



Ambasada Britanică
la Chişinău



Draft Law on Anti-Money Laundering and Countering Financing of Terrorism – Source of Economic Stability or Instability?

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Table of Contents

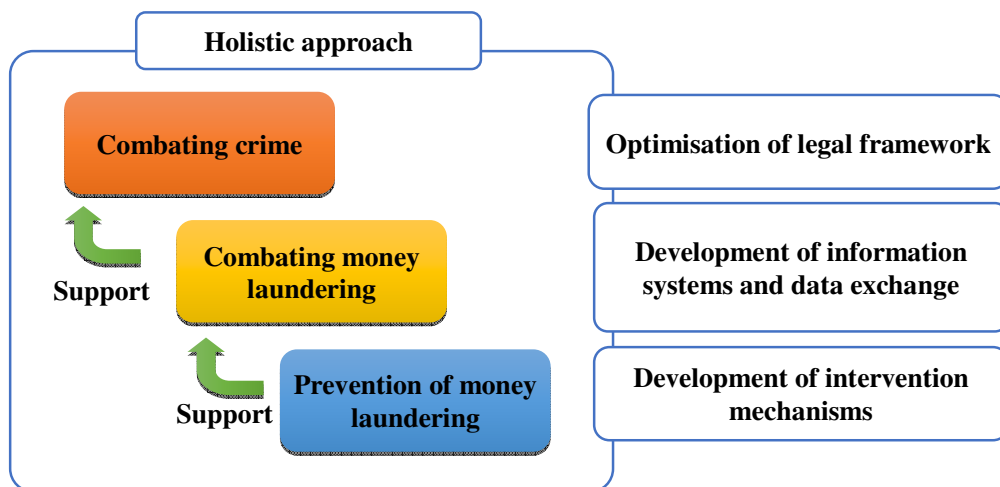
Recommendation 1: Assess the risk of money laundering and adjust the legal provisions of the draft law so as to target the high-risk areas specific for Moldova and minimise the impact on the business environment.	5
Recommendation 2: Review the OAML/CFT governance mechanism. Select the management on a competitive basis and segregate the duties between the entity that issues allegations and the one that establishes large-scale sanctions.	7
Recommendation 3: Develop a clear system of sanctions related to specific violations. Exclude general wordings. Distinctly separate the group of sanctions for violations related to prevention of money laundering from the group of sanctions for money laundering and intentional support of money laundering.	9
Recommendation 4. Eliminate the misleading definition of money laundering and take over the definition as established by the EU Directive.	10
Recommendation 5. Employees' protection should be ensured primarily by the state, not by the reporting entity	11
Recommendation 6. Review the requirements regarding currency exchange operations.	12
Recommendation 7. Develop a centralised national system for the registration of beneficial owners, granting electronic access to reporting entities.	13
Rectification Note: The notion 'Suspension of goods' is incorrect and must be removed.	14
Final Conclusions and Recommendations	15

Defining the Issue

The Office for Anti-Money Laundering and Countering Financing of Terrorism (OAML/CFT) and the Government of the Republic of Moldova (Government) submitted for approval the draft law on preventing and combating money laundering (Draft Law on AML/CFT). The new draft law was proposed in the context of alignment of the national legislation to the recently updated international standards, and namely: Directive 2015/849 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing (Directive) adopted on 20 May 2015 by the European Parliament and Financial Action Task Force (FATF) standards that were revised in 2012, were expressed in 40 Recommendations and 9 specific recommendations (FATF Recommendations).

The aim of this note is to provide recommendations on improvement of the draft law as well as of the certain elements of mechanisms present in Moldova on preventing and combating money laundering, so that to protect the fundamental rights, proper functioning of the business environment and to preserve a rational approach to prevention and combating the money laundering phenomenon.

