

SOME COMMENTS REGARDING THE LAW NO. 129/2019 FOR PREVENTING AND COMBATING OF MONEY LAUNDERING AND TERRORISM FINANCING

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Abstract

The article presents and analyzes aspects related to law no. for the prevention and combating of money laundering and terrorist financing, as well as for amending and supplementing normative acts, in particular the provisions relating to the forensic investigation of money laundering and the financing of terrorism.

Keywords: *money laundering, financing of terrorism, investigation, Financial Intelligence Units.*

Introduction

The money laundering offences are included in the Romanian legislation in Article 49 of Law no. 129/2019 for the prevention and combating of money laundering and terrorist financing, these acts of money laundering being defined in accordance with the provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Terrorist Financing of Warsaw of 16 May 2005 and of the Directive 2015/849/EU on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing.

In essence, the phenomenon of money laundering consists in hiding the true origin of the profits obtained illegally by the criminals as well as their true identity in order to subsequently benefit from the amounts obtained. Money laundering refers to the existence of another crime - the main crime - as a result of which illegal income is obtained and consists of any action that uses the income from that main crime.

As examples of main crimes, we can mention: illegal arms sales, smuggling, drug trafficking, embezzlement, prostitution, bribery, computer crimes, etc. Money laundering affects not only the integrity of financial and business services, but also the economic development of states. It also negatively affects public confidence in banking systems and financial markets, especially in emerging economies.

From the perspective of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Terrorist Financing, the forms of international cooperation are the following: assistance during the investigation of crimes, identification, tracing, blocking or immediate seizure of confiscated property to facilitate in particular the application of a subsequent confiscation measure and cooperation between financial intelligence units. The Convention seeks to improve cooperation between financial intelligence units in order to facilitate the investigation and conviction of persons suspected of committing money laundering offences. At the same time, the Convention recommends that Member States take the necessary measures to establish a regulatory and supervisory regime in order to prevent money laundering and to comply with relevant international standards, such as the recommendations adopted by the Financial Action Task Force on Money Laundering (- FATF-).

Directive 2015/849/EU aims to prevent the use of the European Union's financial system for the purpose of money laundering and terrorist financing. This Directive applies to credit institutions, financial institutions, as well as to certain natural or legal persons engaged in their professional activities, such as auditors, external accountants, tax advisers, real estate agents, gambling service providers, notaries and others. persons practicing legal professions, when participating, in the name and on behalf of the client, in any financial or real estate transaction, or when assisting in the planning or execution of transactions for the client related to the purchase and sale of real estate or commercial entities, money management, securities or other assets of the client, opening or managing bank accounts, savings accounts or securities accounts, organizing the necessary contributions for the creation, operation or administration of companies, creation, operation or administration of trusts, companies, bow or similar structures. Directive 2015/849/EU also applies to other persons who trade in goods only to the extent that payments are made or received in cash and have a value of at least 10 000 euros, regardless of whether the transaction is carried out in a single transaction. operation or through several operations that seem to be related to each other.

According to Article 49 para. (1) of Law no. 129/2019 for the prevention and combating of money laundering and terrorist financing, it is the crime of money laundering to commit the following acts:

a) the exchange or transfer of goods, knowing that they come from the commission of crimes, in order to conceal or conceal the illicit origin of these goods or in order to help the person who committed the crime from which the goods come to evade prosecution, trial or execution of the sentence;

b) disguising or concealment of the true nature, provenance, location, disposition, movement or ownership of the goods or of the rights over them, knowing that the goods come from the commission of crimes;

c) the acquisition, possession or use of goods by a person other than the active subject of the crime from which the goods come, knowing that they come from the commission of crimes.

The legal object of the crime of money laundering is the social relations that guarantee the financial-banking system and the healthy money circulation of the national currency, on the one hand, and on the other, the normal formation and development of relations that guarantee the origin of legal income.

The active subject of the crime of money laundering can be any person, without requiring a special quality.

The financial intelligence units

Financial intelligence units are the main sources of information in money laundering investigations [1]. The financial intelligence units were defined for the first time by the Financial Action Task Force - FATF - through recommendations, the most recent definition being developed in the recommendations from the year of 2019. Thus, Recommendation no. 29 of the FATF in the year of 2019 defines financial intelligence units as “national centres, which receive and analyse suspicious transaction reports and other important information for money laundering, associated main crimes and terrorist financing, as well as for disseminating the results of the analysis. Financial intelligence units should also obtain additional information from reporting bodies and have timely

access to the financial, administrative and law enforcement information they need to perform their duties properly” [2].

The financial intelligence units are defined in Article 32 of Directive 2015/849/EU on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing in accordance with the text of the Recommendation no. 29 of the FATF organization from the year of 2019. Directive 2015/849/EU, according to Article 32 provides for the obligation of each Member State to set up a financial intelligence unit in order to effectively prevent, detect and combat money laundering and terrorist financing [3].

The main reports submitted to the financial intelligence units are as follows [4]: reports on suspicious transactions or activities; reports on foreign exchange transactions; reports on foreign exchange transactions carried out by casinos; reports on bank transfers; cross-border reports.

