

## COUNTRY UPDATE-Moldova: AML

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**Dec 16 2019** Roger Gladei and Ecaterina Nacu

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**Member of FATF?** No. (Moldova is a member of Moneyval, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism, which is an associate member of FATF). Moldova is not on the FATF List of Countries that have been identified as having strategic AML deficiencies.

**On FATF Blacklist?** No.

**Member of Egmont?** Yes.

### ML background in region

#### *Overview of country risks*

Starting from February 23, 2018, a new Law on Prevention and Combating of Money Laundering and Terrorism Financing, No. 308/201 (the AML Law) was enacted. The new AML Law aims to transpose the EU Directive 2015/849/EC and implement the FATF Recommendations (February 2012).

The actions of the Moldovan authorities responsible for analysing, monitoring and investigation of money laundering and terrorist financing are aimed at reducing the risk of use of the banking and non-banking financial systems and of freelancers in different schemes of legalizing of unlawful transactions and financing of terrorism. In this respect, the implementation of FATF and MONEYVAL standards and recommendations has a decisive role in building a viable system of preventing and combating money laundering and terrorist financing.

Moldovan authorities have applied for and benefited from the support of international organizations and structures such as joint Project of the Council of Europe and European Commission against corruption, money laundering and financing of terrorism in Moldova — MOLICO. However, the efforts of Moldovan authorities of implementing international standards are not yet effective on the territory of self-declared 'Republic of Transnistria' (left bank of Nistru River).

As mentioned above, Moldova is not a member of the FATF, but it is a member of the Council of Europe Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL). Following the adoption of the 4th round MER in December 2012, the Republic of Moldova was placed into regular follow-up. The Fifth Round Mutual Evaluation Report issued in July 2019, states that the new AML law reformed the standing of the Financial intelligence Unite (FIU), established the principle of a risk-based approach in the application of preventive measures, and improved the customer due diligence (CDD) framework and implementation of targeted financial sanctions (TFS). Yet technical deficiencies remain with regard to politically exposed persons (PEPs), the application of enhanced due diligence (EDD) measures, preventive and other measures for Designated Non-Financial Businesses and Professions (DNFBPs), and beneficial owner (BO) information on legal persons and TFS, among other topics. Based on the results of its evaluation, MONEYVAL decided to apply its enhanced follow-up procedure and invited Moldova to report back in 2021.

## Key directives/legislative framework

The current AML Law sets forth the framework for anti-money laundering and terrorist financing measures.

The Action Plan for 2017-2019 for Risk Reduction in relation to Money Laundering and Terrorism Financing has set out clear key monitoring indicators, based on which the Government is intending to obtain a set of clear results, as well as clear deadlines for each activity to be undertaken. As for November 2019, there is no new Action Plan enacted.

The main recent regulations enacted by the Moldovan FIU (Service for Prevention and Combating of Money Laundering) are as follows:

### *September 2018:*

- the Regulation on measures for preventing and combating money laundering and terrorist financing by certain reporting entities (those selling assets worth at least MDL 200,000 (ca. EUR 10,000);
  
- the Methodological Manual on the application of measures for preventing and combating money laundering and terrorist financing by self-employed professionals (individuals or legal entities providing independent professional accounting, auditing, legal services, including lawyers, notaries, who operate in accordance with the legislation in force).

### *August 2018:*

- the Regulation on measures for preventing and combating money laundering and terrorist financing by certain reporting entities (leasing companies);
  
- the Regulation on requirements for preventing and combating money laundering and terrorism financing in the activity of real estate agents;
  
- the Regulation on application of international restrictive measures by leasing companies, real estate agents and other persons selling assets worth at least MDL 200,000 (ca. 10,000 euros) as reporting entities;
  
- the Guidelines for Detecting the beneficiary owner.

### *June 2018:*

- the Guidelines for Detecting the Publicly-Exposed Persons, which detail the legal provisions as regards who qualifies as PEP and what additional precaution measures shall apply in connection thereof;
  
- the Guidelines for Detecting and Reporting Suspicious Activities and Transactions in Relation to Terrorism Financing, which deals specifically with the matters concerning reasons for suspicion in terrorism financing and detecting the associated risks;

- the Guidelines for Reporting Suspicious Activities and Transactions in relation to Money Laundering.

