

Effectiveness of the Anti-Money Laundering and Counter-Terrorist Financing Legislation as a Determinant for Asset Confiscation and Freezing Sanctions¹

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Abstract. *The paper deals with a national risk assessment. The subject of the risk assessment is money laundering and terrorism financing. This is the first time it has been conducted in the Slovak republic. The contribution shows what are the decisive criteria in evaluating the national system of anti-money laundering and terrorism financing. The first variable that needs to be taken in account is measures examining the legal framework. The second variable is the institutional framework. The competency of personnel represents the third variable. The infrastructure creates the fourth variable in order to prevent, avoid and respond to such a threat. The other variables are strongly related to the effectiveness of the sanctions. The infrastructure belongs to the other variables. The contribution deals also with data sources and lists those that should be used as a source for further evaluation. The outcome of the NRA will be a comprehensive report.*

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Introduction

The main objectives of the Anti-money laundering (AML or ML) and counter-terrorist financing (CTF or TF) risk assessment² are to identify³ the vulnerability of each of the (relevant) businesses and professions that make up the country's financial sectors and designated non-financial businesses and professions, further to identify businesses/professions of high vulnerability and identify, on a needs basis, the products/services offered by the businesses/professions with high ML/TF vulnerability and to prioritise the action plans that will strengthen anti-money laundering controls (AML/TF controls) in the sectors. The outcome of the Terrorism Financing

¹ This work was supported by the Slovak Research and Development Agency under the contract No. APVV-15-0740.

² FATF Methodology FATF, 2013, p. 6. *Electronic source:* <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology-March%202017-Final.pdf>.

³ Acc. FATF National Moneylaundering and Terrorist Financing Risk Assessment, FATF, 2013, p. 3. *Electronic source:* <http://www.fatf-gafi.org/publications/methodsandtrends/documents/nationalmoneylaunderingandterroristfinancingriskassessment.html>.

and Money Laundering Risk Assessment should be used to inform policy measures and improve data collection. ML and TF cases may take a long time to investigate, prosecute, and adjudicate. Furthermore, the number of terrorist financing convictions is often low in many jurisdictions. It is therefore advised to use, if possible, data from the past ten years in their analysis. Considering that in many countries CTF regimes have only recently been adopted, data collection periods will also depend on the availability of the data.⁴

Quality of Legislation⁵

It should be assessed whether a country has comprehensive AML laws and regulations regarding AML preventive measures and AML supervision for the assessed product in the financial sector and business/profession within the non-financial sector. This is related to the AML legal and regulatory framework.

A country has comprehensive AML laws and regulations on preventive measures and supervision in force for the assessed business/profession if they conform to international standards on Customer Due Diligence (CDD) (risk-based, including verification of beneficial ownership of customers that are natural persons and legal entities and legal arrangements) and record-keeping. It should include the enhanced Due Diligence (DD) for Politically Exposed Persons (PEPs) and high-risk countries and reliance on CDD by third parties, including introduced business, sufficient Suspicious Transaction Reporting (STR) incl. tipping-off and confidentiality, internal controls, foreign branches, and subsidiaries and licensing and supervision for AML compliance.

Effectiveness of Supervision/Oversight Activities⁶

This assesses the effectiveness of AML supervision/oversight activities for the assessed business/profession. An effective supervisory regime is one that has a comprehensive legal and regulatory framework and is supported by appropriate powers and is well resourced, and which employs a risk-based approach to on-site and off-site monitoring and inspections.

The AML supervision/oversight activities are effective where the supervisory body (which can be a self-regulatory body, or both, depending on the practice of the country) is clearly identified in the laws and regulations and has appropriate authority and mandate to conduct AML compliance supervision. When it carries out its supervisory activities within a comprehensive supervisory framework that includes clear supervision policies, procedures, and manuals. It possesses good understanding and appreciation for the ML risks of the assessed business/profession. It has sufficient numbers of staff and trains the staff and equips them with necessary skills and up-to-date knowledge — including an understanding of the

⁴ Inter alia Acc. Recommendation 1. of the FATF recommendation, 2016. *Electronic source:* http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf; *Also see:* FATF Methodology FATF, 2013 p. 6. *Electronic source:* <http://www.fatf-gafi.org/media/fatf/documents/methodology/FATF%20Methodology-March%202017-Final.pdf>,

