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(CDPC)

SELECT COMMITTEE OF EXPERTS ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
MONEYVAL (PC-R-EV)

SECOND ROUND EVALUATION REPORT ON
ROMANIA

SUMMARY

1. Romania was the ninth MONEYVAL Member State whose anti-money laundering regime was assessed in the framework of the second round of mutual evaluations conducted by the Committee. A team of MONEYVAL examiners, accompanied by a colleague from a Financial Action task Force (FATF) Member State visited Romania from 15 to 18 April 2002. The objectives of this second evaluation round were to take stock of developments since the first round evaluation (26-29 April 1999), to assess the effectiveness of the anti-money laundering regime in practice and to examine the situation in those areas which had not been covered during the first round evaluation.
2. The range of crimes generating illegal proceeds has not changed significantly in Romania since the First Round Evaluation: smuggling, banking/financial fraud, vehicle theft, drug trafficking, money counterfeiting, procurement. The number of embezzlements has decreased to an insignificant level whereas that of tax frauds committed by organised groups mainly to the prejudice of the State Budget has increased. Such frauds are committed particularly in relation to illegal manufacturing and smuggling of alcohol, illegal trade of oil products and scrap iron. Frauds in the sector of investments and corruption cases to the prejudice of the private and public sectors became typical. Offences committed by organised crime include drug trafficking, procurement for prostitution, theft and trafficking in luxury cars, customs-foreign exchange frauds and tax evasion and cyber crimes such as e-trade with stolen credit cards.¹
3. The main economic sectors affected by money laundering are: interior/foreign commerce, banking-financial sector, capital market. A special problem seems to be the foreign currency exchange involving Romanian citizens carrying out significant and frequent foreign currency exchanges. Illegal funds to be laundered are generally routed through Romanian and foreign banks and other financial institutions. Sometimes offshore havens are used in the layering process (and funds may be returned to Romania for integration)². The extensive use of cash and the phenomenon of smurfing worthy being underlined as facilitating money-laundering operations.
4. The methods of money laundering have not changed significantly since the first round: they usually involve domestic and foreign banks, whereas, as noted above, offshore territories are sometimes involved in the process. Money laundering continues to involve many Romanian and foreign citizens, as well as commercial companies (in particular in the form of investment in such companies or phantom companies of money derived from tax evasion, fraud to V.A.T, smuggling and corruption.). Complex cases can involve several jurisdictions, including offshore centres, so that information/intelligence gathering becomes quite difficult. According to the Romanian authorities, specific money laundering techniques include the establishment of phantom companies, the use of fraudulent bankruptcy and export frauds.
5. The Government policy and objectives in the anti-money laundering field focus on establishing programmes and national plans targeting institutional and legislative reform (justice, finances, etc). One of these programmes relates to certain predicate offences and aims at preventing and combating corruption, drug related and organised crimes, as well as trafficking of human beings. Programmes also include training and technical development duties.
6. The most important achievement since the first evaluation has been the effective operational activity of the *National Office for the Prevention and Control of Money Laundering (NOPCML)*. From end 1999, when the NOPCML became operational, to the end 2000, 298 notifications have been submitted to the General Prosecutor's Office. 276 cases were sent to the Police for criminal

¹ Law No 39/2003 on preventing and combating organized crime lists offences committed by organized crime associations which represent all serious crimes.

² NOPCML, 2001 Activity Report.

investigation. On the basis of notifications, investigations and their own inquiries, the Police initiated criminal investigations in 42 cases: in 21 of these cases the persons charged were convicted of money laundering. The remaining 218 cases were at different investigation or other procedural stages at the time of the visit. Another very important step was the adoption, a few days before the evaluation visit, of a new version of the Suspicious Transactions Guidelines which now apply to all reporting entities, also beyond the financial sector.

