

ANTI-MONEY LAUNDERING – FOR THE ATTENTION OF THE INTERNATIONAL FEDERATION OF ACCOUNTANTS

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Abstract: *Nowadays, in the context of interconnected economies, the phenomenon of money laundering and terrorist financing has escalated, with a direct impact in Romania as well. The European Union has intensified the fight against this phenomenon, which risks making the financial system vulnerable, through the 4th and 5th European Directives, which extend the professional obligations of accounting experts and financial auditors in the field of preventing and combating money laundering and terrorist financing. Because professional accountants must act in the public interest, IFAC has developed a guide that supports professional accountants in their efforts to limit the phenomenon of corruption and money laundering at an international level.*

Key words: *anti-money laundering, IFAC, the European Directive no. 2018/843, professional accountants, Law no. 129/2019.*

1. Introduction

Money laundering is the process by which financial offenders try to hide the origin and real property of the proceeds from their criminal activities (www.onpcsb.ro). Today, according to the UN Bureau of Drugs and Crime, it is estimated that, globally, the money laundering phenomenon can be assessed at a potential annual level exceeding the threshold of 1 trillion USD. (www.ceccar.ro) Moreover, according to a report published in 2021 by the European Court of Auditors, which is the guardian of EU finances, Europol estimates that, at European level, the value of suspicious transactions in the field of money laundering and terrorist financing reaches hundreds of billions of Euros, respectively 1.3% of the EU's gross domestic product (GDP) and global estimates are close to 3% of world GDP. (European Court of Auditors, 2021)

The phenomenon of money laundering has crystallized, in an incipient form, since ancient times. From the literature we find that two money laundering practices have been delimited, namely the exploitation of tax havens and the fraudulent use of the

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banking system, which have intensified in Europe ever since the Middle Ages, when the Catholic Church banned usury (Dumitrache, 2013).

Although the actions aimed at money laundering have existed since ancient times, the act of money laundering was recognized as an independent offence in late 1986 in the United States and gradually spread throughout the world. As an immediate effect, in 1989, the International Financial Action Task Force (GAFI/FATF) was set up in France at the G7 Summit to promote international policies and standards to combat money laundering and terrorist financing. GAFI is the global intergovernmental body for monitoring money laundering and terrorist financing (www.fatf-gafi.org).

The globalization and digitalization of economies have driven the expansion of organized crime in the field of business and, implicitly, the escalation of the phenomenon aimed at money laundering, respectively the access to liquid assets for which there are no suspicions regarding the source of origin (Dumitrache, 2013). Money laundering is done through the banking system. The latest figures released by Eurostat show that more than 75% of suspicious money laundering transactions have been reported by the credit institutions in more than half of EU Member States (European Court of Auditors, 2021).

Over the last decade, the EU has stepped up the fight against money laundering and terrorist financing through the 4th Directive no. 2015/849/EU and the 5th Directive no. 2018/843/EU *on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing*, and the professional accountants (accounting experts and financial auditors), along with other entities and professionals (notaries public, lawyers and other persons practicing liberal legal professions, certified assessors, tax consultants) are called to become an important part of this extensive process (Lapteş, 2020).

In response to the new professional responsibilities imposed on professional accountants, the International Federation of Accountants (IFAC) has been publishing, since 2020, in several series, a guide on the fundamentals of combating money laundering, entitled *Anti-Money Laundering, The Basics*, which contains six parts and is addressed to professional accountants (www.ifac.org). According to this guide prepared by IFAC, Part 1, entitled *Introduction to Anti-Money Laundering for Professional Accountants*, money laundering is done by “taking over the proceeds of an illegal activity and dissociating them from the crime from which they resulted by placing, stratifying and integrating them into the legitimate financial system.” (www.ceccar.ro)

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 sanctioning of money laundering, repealed by Law no. 129/2019 to prevent and combat money laundering and terrorism financing. In 1999, in Romania, the National Office for the Prevention and Control of Money Laundering was established (N.O.P.C.M.L.), which is the Financial Intelligence Unit of Romania (FIU), with a leading role in elaborating and implementing the national system for combating money laundering and terrorist financing. N.O.P.C.M.L is subordinated to the Ministry of Public Finance and its mission is to receive, analyse, process and disseminate financial information, to monitor and control the reporting entities (including professional accountants) in order to prevent

and combat money laundering and terrorist financing (www.onpcsb.ro). According to Law no. 129/2019, professional accountants are also obliged to collaborate with this body, together with all reporting entities, by signalling any suspicions regarding the identification of activities that fall within the area of money laundering and terrorist financing.