⁵ Inter alia Acc. Recommendation 20–28 of the FATF..., *op. cit.*

⁶ Inter alia Acc. Recommendation 26,27 and 28 of the FATF..., *op. cit.*

nature of the firms and clients and the products of the assessed business/profession — to carry out AML supervision. It has other necessary resources to ensure AML compliance (such as the technical capacity, budget, and tools). It carries out a comprehensive, risk-based supervisory programme that consists of on-site and off-site monitoring and on-site inspections both through regularly scheduled cycles and periodic spot-checks (risk-based and as necessary). It reports and records the examination results in a systematic way and is able to effectively use these records for policy purposes. It exercises moral suasion that has a significant impact on the assessed business/profession's management and is sufficient to positively influence behaviour patterns. It can be demonstrated that supervisory powers are exercised effectively and impartially.⁷

Possible sources for this assessment it should involve consulting:⁸

- Relevant laws and regulations, policies, procedures, and manuals (including how the risk-based approach is determined)
- Statistics on the number of supervisory staff, and information on their training, knowledge, and skills
- Information on the type(s) and methods of off-site supervision activities and findings
- Statistics on the number of firms/professionals actually being monitored or inspected (on-site/off-site), and information as to scope, frequency, and intensity of the supervision/oversight activities
- Statistics and information on main findings of on-site/off-site inspections
- Interviews/consultations with regulatory/supervisory authority (may be a SRB) and other competent authorities
- Interviews/consultations with the assessed business/profession's representatives, including an SRB and professional associations
- Surveys of management and staff of firms that make up the assessed business/profession.

Availability and Enforcement of Administrative Sanctions.⁹

This variable assesses whether the country has a wide range of effective, proportionate and dissuasive administrative sanctions applicable to natural or legal persons in case of non-compliance with AML laws and regulations. Sanctions should be applicable to firms as well as individual directors, management and staff. The more the sanctions are effective, proportionate and dissuasive, the more likely it is that management and staff members will comply with AML laws and obligations.¹⁰

It also includes the assessment of whether the country takes administrative enforcement actions against a firm or individual members of management or staff

⁷ FATF Methodology..., *op. cit.*, pp. 69–72.

⁸ *Ibid.*

⁹ Inter alia Acc. Recommendation 26,27 and 28 of the FATF..., *op. cit.*; Also see: FATF Methodology..., *op. cit.*

¹⁰ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–41; Also see: FATF Methodology..., *op. cit.*, pp. 69–72.

in case of non-compliance with AML obligations. The number of administrative actions taken against the firms and their staff should be considered.¹¹

The following criteria indicate that effective, proportionate, and dissuasive administrative sanctions are in place- a wide range of administrative sanctions (such as monetary penalties, administrative actions and removal of critical staff, and suspension/revocation of business/professional licenses) in force for non-compliance with AML obligations. The administrative sanctions are sufficient to positively influence the assessed business/profession's firms' management and staff behaviour. The following criteria indicate that a country enforces its AML obligations in case of non-compliance:¹²

- Most persons working in the assessed business/profession believe that administrative enforcement action would be initiated in case of non-compliance with AML requirements
- There is a record of administrative enforcement actions taken in the past by law enforcement authorities regarding non-compliance with AML requirements in the assessed business/profession.

The adequacy of the administrative sanctions may need to be assessed in context with the criminal sanctions. The balance and preference between the administrative and criminal sanctions may differ among countries.

Possible Sources of Information and Data:¹³

- Specific legal and regulatory provisions on administrative sanctions
- Statistics on numbers (by type) of past administrative enforcement actions by relevant authorities
- Information as to steps taken (or not taken) by the assessed business/profession to remedy infractions
- Interviews/consultations with regulatory/supervisory authority (may be an SRB) and other competent authorities
- Interviews/consultations with assessed business/profession's representatives, including an SRB and professional associations (including as to forms of sanctions they enforce, such as disciplinary hearings or revocation of membership)
- Surveys of management and staff of firms that make up the assessed business/profession.

