



Money laundering in Bosnia and Herzegovina

Miroslav Baljak^{a*}

^a European University „Kallos“ Tuzla (*Bosnia and Herzegovina*)

Abstract

The problem of money laundering in the world is becoming more and more challenging, which Bosnia and Herzegovina are not spared, and there is more and more "dirty" money coming from various criminal activities and trying to "launder", ie put into legal channels. Therefore, anti-money laundering projects in Bosnia and Herzegovina are extremely important, and they have shown the first results.

In this regard, in May 2017, the European Union launched a two-year twinning project "Support to the fight against money laundering", and in the meantime, our country was removed from the so-called "gray lists" of the Interstate Anti-Money Laundering Authority (FATF).

It should be emphasized that the benefits for Bosnia and Herzegovina due to the removal from the FATF "gray list" are multiple. Due to the fact that Bosnia and Herzegovina were placed on this "gray list", economic entities in their daily business encountered difficult foreign payment transactions. By removing our country from the Interstate Anti-Money Laundering Authority "gray list", the causes of the problems that business entities from Bosnia and Herzegovina face in their daily business, as well as the causes that our citizens encounter when performing financial transactions abroad, cease.

Keywords: *money, laundering, Bosnia and Herzegovina, legal flows, FATF.*

1. Introduction

Money laundering appears as a phenomenon of the twenty-first century. As a global problem, money laundering is widespread throughout the world. The global nature of the problem requires finding a global solution, which is necessary to preserve the integrity of financial institutions and financial systems.

*Corresponding author: Miroslav Baljak, *E-mail:* baljak.miroslav@gmail.com

Money laundering is the process by which criminals and their associates use the financial and non-financial system to carry out transactions or transfer funds from one account to another in order to hide the source and the real owner of the funds, in order to legalize illegally acquired money.

According to the Law on Prevention of Money Laundering and Financing of Terrorist Activities, money laundering means the exchange or transfer of the property if the property was acquired through criminal activities, with the aim of concealing or covering up the illegal origin of the property or providing assistance to a person involved in such activities. actions; concealment or concealment of the true nature, place of origin, disposal, movement, right to or ownership of property if that property was acquired through criminal acts or an act of participation in such acts; acquisition, possession, or use of property acquired through criminal acts or the act of participating in such acts; participation or association for the purpose of doing, attempting to do or aiding, abetting, facilitating or giving advice in doing any of the above actions.(Law on Prevention of Money Laundering and Financing of Terrorist Activities: Article 2)

Money laundering means an activity aimed at collecting unfairly or illegally acquired income through permitted transactions. (Cindori 2007: p. 58) Money laundering is a dynamic process that adapts to economic flows and legislation, at the national and international level, and takes place through the falsification of financial documentation and through manipulations in the systems of interbank transactions. (Cindori 2007: p. 59)

Money laundering can lead to destabilization of the financial stability of a country, through disruption of financial relations, weakening of international trade, reduction of investments, and general damage to reputation, to which Bosnia and Herzegovina were exposed by coming to the "gray list". The literature mentions that the term "laundering" was promoted by London's *The Guardian* some thirty years ago in connection with the famous Nixon Watergate affair, which involved the amount of \$ 200,000 that was allegedly intended to finance the American Republican election campaign.

2. International regulations

The increase in the number of criminal acts marked as "money laundering" has prompted the international community to adopt a series of conventions, recommendations, and guidelines. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, (United Nations Convention, 1988) which discusses the problem and determines ways to combat narcotics by confiscating profits from illicit drug production and trafficking, and promotes international cooperation between member states. This is the first document punishing laundering through punishment for acts from which dirty money arises.

At the G-7 meeting in Paris in 1989, the Financial Action Task Force (FATF) was formed to monitor the implementation of measures to prevent money laundering and terrorist financing. The task of this Group is to establish standards for combating money laundering, terrorist financing, and proliferation of weapons of mass destruction, assess compliance with FATF standards and identify threats to the integrity of the international financial system and respond to them through studies of high-risk jurisdictions and typologies.



The standards applied by the FATF in the fight against money laundering and terrorist financing are known as the "FATF Recommendations". The mentioned recommendations represent a global standard for the prevention of money laundering and terrorist financing and their inadequate application or integration into the legal-institutional system of the state can have serious consequences for a given country, which means that countries that have not harmonized their system for prevention of money laundering and terrorist financing According to the FATF recommendations and through a certain assessment undertaken in accordance with the FATF methodology, they are considered as “countries with a higher degree of risk in terms of money laundering and terrorist financing”. (FATF Recommendations 2020)

Resolution 2462/11 (UN Security Council Resolution 2462, New York, 2019) calls on UN member states to apply the comprehensive international standards contained in the FATF recommendations. Implementation of the FATF recommendations has become an international legal obligation, as Article 25 of the Resolution obliges UN member states to implement resolutions adopted in accordance with Chapter VII of the United Nations Charter, while Article 103 clarifies that obligations under the UN Charter will prevail over any other international agreement.