It is vitally important to understand the general context and the role of prevention and combating money laundering in such context. The primary goal of modern societies and states is to eradicate organised crime, drug trafficking, human trafficking, organ trafficking and illegal arms trafficking. In this context the international community developed services to identify and fight these crimes. Once the technologies were developed and the financial flows enhanced, it became obvious that the criminals' ultimate goal is to bring the enormous income back into the legal 'white' circulation. And after realising this fact, the combating of money laundering was organised and the money laundering activity was incriminated to attack the results of illegal activity. Thus, the incrimination of money laundering is destined to support direct eradication of criminal activity by discouraging the use of profits from this illegal activity. Later, a conclusion was made that the money laundering combating activity also has an additional support and namely the PREVENTION of money laundering phenomena, which also needed the engagement of a private company, especially – professional financial companies. These institutions have to be PARTNERS and not the antagonists to the state authorities in fighting crime. FATF is the institution that developed and is updating the recommendations framework on AML/CFT. One of the key warnings in this regard is that the state shall use HOLISTIC approach to the subject of organized crime combating from the perspective of the three groups of measures.



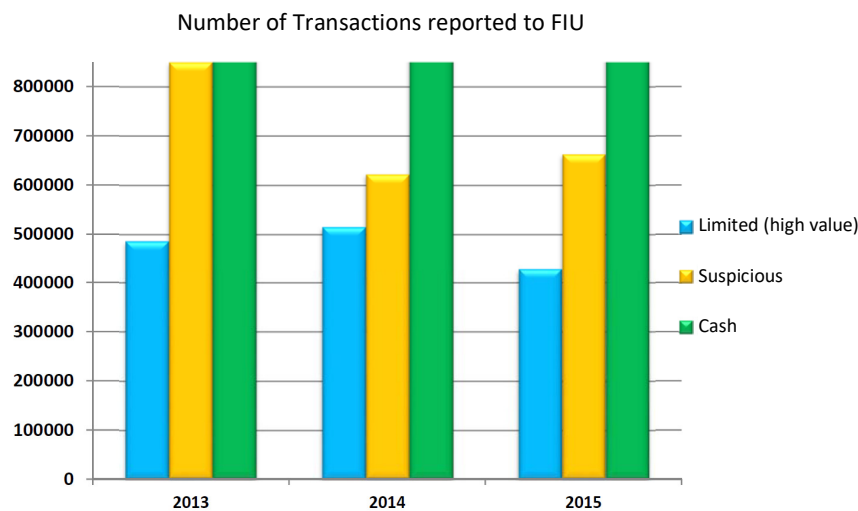
The approach in the context of the legal framework is disproportionate, thus, the activity on preventing money laundering, which, technically is the 'support's' 'support' becomes significantly more regulated, containing a range of broad obligations passed on to a private company. The obligations are less pronounced in case of state institutions responsible for combating money laundering, while the laws that regulate organized crime fighting are outdated. For example, LAW No 241 of 20.10.2005 on preventing and combating human trafficking underwent the last minor changes in 2012. Its provisions are rather short and it lacks a liability for reporting, risk assessment and for informing the public about the results of the authorised authorities' activity. There is no obligation on assessment of risk categories, regular audits and designated record-keeping. The law only provides for a range of duties and rights of the state authorities, while the procedure of organisation of such actions and their frequency is left entirely at the discretion of such authorities. The consequences of such gaps can be seen in reality, like, for example in case of minor children used for begging, who sometimes are drugged or given sedatives. No data are available on the turnover of flows of cash resulting from exploitation of beggars and minor children – which is an example of organised crime. At least, the data published by the OAML/CFT for 2014 and 2015 lack the references to the money laundering topology related to the exploitation of human beings, and especially minors.

Another crime targeted by the international bodies is arms trafficking. The Republic of Moldova faces the increased risk in this field due to the existence of the territories on the left bank of the Nistru river not controlled by authorities, lack of delimitation and control of the demarcation line on this territory, with considerable quantities of munition and arms being stored there. This field lacks a law that would set clear objectives, functions and obligations of the state bodies, mechanisms that have to be applied to fight arms trafficking and cooperate with OAML/CFT on identifying the turnover of flows of cash resulting from such trafficking.

As civil society we are able to determine the lack of holistic approach to the organised crime eradication recommended by European directives and FATF. As long as the entire legal framework related to organised crime is not updated, the effects of strengthening only money laundering prevention will be minimum and inefficient in comparison with the efforts made.

Recommendation 1: Assess the risk of money laundering and adjust the legal provisions of the draft law so as to target the high-risk areas specific for Moldova and minimise the impact on the business environment.

