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Institutions and Protection Systems against Money Laundering in Republic of Macedonia

Danica Moneva*

High Public Prosecution, str. General Mihajlo Apostolski, Shtip 2000, Republic of Macedonia

Email: d.moneva.mkd@gmail.com

Abstract

Money laundering in the Republic of Macedonia rarely is a consequence of organized crime related to drugs, weapons and people trafficking. Money laundering, in most cases, is connected with financial crime, carried through illegal transactions through banking and non-banking institutions. Therefore, it is necessary to have a systems and institutions for the protection of suspicious transactions. Below are given ways to regulate money transactions, money transfers, identification of suspicious clients and suspicious transactions, as well as institutions and systems that contribute to protection against money laundering.

Keywords: financial crime; money laundering; systems; institutions; protection.

1. Introduction

Money laundering is not a new phenomenon. Criminals always tried to hide funds derived from their criminal activity. Although in the long run this activity is considered a marginal issue in the expansion of drug trafficking, money laundering has become an integral part of any serious criminal activity. The international community in the late eighties of last century recognized money laundering as a threat to democracy, human rights and the rule of law that are core values of modern democratic states.

* Corresponding author.

As menacing phenomenon, money laundering expanding its dimensions using intensive processes of globalization and technological transformation. The profits of crime, which is mainly in the form of cash, must be "cleaned" so they can then be reused by criminals. Money laundering involves a series of financial transactions (deposits and their withdrawal, transfers, etc.) That ultimately result is that dirty money becomes clean which can be used for legitimate business activities. Actually "cleaned" dirty money are "recycled" through legitimate businesses, and hence penetrate the legitimate market and are distributed throughout the economy Organized crime is now recognized as a "priority threat" to national security.

1.1. Institutions and systems for prevention of money laundering in Republic of Macedonia

Republic of Macedonia is a country with an average income level and moderately developed financial system. Macedonia is not a regional financial center. While most financial transactions take place through well regulated and monitored banking systems, transactions of funds by a considerable amount, often are performed outside the banking system. Money laundering in the country is mostly related to financial crimes such as tax evasion, smuggling, financial frauds, insurance fraud and corruption, and most of the activities which includes money laundering come from domestic crime. Only a fraction of money laundering is done as a consequence associated with drug trafficking and there is no evidence that organizations for drug trafficking or terrorist groups influence or control the process of money laundering. In addition, there is no evidence that money laundering stems from organizations who smuggle people, weapons, and uses banking or non-banking financial institutions. The most common techniques of money laundering in the Republic of Macedonia are in relation with cash transfers, structured cash deposits, purchase of movable or immovable property and using legal entities of the so-called "offshore" jurisdictions. Here it should be noted that Republic of Macedonia is not "offshore" financial center and the Banking Law does not allow the existence of a "cover banks" in the Republic of Macedonia, while not allowed any existence of anonymous bank accounts. However, there is a need for stricter regulation in relation to the exchange offices and non-financial institutions [1].

Although Republic of Macedonia is not a member of the European Union, however, it has ratified international instruments to combat money laundering, such as:

- Vienna Convention (1988), (United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances);
- International Convention for the Suppression of the Financing of Terrorism (1999);
- Directives of the European Union Council (1991) for prevention of the use of the financial system for the purpose of money laundering (91/308/EEC);
- United Nations Convention against Transnational Organized Crime (Palermo Convention of 2000);
- Directive 2001/97/EC of the European Parliament and the Council (2001);
- Recommendations of the FATF on money laundering that are important for international regulation of the process of money laundering [2].

According to Basel Anti Money Laundering Index (AML Index) which measures the risk of money laundering and terrorist financing of countries based on publicly available sources, in 2016 Republic of Macedonia is

ranked on 108 position out of 149 ranked countries, with score of 4.89, with change in score from +0.48 (formerly scored 4.5 in 2015) [3].

Republic of Macedonia is a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) of the Council of Europe, a regional body in the FATF (Financial Action Task Force) style. As a member of this body, Republic of Macedonia undertake actions to harmonize domestic legislation against money laundering which will be brought closer to international standards. On September 1, 2014, Parliament has adopted new law on prevention of money laundering and terrorist financing, in order to make harmonization with local legislation and international standards. The same law from 2014 has changed the name of the financial intelligence, from Directorate for Prevention of Money Laundering and Terrorist Financing to Financial Intelligence Unit (FIU). The new law has created an opportunity for identification of clients that perform suspicious transactions, and the threshold of the assets over which a transaction is considered suspicious and mandatory disclosure of the identity of the client, and this threshold are displaced from the former 2,000 Euros to 500 Euros [1].

