BANKS – THE GATEKEEPERS IN THE FIGHT AGAINST MONEY LAUNDERING IN THE REPUBLIC OF NORTH MACEDONIA

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Introduction

Money laundering as a criminal activity is subsequent to previous (predicative) crimes and is manifested by the legalization of criminally acquired money and other proceeds in the legal financial system. In order to hide the origin of criminal money and enjoy the "wealth" acquired by crime, the perpetrators find a variety of schemes and techniques to hide the origin of the money, and most often they present that money as turnover from a legal business, but they also use other methods and techniques to first bring in, and then transfer and integrate, criminal money into the legal financial system (Nikoloska, 2015).

Money laundering is the process by which proceeds reasonably believed to be derived from criminal activity are transported, transferred, converted or incorporated into legal funds in order to conceal their origin, source, movement or ownership (Vitlarov, 2008).

In theory and practice, money laundering is defined as a procedure for concealing the existence, illegality of sources and use of income that is the result of criminal activity. According to Trajkovski, fraud is the most frequently applied tactic of criminals in the process of legalizing proceeds from crime (Trajkovski, 2011). It involves a series of financial operations (deposits, withdrawals, transfers, etc.) that eventually result in dirty money from crime becoming clean money, which can be used for legitimate business activities (Thony, 2000).

Money laundering is a process that takes place through three stages:

The first stage of placement, in which money launderers create schemes and techniques for introducing illegal money through financial institutions into the legal financial system, and smurfing[2] is often practiced as a technique, which includes breaking up or dispersing large amounts of cash into smaller amounts and depositing them in a bank account but there is also corruption and involvement in banks by bank officials (Naumovski, 2011).

The second phase of transfer, concealment or "layering" includes a series of activities of dislocation of the funds from their illegal source. These are the actions of movement of funds on the accounts of legal entities of individuals and legal entities in the country and abroad with the aim of concealing their source. The greater the fragmentation of the invested funds, the more difficult it is to discover

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2 **Smurfing** refers to a money laundering tactic by which individuals break up large sums of money into smaller, less noticeable amounts. These smaller amounts are then laundered separately, with the intention of avoiding detection.

the original source. The banking experts involved in this phase transform the money originating from criminal sources through multiple transactions to stratify the large amount of money invested in national and international frameworks. The electronic transfer of money enables the transfer process in a fast way and deployment of "safe places" in several countries, and mostly in off shore destinations (Čudan & Nikoloska, 2018).

The third stage of integration is the final stage of the money laundering process and it represents the return of the funds to the owner, but now as "clean", ("washed") funds from legitimate sources. It is the result of the successfully completed process of concealing the criminal origin of the funds through a series of activities and mechanisms that usually involve the involvement of several persons, trading companies and financial institutions, so that they can be returned to their owner as legitimate. The last phase is the most visible especially for the law enforcement authorities who, through operational procedures and the method of clues, undertake measures and activities to detect crimes with elements of money laundering.

Inefficient national AML/CFT system enables laundering of proceeds of crime. But as this system of control turns out to be insufficiently organized and efficient, a new form of criminality appears – "laundering" of money by opening a legal path for the movement of money. In this way, a new area of criminal activity is opened in banking and financial institutions. However, money laundering is not an end in itself, but the placement of the money acquired through criminal activity in other economic areas, the conquest of new markets and the establishment of control in areas in which organized crime was not present until that moment, and they provide opportunities for the acquisition of high profits and the avoidance of control in the payment of taxes and other obligations to the state (Arnaudovski, 1997).

The role of banks as the gatekeeper of the financial system in the fight against money laundering is not limited and it does not end only with checking, identification and verification of the client. With its positioning in money laundering schemes, the bank is exposed to continuous pressure and vigilance during the business relationship with its customers, while performing a series of numerous activities:

- Knowing your customer with "Know Your Customer" policy.
- Recognition and monitoring through applicatnion of "Know Your Transaction" policy.
- Verification of the origin of funds.
- Risk-based approach.
- Compliance with financial embargoes.
- Limiting the use of cash.
- Obligation to report suspicious activities and suspicious money laundering transactions to the Financial Intelligence Unit (FIU)
- Implementation of financial measures consisting in refusing to establish a business relationship and freezing assets of a client who is marked on a sanction list (national, UN or EU).
- Risk assessment (client, geographical location, product, distribution channel)
- Freezing of assets and refusal to carry out a transaction following an order issued by a competent court.