OAML/CFT collected and published annual statistical data on reporting of suspicious limited and cash transactions. Thus, an impressive number of suspicious transactions (662 818 of the total of 2 715 919 forms) was reported in 2015 in Moldova.



To compare, 381,882 suspicious transactions ¹were reported in the United Kingdom in the course of one year (October 2014 – September 2015). Half as many (!) comparing to the Republic of Moldova. The United Kingdom is the European financial leader, with the population of 65 million, 5.5 thousand businesses and GDP of USD 2858 billion. When extrapolating to the population number, legal entities, GDP or transactions, the Moldovan indicator is hundreds of times larger than that of the United Kingdom.

This phenomenon shows that the legal requirements do not match the important risks and requires processing by private entities and state authorities and accumulation of an unjustified volume of irrelevant operations that only generate the irrational use of resources.

Thus, it is absolutely critical that **OAML/CFT conducts a comprehensive risk assessment, identifying real risk areas based on the money laundering topologies detected and adjusting the legal framework to focus efforts of the both private companies and OAML/CFT human resources on the risk areas that were found.** Collection and processing of an exaggerated uncalibrated amount in risk areas is a waste of resources provided by government's taxpayers.

It is also expressly recommended by FATF in its International standards on combating money laundering and the financing of terrorism & proliferation and namely:

¹<http://www.nationalcrimeagency.gov.uk/publications/677-sars-annual-report-2015>

INTERNATIONAL STANDARDS ON COMBATING MONEY LAUNDERING AND THE FINANCING OF TERRORISM & PROLIFERATION

THE FATF RECOMMENDATIONS, FEBRUARY 2012, Updated October 2016

The FATF Standards have also been revised to strengthen the requirements for higher risk situations, and to allow countries to take a more focused approach in areas where high risks remain or implementation could be enhanced. *Countries should first identify, assess and understand the risks of money laundering and terrorist finance that they face, and then adopt appropriate measures to mitigate the risk.* The risk-based approach allows countries, within the framework of the FATF requirements, to adopt a more flexible set of measures, in order to target their resources more effectively and *apply preventive measures that are commensurate to the nature of risks, in order to focus their efforts in the most effective way.*

....

The preamble of the Directive (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing also specifies the principles to be applied at establishment of regulatory mechanisms, and namely:

(2) The soundness, integrity and stability of credit and financial institutions and confidence in the financial system as a whole could be seriously jeopardised by the efforts of criminals and their associates either to disguise the origin of criminal proceeds or to channel lawful or unlawful money for terrorist purposes. In order to facilitate their criminal activities, money launderers and terrorist financiers could try to take advantage of the freedom of capital movements and the freedom to supply financial services which the integrated financial area entails, if certain coordinating measures are not adopted at Community level. Therefore, certain coordinating measures are necessary at Union level. At the same time, *the objectives of protecting society from crime and protecting the stability and integrity of the Union's financial system should be balanced against the need to create a regulatory environment that allows companies to grow their businesses without incurring disproportionate compliance costs.*

(22) The risk of money laundering and terrorist financing is not the same in every case. Accordingly, **a holistic, risk-based approach should be used.**

Thus, OAML/CFT has to perform a risk assessment, which should be expressed in a published and publicly available report. On 5 and 7 December 2016 a workshop on risk assessment in money laundering was carried out.² Termination of the assessment report and development of an action plan were presupposed. But apparently, these documents were not made publicly available on the website. Following the risk assessment the OAML/CFT should adjust the legal provisions so that to limit the legal measures to targeting these risks. Thus, the following criteria should be met at establishing the categories of reporting entities and especially – of the obligatory measures the latter should take.

- a. A complete and complex reporting shall be limited only to the entities that handle a large volume of financial transactions. Such entities, due to their professional nature and dimensions, are capable of having a separate service able to assess the money laundering risk and develop programs, policies, procedures and measures related to money laundering.
- b. Exclude areas or simplify the procedures that have low-risk and do not have any cases of money laundering registered.

²<http://spsb.cna.md/ro/press-release/evaluare-na%C5%A3ional%C4%83-riscurilor-%C3%AEEn-domeniul-sp%C4%83l%C4%83rii-banilor-%C5%9Fi-finan%C5%A3%C4%83rii-terorismului>

- c. Correlate the measures and obligations included in the draft law with the actual capacities of the entities to collect, process and organise data.

