MONEY LAUNDERING
AND THE INTERACTION WITH THE INTERNATIONAL BANKING SYSTEM

PhD Professor Luigi Popescu

FACULTY OF ECONOMICS AND LAW, UNIVERSITY OF PITESTI, ROMANIA
popesculuigi.p@gmail.com

Abstract

Money laundering is a process by which one gives or tries to give an appearance of legality to profits obtained illegally by criminals who, without being compromised, subsequently benefit from those revenues.

The preoccupation of hiding the nature or the existence of money has existed since ancient times. Taking into account the scale of operations and their frequency, specific to those times, the historical tradition enshrines the following practices: the use of banking activities and geographical areas as financial refuge.

The use of banking activities to hide and fraudulently transfer money experienced a special development in the European Middle Ages. These money laundering techniques, which foreshadow modern banking techniques, were mainly designed either to make the high interest rates on loans disappear, hiding their existence, or to appear to be a different kind of income, disguising their nature.

The objectives of money laundering were and are achieved using several methods:

- for long distance payments, between two shopping centers where different currencies were used, the payment amount was calculated on the basis of an artificially increased exchange rate that also covered the payment of interest;
- the amounts paid in excess (the interests) were presented as a special premium to compensate the risks of the loan operation under the justification that the debtor was a bad payer;
- what are now called "ghost companies" were also used. Significant amounts were lent to firms that did not have a real functional role, and then the creditors received a so-called profit from the debtor (which was, in fact, the interest on the loan), even if it did not make any profit and did not carry out no activity.

In essence, all these tricks were intended to deceive the authorities into transfers of the amounts obtained fraudulently, generally through tax evasion.

Key words: fraud, tax evasion, money laundering, banking money laundering

JEL Classification Codes: H20, H30, G28.

1. Introduction

The opening of Romania's borders has led to a spectacular increase in the cross-border movement of goods, services, people and capital, resulting in a serious increase in various types of criminal activities. Crime and the gains from it have made money laundering one of the most pressing issues we face today.

Over time, the Romanian judicial system has adopted several criminal rules to prevent and combat money laundering. The National Bank of Romania’s regulations on customer information standards stipulate the following measures related to the identification of money laundering:

- the banks are not allowed to enter into business relations until a proper identification of their customers. When there are doubts about the veracity of the information provided by the customers and / or when this cannot be verified, the banks may refuse to initiate the business relationship or to provide the required services;
- the banks must periodically review and update customer information and maintain in favorable operating conditions the system for detecting unusual and suspicious transactions;
- the banks must constantly train their staff in obtaining accurate information on customers.

The National Bank of Romania’s regulations are comprehensive, containing detailed descriptions of the provisions regarding customer identification. From this point of view, it might...
be useful to consider the possibility of extending the provisions that now cover only banks, and to other entities (for example, other credit institutions, financial institutions such as the insurance companies and investment funds, the auditors, the real estate agents, etc.).

2. The Financial-Banking component in the money laundering process

The fight against money laundering has been particularly focused on banks, given the role of the banking system in collecting and transferring funds as permanent activities, nationally and internationally.

The International Monetary Fund estimates money laundering as accounting for 2-5% of world GDP. John Walker (1999) is the first analyst to quantify money laundering, his model suggesting that $2.85 trillion is being laundered globally (Unger, Siegel, Ferwerda, Busuioc, 2006). The Walker model examines two different aspects of the money laundering process: first of all, he carefully researches the amounts intended for money laundering in each country; secondly, he tracks the cash flows generated and transferred from one country to another.

The virtual bank is envisaged as an area that will focus the attention of money launderers, but also of those who pursue these actions. The case of the Bank of the European Union, which went bankrupt in 1997, remains a reference. The Antigua-based bank was founded by two Russians and is believed to have been used by them to launder money from the organized crime in Russia. This bank, which operated on the Internet, offered customers (according to its advertisement on the Internet) "the strictest standards of banking secrecy in foreign affairs" and "financial rewards for foreign banks." The bank therefore operated under a license received in Antigua, the server was located in Washington, and the person operating both the bank and the server was domiciled in Canada and under Antigua law, the theft of the bank’s capital was not considered illegal. In this context, there are several questions: where the crime was committed, who committed it, who will investigate it and whether someone will be imprisoned for a crime, questions that still need to be answered.

While the objectives of the fight against money laundering concern the identification of attempts and crimes of money laundering on the banking channel and, in this context, the involvement of banks and banking staff in the investigation and pursuit process, the subsidiary aims to ensure the integrity of the banking system.