Financial institutions in the process of money laundering are most affected in the phases of placement and concealment. Money laundering increases the likelihood that customers or the bank will be defrauded by corrupt officials in the financial institution, thereby increasing the likelihood that the entire institution will become corrupt and controlled by criminal structures and increasing the institu-

tion reputational risk. It follows from the above that money laundering increases the operational risk for the financial institution, which inevitably leads to an increase in reputational risk (Bartlett, 2000).

The Preventive Role of Banks Against Money Laundering in the Republic of North Macedonia

Since 2001 the Republic of North Macedonia has been working on building the systemic functioning of the overall process of prevention and repression of money laundering, both by harmonizing laws with important international documents and reports of international bodies, as well as in building institutions and establishing an institutional system of coordination and cooperation.

In the Mutual Evaluation Report for the Republic of North Macedonia, adopted at the 65th plenary session of the Moneyval Committee – Council of Europe, the high awareness and efficiency of commercial banks in the fight against money laundering was positively evaluated. Taking into account the significant participation of banks in the financial sector of Macedonia, the positive assessment of their operation affects the assessment of the country's system as a whole. This rating is the result of long-term, constant and comprehensive efforts to improve the regulatory framework and implement measures to prevent money laundering. The report notes that, although some results have been achieved in terms of money laundering investigations and prosecutions, law enforcement and prosecutors should systematically conduct parallel financial investigations and target more complex cases of money laundering involving organized crime, especially drug trafficking, human trafficking as well as tax evasion and corruption. The report also notes the need for systematic application of the "follow the money - follow the goods" principle in order to improve the level of confiscation.

In the Republic of North Macedonia, banks perform several activities in accordance with the Law on Banks (Official Gazette of the Republic of Macedonia No. 31/93), the most important of which are the collection of deposits and other refundable sources of funds, lending in the country and abroad, payment transactions in the country and abroad, fast money transfer, etc. Banks have a dominant role in maintaining the stability of the entire financial system and other financial institutions. The size of the banks and the offer of products and services attract a large number of clients - legal and natural persons. They are the only bearers of payment turnover in the country. The danger of abuse of banks in the function of money laundering can lead to serious repercussions on the stability of banks, as well as the integrity of the banking system and the national economy as a whole. For those reasons, regulatory bodies have adopted appropriate legal solutions that follow international norms and standards.

According to national AML/CFT Law, the banks are obliged entities witch are responsible to undertake measures and actions in prevention of money laundering and terrorism financing, which includes identification of the client, the authorizer and the real owner, determination of his activity, financial condition, analysis of his activities and transactions, assessment of the risk of money laundering, data storage, submission of reports to the competent state authorities, etc. (Law on Prevention of Money Laundering and Financing of Terrorism, Official Gazette of the Republic of Macedonia, No. 151/22).

Banks classify customers depending on the degree of exposure to the risk of money laundering. In practice, clients with low, medium and high risk are met. The state of customers at the banks as of 31 December 2018 includes 70,793 high-risk customers, which represents 1.7 % of the total number of customers with whom the banks have established a business relationship. Profiling of customers in terms of the degree of risk is carried out according to the following criteria: country of origin risk, customer risk, transaction risk and product or service risk. In addition to these standard criteria, the most

frequent are the following criteria: appearance of the client on prohibited lists, complexity of transactions, volume, size and type of business transactions, deviation from the economic profile of the client, public office holder, activity, etc. Depending on the degree of risk of the client, banks perform a normal, simplified or enhanced analysis of the client. For most of the clients, the banks perform the usual analysis, the extent of which depends on the risk assessment of the client, the business relationship, the product or the transaction (Financial Intelligence Unit; 2018). Based on that, submitting a report to the Financial Intelligence Unit for further action and full clarification of suspicions is necessary.