Apart from the need to optimise the obligatory measures imposed by the law, the risk analysis shows that one of the main catalysts for a range of money laundering transactions is the judicial system. At the same time, the draft law doesn't impose any obligation in this regard and doesn't provide for measures to reduce this risk and to target this category of entities. It is important to eliminate these gaps and to include all categories of entities that were proven to be a part of a money laundering schemes, as reporting entities or at least impose them with obligations in the draft law.

Apparently, it is abusive to include individuals and legal entities that lease premises in the category of reporting entities, since the EU Directive is limited exclusively to the categories of estate agents as a professional category, who provide mediation in such transactions and are aware of the large volume of real estate transactions. That is why an extremely solid justification is required for not limiting this category of reporting entities to estate agents. In its absence, the point h) of Article 4 of the draft Law has to be removed.

Considering the identified deficiencies, it is critical to carry out a risk assessment and to amend the draft law, so that to adjust the indicated measures to the phenomenon and vulnerabilities of the Republic of Moldova. It is strongly recommended to carry out this assessment with participation of international and national experts, including those from the economic and financial areas, to correctly and comprehensively calculate the risks and highlight the truly critical ones. We recommend this mixed team to develop implementation measures necessary to reduce specifically critical risks, and to transpose these into the draft law.

Following the example of the AML/CFT Commission that submits a report to the European Parliament, it is recommended that the law provides periodic reporting (every two years, or more frequently if appropriate) of AML/CFT to the Parliament of the Republic of Moldova on the risk assessment and the actions taken throughout the reporting period.

Article 6

(7) Every two years, or more frequently if appropriate, the Commission shall submit a report to the European Parliament and to the Council on the findings resulting from the regular risk assessments and the action taken based on those findings.

Recommendation 2: Review the OAML/CFT governance mechanism. Select the management on a competitive basis and segregate the duties between the entity that issues allegations and the one that establishes large-scale sanctions.

Article 18 prescribes the means of appointment of the OAML/CFT management, however, neither the provisions for appointment of the director, nor those for appointment of his/her deputy, do not contain the obligatory nature of competition or the key criteria for this position.

Article 18. The Office for Prevention and Combating Money Laundering

(2) The Office for Prevention and Combating Money Laundering is led by a head and two deputy heads. *The head of the Office is appointed for the term of 6 years by the Director of the National Anti-Corruption Centre* and is released from the office in compliance with the procedure provided by the legislation. *Deputy heads of the Office are appointed by the Director of the National Anticorruption Center at the suggestion of the head of the Office for Prevention and Combating Money Laundering.*

We recommend to amend this article and to supplement it with the fundamental requirements to transparent and modern governance, and namely: obligatoriness of competition and the list of minimum criteria for the respective positions.

Another essential element of the governance mechanism is the means of establishing sanctions for violations. Thus, Article 23(5) provides that the amount of the fine is established by a single person (head of OAML/CFT) as follows: up to EUR 1 million for all reporting entities and up to EUR 5 million for financial institutions. The decision to impose sanctions is taken by the same institution that exercises control, provided that the sanctions are not specific, assigned to certain violations, but rather generally to requirements of the entire law. In such cases the good governance practices require segregation of the functions of educing violations and their sanctioning, meaning that such impact should be made by 2 separate unrelated institutions. In this case it is recommended to establish such sanctions through a court action, or to use sanctioning leverages of the market regulators.

Article 23. Sanctions

(4) In case of serious violations related to failure to meet the requirements hereof, and if these violations become regular, repeated or the combination of these two, which could lead to drastic consequences related to the material damage caused, integrity and non-transparency of the national and banking and non-banking financial market, damage to country image and interests, fundamental obligations and rights protected by the law, the Office for Prevention and Combating Money Laundering shall impose against the reporting entities provided in Article 4(1) the following pecuniary sanctions:

a) fine amounting to the double benefit resulting from violation of obligations provided hereby, in case this benefit can be determined, or and MDL equivalent to the amount of up to EUR 1,000,000, calculated at the official exchange rate of Moldovan leu as of the violation date.

b) for the reporting entities provided in Article 4(1)(a), (c), (h) and (i) – the fine amounting the MDL equivalent of up to EUR 5,000,000 calculated at the official rate of Moldovan leu as of the violation date, or to 10% of the previous year's turnover.