Availability and Enforcement of Criminal Sanctions¹⁴

This criteria assesses whether the country has a range of effective, proportionate and dissuasive criminal sanctions applicable to natural or legal persons in case of non-compliance with AML laws and regulations. This should include sanctions

¹¹ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–41; *Also see:* FATF Methodology..., *op. cit.*, pp. 69–72.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ Inter alia Acc. Recommendation 3–7, 30–31 of the FATF..., *op. cit.*; *And. acc.:* FATF Methodology..., *op. cit.*, pp. 26–37.

for serious and deliberate (or criminally negligent) breaches that can be ancillary to the money laundering offence. Sanctions should be applicable to firms (legal persons) and to individual managers and staff in relation to the conduct of their activities within or from the country.¹⁵

The criteria assesses not only the legal framework, but also the actual enforcement actions against firms and individual members of management or staff (of the assessed business/profession) in cases of non-compliance with AML obligations.¹⁶

The following criteria indicate that effective, proportionate, and dissuasive criminal sanctions are available and effective- There are appropriate criminal sanctions in force for non-compliance with AML obligations. Persons in the assessed business/profession regard the criminal sanctions regime as sufficiently dissuasive to positively influence individual behaviour patterns. Criminal sanctions are also applicable for appropriate ancillary offences to the offence of money laundering.

The following criteria indicate that a country enforces its AML obligations in case of non-compliance:¹⁷

- Most persons working with the product or in the business/profession believe that criminal enforcement action would be initiated in case of non-compliance with AML requirements.
- There is a record of convictions, and criminal enforcement actions taken in the past by law enforcement authorities regarding non-compliance with AML requirements in the assessed business/profession. Consider the number of investigations, prosecutions, and convictions, as well as other available evidence on enforcement.
- The criminal enforcement against the business/profession's firms and their staff with regard to other financial crimes (such as fraud) may also give an idea of the "enforcement perception" of the assessed business/profession.

Possible Information and Data Sources¹⁸

- Relevant laws (specific provisions on criminal sanctions and enforcement), including relevant ancillary offences to ML
- Statistics on past and ongoing criminal investigations, prosecutions, and convictions by domestic law enforcement and other relevant authorities with respect to the assessed business/profession
- Statistics on criminal enforcement actions carried out by foreign law enforcement and other relevant authorities against the firms and individual members or staff of the assessed business/profession, and whether (and in what form and to what extent) the country provided informal or formal assistance to the investigation and prosecution
- Interviews/consultations with regulatory/supervisory authority (e.g., an SRB, law enforcement agency, or prosecuting agency)

¹⁵ Acc. FATF National Moneylaundering ..., *op. cit.*, pp. 41–44; *And also*: acc. FATF Methodology..., *op. cit.*, pp. 26–37.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*

- Interviews/consultations with assessed business/profession's representatives, including an SRB and professional associations
- Surveys of management and staff of firms that make up the assessed business/profession.

Availability and Effectiveness of Entry Controls¹⁹

This variable assesses the availability and effectiveness of entry controls, including licensing, registration or other forms of authorisation to operate. A country has effective entry controls if there is a comprehensive legal and regulatory framework which provides authorities with appropriate powers and sufficient level of staff and other resources to carry out their duties vis-à-vis the assessed business/profession. Effective entry controls help reduce money-laundering vulnerabilities and ensure a higher level of compliance with AML requirements, including preventing systemic problems in the assessed business/profession. The entry controls are effective if the licensing body is clearly identified in the laws and regulation, it possesses good understanding and appreciation for the ML risks of the assessed product or business/profession, it effectively carries out its licensing and entry controls duties, it has a clear and comprehensive framework for licensing and registration requirements for the assessed business/profession, including:²⁰

- A fit and proper test designed to prevent criminals or their associates from being granted a business or professional license or being the beneficial owner of a significant controlling interest in the business or holding a significant management position
- Appropriate educational and professional certification requirements for key directors and senior management
- Requirement for all licensees to have adequate AML compliance controls in place, including compliance manuals and appointment of well-qualified internal controls/compliance staff
- Possesses adequate resources to ensure the quality implementation of entry controls for the assessed business/profession, including a sufficient number of well-trained and highly skilled personnel to screen, vet, and approve all applications and supporting documentation.

Possible Sources of Information and Data²¹

- Licensing and registration laws and regulations, policies, procedures (including application forms and supporting documentation) and manual for supervisory staff
- Statistics on license applications received and actually granted
- Statistics and information on licenses not granted or later suspended or revoked for failure to meet AML controls

¹⁹ Inter alia Acc. Recommendation 26,27 and 28 of the FATF..., *op. cit.*; Also see: FATF Methodology..., *op. cit.*, pp. 69–72.

