



Preventing and Combating Money Laundering and Terrorist Financing in the EU

Marius Eugen RADU

Faculty of Law and Administration, "Dimitrie Cantemir" Christian University, E-mail: mariusavocat@yahoo.com

Abstract *Although globalization can, and certainly will benefit the world, though these benefits may be overshadowed by the risks incumbent on society. The power of political authorities will become increasingly limited as actors, legitimate or illegitimate, an emerging global market. Along with these changes in society are met and a proliferation of gangs and developed unprecedented organized crime groups operating principles both national and international, using different forms of crimes.*

Key words:

Terrorism, money laundering, crime, organized crime.

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1. Introduction

Threats of money laundering and terrorist financing are constantly evolving, and this requires regular updates of standards in the field. The European Commission has adopted two proposals to strengthen existing EU rules on combating money laundering and transfers of funds. States of the European Union is at the forefront of international efforts to combat money laundering proceeds from crime. Flows of dirty money can damage the stability and reputation of the financial sector, while terrorism shakes the foundations of our society. In addition to the criminal law approach, a prevention effort through the financial system may help prevent money laundering. Our aim is to propose clear rules to increase vigilance banks, lawyers, accountants and all other professionals involved.

It said the European level that no place dirty money in economies, wherever they come from: drug dealing, illegal arms trade and human trafficking. It is not possible for organized crime to wash their funds through the banking system or the gambling sector. To protect the legal economy, especially in times of crisis, there should be no legal loophole allowing organized crime or terrorists to slip. Also the banking system should never serve as a "washing machine" for mob money or facilitate terrorist financing.

2. Specific Organized Crime

EU legislative package on organized crime, complements other actions taken or planned by the

European Commission in the fight against crime, corruption and tax evasion, and includes: - a Directive on prevention of the use of the financial system for money laundering and terrorist financing - a regulation on information accompanying transfers of funds to provide "adequate traceability" of these transfers. Both proposals take full account of the latest recommendations of the Financial Action Task Force (FATF), the global body for anti-money laundering, and go further in a number of areas, to promote the highest standards of combat money laundering and terrorist financing. (MEMO/12/246)

Specifically, both proposals require a risk-based approach, focusing instead on more precise objectives. The purpose of a large number of criminal activities is to generate profit for the individual or group that commits the crime. Money laundering is the processing of the results of the offense in order to hide their illegal origin. This process is critical because it gives the offender the opportunity to enjoy the proceeds of crime without revealing their origin. Illegal arms sales, smuggling, and organized crime activities including, for example, drug trafficking and prostitution networks can generate huge amounts. Embezzlement, insider trading, bribery and computer fraud schemes can also produce large profits and create features regarding legitimacy gains obtained by washing dirty money. When a criminal activity generates substantial profits, the individual or group involved must find a way to control the funds without attracting attention or activity from which the people involved. Criminals achieve this

hiding sources, changing their shape, or directing funds to a place where they are less likely to attract attention. Money laundering is a process to give a semblance of legality to the illegal profits to criminals without being compromised, then the proceeds benefits. (Radu, 2012).

It is a dynamic process in three stages, which requires first-movement of funds obtained directly from crimes; Second-cover the tracks of money to avoid any type of investigation; Third-availability of money for criminals, hiding again occupational and geographical origin of the funds. There is no single method of money laundering. The methods range from buying and selling a luxury item (i.e. A car or jewelry) to shift money through a complex international legal business and the company "Shell" (companies that exist only legal without owning a business or doing business).

Initially, in the case of drug trafficking and other crimes such as smuggling, theft, blackmail and so on, take the proceeds, currently, as cash that should be entered by any method in the financial system. Traditional banking operations up of deposits or money transfer and credit systems provides a vital mechanism for money laundering, especially in the initial phase of introduction of cash into the financial system. Removing obstacles in the Internal Market facilitates not only the initiation or legitimate commercial activities across the EU, but can also provide more opportunities for money laundering and terrorist financing. Therefore, criminals dealing launderers could try to hide or to conceal the true nature, source or beneficial owner of those assets and turn them into profits with apparently legitimate.