Combating money laundering and terrorist financing continues to be a major challenge for the banking sector.

A global study by KPMG Forensic on money laundering shows that there have been rapid changes in the financial services in recent years and the regulatory pressures and expectations have increased. This study showed how banks responded to the challenge of combating this phenomenon and the evolution of the situation from the previous study. In recent years, the financial markets and the regulatory environment have undergone unprecedented change. Banks have expanded globally, their markets and products have become more complex, they have invested more in emerging markets and the volume of private income has increased significantly.

The results of this study, focused more on emerging markets and included more than 25% of the top 250 banks in 59 countries, confirmed the trend to make significant investments in money laundering prevention systems and control environments, and their improvement. The study found that senior management is more involved in issues related to the prevention of money laundering, the percentage of boards that have shown an active interest in this regard increasing by 10% and reaching 71%.

In general, the bank approach to risk management has expanded globally. Almost 85% of the internationally active banks have a global money laundering prevention policy. Several banks have confirmed that they have a monitoring and testing program and that a greater number of functions within the organization are involved in this activity. However, despite their sophisticated
monitoring technology, 97% of banks admitted they were dependent on the vigilance of working staff to monitor and identify suspicious activities, and a third of banks (34%) admitted that they were dissatisfied by the efficiency of their transaction monitoring systems.

Given that both expenditures and the scale of staff development activities have increased, over 70% of banks reported that the suspicious activities have increased. 42% of banks admitted that the number of suspicious activities generated and reported has increased substantially. However, banks are not content with the feedback from the regulatory authorities responsible for receiving and evaluating suspicious activities.

A high proportion of Romanian bank managers demonstrate an excellent knowledge of the issues involved in combating money laundering and a strong commitment to addressing them. 80% considered this to be a major problem, compared to 71% globally.

The financial markets and the regulatory environment have undergone unprecedented change in recent years. Banks have expanded globally, their markets and products have become more complex, they have invested more in emerging markets and the volume of private income has increased significantly. The resulting structural changes have profound implications for how the banks respond to the challenges of money laundering prevention and how the financial institutions generally oppose terrorist financing.

3. Characteristics of the activity of preventing and combating money laundering in Romania

In Romania, the main responsibilities in implementing the normative acts on combating money laundering rest with the National Office for Preventing and Combating Money Laundering (ONPCSB), which was established in 1999, under the Law no. 21/1999, amended by the Law no. 656/2002 for the prevention and sanctioning of money laundering as well as for the establishment of measures to prevent and combat acts of terrorism. It functions as a specialized central body, with legal personality, subordinated to the Government.

The Office's object of activity is to prevent and combat money laundering and terrorist financing, for which purpose it receives, analyzes, processes information and notifies the Prosecutor's Office attached to the High Court of Cassation and Justice, and in case the financing of acts of terrorism are found, it immediately notifies the Romanian Intelligence Service regarding the suspicious operations of financing terrorist acts.

In order to fulfill its object of activity, the institution has the following main attributions, for the approval of the Regulation on the organization and functioning of the National Office for Preventing and Combating Money Laundering, respectively:

- it receives data and information from natural and legal persons provided by law, regarding the operations and transactions performed in RON and / or foreign currency;
- it analyzes and processes the data and information received according to the law in order to identify the existence of solid indications of money laundering or terrorist financing;
- it requests any competent institution to provide the necessary data and information in order to fulfill its object of activity;
- it cooperates with the Ministry of Economy and Finance, the Ministry of Justice, the Prosecutor's Office attached to the High Court of Cassation and Justice, the Ministry of Administration and Interior, the Romanian Intelligence Service, the Foreign Intelligence Service, the National Bank of Romania, the Court of Accounts, the Romanian Association of Banks, The National Securities Commission, the Insurance Supervisory Commission and any other public or private authority or institution that may provide useful data;
- it may exchange information, on the basis of reciprocity, with foreign institutions that have similar functions and have the obligation to maintain secrecy under similar conditions, if such communications are made in order to prevent and combat money laundering or terrorist financing;
it issues, in accordance with the law, the decisions to suspend the execution of transactions on which there is a suspicion that it would be aimed at money laundering and / or financing terrorist acts;

it notifies the Prosecutor's Office attached to the High Court of Cassation and Justice in the cases provided by law;

it immediately notifies the Romanian Intelligence Service regarding the suspicious operations of financing terrorist acts, if following the analysis and processing of information, indications of financing such acts are found;