The 141st Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, (Council of Europe Convention on Laundering 1990) which provides for the obligation to confiscate profits from all illegal activities, and for international co-operation in the seizure and distribution of confiscated funds.

EU Council Guidelines on the Prevention of the Use of the Financial System for Money Laundering (EU Council guidelines 1991) prescribing customer identification, in-depth analysis, verification and supervision of the client - beneficial owners, cash use limits, identification of related, illogical and suspicious transactions, reporting obligations, ban on disclosure of information, maximum protection of members financial institutions responsible for disclosing information, staff training and risk management, record keeping and statistics, supervision and sanctions.

The 2005 Anti-Money Laundering Directive is also known as the third Directive. (EU Directive) Regulation 1781/2006 stipulates the obligation for the information on the principal to monitor the transfer of money for the prevention, investigation and detection of money laundering and terrorist financing.

Directive 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing amended Regulation no. 648/2012 of the European Parliament and of the Council and repealed Directive 2005/60 / EC of the European Parliament and of the Council and Commission Directive 2006/70 / EC.

3. Regulations in Bosnia and Herzegovina

Despite the ongoing efforts of banking regulators to put an end to the financial black market, criminals are always one step ahead when it comes to mechanisms for injecting dirty money into legal financial flows. This is best evidenced by money laundering scandals that simply catch up with each other. Last year alone, several scandals involving billions of dollars were discovered.

In recent years, global efforts to combat money laundering have become increasingly significant due to the growing problem of terrorism on a global scale. Preventing and combating money laundering and terrorist financing is one of the priorities when it comes to current world politics.

The promulgation of the Law on Prevention of Money Laundering (Law on Prevention of Money Laundering and Financing of Terrorist Activities: no 47/14, 46/16) precisely prescribes the obligations of legal and natural persons, as well as certain institutions in BiH, which monitor the trends of international regulations in this area. The Financial Intelligence Unit (FIU) has been established within the State Investigation and Protection Agency SIPA, which is the main and responsible institution in the fight against money laundering in Bosnia and Herzegovina, and makes a significant contribution to the fight against money laundering.

The law also harmonizes the procedure with relevant international acts, primarily in relation to the identification of the party and the definition of the beneficial owner, ie the in-depth analysis of the party, and the keeping of comprehensive records.

With the adoption of the Law on Prevention of Money Laundering, Bosnia and Herzegovina have actively joined countries that, according to internationally recognized standards, take measures and responsibilities for the detection, prevention and investigation of money laundering and terrorist financing. One of the important conditions set before us by the international community has been fulfilled.

The Law on Prevention of Money Laundering defines that the taxpayer, in accordance with the prescribed conditions, is obliged to submit to the FIU the prescribed information regarding the following: Laundering (Law on Prevention of Money Laundering and Financing of Terrorist Activities: article 13)

- any transaction, party or person of suspicious nature immediately after the suspicion arises and before the execution of the transaction, stating the period in which the transaction is expected to take place
- on a cash transaction whose value amounts to or exceeds the amount of 30,000 KM, and
- on related cash transactions whose total value amounts to or exceeds the amount of 30,000 KM, immediately after the execution of the transaction and no later than 3 days after the execution of the transaction.

The aim of measures to prevent and detect money laundering, which are usually carried out by special financial intelligence units, is to monitor and analyze financial transactions and detect typologies of money laundering. Monitoring (suspicious) transactions seek to determine their illegal origin. Monitoring of these transactions should be viewed



separately from integrated financial investigations aimed at identifying, tracing, seizing and confiscating proceeds at the same time as conducting a criminal investigation into a proceeding that resulted in property gain.

The Financial Intelligence Unit is also a special body for the prevention, investigation and detection of money laundering operations and the financing of terrorist activities. According to the Law on Prevention of Money Laundering, the FIU also promotes cooperation between the competent authorities of Bosnia and Herzegovina, the Federation of Bosnia and Herzegovina, Republic of Srpska and Brčko District, in the field of prevention of money laundering and terrorist financing, as well as promoting cooperation and exchange of information with other authorities states and international organizations in charge of preventing money laundering and terrorist financing. (Law on Prevention of Money Laundering and Financing of Terrorist Activities: article 5)

When determining the identity of the party, the obligor is obliged to obtain information about the party and the transaction. Customer identification is performed:

- during each transaction or several related transactions whose value amounts to or exceeds 30,000 KM, even if it is a public sale or cash trading in works of art and the like,
- in cases of life insurance when the total amount of an individual installment or several installments to be paid within one year is or exceeds the amount of 2,000 KM or if the payment of one premium is or exceeds 5,000 KM,
- in the case of pension insurance if it is possible to transfer the policy, or use it as collateral to raise a loan or credit,
- when playing games of chance and gambling if the transaction is 5,000 KM or more.