The national system for preventing and combating of money laundering and terrorist financing consists of the following authorities and institutions according to Article 1 para. (1) of Law no. 129/2019 for preventing and combating money laundering and terrorist financing, as well as for amending and supplementing normative acts: the criminal investigation bodies; the public authorities and institutions with regulatory, information and control attributions in the field, such as the financial information unit of Romania, authorities with financial/fiscal control attributions or authorities with fiscal control attributions, customs authority; state bodies specialized in the information activity provided in Article 6 para. (1) of Law no. 51/1991 on the national security of Romania, republished, with subsequent additions; the autonomous administrative authorities and institutions with the role of sectoral regulation and supervision and control of reporting entities, such as the National Bank of Romania, the Financial Supervision Authority, the National Gambling Office.

The National Office for Prevention and Combating of Money Laundering (FIU) is the financial intelligence unit of Romania, of administrative type, based in Bucharest, a specialized body with legal personality, independent and autonomous from an operational and functional point of view, subordinated Government and under the coordination of the Prime Minister of Romania. The object of activity of the National

Office for Prevention and Combating of Money Laundering is the receipt, analysis, processing and dissemination of financial information, supervision and control, according to law, of reporting entities in order to prevent and combat money laundering and terrorist financing.

The National Office for Preventing and Combating of Money Laundering represents the authority that coordinates the assessment of money laundering risks and terrorist financing at national level, an assessment that is carried out in cooperation with the authorities and institutions provided by Article 1 para. (1) of Law no. 129/2019, ensuring the protection of personal data.

In fulfilling its object of activity, the National Office for Prevention and Combating of Money Laundering, has the following main attributions, according to the provisions of Article 39 para. (3) of Law no. 129/2019: receives the reports provided for in this law, as well as other information from reporting entities, authorities and public institutions in connection with money laundering, money laundering offences and terrorist financing; collects the information received by creating its own databases; requests from the reporting entities, public or private authorities or institutions the data and information necessary for the performance of the tasks established by law, including classified information; evaluates, processes and analyzes the information received; orders, in accordance with the law, the suspension of transactions related to a suspicious activity of money laundering or terrorist financing and may order the revocation of the suspension measure, pursuant to the provisions of this law, etc.

The reporting entities have the obligation to report to the National Office for the Prevention and Combating of Money Laundering the transactions with amounts in cash, in lions (the local currency of Romania or in foreign currency) or in foreign currency, whose minimum limit represents the equivalent in lions of 10,000 euros. Credit institutions and financial institutions will submit online reports on external transfers to and from accounts, in lions or foreign currency, whose minimum limit is the equivalent in lions of 15,000 euros.

The National Office for the Prevention and Combating of Money Laundering analyses and processes the information from the reports on suspicious transactions, and when there are indications of money laundering or terrorist financing, it immediately

informs the Prosecutor's Office attached to the High Court of Cassation and Justice [5]. If the National Office for the Prevention and Combating of Money Laundering finds the financing of terrorism, it will immediately notify the Romanian Intelligence Service regarding the suspicious terrorist financing operations.

The National Office for the Prevention and Combating of Money Laundering shall inform the criminal investigation bodies and, as the case may be, other competent authorities about suspicions of committing crimes other than money laundering or terrorist financing.

In order to fulfil its object of activity, the Office for the Prevention and Combating of Money Laundering has direct access, in a timely manner, to financial, fiscal, administrative information, as well as to any other information from law enforcement authorities and law enforcement agencies. criminal prosecution, for performing the tasks properly. The Office for the Prevention and Combating of Money Laundering represents Romania in its field of competence and promotes the exchange of experience in relations with international organizations and institutions, cooperates with foreign financial intelligence units, can participate in the activities of international bodies and can be a member of them.

The Office for the Prevention and Combating of Money Laundering requests from the reporting entities, public or private authorities or institutions the data and information necessary for the fulfilment of the attributions established by law. We mention that the requested data are transmitted exclusively in electronic format and are processed and used within the Office for the Prevention and Combating of Money Laundering in a confidential regime, respecting the security measures of personal data processing.

In order to fulfil the legal obligations of the National Bank of Romania and the Financial Supervision Authority, the Office for the Prevention and Combating of Money Laundering provides, at their motivated request, information on persons and entities that have associated money laundering and financing risk of terrorism.

The manner of application of the provisions of Law no. 129/2019 is supervised and controlled, within the service attributions, by the following authorities and bodies: the National Bank of Romania; the Financial Supervision Authority; the National Agency for Fiscal Administration; the National Gambling Office; the Office for the Prevention and

Combating of Money Laundering; the self-regulatory bodies, for the reporting entities they represent and coordinate. At the same time, we emphasize that the authorities and bodies mentioned above must immediately inform the Office for the Prevention and Combating of Money Laundering when, in the exercise of their specific duties, they discover facts that may be related to money laundering or terrorist financing, or regarding other violations of the provisions of Law no. 129/2019 with significant impact on the exposure to the risk of money laundering and terrorist financing, found according to specific attributions.

Conclusions

The financial intelligence unit is independent and autonomous, which means that it has the authority and capacity to exercise its functions freely, including the ability to make autonomous decisions to analyse, request and communicate specific information. The national financial intelligence unit, in its capacity as the national central unit, is responsible for receiving and analysing reports on suspicious transactions and other information relevant to money laundering, associated main crimes or terrorist financing.

The financial intelligence unit shall communicate to the competent authorities the results of its analysis and any relevant additional information, if there are grounds for suspecting money laundering, associated main offences or terrorist financing. The financial intelligence unit is also able to obtain additional information from the obligated entities. Member States shall provide the financial intelligence unit with adequate financial, human and technical resources to carry out its tasks.

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