²⁰ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–41; And also: acc. FATF Methodology..., *op. cit.*, pp. 69–72.

²¹ *Ibid.*

- Interviews/consultations with regulatory/supervisory authority (may be an SRB) and other competent authorities
- Interviews/consultations with assessed business/profession's representatives, including a SRB and professional associations
- Surveys of management and staff of firms that make up the assessed business/profession.

Integrity of Business/Profession Staff²²

This variable assesses whether the directors, managers and staff of the firms (including sole practitioners) act with integrity. This means that the staff does not act in a wilfully blind manner or collude with criminals or act corruptly. In addition, they take care that they do not become unwittingly involved as "innocent agents" on behalf of criminals seeking to use their products and specialised knowledge and skills.

If staff members collude with criminals or undermine AML controls by acting corruptly, firms are vulnerable to money laundering abuse. Consider the effectiveness of staff vetting programmes in the assessed business/profession; the incidence of disciplinary action for breach of integrity-related rules; and the number of criminal cases against staff members. Professionals and staff of firms of the assessed business/profession act with integrity if the firms generally regard their staff members as secure from corruption by criminals. The incidence of integrity failure (e.g., negligent or "wilful blindness" to suspicious transactions) involving the business/profession's staff is low (but consider whether there is under-reporting of incidences of integrity failure). There is an appropriate mechanism in place to protect the business/profession's managers and staff against any negative consequences as a result of reporting suspicious transactions or other actions to comply with AML obligations.²³

Possible Sources of Information and Data²⁴

- Relevant laws/regulations (including specific provisions on confidentiality mechanisms in place for the staff when reporting suspicious or other relevant transactions)
- Information as to staff vetting and training programmes (of the assessed business/profession)
- Statistics on integrity breaches by the managers and staff in firms (of the assessed business/profession) and information on disciplinary actions taken
- Statistics on the number of criminal cases, including money laundering cases, concerning staff of the firms in the assessed business/profession
- Findings of firms' (of the assessed business/profession) AML on-site inspections and off-site monitoring

²² Inter alia Acc. Recommendation 18–23 of the FATF..., *op. cit.*

²³ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–40; *And also*: acc. FATF Methodology..., *op. cit.*, pp. 56–62.

²⁴ *Ibid.*

- Statistics on number (and types) of administrative enforcement actions against firms and individuals working in the assessed business/profession
- Review of reports/records of internal control/compliance units in firms of the assessed business/profession
- Historical data of incidents /breaches by staff (kept by firms for operational risk management purposes)
- General levels of integrity or the operating environment in the country (refer, for instance, to the Transparency International Corruption Perceptions Index)
- Assessed business/profession's reputation on involvement in financial crimes, including tax evasion
- Interviews/consultations with a regulatory/supervisory authority, which may be an SRB or other competent authority
- Interviews/consultations with assessed business/profession's representatives, including an SRB (particularly internal control or compliance units) and professional bodies
- Surveys of management and staff of firms that make up the assessed business/profession.

AML Knowledge of Business/Profession Staff²⁵

This variable assesses how well the professionals and staff of firms in the assessed business/profession know and understand their duties and responsibilities. Professionals and staff of firms in the assessed business/profession have the required AML knowledge if there are appropriate AML training programmes and materials for professionals/staff. Training programmes are designed to ensure that all appropriate staff members are trained. All professionals and staff members are required to undergo ongoing training to ensure that their knowledge of AML laws, policies, and procedures is appropriate and up-to-date. Keep in mind that if the firm conducts business with clients and professional intermediary firms in other jurisdictions, their knowledge should also extend to AML laws and regulations of those jurisdictions. Professionals/staff have a good knowledge of and are regularly updated on domestic and transnational money laundering schemes and typologies, including those involving the misuse of the business/profession and specialised knowledge and skills of its professionals and its products and services. Professionals/staff are aware of AML compliance and reporting procedures and obligations.²⁶

Possible Sources of Information and Data²⁷

- Relevant legal and regulatory framework pertaining to professionals and staff knowledge, including as part of entry controls/renewal of business or professional licenses or certifications

²⁵ Inter alia Acc. Recommendation 18–23 of the FATF..., *op. cit.*

²⁶ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–40; And also: acc. FATF Methodology..., *op. cit.*, pp. 56–62.

