

COMBATING MONEY LAUNDERING – A MANDATORY TOPIC FOR THE PROFESSIONAL ACCOUNTANT

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Abstract: *In recent years, the European Union has intensified concerns about money laundering and terrorist financing, with direct impact in Romania, too. The 4th and 5th European Directives, drafted in this regard, require the extension of the role and responsibility of the professional accountant (expert accountant or financial auditor) in the complex process of preventing and combating money laundering and terrorist financing. There is a specific regulatory framework, but also several stages that define the money laundering process, which must also be known by professional accountants.*

Key words: *money laundering, the European Directive no. 2015/849, the European Directive no. 2018/843, the Good Practice Guideline of CFAR, Law no. 129/2019.*

1. Introduction

The globalization of economies has generated the expansion of organized crime in the field of business and, implicitly, the escalation of the money-laundering phenomenon, respectively the access to cash availability for which there are no suspicions about the source (Dumitrache, 2013). Money laundering is de facto the financial component of all crimes through which profit is generated. In other words it is the process by which financial criminals try to hide the origin and real property of the gains from their criminal activities (National Office for the Prevention and Control of Money Laundering - N.O.P.C.M.L.).

Although actions aimed at money laundering have existed since ancient times, the deed of money laundering was recognized as a stand-alone offense later in 1986 in USA and gradually expanded worldwide. The first international document incriminating money laundering is the Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, drawn up on 8 November 1990 in Strasbourg (Dumitrache, 2013).

In Romania, the legislative framework in the field of money laundering was outlined in 1999 by law no. 21 and continued by adopting Law no. 656/2002 for the prevention and

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sanctioning of money laundering.

Today, the European Union has intensified its fight against money laundering and terrorist financing by the 4th Directive no. 2015/849/EU and the 5th Directive no. 2018/843/EU of the European Parliament and of the Council *on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing* and professional accountants (expert accountants and financial auditors), along with other entities and professionals are called upon to become part of this process. In addition to the 5th Directive no. 2018/843/EU, in 2018, the European directive no. 2018/1673/EU, which introduces measures to combat money laundering through criminal law, was drawn up.

2. Research Methodology

This study has as a fundamental objective to analyse the approach initiated by the European Union and subsequently adopted by Romania to prevent and combat money laundering and terrorist financing, an approach in which financial auditors and expert accountants, as well as professional accountants are involved, along with other entities and professionals.

In order to attain this objective, a fundamental research, of normative type, was achieved, which implies the study and the analysis of the content of the 4th Directive no. 2015/849/EU and the 5th Directive no. 2018/843/EU of the European Parliament and of the Council of the European Parliament *on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing* and also of Law no. 129/2019 to prevent and combat money laundering and terrorist financing.

By the content of this study, answers will be formulated to questions such as:

- What are the stakes of the new measures and procedures adopted at EU level, which aim at reducing money laundering or terrorist financing?
- What was Romania's response to the legislative initiative of the EU, which aims to prevent and combat money laundering or terrorist financing?
- What are the models for representing the money laundering process?
- What are the main professional obligations of the professional accountants in the area of preventing and combating money laundering?

3. Research Results

The EU Directive no. 2015/849 obliges the entities which are under the incidence to apply prevention measures concerning the clientele, both to existing clients and to the potential clients. Moreover, this European directive emphasizes the internal procedures of the reporting entities, as regards knowing the real beneficiary of the transactions, the risk analysis applied to the clients and the activities carried out, as well as the measures applied by the auditor in his relation with the clientele.

Starting from 2018, in the European Union, there are stricter rules on combating money laundering, which make it more difficult to hide illegal funds through fictitious companies and strengthen controls on high-risk third countries. The role of the financial

supervisory authorities has also been strengthened, and the access to information and the exchange of information have been facilitated. Moreover, in May 2020, the European Commission developed an action plan, which sets out the measures to be taken over the next 12 months to more effectively implement and coordinate EU rules in the field of combating money laundering (EU Council, 2020). The complexity of money-laundering and terrorist-financing risks requires close collaboration between the EU and its partners, through the International Financial Action Task Force (FATF), which was established in 1989 to promote the international anti-money laundering policies and standards.