In addition, the following laws also contain provisions regarding AML:

- the Law on the National Anticorruption Centre (NAC) dated June 6, 2002;
- Criminal Code of the Republic of Moldova (defines the crimes of money laundering and financing of terrorism and sets the applicable sanctions);
- the Law on Banking Activity, dated October 6, 2017.

### **Who are the regulators/monitoring authorities**

#### *Who is affected/reporting entities?*

Moldovan FIU is the national monitoring authority. It is in charge of coordinating national AML policies, collecting and processing the reports on suspicious transactions and immediate intervention to prevent money laundering and terrorist financing. The other supervisory authorities are: the National Bank of Moldova, the National Commission of Financial Market, the Notary Chamber, the Bar Association, the Ministry of Finance, the State Chamber for Marking Supervision, and the National Agency of Regulation of Electronic Communications and Information Technology. They all shall cooperate with the Moldovan FIU to ensure the compliance of supervised entities and market participants with the AML rules

Besides banks, and other financial institutions (non-banking credit organisations and mortgage lending entities, credit cooperatives, credit bureaux, private pensions funds and leasing companies), other reporting entities are: bureaux de change, registry companies, the Single Central Depository, the National Insurers' Bureau, stock exchanges, dealers and brokers, insurance companies, investment funds, gambling organizers, real estate agents, dealers of precious metals and stones, notaries ,attorneys at law and other self-employed professionals (when acting on behalf of clients in connection with any financial and real estate transaction, the opening and management of bank accounts, incorporation and running of legal entities, management, purchase or sale of assets under fiduciary administration), the lessees – legal entities practicing entrepreneurial activity, payment companies, electronic money issuers and postal services providers, auditors and other legal entities or entrepreneurs providing accounting services, , other persons selling assets worth at least 200,000 Moldovan lei (about 10,000 euros) or its equivalent only if the payments are made in cash. These entities are legally required to report suspicious transactions to the AML monitoring authority.

### **Legal requirements for KYC**

#### *Customer due diligence*

Reporting entities are required to apply extensive know-your-customer procedures. Upon inception of the business relationship, the reporting entity must identify the customer/the beneficiary owner, and along the way shall monitor the transactions carried out under a risk-based approach. The information about the identity of the customer and the beneficiary owner should be updated.

Identification of an individual is done based on the date and place of birth (ID, passport, etc.) and on other factual data related to family life, domicile, residence, place of work, contacts with different business people, including physical appearance. The identification of the legal entities involves also several issues, as the foundation and registration date, associates / shareholders/directors, representatives, basic and secondary activities.

The reporting entities shall examine the identity documents, due to the fact that such documents may be falsified with high precision. If there is a suspicion on any presented document, the entities should undertake appropriate measures to check if the presented document was reported as lost or stolen.

In cases where the customer is represented based on a power of attorney, the reporting entity shall take appropriate measures to verify the identity and nature of the effective beneficiary for whom the banking account shall be opened or the transaction shall be performed.

If the identification of customer fails when applying the know-your-customer requirements, the entity should refuse to start the business relationship with the customer; shall no longer carry out the transactions ordered by the customer and shall immediately terminate any relationship with the client and report the suspicion to the Moldovan FIU.

Reporting entities should apply additional measures in specific cases, which include non-face-to-face operations, transactions of politically exposed persons, cross-border interbank transfers or electronic transfers when the parties cannot be fully identified.

The reporting entities shall apply certain client due diligence measures, in the following cases:

- 1. Before establishing business relations with the customer;
  
- 2. When carrying out any occasional transaction: (i) with a value of at least 20,000 Moldovan lei (about 1,000 euros) if the transaction is executed in a single operation through payment services providers (electronic transactions included), or (ii) with a value at least of 300,000 Moldovan lei (about 15,000 euros), whether the transaction is executed in a single operation or in several operations;
  
- 3. When there is a suspicion of money laundering, regardless of any derogation, exemption or threshold. The suspicious character of the transaction is established individually by taking into account the indexes of suspected transactions provided by the NAC Order No. 118 and the Methodology on Identification of Suspicious Activities and Transactions of Money Laundering and Terrorism Financing, enacted by the Government of Republic of Moldova (in force as of June 1, 2018);
  
- 4. When there are any doubts about the veracity, sufficiency or accuracy of previously obtained client's identification data;
  
- 5. When at the time of collecting the wins or when placing a stake (or both situations), transactions of at least 40,000 Moldovan lei were made (about 2,000 euros);

- 6. When the persons selling assets are carrying out cash occasional transactions of at least 200,000 Moldovan lei (about 10,000 euros), whether the transactions is executed in a single operation or in several operations.