²⁷ *Ibid.*

- Statistics and information on overall quality of AML training activities by the firms of the assessed business/profession and whether such training is mandatory or voluntary
- Data on frequency of training, hours of training, number of trainees, level and type of staff/professionals trained
- Statistics on AML training given by authorities to individuals in the assessed business/profession
- Information on AML training programs and training materials of firms (of the assessed business/profession)
- Findings of business/profession's AML on-site/off-site inspections and monitoring
- Interviews/consultations with regulatory/supervisory authorities (e.g., an SRB or other competent authority)
- Interviews/consultations with assessed business/profession's representatives, including an SRB and professional associations
- Surveys of management and staff of firms that make up the assessed business/profession.

Effectiveness of Compliance Function (Organisation)²⁸

This variable assesses whether firms (including sole practitioners) in the assessed business/profession have an effective compliance function that is comprehensive, risk-based, and well resourced, with an independent AML compliance function. The assessed business/profession possesses effective internal AML compliance functions if most firms (including sole practitioners):

- Have internal compliance programmes that are commensurate to the level of the risk of the firms, taking into account factors such as jurisdictions of end users and professional intermediary clients, clients that have complex or opaque legal structures, the volume and nature of products provided, client-base profile transaction patterns, and cross-border nature of transactions
- Have appointed a sufficiently resourced, independent AML compliance officer at the senior management level
- Take disciplinary actions against their staff in cases of breaches of compliance policy
- Perform internal and/or external AML audits.²⁹

Possible Sources of Information and Data³⁰

- Relevant regulatory framework in relation to the compliance function
- Information on internal compliance function and policies of firms in the assessed business/profession

²⁸ Inter alia Acc. Recommendation 18–23 of the FATF..., *op. cit.*

²⁹ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–40; *And also*: acc. FATF Methodology..., *op. cit.*, pp. 56–62.

³⁰ *Ibid.*

- Findings of the AML on-site inspections and off-site monitoring
- External (if any) and internal audit reports on adequacy and effectiveness of compliance function
- Statistics on disciplinary actions taken by the firms (of the assessed business/profession) against their staff for breaches of compliance policy
- Statistics on new clients or business declined or business relationship terminated, based on recommendations of the compliance staff
- Interviews/consultations with regulatory/supervisory authority (e.g., an SRB or other competent authority)
- Interviews/consultations with assessed business/profession's representatives, including an SRB and professional associations
- Surveys of management and staff of firms that make up the assessed business/profession.

Effectiveness of Suspicious Activity Monitoring and Reporting³¹

This variable assesses whether the products or firms of the assessed business/profession have effective and appropriate systems for record keeping, monitoring and STR reporting to support their AML policies and procedures. A well-designed manual system may be adequate for a small firm with a single branch or for a sole practitioner, while large businesses and firms will require more sophisticated systems. A good record-keeping system is a pre-requisite for an effective monitoring system. Any problems and deficiencies in record keeping should therefore be assessed under this variable. The firms of the assessed business/profession have adequate and appropriate AML-monitoring and STR reporting systems if the firms have information systems that enable and facilitate the monitoring of client transactions and comparing them against the client's profile. Transactional records are available in a format that facilitates AML screening and monitoring. The systems support the firms in the assessed business/profession in performing effective PEP screening. The systems assist the business/profession and its staff to effectively identify and record all complex, unusual large transactions. The systems assist the business/profession and its staff to effectively identify and report suspicious transactions. Staff should have a good understanding of the scope of their reporting obligations on suspicious transactions and activities, including what activities are covered or not covered under laws or rules on professional secrecy and professional/client privilege.

Possible Sources of Information and Data³²

- Relevant legal and regulatory framework in relation to AML monitoring, record-keeping, and STR reporting obligations of the assessed business/profession

³¹ Inter alia Acc. Recommendation 20–21 of the FATF..., *op. cit.*

³² Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–40; *And also: acc. FATF Methodology...*, *op. cit.*, pp. 58–59.