In Romania, the responsibility for developing and implementing the national system for combating money laundering and terrorist financing is held by the National Office for the Prevention and Control of Money Laundering, established in 1999. In Romania, the European directives on combating money laundering and terrorist financing were transposed late, by Law no. 129/2019. According to this law, the crime of money laundering is punishable by imprisonment from 3 to 10 years and is represented by:

- ✓ the exchange or transfer of goods, knowing that they come from the commission of crimes, in order to conceal the illicit origin of these goods, or in order to help the person who committed the crime from which the goods originate to evade prosecution, trial or execution of the sentence;
- ✓ concealment or disguise of the true nature, provenance, location, disposition, movement or ownership of goods or rights over them, knowing that the goods come from the perpetration of criminal offenses;
- ✓ acquisition, possession or use of goods by a person other than the active subject of the crime from which the goods originate, knowing that they come from the perpetration of criminal offenses.

The reporting entities are specified by Law no. 129/2019 (the financial and credit institutions, the administrators of private pension funds, the gambling service providers, the professional accountants, the notaries, lawyers, bailiffs, real estate developers and other entities) have the obligation to report to the N.O.P.C.M.L. transactions with amounts in cash, lei or foreign currency, whose minimum limit represents the equivalent, in RON, of 10,000 EUR. Moreover, the credit institutions and financial institutions are required to submit online reports on external transfers to and from accounts, in lei or in foreign currency, the minimum limit of which is the RON equivalent of 15,000 EUR.

Law no. 129/2019 introduces two new obligations:

- ✓ the obligation to register the real beneficiaries of the legal persons subject to the obligation of registration in the Trade Register, except for the autonomous utilities, companies and national companies and companies wholly or majority owned by the state; therefore, greater transparency will be ensured in relation to the legal owners of a company;
- ✓ the bearer shares must be converted into registered shares by the issuing companies within 18 months; therefore, the bearer shares disappear from the financial circuit in Romania, these being completely replaced by the registered shares.

The criminals' need to hide sums of money or property of illicit or dubious origin has

existed since ancient times however, two practices related to money laundering have been established in the literature: the exploitation of tax havens and the intelligent use of banking activities. Fraudulent use of banking activities has grown significantly in Europe since the Middle Ages, when the Catholic Church banned usury (Dumitrache, 2013).

There is certainly no single “recipe” for money laundering. Money laundering methods range from buying and selling a luxury product (jewellery or a car) to placing dirty money through a complex international network of legal businesses or through “shell companies”. “Shell” companies are those entities that exist only as legal entities, without carrying out concrete business or commercial activities (Chamber of Financial Auditors in Romania - C.F.A.R., 2016).

Because money laundering does not always involve identifiable victims and no complaints are registered, it becomes a crime that is difficult to investigate and estimate based on the statistics from the authorities. In 2008, the International Monetary Fund estimated the amount of money laundered annually in the USA at 3-5% of the gross domestic product. (Dumitrache, 2013).

There are several models to represent the money laundering process (Superior Council of Magistracy, 2015):

- the phase model;
- the elementary model of money laundering;
- the elaborate money laundering model;
- the sophisticated model of money laundering;
- the cyclical model of money laundering.

The best-known model for representing the money laundering process is the phase model, originally described by the US authorities to explain the process of money laundering obtained from drug trafficking. In this case, the money laundering process involves three phases: placement, stratification and integration (Superior Council of Magistracy, 2015). The first concern of the financial criminals is to introduce cash, resulting from illegal transactions, into the banking system by any method. Banking operations of deposit formation or money transfer, and lending systems are a key step in the money laundering process. In this context, it is recommended to the professional accountants to know the three stages through which the process of money laundering by the client is carried out, respectively: placement, stratification and integration (C.F.A.R., 2016).