(5) *The fine is established for each separate case by the decision of the head of the Office for Anti Money Laundering and Countering Terrorism Financing or his/her deputy.*

It is recommended to conduct the expert review of the entire governance mechanism of OAML/CFT, as well as to ensure implementation of all necessary segregation and to eliminate the concentration of power which can lead to abuse and corruption. We suggest that the sanctions are mainly applied by the market regulators and not by OAML/CFT, while the market regulators should transpose the AML/CFT requirements into their own regulations based on the specific provisions of the law.

Recommendation 3: Develop a clear system of sanctions related to specific violations. Exclude general wordings. Distinctly separate the group of sanctions for violations related to prevention of money laundering from the group of sanctions for money laundering and intentional support of money laundering.

Sanctioning tools are critical in making a law an efficient one aimed at stopping the destructive or anti-social practices. At the same time, the setting of incorrect, general or unclear sanctioning provisions serves as a breeding ground for corruption, abuse of power, transformation of law from the tool of organisation and protection of the society into the means of deepening the insecurity, lack of predictability and the sense of dependence on the will and interpretation of one or more public officers, transformation of the public-private relationship into the antagonist one.

The sanctions have to result from identification and proving of the intentional defective behaviour based on an extensive analysis which quantifies both corresponding practices and negative effect of such practices for the society. Specific and limited sanctions to counter the defective behaviour will be established on the basis of evaluation of such behaviour.

EU Directive, as a guiding regulatory act, establishes in its preamble only key principles and provisions that have to be reflected in the national legislation of the member states, while FATF recommendations state that measures and regulations have to be set by applying and respecting the following principles:

1. They are carried out in compliance with all fundamental values of liberty and democracy, of respect for human beings.
2. They are carried out with an assessment of risks on the national level, adapted and detailed to establish sanctions for specific violations calibrated against their dimensions, importance and characteristics.

Thus, in the absence of risk assessment as well as providing certain civil servants with the liberty to apply sanctions with an enormous arbitrary range of sanctions, arbitrary applicable to any violation, this law is transformed into a tool of destabilization and insecurity, exactly opposite to the goals pursued by the EU Directive. The provisions of the Draft Law on AML/CFT related to sanctions were literally copied from the EU Directive with minimum adjustments. The prerogatives to establish the value of financial sanctions are given to one single person – Head of OAML/CFT. Such provisions turn OAML/CFT and especially the Head of OAML/CFT into an entity that has the powers to affect the private sector beyond the necessity and legal objectives.

This approach makes the law abusive, anti-social and anti-citizen. In combination with the appointment without obligatory competition, this law supports anti-democracy with the elements of totalitarian regime.

It is crucial for Article 23 ‘Sanctions’ of the Draft Law on AML/CFT to be completely reviewed. The sanctions shall be grouped into 2 separate categories: the ones that are related to violation of the prevention and information obligation measures and the ones that are directly related to admission of money laundering, intentional (proved) and selective data corruption. Sanctions for the first category of violations have to be limited exclusively to the administrative ones. They must be applied only in

cases of lack of cooperation or repeated violations with the failure to comply with the prescriptions established by OAML/CFT.

Sanctions specified in the law must target specific violations in specific conditions calibrated against dimensions and categories of the reporting entities. The list of violations explicitly indicated and targeted by the law must result from the risk assessment based on the analysis of statistics and previous practices that hindered or are hindering accomplishment of law's objectives.

Recommendation 4. Eliminate the misleading definition of money laundering and take over the definition as established by the EU Directive.

In compliance with the EU Directive, money laundering is defined as follows:

Article 1

For the purposes of this Directive, the following conduct, when committed ***intentionally***, shall be regarded as money laundering:

- (a) ***the conversion or transfer of property, knowing that such property is derived from criminal activity*** or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an activity to evade the legal consequences of that person's action;
- (b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is derived from criminal activity or from an act of participation in such an activity;
- (c) the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such an activity;
- (d) participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions referred to in points (a), (b) and (c).