- Findings of AML monitoring and supervision with regard to the effectiveness of the firms' (of the assessed business/profession) STR systems (for example, how many firms are compliant, how many are not compliant, and how this affects the overall effectiveness of the STR system for the assessed business/profession)
- Statistics on the number and quality of STRs filed by the firms/professionals (of the assessed business/profession), including numbers filed "defensively" (after being alerted to suspicious activity or investigation by authorities)
- Statistics on numbers of STRs relating to monitoring lapses, etc., originating from the firms/ professionals (of the assessed business/profession)
- Statistics on numbers of STRs by the firms/professionals (of the assessed business/profession) referred to law enforcement agencies
- Statistics on number of detected complex, unusually large transactions that were recorded by the reporting entity and not reported
- Information on quality and accessibility of the firms' (of the assessed business/profession) transaction and CDD records
- Findings of firms/professionals' AML on-site/off-site supervision
- Interviews/consultations with regulatory/supervisory authority (e.g., an SRB or other competent authority)
- Interviews/consultations with assessed business/profession's representatives, including an SRB and professional associations
- Surveys of management and staff of firms that make up the assessed business/profession.

Availability and Access to Beneficial Ownership Information³³

This variable assesses whether it is easy for criminals to hide their beneficial ownership in corporations, trusts or similar structures registered in or administered from within the country. Assessment criteria Transparency relating to beneficial interests in corporations, trusts or similar entities is in place if comprehensive information on the structure, management, control, and beneficial ownership in corporations, trusts and similar vehicles is readily available and can be accessed in a timely manner by competent authorities and is available to AML-regulated institutions and businesses and professions to facilitate their Customer Due Diligence requirements.

Possible Sources for Data³⁴

- Information as to whether regulated businesses or professions (e.g., lawyers, notaries, or Trust and Company Service Providers) are required to form, register or administer a legal entity or legal arrangement
- Information as to the mechanism chosen by the country to collect and maintain basic and beneficial ownership information of legal entities formed

³³ Inter alia Acc. Recommendation 22–27 of the FATF..., *op. cit.*

³⁴ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–40; *And also*: acc. FATF Methodology..., *op. cit.*, pp. 60–67.

- or registered in the country, and beneficial ownership information of legal arrangements formed or administered in or from the country
- The relevant regulatory framework and the effectiveness of beneficial ownership information Customer Due Diligence requirements (pertaining to natural persons and legal entities and legal arrangements)
 - Statistics or information on crimes (including money laundering involving the use of shell companies or other opaque structures) and whether accurate, adequate, and current beneficial ownership information can be accessed in a timely manner by competent authorities
 - Interviews/consultations with the reporting entities and their supervisory authorities, law enforcement agencies, tax authorities, and, if applicable, the supervisors of Trust and Company Service Providers
 - Interviews/consultations with Trust and Company Service Providers, law firms, and accountancy firms
 - Surveys of reporting entities' management and staff
 - Experience and opinion of the public authority or private agency that registers corporations and other legal entities.

Availability of Reliable Identification Infrastructure³⁵

Financial transparency and customer identification and verification processes are enhanced when AML-regulated institutions are able to verify the identity of customers using reliable, independent source documents, data or information. A good identification infrastructure will also prevent the use of fake documents and false identities. Fake documents and false identities hamper the ability to detect and investigate money laundering and trace the proceeds of crime. Assessment criteria A good identification infrastructure exists and information is available if AML-regulated institutions can rely on the country's identification infrastructure. For instance, there is reliable and secure government or private sector documentation, data or information to identify and verify the identity of the clients. The infrastructure may consist of a secure national identification system with government-issued identity documents, whether issued by the national or a local authority, and/or comprehensive and reliable public information systems that assist in the verification of details of clients' details.

Possible Sources³⁶

- Information about the national identification system
- Information on national identification (ID) infrastructure database and its suitability and availability for ID verification purposes (if available)
- Information on available identification documents and installed anti-counterfeit measures
- Statistics (or experience) concerning the frequency of cases that involve the use of fraudulent ID documents

³⁵ Inter alia Acc. Recommendation 10–11, 24–25, 33–34 of the FATF..., *op. cit.*

³⁶ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–44; *And also:* acc. FATF Methodology..., *op. cit.*, pp. 41–47, 64–68, 79–80.