If it is known that the first stage of money laundering is the placement usually done through banks, it becomes clear how much it is necessary to have adequate procedures and policies for the identification of clients and examination of their creditworthiness and integrity. In accordance to the international standards adopted by both The Basel Committee on Banking Supervision and by the FATF, each country must provide conditions for the application of appropriate procedures for the identification and examination of the creditworthiness of clients by its financial institutions (including banks). These procedures apply to both legal and natural persons who appear as potential or existing clients of a financial institution. The purpose of this procedure is to provide banks with reasonable assurance that they know their clients and their business activities. At the same time, the procedure for identifying the clients is also known as the policy of knowing your clients (know your customer), a term used by the Basel Committee (Trajkovski, 2011).

Banks have the role of detecting criminal money and proceeds, but also the implementation of legal repressive measures that refer to the "freezing" of bank accounts for suspicious individuals and legal entities based on a court decision. The efficiency in the actions of the banks can be seen by researching their activities resulting from the laws and submitted reports on suspected cases of money laundering, but also on other criminal acts, as well as measures taken to block bank accounts and retain financial transactions.

Criminal Liability of Banks in Cases of Involvement in Money Laundering

Based on the recommendations of the Vienna Convention (1988), the Strasbourg Convention (1990) and the Palermo Convention (2000), as well as the FATF Recommendations and the Basel Declaration for the Prevention of Abuse of the Banking System, for the Purposes of Money Laundering (1988) in the Republic of North Macedonia, with the adoption of the first criminal code after its independence, the crime "Money Laundering and Other Proceeds of Crime" is criminalized in Article 273 of the Criminal Code of the Republic of Macedonia (Official Gazette of the Republic of Macedonia No. 37/96.....248/18). The criminal offense has been amended and supplemented several times in order to include as many criminal activities as possible with elements of money laundering, but also to determine special criminal liability in financial institutions as legal entities and officials who are in direct contact with customers and with the realization of activities aimed at financial transactions.

With the crime of "Money Laundering and Other Proceeds of Crime", the Macedonian legislator foresees criminal liability for banks and bank officials who are directly involved in the process of receiving, taking, exchanging or dispersing money or other property that they know to have been obtained by a criminal offense, or by converting, changing, transferring or otherwise concealing that they come from such a source or concealing their location, movement or ownership; receive and give credit to the falsification of documents, do not report suspicious money intake or suspicious transactions in banking operations or avoid by dividing the transaction the duty to report in the cases determined by law, and that they will be punished with imprisonment of at least three years. The commission of

criminal acts in the banking business is a qualifying element and therefore a higher penalty is foreseen in relation to the basic crime for money laundering for which a prison sentence of one to ten years is foreseen. As a more serious form of the crime, if it is committed by an organized criminal group engaged in money laundering or with the help of foreign banks, financial institutions or individuals, the prison sentence is at least five years. A prison sentence of at least five years is also provided for officials and responsible persons in a bank who enable or allow a transaction or business relationship, contrary to their legal duty, or will carry out a transaction contrary to the prohibition imposed by a competent authority or a temporary measure determined by a court, or will not report the laundering of money, property or property benefit, which they learned about in the performance of their function or duty. Sanctioning with a prison sentence of three months to five years is provided for an official or responsible person in a bank who is, according to the law, an authorized entity for the application of measures and actions to prevent money laundering and other proceeds from a criminal offense, who will unauthorizedly disclose to a client, or a third person, data related to the procedure of examining suspicious transactions or the application of other measures and actions to prevent money laundering. If it is determined that the said actions were done due to favoritism, the prison sentence is at least one year, but the legislator also provides for a mitigating circumstance if the actions were committed due to negligence, for which a fine and a prison sentence of up to three years are foreseen. Criminal liability with a fine is provided for the legal entity in whose name and on whose account the criminal act was committed.