In addition, terrorism can be financed through legitimate activities and through criminal activities since terrorist organizations generating activities income that can be, or at least may appear to be legitimate. Such money laundering and terrorist financing creates a risk to the integrity, proper functioning, reputation and stability of the financial system, with devastating consequences general public. European legislation has been enacted to protect the proper functioning of the financial system and the Internal Market. However, the changing nature of threats of money laundering and terrorist financing, facilitated by the constant evolution of technology and resources available to offenders, require adaptation of the legal framework to combat these threats. At EU level, Directive 2005/60/EC of 26 October 2005 on prevention of the use of the financial system for money laundering and terrorist financing (hereinafter the Third AML Directive) establishes a framework designed to protect the soundness, integrity and stability of institutions credit and financial, and confidence in the financial system as a whole, the risks of money laundering and terrorist financing.

To a large extent, EU rules (Radulescu, 2012) based on international standards adopted by the Financial Action Task Force (FATF) and as minimum harmonization Directive aims to address, the rules are adopted at national level. Internationally, the FATF has undertaken fundamental re-examination of international standards and adopted a new set of recommendations in February 2012. Alongside the international process, the European Commission launched its re-examination of the European framework. Now, the revised Directive complements re-examined the FATF Recommendations, which themselves represent a significant strengthening of the framework for combating money laundering and terrorist financing. Directive as such further consolidates some of the elements Recommendations re-examined, particularly in relation to the coverage (including our service providers and gambling merchants of goods with a threshold of 7.500 Euro), information on entities who are actual beneficiaries (to be made available to the obliged entities and authorities) and in the provision of sanctions.

Does the need to enhance the effectiveness of AML by adapting the legal framework to ensure that risk assessments are carried out at appropriate levels and with the necessary degree of flexibility to adapt to different situations and actors. Accordingly, Directive, which provides a high level of standards, calls on Member States, supervisors and entities required to assess risks and take the necessary mitigation measures to address these risks. Accordingly, the Directive contains less detail on specific measures to be taken.

Each EU Member State must establish a financial intelligence unit (FIU) as a central national unit. These units are responsible for receiving, requesting, analyzing and disseminating to the competent authorities of information regarding potential money laundering or terrorist financing. EU Member States must provide their FIU's adequate resources to enable it to fulfill its mission, and must ensure access to all financial, administrative and judicial necessary. Entities and persons covered by this Directive must submit a statement to the FIU reporting a suspicious transaction without delay when they have knowledge or suspicion that is or was a transaction or attempted money laundering or financing terrorism. During this period, they should refrain from carrying out operations. At the request of the FIU, these entities and shall provide all necessary information, in accordance with the law.

Member States may decide not to require independent legal professionals, notaries, auditors, external accountants and tax advisors to inform FIU received information about their customers or their part in the assessment of their legal situation or carrying out the

task of defending or representing the client in judicial proceedings. Entities and persons covered by this Directive must not disclose to the customer concerned or to other third parties that have provided information to the FIU, unless they be disclosed for law enforcement purposes. They must keep records and supporting documents or other information for at least five years following the termination of the business relationship with the client or running transaction. The Commission encourages coordination between FIU's from EU Member States. Member States are required to inform each other, and AES, if they consider that a third country meets the conditions of equivalence in terms of prohibiting disclosure, professional secrecy and personal data protection.

Credit institutions and financial institutions covered by this Directive should apply measures at least equivalent to those provided for the customer due diligence and record keeping their majority in branches and subsidiaries in third countries. Member States, ESA and the Commission shall inform each other of cases where the law of a third country does not permit application of these measures and when you can take coordinated action for a solution. In these cases, the ESA are able to develop draft regulatory technical standards to specify the type of additional measures and actions minimum credit institutions or financial institutions must undertake.

Since terrorism is a threat to security, freedom and values of the EU and EU citizens against Union actions are intended to provide an adequate and appropriate response to combat this phenomenon. Prevention, protection, prosecution and response are the four pillars of the EU Global Approach. It is making efforts to prevent and suppress terrorist acts and to protect infrastructure and citizens. The EU also addresses the issue of causes, resources and capacities terrorism. International cooperation and coordination between law enforcement bodies and between judicial authorities in the EU are essential to ensure the effectiveness of the fight against transnational phenomenon. Amsterdam Treaty laid the foundations of EU action in this area, until then limited to a few Member States. These actions were intensified after the terrorist attacks in the United States (in 2001) and in Europe (Madrid - 2004, London - 2005).