7. Several legislative or other regulatory measures were also taken that affected the legal regime in the field of money laundering, related to: criminal and criminal procedure law; terrorism; corruption; drug trafficking; co-operation in criminal matters; transfers abroad of convicted persons; extradition; human beings trafficking; credit co-operative organisations; know-your-customer (KYC) standards; documentation for the authorisation of the financial-banking operations, for issuing the functioning authorisation of the Insurance Companies as well as the Criteria for approving the insurer's significant shareholders, the administrators and managers of these companies, insurance brokers, securities, financial investment companies and real estate agents.
8. At the time of the visit, the Government envisaged new legislative initiatives, among which, as a priority, the revision of Law No. 21/1999 for the prevention and sanctioning of money laundering. A new draft law had been approved by the Government and submitted to Parliament before the Evaluation visit.³ Amendments were also announced with regard to provisions of Law No. 78/2000 on the preventing, finding and punishing the corruption deeds⁴, of Penal Code and Penal Procedure Code, of legislation regarding the fight against organised crime⁵, the protection of and assistance to witnesses⁶ and penal liability of legal persons. Finally, the Romanian Government announced their intention to ratify soon the Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime⁷.
9. Romania made significant amendments on the penal and financial aspects of the fight against money laundering, after the evaluation visit, by virtue of the adoption of the Law No 656/2002, which replaced Law No 21/1999, namely:
 - the limitative list of predicate offences on which money laundering offence is based has been removed and replaced by the "all crimes approach";
 - the coverage area of the reporting entities has been enlarged, including art objects dealers, the personnel with responsibilities in the privatization process, postal offices, companies that ensure fast electronic transfer of funds (money remittance services), real estate agents and State treasury;
 - the identification obligation shall apply as from the date of entering into a business relation with a client (art. 3 of the Directive 97/2001/CE and FATF Recommendation No 10);
 - the period for which the NOPCML could decide the suspension of an operation has been extended from 24 to 48 hours;
 - non-opposability of professional and banking secrecy against the NOPCML has been expressly mentioned;

³ The new Law No 656/2002 on the Prevention and Sanctioning of Money Laundering of the 7th December 2002 replaced Law No. 21/1999.

⁴ Law No 161/2003 on certain measures on ensuring the transparency in performing the public dignities, of public functions in business area too, the preventing and sanctioning of corruption; Governmental Emergency Ordinance No 43 on April 4th, 2002 (establishing the National Anti-Corruption Prosecutor's Office), approved by Law No 503/2002.

⁵ Law no. 39/2003 on the prevention and combating organised crime;

⁶ Law no. 682/2002 on the protection of the witnesses

⁷ Romania ratified the Strasbourg Convention [ETS No. 141] on 6 August 2002. It entered into force with regard to Romania on 1st December 2002. Romania also issued Law No 161/2003 on transparency of public functions and prevention and suppression of corruption; Law No 39/2003 on the prevention and combating of organized crime; Law No 682/2002 on the protection of witnesses.

- non-opposability to the prosecution bodies and courts of the provisions of the law on banking and professional secrecy in the case of offences provided by Art. 23 (money laundering) and 24 (tipping off), once the penal procedure has been initiated by the prosecutor;
- the possibility has been provided for the NOPCML to perform commune controls and verifications jointly with financial control authorities or prudential supervision bodies mentioned in Art. 8;
- the NOPCML is no longer liable for financial losses suffered by legal and natural persons whose transaction has been suspended;
- criminalisation of facts performed by the persons provided for in art. 8 and their employees in case of transmitting money laundering information besides those cases provided by the law (tipping-off) has been introduced;
- the requirement provided by law according to which the reporting entities shall inform the NOPCML on the basis of “solid grounds” has been removed; mere “suspicions” now suffice;
- the obligation for all the reporting entities to report any “external” transaction of an amount higher than the equivalent of 10.000 EURO has been introduced;
- the obligation has been introduced for the Prosecutor’s Office to provide information, when requested by the NOPCML, about the way they handled the information notes sent by the NOPCML (feed-back);
- verification and control obligation on the enforcement of money laundering provisions has also been established for the financial control and prudential supervision authorities for the persons provided for in art.8;
- if there are solid grounds to suspect a money laundering offence, the prosecutor may authorise, for an indefinite period of time, the access to telecommunication and computer systems or/and the supervision of bank accounts and accounts assimilated to such.