The first phase of the money laundering process is placement, which aims to introduce the amounts of money resulting from financial crimes (smuggling, theft, blackmail) in the financial system. Specifically, the placement is made by dividing large sums of cash into smaller and less suspicious amounts, which are then placed in bank deposits or invested in financial instruments (checks, promissory notes, etc.). In recent years, there has been an expansion of financial crimes through cyberspace, virtual casinos, electronic money, virtual banks, which have become destinations and means frequently accessed by financial criminals.

An effective preventive activity in the area of money laundering can be achieved when criminals still have large sums of cash that they are trying to change into higher value banknotes or place in the bank accounts (Dumitrache, 2013).

In the next phase of the money laundering process, called stratification, financial criminals seek to eliminate any link between dirty money and its source. After introducing money into the financial system, the financial criminals track the movement of money between different bank accounts to hide its origin. Funds can be directed to the purchase of investment instruments (stocks, bonds) or financial offenders can send funds by electronic transfer to a multitude of bank accounts opened with various banks around the world (C.F.A.R., 2016). Moreover, in the stratification phase, the criminals speculate on the opportunities offered by tax havens located in offshore destinations, setting up several front companies (Superior Council of Magistracy, 2015).

The last phase of the money laundering process is integration, which supposes the introduction of money laundering into the legal economic circuit, thus achieving the major goal of the money laundering process. The financial offender can invest money laundered in the real estate market, luxury goods or in the business area.

The basic model of money laundering involves the transformation of dirty money into clean cash through as short a circuit as possible in general, through the purchase of luxury goods, false gains from gambling or currency exchange at currency exchange offices. The developed model of money laundering involves the reinvestment of dirty money in important legal activities, in general, by investing large sums of money with the same periodicity, which involves the establishment of stable money laundering circuits. The sophisticated model of money laundering is based on the use of online payment systems for the purpose of money laundering. The cyclical model of money laundering consists in introducing dirty money into the legal economy and subsequently, the profits obtained are invested in the legal economy, or they finance future illegal activities (Superior Council of Magistracy, 2015).

In the process of money laundering, three moments have been delimited which the offender must go through and which, therefore, can be identified (N.O.P.C.M.L.):

- placing cash in the financial system;
- transferring cash across borders;
- transferring cash to and from the financial system.

According to the Manual developed by the N.O.P.C.M.L. (2010), there are certain key elements that financial criminals take into account in the construction of money laundering schemes: anonymity, speed, complexity and secrecy.

The professional accountants' obligations in the area of money laundering prevention require, on the one hand, increased attention to certain transactions of the client, and on the other hand, testing the computer system used in the client's activity. To identify suspicious transactions, the professional accountants should consider the following transaction selection criteria (C.F.A.R., 2016):

- significant cash transactions;
- international transfers;
- transactions that are not in line with the client's activities or income;
- very complex transactions;

- transactions with securities or other financial instruments, currency, metals and precious stones, the value of which exceeds the equivalent of 15,000 EUR.

In the relationship with their customers, the financial auditors test the effectiveness of the IT system used by each customer to make electronic transfers, to the extent that there is such an IT application. The financial auditor verifies whether controls are implemented in the IT application to ensure effective monitoring of money laundering risk.

4. Conclusions

Due to the challenges of this century, mainly related to the globalization of economies and the development of information technologies, the professional accountants play a decisive role in the fight against national and international fraud. From this perspective, professional accountants, along with other entities and professionals, have become important partners in the fight of national and international authorities against money laundering and terrorist financing. Knowledge and deepening by professional accountants of the various models implemented by financial criminals for money laundering is becoming a mandatory and necessary topic today. The latest regulations in the area of preventing and combating money laundering bring, first of all, a greater transparency in the business world through the obligation to declare the real beneficiary of a company. In this direction, starting with 2019, with a long delay compared to international practices, in Romania, bearer shares were banned and replaced by registered shares.

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