2. Research Methodology

This study has as its fundamental objective the analysis of the money laundering phenomenon and the role that professional accountants received through the legislative initiative initiated by the European Union and subsequently taken over by Romania for preventing and combating money laundering and terrorist financing, an approach involving, together with other entities and professionals, the financial auditors and accounting experts, respectively the professional accountants. Moreover, IFAC's vision of the new responsibilities for the professional accountants in the fight against corruption, money laundering and terrorist financing is outlined, which today risks making most of the world's states vulnerable. To achieve this goal, a fundamental research was conducted, by studying the main papers and specialized materials, which address the topic.

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

- What are the latest decisions taken at EU level to step up the fight against money laundering and terrorist financing?
- What is the content of the guide developed by IFAC, starting with 2020, and entitled *Anti-Money Laundering, The Basics*?
- What are the main issues in the area of preventing and combating money laundering that accountants should pay attention to, according to IFAC expectations?

3. Research Results

Through the 5th Directive no. 2018/843/EU *on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing*, in the European Union (EU) there are stricter rules on combating money laundering, which makes it more difficult to hide illegal funds through fictitious companies. Although these strict anti-money laundering rules have been adopted, there are some limitations at EU level that make it difficult to counteract this complex, widespread phenomenon. A special report published in 2021 by the European Court of Auditors shows that "The EU efforts to combat money laundering in the banking sector are fragmented and the implementation is insufficient." Moreover, the process is deficient because, in this fight, several EU bodies are involved, which do not always cooperate effectively, and the European norms in this field are not implemented uniformly at the level of each Member State. (European Court of Auditors, 2021)

Because, in 2021, the experts within the European Court of Auditors pointed out that, in reality, surveillance in the field of combating money laundering and terrorist financing occurs to a limited extent, only at national level, without a sufficient control framework

at EU level, the European Commission presented, in July 2021, a set of legislative proposals to strengthen the current European rules and provide the legal framework for setting up a single supervisory authority at EU level, with the task of combating money laundering (European Commission, 2021)

The reform proposed by the European Commission in the field of combating money laundering will mainly aim:

- for the existing national registers of bank accounts to be connected, which will ensure the intensification of financial investigations;
- for the future anti-money laundering rules to be extended to cryptoassets, with anonymous cryptocurrencies being banned;
- for the € 10,000 cash payment ceiling to be extended to all EU Member States, given that today only two thirds of Member States have imposed value limits on cash payments, with values differing from one state to another.

In Romania, the responsibility for coordinating the national system for combating money laundering and terrorist financing is held by the N.O.P.C.M.L. 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 offence of money laundering is punishable by 3 to 10 years in prison. (Lapteş, 2020)

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

Throughout this context fraught with much uncertainty and global risks, IFAC is focusing on better preparing professional accountants for the future, which also involves the component aimed at limiting the phenomenon of money laundering through the responsible actions of professional accountants. To achieve this goal, IFAC together with ICAEW (Institute of Chartered Accountants in England and Wales) developed, in 2020, the guide entitled *Anti-Money Laundering, The Basics* to help professional accountants understand the money laundering mechanism, the risks they face in carrying out their professional activities and the solutions they need to know to limit these risks, in an attempt to contribute to the public interest of society as a whole. The guide *Anti-Money Laundering, The Basics* was published in six parts as follows:

- Installment 1: Introduction to Anti-Money Laundering for Professional Accountants;
- Installment 2: A Risk-Based Approach;
- Installment 3: Company Formation;
- Installment 4: Asset Transfers;
- Installment 5: Tax Advice;
- Installment 6: Businesses in difficulty.

The first part of the guide highlights the professional accountants' role of acting in the public interest, as "guardians of the financial system", whose mission is to block the entry of illicit funds into the economy. Moreover, it is emphasized that the money laundering mechanism is based on three pillars: the placement of money, the

stratification and integration of the illicit funds into the economy. Placement involves the introduction of illicit funds into the financial system, the main methods being: currency exchange, cash transport and opening of bank deposits. By stratification, the financial criminals try to eliminate the link between the illicit funds and the source of origin, the main methods being: electronic transfers, cash withdrawals or splitting and merging accounts. Through the last stage of money laundering, called integration, the illicit funds are reintroduced into the legal economic circuit by investing them in the real estate market, luxury products or in the business area (IFAC, 2020). In this context, IFAC recommends certain key issues to accountants, for them to consider with a view to combating money laundering:

- Prior and careful verification of all clients of professional services and, in particular, of the person politically exposed in order to avoid the risks of bribery and corruption;
- Permanent monitoring of all customers;
- Reporting suspicious money laundering activities to a Financial Intelligence Unit (IFAC, 2020).