With the new law on prevention of money laundering and terrorist financing, government of the Republic of Macedonia made a law which is harmonized with FATF Recommendations from 2012. Novelties includes:

- As new entities to undertake actions to prevent money laundering and financing terrorism are introduced online casinos, and from this obligation are exempt associations and foundations (domestic and foreign), the Real Estate Agencies, Cadastre and legal entities carrying out the purchase of vehicles;
- Despite a ban on opening anonymous accounts there is also a ban for opening accounts in obviously fictitious names;
- The collection, processing and use of personal data complies with the Law on Protection of Personal Data;
- Provisions for employees in the Financial Intelligence Unit complies with the Law on Public Sector Employees and the Law on Administrative Officers;
- Entities should take stronger measures to analyze clients from countries that do not have implemented measures to prevent money laundering;
- Time limit for keeping the documents collected during the implementation of measures under this Act is shortened, from 10 to 5 years; and
- Are introducing appropriate penalties and proportionalni accordance with the Penal Code [4].

In 2014, the Financial Intelligence Unit has completed the implementation of a new information technology system that allows sending reports from entities of any suspicious transaction, directly to a secure platform in real time. The Financial Intelligence Unit is in the process of implementing new methodologies which will enable implementation of a program for National Risk Assessment. However, this administration is obscured by the Financial Police and the ordinary police of the Ministry of Interior Affairs [1].

Within the legally defined responsibilities, the Financial Intelligence Unit cooperates with authorized bodies of other states and international organizations engaged in combating money laundering and financing terrorism and participates in fulfilling the obligations deriving from membership of Republic of Macedonia in international

organizations like Moneyval Committee of Council of Europe and EGMONT. Within the international cooperation, FIU can request and submit data on its own initiative or at the request of another state with principle of reciprocity. The exchange of data and information, i.e. receipt and delivery of data from EGMONT members is done electronically via Egmont Secure Web Site (ESW) [5].

All banks have programs that were created and governed by new regulations. Savings offices continue to implement the legal framework and new programs, which are under the supervision of the Central Bank, while three of them who have transformed them self's in financial companies are supervised by the Ministry of Finance. However, there are other institutions that are connected to the reporting system of Financial Intelligence, but under the supervision of the Public Revenue, exercising very poor control, given that this administration is primarily focused on tax evasion. The transparency of the electronic money transfer has improved, but still not demonstrating effective application of the regulations and legal acts. Also, it is necessary and improves the monitoring of transactions performed by exchange offices and other entities.

The reporting of suspicious transactions by lawyers, accountants, brokers, real estate agents, consulting bureaus, casinos, notaries and other entities dealing with finances is not yet well established, and the implementation is very slow. The latest changes in the law exclude non-governmental organizations and foundations as reporting entities that has to report any suspicious transactions.

Especially important is that the new law clearly provides an opportunity for the confiscation of all forms of indirect profits, including transformed and acquired assets, and income or other benefits from the crime. However, effective implementation is the negative side, because of over-complex regime of confiscation which is performed only on the basis of conviction. Republic of Macedonia has such entity, an Agency for Management of Confiscated Property and Freezed Assets, but that Agency has very limited capacity, with minimal activity [6].

Each country should take measures to prevent money laundering process and the financing of terrorism. These measures are aimed at increasing awareness of institutions and the private sector in the fight against money laundering and terrorist financing, and creating appropriate tools to combat against this type of crime.

Standards and measures that set international bodies dealing the issue of combating money laundering and terrorist financing are continuously developed and updated in accordance with the detected cases of money laundering and terrorist financing. Features that certain legal enteties and individuals offer are commonly abused by criminals leading to setting the standards in terms of applying specific measures and actions by those persons in order to prevent, as far as possible illegal money laundering activities and financing terrorism. For this reason, all individuals and legal entities included in the category of obligatory subjects, should apply such measures.

Financial Intelligence Unit regularly monitors standards regarding determination of category of entities, so as their obligations, and implement them in preparation of laws and regulations. Hence, the scope of entities covered by the law is in accordance with international standards and regulations [5].