According to the criminalization of money laundering in banking operations, the Macedonian legislator foresees serious prison sentences for bank officials who have the status of officials or responsible persons. As a qualifying element it is considered if the crime was committed in banking operations. Acts committed with intent, but also due to negligence, are taken into account, which indicates the importance of respecting the laws in the banking sector that refer to money laundering.

The criminalization of money laundering protects the economic system and its functioning, protects the market economy, that is, the free market and trust in the economic system as a whole. Within the framework of the protection of the economic and financial system, the right to equal business conditions is protected for those economic entities that work legally in compliance with the laws and their right may be threatened or violated by those who work with money that was acquired from crime (Đorđević, 2016).

The criminal liability in banks can be analyzed from two aspects: when criminal liability is foreseen for banks and bank officials for actions with elements of money laundering and when banks have to implement the measures and actions related to "freezing" of financial assets on bank accounts through their bank officials.

The Paragraph 1 in Article 200 of the The Law on Criminal Procedure (Official Gazette of the Republic of Macedonia, No. 150/10, 100/12 and 198/18) provides "*Handling of data that is a bank secret, property in a bank safe, monitoring of payment transactions and account transactions and temporary suspension of execution of certain financial transactions*". If there is a well-founded suspicion that a certain person receives, keeps, transfers or otherwise disposes of the proceeds of a criminal offense in his bank accounts, and that proceeds is important for the investigation procedure of that criminal offense or is subject to compulsory confiscation according to the law, upon a reasoned request from the public prosecutor, the court may issue a decision ordering the bank or other financial institutions to provide him with documentation and data on the bank accounts and other financial transactions and affairs of that person, as well as for the persons for whom are reasonably believed to be involved in those financial transactions or affairs of the suspect if such data could be evidence in criminal proceedings.

Paragraph 6 provides that if the circumstances of paragraph 1 exist, upon a reasoned proposal of the public prosecutor, the judge of the preliminary procedure may by decision order the bank or other financial institution to monitor the payment transactions, account transactions or other affairs of a certain person and to regularly notify the public prosecutor for the time determined in the decision, and in paragraph 7, upon a reasoned proposal of the public prosecutor, the court may by decision order a financial institution or a legal entity to temporarily stop the execution of a specific financial transaction or work, and the property is temporarily confiscated.

Analysis of the Situation in the Republic of North Macedonia on the Role of Banks in Preventing Money Laundering

According to the law, banks have to identify suspicious customers, monitor and detect suspicious and related transactions through the banking services, and in their work they have appropriate direction through the specified list of indicators for banks prepared and revised by the Financial Intelligence Unit.

When analyzing their customers, bank officers must understand which activity, i.e. which transaction is normal, and which deviates from the customer's regular operations. When considering making a suspicious transaction report, reporting banks should consider all the circumstances of the transaction and their customer's activity. Relevant factors include knowledge of the business, financial history, background and behavior of the customer. Any deviation, if it is supported by an indicator for recognizing a suspicious transaction, the bank is obliged to fill out a suspicious transaction report and submit it to the Financial Intelligence Unit for their further analysis, collection of additional documentation to support or reject the suspicion of the crime of money laundering.

At the beginning of any investigation, knowledge of money laundering is based on suspicions that need to be proven on the basis of evidentiary material. Suspicion involves personal and subjective judgment, and bank officials should assess whether there are reasonable grounds to suspect that the transaction is related to money laundering. In this regard, attention should be paid to: business transactions with individuals, corporate entities and financial institutions in or from other countries that do not or insufficiently meet the recommendations of the Financial Action Task Force (FATF), a transaction that is complex, unusual or large, whether completed or not, unusual patterns of transactions and insignificant but periodic transactions that have no obvious or visible legal purpose.

