while continuing to provide regular training and support supervisory activities and provide advice on the compilation of guidelines. The control measures were rated overall high, which is also justified given the level of regulation, restrictions, and control mechanisms in the sector.

As for attorneys, it was pointed out that the supervision of the Bar Association was insufficient and that no penalties had been applied.

##### SRNA 2017/2019:

In the non-financial sector, one of the problems is the identification of the beneficial owner of the client. The analysis has shown that sometimes the concept of a beneficial owner is either not correctly understood or not properly controlled when starting a business relationship. There are also deficiencies in the level of supervision, guidance, and reporting in most Member States. Risk awareness was assessed as low; also, the lack of submission of notifications was pointed out. Overall, the vulnerability to money laundering was assessed as high.

As for legal professionals, including attorneys, it was pointed out that criminals may wish to use the services of attorneys in the following areas: misuse of client accounts, purchase of real estate, creation of trusts and companies/management of trusts and companies, initiation of certain litigation. Attorneys can be involved in money laundering schemes through the creation of "non-transparent structures," defined as business structures where the owners of the entities or institutions in the structure and the beneficial owners of companies and agreements are veiled by the structure. The creation of such structures, often established in different jurisdictions, including offshore centers, is complex and requires the services of professionals such as attorneys.

Proposals at EU Member State level:

1. Member States should take due account of the risks associated with different services in their national risk assessments and identify appropriate mitigative measures.
2. Member States should ensure that information on the beneficial owners and legal arrangements of legal persons is adequate, accurate, and up-to-date.
3. The number of local inspections in the professional sector carrying out activities covered by the principle of legal privilege should be proportionate to the risks.
4. Supervisory authorities should develop a better understanding of the risks of money laundering

and money laundering financing faced by a particular segment of the business. This recommendation should also apply to attorneys.

5. Regular cooperation between competent authorities and obligated persons.

6. Training of obligated entities.

7. Reporting obligation of competent authorities on money-laundering prevention and supervisory activities to obligated entities under the supervision of the authority.

#### Evaluation of Moneyval IV:

In the case of attorneys, there was good general awareness of the requirements for preventing money laundering and terrorist financing, and a risk-based approach was used in everyday practice. The attorneys consider the instructions of the Bar Association to be very useful.

The evaluation report stated that the Bar should review its supervisory system in terms of those members who are at a higher risk for money laundering and terrorist financing. The control of law firms in the field of money laundering and terrorist financing should also be strengthened. It was also noted as a deficiency that the Bar Association has not imposed penalties on attorneys for violating money laundering and terrorist financing requirements. Attorneys pointed out that there are deficiencies with regard to state databases; for example, the data on the beneficial owner may not be complete. It was also noted that the FIU had not developed sufficient guidelines for attorneys.

There is still a need to supplement and develop state databases. Guidelines for obligated entities by specific sectors have not been compiled yet.

#### **11.6.4.1.6. Conclusion**

On a scale of 1 to 5, according to the assessment module, the vulnerability score of the attorneys' sector from the aspect of money laundering is 2.31, i.e., **low**.

**Table 98.** Level of vulnerability to money laundering in the attorneys' sector.

Sector	Level of vulnerability to money laundering at the sectoral level	
Attorneys	2.31	<b>low</b>

The strengths of the sector include the existence of an adequate legal framework, the activities of the umbrella organization in raising attorneys' awareness (developed new guidelines, risk assessments, the management board also provides instructions/positions, if necessary, regular membership training takes place), as well as the existence of sufficient disciplinary sanctions at the level of the law, which can be applied if necessary. At the level of law firms, a high level of due diligence and risk management can be noted.

In the case of the attorneys' sector, the requirements of prevention of money laundering and terrorist financing are also enhanced by the fact that all attorneys belong to the umbrella organization and that overview of the sector is complete. It is also important that a person's background is checked upon admission to the Bar Association and persons who have committed an intentional criminal offense in the past do not become members of the Bar Association, and persons guilty of an intentional crime are immediately excluded from the Bar Association. In addition, all members of the Bar are subject to high ethical and professional standards.

Access to adequate information on PEPs, beneficial owners, and high-risk clients can be considered a vulnerability. There are no relevant databases for PEPs, and it is particularly difficult to gather information from abroad. However, these shortcomings need to be addressed at the national level, which means that it is not a sector-specific risk.