1.2. Constraints of the study

In this study, it is made an superficial overview of the institutions, systems and laws that primary actions are preventing money laundering in Republic of Macedonia, and there is still to be done for research. This study is limited to the analysis of the number of relevant reports of international bodies in relation to money laundering in the country, as well as the opinions and reports from the Macedonian analysts and papers from relevant institutions in the Republic of Macedonia in charge of preventing money laundering and terrorist financing. Therefore, the study is limited to the presentation and analysis of the facts found in the reports on the situation in the country, which institutions are responsible for prevention of money laundering, which are systems to prevent money laundering and by which law is regulated prevention of money laundering, but only mentioned, without any development thereof.

What could be subject to further research is a more detailed analysis of the law on prevention of money laundering and financing of terrorism, in particular Article 273 of Penal Code, then, analysis of responsibilities, actions and powers of the Financial Intelligence Unit, Processing acts under which run this agency, analysis of all legal acts and articles of these laws relating to combating money laundering, and a review of the harmonization of law on prevention of money laundering with international conventions, directives and recommendations.

From all above, we can conclude that the analysis in a text which is presented above is only superficial and requires greater analysis and processing of the said targets.

2. Conclusions and Recommendations

In Republic of Macedonia, there is still serious concern about the occurrence of money laundering, in part because of inadequate legal framework that exists and incrimination which further contributes to the existence of a repressive system. The recommendations can be made to further improve the fight against money laundering, such as:

- Position of incrimination itself as the most widely offense prescribed by law by changing the incrimination in Article 273 of the Penal Law;
- Effective implementation of legislation and harmonization of the Law on Prevention of Money Laundering and Other Proceeds from Crime and Financing of Terrorism Law on Criminal Procedure and to establish a system for monitoring and complete statistics nationwide;
- Strengthening the capacity of institutions in terms of information technology, capacities for supervision, and training of human resources in the area of oversight, through adequate training and proper practice;
- Further development of the system for effective international cooperation with the institutions of the international community and continued cooperation with the Council for Combating Money Laundering and Financing of Terrorism;
- Control and supervision of the institution who are not dealt with prior supervision, such as non-financial institutions, savings banks, law offices, accountants and so on;

- Continuing cooperation with International Units for combating money laundering, organized crime and terrorism, to strengthen cooperation with Moneyval, the Financial Intelligence Units at international level and so on; and
- Raising the awareness of the subjects on the need for taking measures to prevent money laundering through the signing of appropriate protocols and memoranda of cooperation.

As a special recommendation, there is a need for training of officials for recognition of the schemes of money laundering, due to quickly and effectively prevent the occurrence, which means that after proper training, the experts will be able to notice suspicious activities, as officials who are fully prepared for recognising the scheme of money laundering and help in the fight against money laundering.

As a conclusion of the above, it is clear that there is a lack of human resources and knowledge in the field of money laundering and terrorist financing, as need to promoting further. Despite the existence of international guidelines and standards, national law should treat the issue of money laundering according to its needs. In Republic of Macedonia, money laundering is of great importance for managing institutions because Republic of Macedonia is characterized as a developing country.

It must be emphasized that greater application of information technology is required in order to detect suspicious transactions, or installing software on national level for prevention of money laundering, and this will help increase the efficiency of the fight against money laundering. Furthermore, is expected in future to increase the power of the Financial Intelligence Unit and internal auditors, while requiring greater involvement of the FIU in the processing and analysis of reports on transactions, which will allow direct delivery of information to the judicial authorities where will accelerate the process and increase the efficiency in the functioning of regulatory authorities.

We must note that the judicial system is much politicized and time inefficient; laws and rights are poorly implemented and there is selectivity by the judiciary. Republic of Macedonia should concentrate on reforms focused on greater independence of the judicial system and to exert maximum efforts in fighting organized crime, corruption, terrorism and money laundering. Although there is high awareness in the country for the need to combat this type of crime, however, Republic of Macedonia will have to invest much efforts to create institutions and systems which can prevent money laundering through the financial and non-financial institutions in the country. Republic of Macedonia has shown progress in combating corruption, but still remains restricted in some sensitive areas, such as money laundering. There is a need for improvement in control systems of transparency and accountability at the local and national level and it is very important to develop and adopt effective systems for monitoring and control, to breakout danger of money laundering, which may be associated with financing terrorism.

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