it immediately notifies the competent body in case the existence of solid indications of committing other crimes than those of money laundering or terrorist financing is found;

it draws up and updates lists comprising natural and legal persons suspected of committing or financing acts of terrorism, which are sent to the Ministry of Economy and Finance;

it may carry out verifications and controls of the persons who have the obligation to report to the Office, regarding the application of the provisions of the law, together with the authorities that have financial control attributions and / or with those of prudential supervision of the entities provided by law;

it pursues the effective application of its own decisions;

it makes proposals to the Government and to the central public administration bodies for the adoption of measures in order to prevent and combat money laundering and terrorist financing, it approves the draft normative acts related to its field of activity;

it organizes and carries out the specialized training of its own staff and participates in the special training programs of other institutions;

it establishes the form and content of reports for operations that may be related to money laundering and / or terrorist financing;

it elaborates, negotiates and concludes conventions, protocols, agreements with the institutions from the country that have attributions in the field and with similar foreign institutions, in accordance with the law; it may be a member of some specialized international bodies and it may participate in their activities.

The role of the Office's supervisory and control authority has increased substantially in recent years, having the direct task of supervising the non-financial reporting entities that do not have a prudential supervisory authority.

The following departments operate within the Office:

a) the general operational department, which includes:
   - the information analysis and processing department;
   - the information technology department;

b) the inter-institutional cooperation and international relations department;

c) the economic-financial and administrative department;

d) the legal, methodology and control department.

To fulfill its attributions, the National Office for Preventing and Combating Money Laundering, which is FIU - Financial Intelligence Unit in Romania, became a member of:

- The Committee on the Prevention of Money Laundering and Terrorist Financing established in 2006, which has the role of assisting the European Commission in adopting the measures to implement the Directive 2005/60 / EC of October 26th, 2005 on the prevention of the use of the financial system for money laundering and terrorist financing. The Committee manages matters relating to the regulation, collection of statistical information and supervision of the fight against money laundering and terrorist financing in the European Union.

- The Council of the Committee of Experts on the Evaluation of Measures to Combat Money Laundering in Europe (MONEYVAL) established in 1997, which evaluates the
measures to combat money laundering and terrorist financing in the member states of the European Council.

The Egmont Group, an international organization of Financial Intelligence Units, established in 1995, which provides the framework for streamlining cooperation on the exchange of information, training, exchange of experience and know-how in the field of preventing and combating money laundering and financing acts of terrorism. At present, the members of the Egmont Group ensure the protection and confidentiality of the information transmitted between the parties.

In terms of legislation, the Office has contributed to achieving one of its primary objectives, namely the harmonization of the Romanian legislation to prevent and combat money laundering and the financing of acts of terrorism with the European standards in the field.

4. Conclusions

Preventing money laundering and terrorist financing continues to be a challenge for the financial institutions. The obligations faced by the banks continue to evolve in the same way as the regulatory environment in which they operate. A key obstacle to overcome is the compliance with the relevant legislation in content and not just in form. This requirement is valid both globally and in Romania.

Money laundering, especially internationally, is usually not done directly by the people who are engaged in basic illegal activities, but by some specialized professionals who know the operations on the international capital market, the banking products and services characteristic of some banks in certain countries and which can be used for this purpose. Money laundering professionals have a lot of information that allows them to determine the risks of being detected and to capitalize on or exploit the differences between control regimes, regulations and rules on the financial-banking supervision in different countries.

Currently, these professionals who have a high level of training and professional ability, perform sensitivity analyzes on behalf of those who want to launder money. Through these analyzes, performed in several “route” variants, they try to determine generally two things: the probability that the origin of the laundered money will be detected on a route; they make several routes to be used simultaneously - for the same amount - but in smaller amounts, in order to ensure a dispersion of the risk of identifying the disguised money: several types of investments, several types of banking operations, in several countries, etc.

As long as there are differences between the control and supervision regimes between countries, the objective of money laundering professionals remains to identify it through permanent information and, of course, to capitalize it.

The mechanism of money laundering can be likened to a cycle through which the money is separated from the delinquent who obtained it illegally and after going through some stages, it returns to him "clean". Going through these steps involves a cost which, if it amounts to 30% of the total amount and it is returned in proportion of 70%, it is considered an "efficient" laundering operation. There are many cases when this cost is 50% or more.

5. References

[3] Unger, B., Siegel, M., Ferwerda, J., Busuioc, M., - The amounts and the effects of money laundering, Australian National University, Centre for Tax System Integrity, p. 5, 2005;