The Draft Law on AML/CFT does not define money laundering, making reference to the Criminal Code, Article 243. The Criminal Code defines money laundering as follows:

Article 243

Article 243. Money Laundering

(1) Money laundering committed by:

- a) the conversion or transfer of goods by a person who knew or should have known that such goods were ***illegal earnings*** in order to conceal or to disguise the illegal origin of goods or to help any person involved in the commission of the main crime to avoid the legal consequences of these actions;
- b) the concealment or disguise of the nature, origin, location, disposal, transmission, or movement of the real property of the goods or related rights by a person who knew or should have known that such were illegal income;
- c) the purchase, possession or use of goods by a person who knew or should have known that such were illegal earnings;
- d) the participation in any association, agreement, complicity through assistance, help or advice on the commission of actions set forth in letters a)-c);

shall be punished by a fine in the amount of 1350 to 2350 conventional units or by imprisonment for up to 5 years, in both cases with (or without) the deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 8000 to 11000 conventional units with the deprivation of the right to practice certain activities or by the liquidation of the legal entity.

A superficial examination does not seem to reveal important differences, still the differences that there are, change significantly the scope of this term. The 'European' definition provides clearly for acts 'committed intentionally', which requires the investigation bodies to prove them, which is missing in the 'Moldovan' version and its place is taken by 'should have known', which is much more vague and leaves more room for interpretation. A critical element is that the 'European' definition explicitly provides for the fact that goods and transfers (earnings) proceed from criminal activity, while the Moldovan version uses the term 'illegal earnings' which is more vague and may be associated with simply not paying the taxes, the problem being aggravated by the fact that the notion of 'illegal earnings' is not explicitly defined in the definitions chapter, leaving its interpretation to the civil servant.

These gaps strengthen the foundation of a corruptible environment and the abuse of power, preserving the appearance that the law is observed and allowing for the unequivocal and selective interpretation and sanction of business entities. Such gaps are inadmissible and have to be removed from the legislation. It is imperative for the definition of money laundering as set out in the European directive to be transposed identically as a definition in the national legislation. Also, having mentioned the Criminal Code, it needs to undergo a substantial reform and to precisely establish sanctions on specific categories and types of crimes related to money laundering, so that the abuse of power and the interpretation of the law are ruled out and the punishments are expressly provided for by the law, without leaving room for unjustified interpretations.

Recommendation 5. Employees' protection should be ensured primarily by the state, not by the reporting entity

The EU Directive provides for the protection of employees and individuals who report suspicious transactions. This is stated in the preamble, paragraph (41) and in Article 38 of the Directive.

(41) There has been a number of cases where employees who have reported their suspicions of money laundering have been subjected to threats or hostile action. Although this Directive cannot interfere with Member States' judicial procedures, it is crucial that this issue be addressed to ensure effectiveness of the AML/CFT system. *Member States should be aware of this problem and should do whatever they can to protect individuals, including employees and representatives of the obliged entity, from such threats or hostile action, and to provide, in accordance with national law, appropriate protection to such persons, particularly with regard to their right to the protection of their personal data and their rights to effective judicial protection and representation.*

Article 38 Member States shall ensure that individuals, including employees and representatives of the obliged entity, who report suspicions of money laundering or terrorist financing internally or to the FIU, are protected from being exposed to threats or hostile action, and in particular from adverse or discriminatory employment actions.

Although the text of the directive is sufficiently explicit, the draft law should have actually contained two provisions: one regarding the policy of protection against threats from within the organization – a measure to be taken by the reporting entities, and the other one – for the protection provided by state bodies against any hostile actions against individuals who report. By Article 12(2), all the burden of protection falls on the reporting entities, which is a non-sense in that the private subjects do not know, nor do they have any powers or duties to provide full protection against any hostility.

Article 12. Prohibition of Disclosure

(1) The reporting entities, employees, persons in position of accountability and their representatives shall not tell clients or third parties about the transmission of information under this Law to the Anti-Money Laundering Service and to the bodies supervising the reporting entities, nor about the analyses or financial investigations on money laundering, related crimes or terrorist financing that take or might take place.

(2) The reporting entities shall ensure the protection of its employees and of other individuals who are not employed by the reporting entity, but who participate in its management and activity, from any threat or hostile action in connection with the provision of information under this law.

It is therefore necessary to review this article and to establish the measures that the state will take to grant protection and in what way is the state held accountable, where it is necessary.