According to the assessment module, the impossibility of joint supervision of the sector has been identified as a higher vulnerability, but in the opinion of the Bar Association, specific supervision of attorneys by

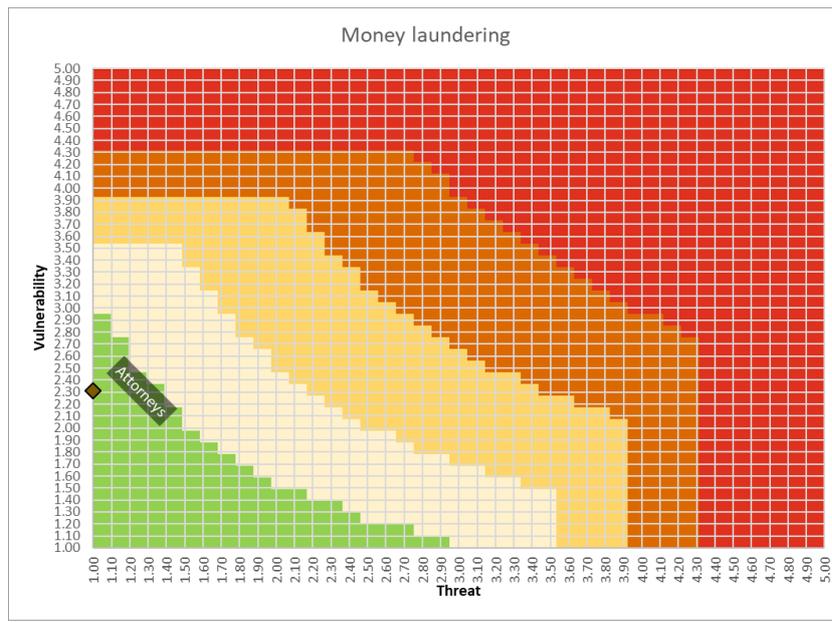
the Bar Association is completely adequate and the only possible method. The attorneys' sector in Estonia is clearly distinguishable from other legal advisers, and supervisory issues and potential problems are completely different. Attorneys do not agree with their treatment as the "legal advisers' sector," which allows problems of other sectors to be artificially attributed to members of the Bar who in reality have a high standard of conduct.

Improving regulation and supervision at an even higher level is not necessary for the Bar Association, as the level of vulnerability in the sector is low, and the existing mechanisms work. The current level of supervision must be maintained.

Compared to previous periods, **the Bar Association has significantly improved its supervision and explanatory work and continues to do so:**

- (i) the Bar Association organizes regular training for attorneys. In addition, money laundering prevention training video is now available to attorneys and can be viewed at any time;
- (ii) money laundering training is also provided by law firms, which are involved in the process of supervising obligated persons, i.e., attorneys;
- (iii) the Bar Association carries out planned on-site inspections on a regular basis each year; for example, 25 law firms are inspected (compared to 20 in the previous evaluation period), each law firm employs between 1 and 70 attorneys;
- (iv) the Bar Association conducts extraordinary on-site inspections in law firms;
- (v) the Bar Association has developed and adopted new money-laundering prevention guidelines and risk assessment documents and updated them (latest update 2020);
- (vi) the Management Board of the Bar Association has appointed a member of the Management Board dealing with money laundering prevention to provide additional support to the staff of the office;
- (vii) the Bar Association has set up a system of quality management certificates, which has been voluntarily joined by six offices and now covers 209 attorneys – the respective offices voluntarily apply the increased requirements and has subjected themselves to audits by the Bar, including regarding money laundering prevention measures, procedures and systems;
- (viii) Whereas the Bar Association has cooperated with a private company carrying out professional background checks on persons and helped them to adapt their services to attorneys in order to enable them to use external expertise to carry out due diligence measures, if necessary;
- (ix) the Bar Association is developing and will further implement in the near future a system of remote control of law firms, which will allow a simultaneous inspection of a large number of offices and to select the offices to be closely monitored;
- (x) The Bar Association considers full cooperation with the membership and the prevention and deterrence of money laundering problems to be a top priority.

**Figure 31.** Heat map of the money laundering risk level of the attorneys' sector



**Summary**

The risk level of the sector in terms of money laundering is **low**, which means that the risk and its consequences must be accepted, and no specific measures are considered necessary. Simplified due diligence measures may be applied in the sector.

**11.6.4.1.7. Risk management strategy**

**11.6.4.1.7.1. Risk mitigation measures at the state level**

Based on the results of the risk assessment, the following suggestions are made to improve the situation at the state level:

- The timeliness and reliability of the information contained in the national registers
- A database for the identification and verification of PEPs and their family members and close associates
- Reliable and free databases for background checks
- Clearer requirements and guidance for obligated entities by sector
- Free availability of reliable data – this needs to be ensured for both Estonian and EU level background checks

The Bar Association, as a supervisory authority, would like feedback from the FIU regarding the annual report submitted by the Bar Association; so far, no feedback has been received. Ongoing feedback on the supervision of the Bar might help to make some improvements in the processes. Until now, meetings have taken place once a year between the FIU and the Management Board of the Bar Association; such meetings must be held at least twice a year, and specific cases or new risk factors must be analyzed. The law firms that responded to the survey have noted that they have not received any feedback from the FIU regarding the quality of suspicious reports.