Internationally noted insistence legal texts to associate two realities whose intrinsic characteristics and empirical demonstrates that the differences between them are more significant than the similarities. Canada, for example, differs from states which are partners, in terms of this view, namely that money laundering related to terrorist financing and money laundering activities linked to criminal organizations. It is not surprising that money laundering for terrorist groups is

systematically associated dimensions of the latter problem, being based on evidence obtained cash from laundering operations conducted by criminal organizations. After all, the phenomenon of crime is associated to any facts that are provided for and punished by law. Terrorist groups and criminal organizations threaten the economic markets of democratic societies. Parallel networks for transfer of funds shall be used for financial movements.

However, the list of common points can not be an excuse enough to be in full agreement with what has been written on the subject, because it is generally controlled by governments, politicians, judicial authorities etc. (Radu 2012)

When considering particular aspects and differences on the issue of money laundering to finance terrorist activities can not use the same benchmarks prevailing in money laundering by criminal organizations. The competent authorities' joy associated with money laundering to terrorist financing, despite the differences that characterize the two types of activities. Very often, "terrorist financing" and capital movements are confused or money laundering work of researchers, analysts and government regulatory agencies. That said, many of the methods used by criminal groups to launder money are the same as the terrorists have resorted to mask the purpose of funds (obtained legally or illegally) at their disposal to conceal the control bodies that are recipients of these transfers financial.

When considering money laundering is required from the outset the statement: between what happens in the case of terrorist groups and criminal organizations are big differences, and to describe the complexity of terrorist financing activities is not enough to talk what happens when criminal organizations. Many important factors must be considered to understand done laundering terrorist groups to finance their activities. (Radu M., 2012, p.488)

For example, terrorism does not necessarily need to show astronomical sums, according to the U.S. State Department, "sums terrorist cells or trying to hide their members are often minimal when compared to the amounts recycled crime organized and major drug traffickers." In fact, laws were passed aimed at, first, the fight against money laundering. For this reason, the obligation to declare deposits over 10 000 dollars for terrorist financing is considered unnecessary and inefficient and necessary measures adapted to the movements of terrorist funds.

Moreover, terrorist groups frequently use funds from legal sources to finance its operations. For some experts in the field (Anina Hardy and Johnson, 2004), money laundering is the processing of the product of an offense in a usable form and disguising its illegal sources. Various financial transactions are used by

multiple financial instruments so as to allow the money to be invested wash again is in legal activities or to finance trades or to serve terrorist activities. The same authors define as terrorist financing using proceeds from any source (legal or not) to finance terrorist activities, past or future. Here's a feature that allows differentiation between operations of money laundering and terrorist financing activities: more often than other times, terrorist financing is geared towards the future. In a democratic society and respect for human rights is a priority especially embodied in legal justice whose procedural safeguards acquire actual size (Radulescu, 2011). Terrorism jeopardize fundamental rights such as the right to life and physical integrity, undermines the importance of law and democracy generally requiring states restrict the rights and freedoms of the individual. However there must be a balance between limiting certain rights as a result of particular danger posed by the terrorism and respect for individual rights and freedoms to ensure that the legal framework in the field, and its application in a fair trial in criminal matters.

3. Conclusions

In the fight against terrorism, the judiciary is required to be specialized in terms of the judge who is supposed to have adequate training on terrorism not only in terms of concept, but also the phenomenon of political implications, social as well as legal institutions, or investigative techniques, and guarantees that characterizes a process that takes place with respect to the conventional block on. The European Union is an active combat money laundering and terrorism financing are busy constantly updating regulations in this area. As the European Commission it stated: "Over the years, the rules have evolved and the scope of their expanded every change intended to remove potential additional resources that could be exploited by criminals and terrorists." Currently, the EU is under review of the rules against money laundering, with a fourth project-level Anti-Money Laundering Directive (the "Directive") and a new regulation on the transfer of funds (the "Regulation") which is to most likely be approved towards the end of 2013.

Overall, the two initiatives provide a set of rules by which regulatory authorities to quickly identify the origin of goods subject to the transaction if that source is legitimate and who is the ultimate beneficiary thereof. Also, existing sanctions are considered not severe enough to serve the purpose of punitive and preventive. Thus, both initiatives are considering new rules for powers to sanction of the competent authorities by introducing, for example, a minimum set of rules based on the principles of administrative sanctions and tougher rules to strengthen coordination in cross-border cases. In addition to the common goal of both

initiatives, each of which provides guidelines and specific purposes.

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