The Financial Intelligence Department has primary activities: detecting and investigating money laundering and terrorist financing, international cooperation in the field of money laundering, informing prosecutors and submitting reports.

In order to prevent money laundering and terrorist financing, the Financial Intelligence Unit may request data, information and documentation necessary for the performance of tasks from foreign law enforcement agencies, prosecutors or administrative bodies, financial intelligence units and international organizations.

The Department may provide data, information and documentation collected in Bosnia and Herzegovina to financial intelligence units of other countries, provided that similar protection of confidentiality is ensured, at their request or on its own initiative. Before submitting personal data to financial intelligence units of other countries, the financial intelligence department requires a guarantee that the information, data and documentation

will be used only for the purposes prescribed by the provisions of this law. (Law on Prevention of Money Laundering and Financing of Terrorist Activities: article 21)

If the Financial Intelligence Department, on the basis of data, information and documentation obtained in accordance with the provisions of this Law, assesses that there are grounds for suspicion that it is a criminal offense related to a transaction or person, it shall provide the prosecutor with written notice.

The Financial Intelligence Unit shall not state in the notification the data on the employee or persons from the taxpayer who communicated the data in accordance with this Law, or who are in any other way involved in the execution of the transaction on behalf of the taxpayer, unless there are grounds for doubt that the taxpayer or his employee has committed a criminal offense, or if that information is necessary to establish the facts during the criminal proceedings. (Law on Prevention of Money Laundering and Financing of Terrorist Activities: article 22)

The Financial Intelligence Department submits annual reports to the Director of the State Investigation and Protection Agency and the Minister of Security of BiH on the general activities of the Financial Intelligence Department, as well as on activities related to the prevention of money laundering and terrorist financing. (Law on Prevention of Money Laundering and Financing of Terrorist Activities: article 24)

The Central Bank of Bosnia and Herzegovina has the following clients in its operations: commercial banks of BiH, state and entity ministries of finance and treasury, as well as banking agencies. It does not have a direct role in the prevention of money laundering and terrorist financing and is not obliged to report suspicious money laundering transactions. The Central Bank of Bosnia and Herzegovina is not obliged to report suspicious transactions and expressed risk in the purchase and sale of domestic currency with commercial banks, there is no risk in investing foreign exchange reserves in time deposits. Banks operating in the territory of Bosnia and Herzegovina, in accordance with the provisions of the Law on Prevention of Money Laundering, must have an internal procedure for the preliminary assessment of suspicious transaction reports and the procedure for mediating these reports by the FIU. They must identify the main specific person, usually called the "money laundering officer". Pursuant to the Law on Prevention of Money Laundering, bank employees are personally responsible for its observance. Banks should use the following policies, procedures and systems in their work:

1. The principle "Meet your customer" is the most effective means that banks have in preventing money laundering. The principle requires careful identification and caution, targeted non-suspicious transactions. This somewhat lowers the reputation of banks by connecting with customers on the principle of good business policy. Banks do not need to enter into business relationships with customers until they know their true identity,
2. The "get to know your customer" principle includes major activities that bank customers must obtain the necessary evidence for identification. When a bank customer opens an account, enters into business relationships and issues large one-off transactions (or a series of related transactions) he must prove the legality of the transactions. A document can be used to identify the client, e.g. driver's license or ID card if it is a natural person, and if it is a document on the legal status of the company (excerpt from the register of companies),



3. Knowledge of the client's business activities.

All bank employees must be wary of new client activities that are not related to clients of known business activities. Given the size and scope of the activity, it is easy to obtain data for the relevant issues of the source of funds, the unusualness of some unusual business activity. This is part of the anti-money laundering policy and procedure that every bank has. Data on the identity of the party and its property transactions should be kept for the purposes of money laundering investigations.