- Statistics relating to the part of the population that lacks proper ID documents
- Information on any community, social group (such as immigrant communities, tribes, etc.) whose members have no ID documents or have no access to ID documents
- Discussions with reporting institutions on the usefulness of the identification infrastructure
- Discussion of reasons why the national identification system and practices are not working ideally.

Availability of Independent Information Sources³⁷

This variable assesses the availability of independent and reliable sources of information to determine transaction patterns of clients. Customer due diligence processes are easier to perform, and are generally of a higher quality, if such sources are available. They can be used to identify or verify clients' transactional patterns and commercial history. Such information may include data held by credit bureaus, details of previous banking relationships, accessibility to former employers, and the availability of utility bills. Assessment criteria Independent and reliable information sources are available if sources of comprehensive and reliable historical financial information and other information about clients are available and can easily be accessed by AML-regulated institutions.

Possible Sources³⁸

- Interviews/consultations with the reporting entities and their respective supervisory authorities
- Surveys of reporting entities' management and staff
- Interviews with credit bureaus, utility companies, etc., with regard to information available on clients.

2. CTF Risk Assessment

It should be assessed whether the jurisdiction has effectively and comprehensively criminalised terrorism financing in its laws, and assess the strengths/weaknesses within the jurisdiction's legal capacity to prosecute and apply criminal sanctions to the persons that finance terrorism.³⁹

It should be also assessed whether the jurisdiction has effective and comprehensive laws and regulations in place that implement targeted financial sanctions that comply with the UN Security Council's resolutions. This specifically refers to the

³⁷ Inter alia Acc. Recommendation 10–11, 24–25, 33–34 of the FATF..., *op. cit.*

³⁸ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–44; *And also*: acc. FATF Methodology..., *op. cit.*, pp. 41–47, 64–68, 79–80.

³⁹ Acc. FATF National Moneylaundering..., *op. cit.*, pp.5–8; *Also see*: FATF Methodology..., *op. cit.*, p. 6.

resolution that requires countries to freeze, without delay, all funds or assets related to terrorism, and to ensure that no assets are made available to, or for, the benefit of persons and entities designated by the UN Security Council under Chapter VII of the Chapter of UN resolutions, 1267 (1999) and its successor, 1373 (2001).⁴⁰

For this assessment the following should be consulted⁴¹ :

- Relevant laws, regulations, and enforceable directions
- Findings, Interviews/consultations from supervisory and regulatory authorities
- Interviews/consultations with assessed business/profession's representatives, including a SRB and professional associations
- Surveys of management and staff of firms that make up the assessed business/profession.
- Reports from governments and/or international organisations
- Reports from academia and/or civil society organisations.

Quantitative Indicator Sources of the CTF Should be Used as Follows⁴²

- Judicial system database
- Prosecutor's Office database
- Law enforcement database
- FIU database
- Research reports and academic studies

Qualitative Indicator Sources of the CTF Should Consist of:⁴³

- Intelligence
- Reports by government agencies
- Academic studies and publications
- Publications by international organisations
- Open sources (e.g. Internet, and public news)
- Surveys with focus groups or the general public
- Interviews with focus groups or experts

Assessment of the Terrorism Financing Threat should be based on following data gathered:

Enforcement data should include

- Number of TF cases investigated
- Number of TF cases prosecuted
- Number of TF cases convictions
- Number of persons convicted for TF
- Number of case files on TF sent to LEAs
- Number of International Assistance requests received
- Number of International Assistance requests sent
- Amount of TF funds seized or frozen
- Amount of TF funds confiscated

⁴⁰ *Ibid.*

⁴¹ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 39–44.

⁴² Acc. FATF National Moneylaundering..., *op. cit.*, pp. 13–16, 39–44.

⁴³ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 13–16, 31–32, 39–44.

Direction of the Terrorism Financing⁴⁴

This covers:

- Funds generated in the home jurisdiction, for operations within the home jurisdiction.
- Funds generated in the home jurisdiction, for operations in a foreign jurisdiction.
- Funds generated in a foreign jurisdiction, for operations in the home jurisdiction.
- Funds generated in a foreign jurisdiction, for operations in foreign jurisdictions (transit point).

Financial flows related to terrorism financing can be distinguished by their direction. The funds might be generated in the home jurisdiction, but used for operations elsewhere. Conversely, the funds might be generated in another jurisdiction, but used to fund terrorist operations in the home jurisdiction. Or, the funds may simply pass through the home jurisdiction, using it as a point of transit. It is needed to establish the direction of the flows, as this information is relevant in determining which controls need to be adopted or strengthened.