Recommendation 6. Review the requirements regarding currency exchange operations.

The EU Directive does not contain special provisions for currency exchange offices, although they are obliged entities too (term that is equivalent to ‘reporting entity’ in the Draft Law on AML/CFT).

However, the preamble to the directive specifies that it is important for state authorities to ensure that the managers of the currency exchange offices and the beneficial owners of this type of business are fit and proper.

(51) *Competent authorities should ensure that, with regard to currency exchange offices, cheque cashing offices, trust or company service providers or gambling service providers, the persons who effectively direct the business of such entities and the beneficial owners of such entities are fit and proper.* The criteria for determining whether or not a person is fit and proper should, as a minimum, reflect the need to protect such entities from being misused by their managers or beneficial owners for criminal purposes.

Given that foreign exchange transactions do not actually represent a transfer of ownership and the beneficiary of this transaction is the same person who deposits the initial currency, the value of identifying that person is minimal and is only useful in correlation with other factors that are beyond the identifying capacity of the currency exchange worker. Therefore, presenting one’s ID card is absolutely useless, as long as this operation is not registered. The point from which it makes sense to identify customers making a transaction and collect information about their identity needs to be correlated with the results of the risk assessment and is recommended for it to be no lower than the value set for cash transactions according to the EU Directive, i.e. the equivalent of EUR 10 000. Cash transactions are much more valuable from the perspective of money laundering because value/goods are transferred from one entity to another, while the currency exchange service does not have this effect. For this reason, the currency exchange service cannot be more risky and there is no need to have a lower limit than the one for cash transactions.

Moreover, such restrictions can bring the currency market back into the informal zone that represents a fertile environment for scams and the population will believe this sector is unsafe. Another critical consequence would be the more difficult quantification of the real volumes of foreign currency traded on the currency market, which would make it difficult to manage the money supply and ensure financial stability at national level. These risks make the measures provided for in the draft law absolutely unjustified, particularly since the expected good effects in terms of preventing money laundering are under a question mark.

It is thus recommended for the authorities to focus particularly on ensuring the transparency of owners of currency exchange offices that can legalize certain revenues gained out of crimes in the form of revenues gained in currency exchange offices, by virtue of the non-material nature of the provided service, and not on individual transactions with the customers of these currency exchange offices.

Thus, Article 5 is recommended to be amended and to provide for a single requirement to register the foreign exchange operations if the amount is greater than EUR 10 000 (or to remove this limit completely if it turns out to be too difficult to follow whether it is observed or not) and to provide for the skills that the management and the real owners of these entities should have, which is the major risk in legalizing illicit income.

Recommendation 7. Develop a centralised national system for the registration of beneficial owners, granting electronic access to reporting entities.

Developing a centralised national system for the registration of beneficial owners, developing mechanisms to introduce such data and ensuring the access of stakeholders responsible of identifying beneficial owners are all key elements of a money-laundering prevention system. This centralised register would ensure the synergy and fortification of measures and efforts made by the stakeholders in preventing and combating money laundering. Without this national register, the resources coming from the taxpayers meant for funding state institutions will have a minimum marginal effect. Thus, the EU Directive explicitly highlights this need in the 14th paragraph of its preamble and in Article 31:

(14) With a view to enhancing transparency in order to combat the misuse of legal entities, Member States should ensure that ***beneficial ownership information is stored in a central register located outside the company, in full compliance with Union law. Member States can, for that purpose, use a central database which collects beneficial ownership information***, or the business register, or another central register. Member States may decide that obliged entities are responsible for filling in the register. Member States should make sure that in all cases that information is made available to competent authorities and FIUs and is provided to obliged entities when the latter take customer due diligence measures.

Article 30

(1) Member States shall ensure that corporate and other legal entities incorporated within their territory are required to obtain and hold adequate, accurate and current information on their beneficial ownership, including the details of the beneficial interests held.

(3) ***Member States shall ensure that the information referred to in paragraph (1) is held in a central register in each Member State***, for example a commercial register, companies register as referred to in Article 3 of Directive

2009/101/EC of the European Parliament and of the Council, or a public register. Member States shall notify to the Commission the characteristics of those national mechanisms. The information on beneficial ownership contained in that database may be collected in accordance with national systems.