**11.6.4.1.7.2. Risk mitigation measures at the level of obligated entities**

At the level of attorneys, the measures referred to in section 11.6.4.1.7.1 can also be pointed out as necessary mitigating measures. The competence to impose measures lies at the state level.

## **11.6.4.2. Vulnerabilities of prevention of terrorist financing**

### **11.6.4.2.1. Exposure to the threat**

There are no specific differences; the threats are similar to those of money laundering, but in practice, there is no exposure, and the probability of occurrence is extremely low.

### **11.6.4.2.2. Risk awareness**

#### **Management commitment and leadership**

As the prevention of terrorist financing is inextricably linked to the prevention of money laundering, the sector's awareness of the prevention of terrorist financing is also high on the basis of the explanations given in section 11.6.4.1.2. The implementation of statutory due diligence measures is aimed at preventing both money laundering and terrorist financing.

To the knowledge of the Bar Association, no notifications have been submitted to the FIU by attorneys in connection with the prevention of terrorist financing, and there are no known cases of attorneys being misused for terrorist financing.

### **11.6.4.2.3. Quality of terrorist financing detection and prevention of financing of proliferation of weapons of mass destruction**

#### **Quality of supervision**

With regard to the detection of terrorist financing, there is nothing to point out in this point compared to clause 11.6.4.1.3. There are no known specific risks related to weapons of mass destruction in the attorneys' sector.

#### **Effectiveness of compliance control systems and reporting**

As a result of the feedback from the survey of market participants, appears that about 20% of the responding law firms invest in risk management technologies, especially in programs/software and paid databases. In the remaining offices, background checks are carried out, and actions are implemented on a case-by-case basis, so-called manually, using data collected separately for this case as a background check. This distribution is logical and reflects the specialization of law offices, as most offices do not usually provide advice that falls under the list set out in the MLTFPA, for which the obligation of implementation of due diligence measures would apply to attorneys. The procedures applied and the manner in which due diligence measures are applied must be proportionate and in accordance with the principle of reasonableness, taking into account the risks associated with the activities of attorneys in a particular law firm.

For the identification of politically exposed persons, Internet searches and free Internet sources are mainly used, as well as conversations with the person or paid databases. Nearly 35% of respondents indicated that these sources are not sufficient to identify PEPs, as the sources may not reflect reality or provide all information, and there is no database on PEPs and their family members. Nearly 24% of respondents estimate that it is difficult for them to identify and monitor PEP, mainly due to insufficient information, unreliable databases, and lack of access to data. The vagueness of the concept of PEP in both the directive and the law is also a problem.

Guidelines for identifying complex or unusual transactions are established in law firms. Various control and due diligence measures are applied to clients, but problems are caused by the lack of reliable databases, which makes the implementation of due diligence measures inefficient and costly.

All responses that were provided do not provide a complete overview of the sector as not all law firms provided feedback. Also, not all law firms operate in areas that require regular application of due diligence measures.

In conclusion, based on the feedback, it is most difficult to implement control and due diligence measures for PEPs due to the lack of reliable sources of information and databases. Highlighting difficulties does not mean that due diligence measures are not implemented or clients are served without complying with the requirements.

#### **Quality of the framework of due diligence measures applied with regard to clients**

General description of due diligence measures:

- Following the "know your client" principle (background check)
- Risk assessment of products/services/transactions
- Checking the list of sanctions
- Document verification
- Monitoring the origin and movement of funds
- Operating according to different instructions
- Assessment of risks related to geographical areas and jurisdictions
- Monitoring of radical movements and hostile information campaigns/foreign propaganda

In conclusion, the requirements for the prevention of terrorist financing are also known, as they go hand in hand with the prevention of money laundering, but due to the low probability of occurrence, the emphasis is on due diligence measures in the prevention of money laundering risks and less on the assessment of specific terrorist risks. This is in line with the principles of proportionality and reasonable risk assessment, as the obligated entity must pay more attention to larger risk areas based on the specifics of its activities. The implementation of due diligence measures adequately mitigates the risks of both money laundering and terrorist financing that would be associated with the activities of law firms. The incidence of vulnerability to terrorism is low, as there is essentially no exposure in Estonian practice, so the implementation of some of these due diligence measures to a lesser extent does not increase the level of vulnerability.