Sources of Terrorism Financing⁴⁵

- Legitimate sources
 - Non-profit organisations (*following as "NPOs"*)
 - Import/export
 - Construction
 - Agriculture
 - Donations
- Criminal activity
 - Natural resource theft
 - Drug trafficking
 - Smuggling
 - Extortion
 - State sponsorship

The aim of this category is to help determine the source of terrorism financing. Financing may come from legitimate sources (such as non-profit organisations or import/export activities), or from sources that involve criminal activity (such as natural resource theft or drug trafficking).

Channels of Terrorism Financing⁴⁶

- Banking Insurance Cash (couriers)
- Money exchange offices
- Money value transfer services (regulated)
- Money value transfer services (unregulated)
- Trade
- Real estate
- NPOs

In this section, it should be examined which channels are being used, or are suspected of being used, for moving terrorist funds. For example, if funds are

⁴⁴ *Ibid.*

⁴⁵ Acc. FATF National Moneylaundering..., *op. cit.*, pp. 13–16, 31–37, 39–44.

⁴⁶ *Ibid.*

deposited into a bank account and then wired to an account in another jurisdiction, the channel being used is the banking sector. Alternatively, funds may have been raised in cash and carried by individuals to or from another jurisdiction.

Conclusion

The form, scope and nature of ML/TF risk assessments should ultimately meet the needs of its users — whether these are policy makers, supervisors, operational agencies, financial institutions, DNFBPs, etc. The number and diversity of users of an assessment varies according to the purpose for which it is carried out; however, typical users of risk assessments might include:

- Policy makers and other authorities, for example, in order to formulate the
- national AML/CFT policies, make reasonable decisions on the legal and regulatory framework and the allocation of resources to competent
- Operational agencies, including law enforcement, other investigative
- authorities, financial intelligence units (FIUs), relevant border agencies, etc.
- Regulators, supervisors and self-regulatory bodies (SRBs).
- Financial institutions, and designated non-financial businesses and professions (DNFBPs), for which the national-level ML/TF risk assessment is a critical source contributing to their own ML/TF risk assessments and risk-based obligations.
- Non-profit organisations (NPOs).
- AML/CFT assessors and assessment bodies more broadly, along with other
- international stakeholders.
- The general public, as well as academia, specified individuals, etc.

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Streszczenie. Artykuł dotyczy krajowej oceny ryzyka, której przedmiotem jest proceder prania brudnych pieniędzy i finansowanie terroryzmu. Na Słowacji po raz pierwszy dokonuje się tego rodzaju oceny. Autorzy wskazują na decydujące kryteria przy ocenie narodowego system przeciwdziałania praniu brudnych pieniędzy i finansowaniu terroryzmu. Pierwszą zmienną, którą należy wziąć pod uwagę są środki badające ramy prawne. Drugą zmienną stanowią ramy instytucjonalne, trzecią zaś umiejętności personelu. Czwarta zmienna to infrastruktura, która jest tworzona w celu zapobiegania oraz reagowania na tego rodzaju zagrożenia. Inne zmienne są ściśle powiązane ze skutecznością sankcji, a infrastruktura należy do innych zmiennych. Opracowanie zawiera też źródła i listę danych, które powinny zostać wykorzystane podczas dalszej ewaluacji. Wynikiem krajowej oceny ryzyka będzie obszerny raport.

Резюме. В статье рассматривается национальная оценка рисков, предметом которой является отмывание денег и финансирование терроризма. В Словакии этот вид оценки проводится впервые. Авторы указывают на основные критерии при оценке национальной системы противодействия отмыванию денег и финансированию терроризма. Первой переменной, которую необходимо учитывать, являются инструменты, позволяющие изучить правовые рамки. Вторая переменная — институциональная структура, а третья — навыки и умения персонала. Четвертая переменная — это инфраструктура, созданная для предотвращения и реагирования на такие угрозы. Другие переменные тесно связаны с эффективностью санкций, а инфраструктура относится именно к другим переменным. Исследование содержит также источники и список данных, которые следует использовать при дальнейшей оценке. Результатом оценки национального риска станет обширный отчет.

(mj)