The second part of the IFAC guide, *A Risk-Based Approach* emphasizes that professional accountants must consider three fields of risk in the business relationships they develop with clients, namely: geographical risk, customer-related risk and service-related risk. In relation to the geographical risk, professional accountants must access the public information when assessing the risk of money laundering in a particular country. The customer-related risk refers to the general risk of money laundering posed by a customer, hence increased attention is recommended in case of excessive customer discretion, of very complex ownership structures or in the situation where a customer is a person politically exposed. The service-related risk refers to the risk of certain products or services being used in the money laundering process (IFAC, 2020). The third part of the IFAC guide, *Company Formation*, emphasizes that setting up companies is one of the services provided by the professional accountants most susceptible to the money laundering risk. IFAC warns that professional accountants who have suspicions about a client or potential client regarding the perpetration of a revenue-generating offence must report all details to a local Financial Intelligence Unit.

Through the fourth part of the IFAC guide, *Asset Transfers*, professional accountants are warned that the main mode of action by which financial offenders stratify or integrate into the legal economy the proceeds of criminal activities is related to the transfer of assets in the area of real estate or assets of significant value. If, as a result of investigations conducted by professional accountants into transactions involving the transfer of assets or the source of a client's assets and funds, suspicions arise, IFAC recommends giving up working with that client and submitting a report of suspicious activity to the local Financial Intelligence Unit without warning the client.

In the fifth part of the IFAC guide, *Tax Advice*, professional accountants are warned that they have the obligation to give up working with a client, when performing tax advisory services, if that client commits acts of tax evasion or obtains proceeds from illegal activities. The last part of the IFAC guide, *Businesses in difficulty*, points out that entities with financial problems can become targets for money laundering criminals.

Professional accountants must discontinue collaboration with those companies in which they identify fraudulent activities.

4. Conclusions

It is a fact that today the phenomenon of money laundering has escalated and risks making most countries in the world vulnerable. In this context, it is necessary to accelerate legislative harmonization at EU level, to step up the cooperation between the various national bodies and to ensure an effective control by speeding up the establishment of a single supervisory authority at EU level, with the task of combating money laundering. It is necessary to set up an “effective anti-money laundering ecosystem”, in which each component part, including professional accountants, plays a decisive role in the fight against money laundering. On this note, for the future, the professional accountants’ new role must be developed and understood, which will make possible the transition from “reactive management to proactive anti-money laundering risk management” (Accountancy Europe, 2021). It is a step that requires maximum attention and responsibility from all professional accountants, who are called today to contribute to the difficult fight against corruption and money laundering.

References

- Accountancy Europe, 2021. *Building an Effective Anti-Money Laundering Ecosystem: From Reactive to Proactive Risk Management*. <https://www.accountancyeurope.eu/wp-content/uploads/Building-an-effective-AML-ecosystem.pdf>.
- Dumitrache, A.A., 2013. *Spălarea banilor. Aspecte juridico-penale*. Bucharest: Universul Juridic Printing House.
- European Court of Auditors, 2021. *Special Report EU efforts to fight money laundering in the banking sector are fragmented and implementation is insufficient*. https://www.eca.europa.eu/lists/ecadocuments/sr21_13/sr_aml_en.pdf.
- European Commission, 2021. *Anti-money laundering and countering the financing of terrorism legislative package*. https://ec.europa.eu/info/publications/210720-anti-money-laundering-countering-financing-terrorism_en.
- IFAC, 2020. *Anti-Money Laundering, The Basics*. <https://www.ifac.org/knowledge-gateway/preparing-future-ready-professionals/discussion/anti-money-laundering-basics>.
- Lapteş, R., 2020. Combating Money Laundering – A Mandatory Topic for the Professional Accountant. *Bulletin of the “Transilvania” University of Braşov*. Vol. 13(62), Series V, no. 2, pp. 141-146.
- Directiva a 5-a no. 2018/843/EU *on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing*.
www.ceccar.ro
www.fatf-gafi.org
www.onpcsb.ro