#### **Quality of the identification of sector-based international sanctions**

The imposition of sanctions, embargoes, and other measures is a very high-risk indicator, and the existence of sanctions in transactions must always be checked. As a result of the survey, 92% of the responding law firms have also developed, among other things, the principles of compliance with financial sanctions, and the list of sanctions is also monitored when applying due diligence measures.

The existence of sanctions is checked from public databases. Unlike PEPs, information on international sanctions is available through databases. The level of vulnerability in this aspect is, therefore, very low.

#### **11.6.4.2.4. Sector-specific risk assessment with the quality of sector-specific controls**

The following vulnerabilities have been identified in the analysis and assessment of sector-specific risks:

- lack of effective mechanisms for identifying complex or unusual transactions
- access to information
- unreliability of the information contained in the registers
- identification of companies that support the participation of a person (beneficial owner) in a business transaction or the concealment of his or her assets
- identification of cases where a legal person or entity is used to conceal a beneficial owner
- identifying the use of shell companies by the client and reporting the respective suspicions

In conclusion, vulnerabilities are mainly exacerbated by difficulties in obtaining or verifying information, as misinformation or lack of information increases vulnerabilities in any transaction.

#### **11.6.4.2.5. Quality of response to risks identified in previous evaluations**

NRA 2015 results:

With regard to terrorism, nothing is specifically mentioned in isolation, see also clause 11.6.4.1.5.

SRNA 2017/2019:

Due to the link to money laundering and terrorist financing, the role of terrorism has not been assessed separately. See also clause 11.6.4.1.5.

Evaluation of Moneyval IV:

See also clause 11.6.4.1.5.

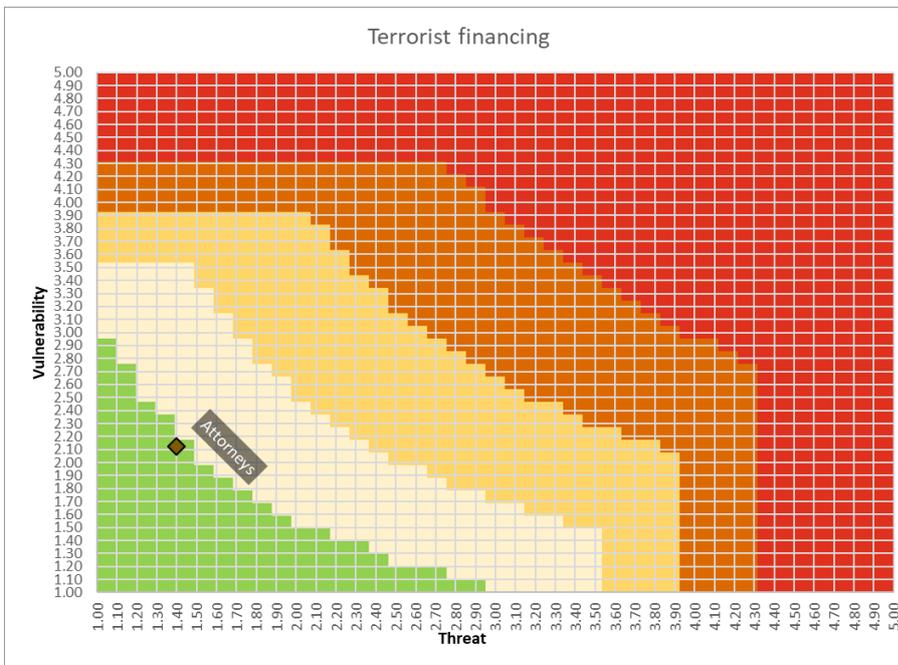
**11.6.4.2.6. Conclusion**

On a scale of 1 to 5, according to the assessment module, the vulnerability rate of the attorneys' sector is 2.12, i.e., **low**, rounded from the aspect of terrorist financing.

**Table 99.** Level of vulnerability to terrorist financing in the attorneys' sector

Sector	Level of vulnerability to terrorist financing at sectoral level	
Attorneys	2.12	<b>low</b>

**Figure 32.** Heat map of the terrorist financing risk level of the attorneys' sector



As the prevention of terrorist financing is related to the prevention of money laundering, as far as the vulnerabilities of terrorism are concerned, they are not repeated here. There is a difference only for PEPs, which are rated on the highest efficiency scale of the design as not applicable.

**Summary**

The level of risk in the sector in terms of terrorist financing is **low**, which means that the risk and its consequences must be accepted, and no specific action is considered necessary. Simplified due diligence measures may be applied in the sector.

#### **11.6.4.2.7. Risk management strategy**

Due to the low vulnerability of the sector in the context of terrorist financing, it is not necessary to strengthen regulation or supervision of the sector for this reason, and the focus must be on maintaining the level achieved. Also would be useful the risk mitigation measures listed in clause 11.6.4.1.7.