The banks are obliged to submit the collected data, information and documents to the Financial Intelligence Unit (FIU) within three working days of the completed transaction in the form of a report for suspicious transaction or suspicious activity. Based on the reports and its own analysis, when there is a suspicion of a criminal offense of money laundering, the FIU can submit a written order to the bank for a temporary hold and/or ban on carrying out transactions or a temporary freezing of assets, with a deadline of 72 hours, and if holidays and weekends are included, the freezing can be longer than 129 hours from the issuance of the order. For that, the Administration submits a request for the determination of temporary measures to the competent public prosecutor, who reviews the request and submits a proposal for the determination of temporary measures to the competent court for making a decision. The decision is submitted to the appropriate bank with full data on the natural and legal person and the transaction account number and the type and amount of financial assets.

Table 1 *Volume and dynamics of submitted reports on suspicious transactions - from banks and type and amount of frozen financial assets in the Republic of North Macedonia*

Year	Number of banks	STR sent	Submitted reports		Frozen financial assets		
			Money laundering	Others criminal offences	denars	euros	USA dollars
2017	15	177	22	201	44,293.945.00	/	/
2018	15	152	39	183	19,235.585.00	3,607.738.00	126,910.00
2019	15	226	45	172	38,026.899.00	324,822.00	3,152.00
2020	14	237	32	171	17,774.076.00	1,413.148.00	/
2021	13	227	81	305	73,641.220.00	1,676.315.69 3,361.509.94	/
Total	15	1 019	219	1032	192,971.725.00	10,383.532	130,062.00

According to the data shown in the Annual Reports of the Financial Intelligence Unit for the period 2017-2022, a total number of 1019 STRs were submitted to the Financial Intelligence Unit by the banks, the largest number in 2020 being 237, and the fewest in 2018 being 152. Based on the analyses, the FIU prepared a total of 219 reports on the existence of suspicion of money laundering, the most in 2021 being 81 reports. A total of 1032 reports were submitted for other crimes, the most for 2021, 305 reports, and the least for other crimes, the highest number of reports were in 2021, 81, and the fewest in 2020, 171 reports.

Based on court decisions, a total of MKD 192,971.725.00, EUR 10,383.532 and USD 130,062.00 have been frozen. In 2021, that amount was the largest of 73,641.220.00 and 1,676.315.69. On the basis of international cooperation, requests from foreign institutions to freeze financial assets in Macedonian banks have been submitted to the Republic of North Macedonia. They amount to 3,361.509.94 and are shown separately because they have to be returned to the requesting States based on national and international legislation.

Conclusions and Recommendations

For the past two decades, the Republic of North Macedonia has been continuously working on building a system to prevent money laundering. The system was established in accordance with the Law on prevention of money laundering and financing of terrorism, (Law on Prevention of Money Laundering and Financing of Terrorism, Official Gazette of the Republic of Macedonia, No. 151/22) and it has been changed and supplemented several times based on the recommendations of international documents and the observed practices of all those involved in that system. For the functioning of the system where, in the first pillar, banks as important financial entities should fully implement the legal solutions that are fully defined, which is also confirmed by the latest Mutual Rvaluation Report issued by Moneyval Committee.

The legal framework is good, but what needs to be worked on is the improvement of institutional cooperation and greater involvement of the law enforcement authorities to detect, shed light and pro-

vide evidence for cases of organized crime and increase financial investigations and connections with money laundering, thereby improving the efficiency of processing criminal cases and effectiveness in terms of freezing financial accounts and enabling future confiscation. Complete rounding of criminal cases is a good "answer" to organized crime groups and money launderers originating from crime.

As far as banks are concerned, the degree of control and prevention of corruption should be increased for bank officials who "may" be involved in criminal structures only with a criminal advisory role to "facilitate" the process of money laundering. Therefore, it is necessary to raise the level of institutional cooperation and a team and coordinated approach, which is an essential prerequisite for the suppression of organized crime and corruption. Time is an important factor, especially when deciding on the freezing of financial assets, but also on the adoption of durable solutions with substantiated suspicions and relevant evidence, which are most significant for the comprehensive completion of criminal cases with elements of money laundering that should end with effective confiscation.

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