(4) Member States shall require that the information held in the central register referred to in paragraph (3) is adequate, accurate and current.

(5) *Member States shall ensure that the information on the beneficial ownership is accessible in all cases to:*

(a) competent authorities and FIUs, without any restriction;

(b) *obliged entities, within the framework of customer due diligence in accordance with Chapter II;*

(c) any person or organisation that can demonstrate a legitimate interest.

By Article 14 of the Draft Law on AML/CFT, a number of institutions supervising markets and the State Registration Chamber are regarded as obliged institutions when it comes to collecting information regarding the beneficial owners and to granting access of reporting entities to these data. At the same time, this information is not put together in one single register that would guarantee the correlation of data and the full identification of affiliated interest groups. At the same time, accessing multiple databases to identify beneficial owners is an unnecessary burden that make day-to-day operations of reporting entities more difficult.

Therefore, it is recommended to have one single register of beneficial owners to streamline economic transactions.

Rectification Note: The notion ‘Suspension of goods’ is incorrect and must be removed.

Processes/actions can be suspended, but not goods. ‘Suspension of goods’ is incorrect and must be removed from the list of notions, particularly since no such term is found back in the EU Directive.

Final Conclusions and Recommendations

Having assessed the draft law on Anti Money Laundering and Countering Financing Terrorism, the following measure are recommended:

- 1. Pull together a mixed team of international and national experts – economists and finance experts, to conduct the following analyses:**
 - a. Assessment of the risks specific for the Republic of Moldova, alongside a historical analysis of money laundering practices, identification of activities, operations and profile of those that might conduct money-laundering operations. This needs to be a holistic assessment to cover risks that faces both the prevention activity and the countering of the organised crime, trafficking in drugs, human beings and arms generate.
 - b. The measures whereby those risks would be mitigated and controlled need to be identified and established. The impact of these measures needs to be quantified. They need to be of the right level to mitigate the risks. The costs of control need to be analysed and it is also necessary to check whether the costs of the measure to be implemented are justifiable.
 - c. Evaluation of the mechanisms for governance, for the transposition of the best practices in the area of duty segregation, for avoiding the concentration of power in one single place, for granting transparency and powers exclusively within the required limits to ensure that the objectives of the law are reached.
 - d. A report containing recommendations regarding the legal provisions that need to be implemented, taking into account the results of the assessments and analyses mentioned in (a)-(c) and the data and analyses conducted in line with points 2 and 3, needs to be developed.

If the risks were already assessed, this needs to be reviewed because of the gaps found in the law. Both the older report and the updated one need to be published and discussed publicly.

- 2. Involve business and professional companies, market regulators to assess the impact of the law, potential costs for reporting entities, other adverse effects of the implementation of the Draft Law on AML/CFT.**
- 3. Create a mixed team of experts, representatives of market regulators, of businesses to work out punishments that would match the risks that the violations concerned generated.**

Recommendations in brief:

1. Assess the money-laundering risk on the basis of the former experiences and practices. Risks should be regarded from the perspective of categories of participants and processes. Assess the measures, the cost of which is REASONABLE and assess and quantify the negative impact on the real sector. Adjust measures to make them reasonable.
2. Review the OAML/CFT governance mechanism, namely:

- a. the obligation to hold a contest to appoint in this way the management of OAML/CFT;
 - b. separate investigation and sanctioning duties, particularly in case of severe sanctions.
- 3. Amend the sanctioning mechanism by establishing a list of concrete violations and applicable sanctions for each of them. They have to be underlain by the risk assessment and cases that took place previously.
- 4. Eliminate the misleading definition of money laundering and take over the definition as established by the EU Directive.
- 5. Employees' protection should be ensured primarily by the state, not by the reporting entity. It is necessary to review Article 12(2) and amend it by adding the guarantees and responsibilities of the state with regards to protecting the employees who report suspicious transactions.
- 6. Review the requirements regarding currency exchange operations and remove the MDL 5000 threshold. However, introduce requirements regarding the quality of management and owners.
- 7. Develop a centralised national system for the registration of beneficial owners, granting electronic access to reporting entities.
- 8. Remove the phrase 'suspension of goods', which does not and cannot even exist in Romanian.