According to the Law on Prevention of Money Laundering, the bank must keep evidence of the sources of financial transactions for five years from the date when the transaction was executed. These documents include the bank's payment or deposit orders, checks, transaction records, etc. The Law on Prevention of Money Laundering prescribes "conditionally speaking" two categories of violations of the law:

(1) The first category refers to situations if the following obligations are not fulfilled:

- does not perform the identification of the party, or if the identification is not performed in accordance with the provisions of the law;
- does not inform the FIU or does not provide it with legally prescribed information, data or documentation;
- does not act on the order of the FIU on the temporary suspension of the transaction or does not act on the instructions issued by the FIU in connection with that order and in accordance with the provisions of the law;
- does not store information, data and documentation in accordance with the provisions of the law for at least 10 years after identification, transaction, closing of account or termination of the contract in accordance with the provisions of the law.

For the listed offenses (first categories): (Law on Prevention of Money Laundering and Financing of Terrorist Activities: article 39)

- The legal entity, in terms of this law, is fined for a misdemeanor in the amount of 20,000 KM to 200,000 KM,
- The competent person in the legal entity is fined in the amount of 2,000 KM to 15,000 KM,
- A natural person in the performance of independent activities is fined in the amount of 5,000 KM to 20,000 KM.

(2) The second category refers to situations where the following obligations are not fulfilled:

- Does not obtain all necessary data for identification in accordance with the provisions of the law or does not perform the identification by the method prescribed by law;
- Does not re-identify a foreign legal entity at least once a year in accordance with the provisions of the law;
- Does not submit the prescribed information to the FIU or does not submit it in the prescribed manner in accordance with the provisions of the law;
- Does not establish internal control or does not compile a list of indicators for identifying suspicious transactions within the prescribed period or in the prescribed manner in accordance with the provisions of the law;
- Does not appoint an authorized person and his deputy or does not notify the FIU of this appointment in accordance with the provisions of the law;
- Does not provide professional training for staff in accordance with the provisions of the law;
- Do not keep data on the authorized person and deputy authorized person, on professional training of employees and on performing internal control for at least 4 years after the appointment of the authorized person and deputy authorized person, after completion of professional training or performing internal control, in accordance with the law.

For the listed offenses (second categories): (Law on Prevention of Money Laundering and Financing of Terrorist Activities: article 40)

- A legal entity is fined in the amount of 10,000 KM to 100,000 KM,
- The responsible person in the legal entity is fined in the amount of 1,000 KM to 5,000 KM,
- A natural person, who performs self-employment, is fined in the amount of 2,000 KM to 20,000 KM.

4. Conclusion

The entire international community has recognized the danger of criminal activities of individuals and groups aimed at laundering and concealing money and other property gains obtained by committing criminal acts. Thus, international law, as well as certain national legislations provide for criminal liability for money laundering as a criminal offense threatened with severe penalties aimed at preventing and combating such socially dangerous activities.

Corruption and organized crime have been continuously identified as obstacles to the successful implementation of the Dayton Peace Agreement. Money laundering, which is an integral part of organized crime and corruption, is an effort to cover up an illegal source of money in order to make it legitimate for further profit-making. The global problem of money laundering disproportionately affects transition countries such as Bosnia and Herzegovina, poses a threat to the political and economic stability of these countries, and discourages legal and long-term foreign investment necessary for economic development in Bosnia and Herzegovina.

The legislative and institutional framework in Bosnia and Herzegovina is such that the system of prevention, detection and investigation of money laundering and terrorist financing in Bosnia and Herzegovina is not under the jurisdiction of only one institution



but is an area under the jurisdiction of institutions at all levels of government. with the legal definition of the role of all participants in the system and their obligatory mutual interaction and cooperation.

In Bosnia and Herzegovina, in May 2017, the European Union launched a two-year twinning project "Support to the fight against money laundering", and in the meantime, our country was removed from the so-called "gray lists" of the Interstate Anti-Money Laundering Authority (FATF).

References

Cindori, S. (2007) *Money laundering prevention system*, Financial theory and practice 31.

Directive 2005/60/EC, 2007/64/EC, 2008/20/EC, 2009/110/ EC, 2010/78/EC, 2013/36/EC.

EU Council guidelines on the prevention of the use of the financial system for the purpose of money laundering, 1991/308/EEC, 2001/97/EC i 2005/60/EZ.

FATF Recommendations, Financial Action Task Force, Paris, 2012, <http://www.fatf-fafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%b202012.pdf> [accessed 23 December 2020].

141st Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, 1990.

Law on Prevention of Money Laundering and Financing of Terrorist Activities, Official Gazette of BiH, no 47/14,46/16.

United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 1988.

Zirojević, A. (2017) *Contemporary tendencies in the ways of money laundering and prevention of terrorism in the Republic of Serbia*, doctoral dissertation, Faculty of Law, Faculty of Economics and Justice, Novi Sad.

Received 16 November 2023, accepted 8 January 2024.