10. MONEYVAL recognised that major modifications were introduced with the adoption of Law No 656/2002. The Romanian authorities are now expected to effectively implement these new requirements. Following the first convictions for money-laundering, experience gained should allow the Prosecution and Courts to fight even more effectively money-laundering in the future within the new legal framework. Notwithstanding such major improvements, some recommendations of the first round evaluations remained apposite and MONEYVAL added some new ones.

11. The Romanian authorities should review the mental element of the offence (to consider lesser standards, such as suspicion or reasonable suspicion), consider a general negligence standard in appropriate circumstances or at least provide explicitly that elements of the money laundering offence can be inferred from objective factual circumstances.

12. The confiscation and provisional measures regime should be reviewed to ensure that there is explicit provision for property and value based confiscation and provisional measures as envisaged by the Strasbourg Convention, which covers both direct, indirect proceeds and substitutes, as well as incomes derived from proceeds and which cannot be frustrated by transfer to third parties. Consideration should be given to mandatory confiscation in a broader range of proceeds-generating criminal offences. Provisional measures should be regularly taken where there is a danger of assets being dissipated before confiscation orders can be made.⁸ Meaningful statistics should be kept which demonstrate the use of the system relating to particular categories of criminal offences. Elements of practice which have proved effective elsewhere should be considered such as reversal of the onus of proof regarding the lawful origin of alleged proceeds. Civil confiscation might be considered where criminal proceedings are not possible.

13. All foreign legally addressed requests for information should be responded to positively and bank secrecy lifted, even where criminal proceedings have not been instituted in the requesting

⁸ However the new Law No. 656/2002 introduced new specific provisions in this area (Article 25 paragraph 3 and Article 27 paragraph 2).

jurisdiction. Legislation should consolidate the possibility to share assets with foreign counterparts and clarify the process by which this could be achieved.

14. Regular compliance inspections should commence quickly in the entire financial sector. The exchange offices and the Western Union systems are one of the most vulnerable sectors that require frequent inspections. The Romanian authorities should strengthen the supervision of the Western Union Money Transfer services in Romania in order to ensure the compliance with the due diligence and anti-money laundering requirements and, in particular, that the messages sent through them should contain full details of the ordering and beneficiary clients. This supervision should also benefit from co-operation to be established with other similar bodies abroad. In particular, supervisory bodies should be encouraged to make spontaneous disclosures. The authorities with financial control powers should strengthen their anti-money laundering supervision over the casino activities. An appropriate supervisory regime, including, where appropriate, on-site inspections should be considered with regard to the monitoring of the other reporting professions, institutions, such as real estate agents, lawyers, accountants, notaries.
15. The possibility of lowering in the law the existing threshold limit of 10.000€ for identifying customers performing such transaction should be considered as a mean of strengthening the preventive measures. Further detailed identification requirements could be explicitly introduced into Law with regard to gambling activities and to the other professions covered or not by Law No 21/1999 such as lawyers, legal counsellors, auditors, external accountants, real estate agents, public notaries, dealers in high-value goods, etc.⁹
16. The best way to resolve the problem raised by numbered accounts is to suppress them or to eliminate the possibility to open them. Alternatively, Romania should put in place strengthened supervision on these accounts, including guidelines on the identification of suspicious transactions in the context of the operation of these accounts.
17. The level of cash transactions over 10.000€ should decrease. Tougher regulations should be introduced in order to limit the use of cash by legal as well as natural persons. The operation of commercial companies should be more carefully supervised.
18. Appropriate and specific training in anti-money laundering requirements and suspicious transactions should continue for the following professions: lawyers, notaries, real estate agents, accountants and auditors, legal and tax counsellors and dealers in high-value goods working on their own.
19. It should be a matter of priority to increase the investigative means of the investigators at an early stage when conducting the preliminary investigations. The investigator should be in a position to obtain all necessary financial information required from financial institutions in money laundering cases without awaiting the launch of criminal proceedings. It should be allowed to use all special investigation means available, if not already able to do so, such as the use of under-cover agents and controlled deliveries. The investigator should be provided the possibility to obtain banking evidence capable of use in court at an early stage of investigations. The Customs authorities should adopt a more proactive approach to performing their obligations.

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⁹ The new Law No. 656/2002 now covers all these professions.