## **Reporting requirements/obligations**

### *Recordkeeping*

Under the AML Law, the reporting entities should keep, on paper, all data related to national and international activities and transactions of the client, for a minimum of 5 years after the business contract has ended (or after termination of the occasional transaction) and up to 5 years – on electronic support.

At the request of the FIU, the term can be extended. The kept data shall be sufficient to restore every activity or transaction. The reporting entities shall keep all data about the Clients and ultimate beneficiaries, including: copies of identification documents, the information regarding accounts and the primary documentation, the business correspondence, results of due diligence on identification of complex and unusual transactions.

Data on suspicious activities or transactions are indicated in a special form, which is sent to the FIU, within 24 hours of receipt. The reporting entities shall report to the FIU about the suspicious assets, activities and transactions of money laundering, about the crimes associated to them or terrorism financing, no matter the phase of the crime (preparation, attempt, in progress or completed).

Transactions which amount exceed 200,000 Moldovan lei (approximately 10,000 euros), performed in cash, in one or several operations, should be reported to the Moldovan FIU within 10 calendar days. Also, transactions which amount exceed 500,000 Moldovan lei (approximately 25,000 euros), by transfer, in one or several operations shall be reported to the Moldovan FIU by the fifteenth day of the following month.

Any transaction which is deemed a suspicious transaction, irrespective of the amount of the transaction, should be reported within 24 hours.

The National Bank of Moldova (NBM), as supervisory authority, has enacted special rules for the supervised entities:

- Regulations on the requirements on preventing and combating money laundering and terrorist financing in the activity of non-bank payment service providers (approved by Decision No. 202, in force as of August 2018);
- Regulations on the requirements on preventing and combating money laundering and terrorist financing in the activity of banks (approved by Decision No. 200, in force as of August 2018);
- Regulations on the requirements on preventing and combating money laundering and terrorist financing in the activity of bureaux de change and hotels (approved by Decision No. 201, in force as of August 2018).

Moldovan banks should have internal AML programmes and procedures in place to ensure collection of the information on the identity of the client, the ultimate beneficiary, politically exposed persons, the trust relations, the holder of the corresponding bank account, etc.

National Commission of Financial Market (NCFM, the supervisor of capital markets and non-banking credit organisations) has enacted the Regulation on the Measures of Prevention and Combating of Money Laundering, in force as of August 2018. According to the Regulation, the reporting entities shall report to both FIU and NCFM about their activities of prevention and combating money laundering.

### *Tipping off*

Under the AML Law, the reporting entities and their employees are bound not to inform the subject of report that a report has been made to the monitoring authority. The tipping off, as a wrongdoing, shall be examined under the general rules of the law, while the AML Law states that infringing of the provisions of said law shall bring liability in compliance with civil, administrative, criminal laws.

### *Whistle-blowing*

Under the AML Law, the reporting entities, their employees, the responsible persons and their representatives are bound not to inform the clients or the third parties of their report that a report has been made to the monitoring authority until the legal terms of recordkeeping have expired.

Such disclosure of data may interfere with rules on keeping the banking secret, commercial secret if done too early, when a criminal investigation was not yet finalised and a final court decision was not issued.

### **Offences**

Under the Moldovan Criminal Code the following crimes are deemed as "predicate offences", as set out in Art. 9 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and Financing of Terrorism:

- *Money laundering*, i.e., the act of attributing a legal aspect to the source of the illicit incomes, or hiding the origin of such incomes, which is carried out in one of the forms indicated in the law (Article 243 of the Criminal Code).
  
- *Terrorist financing*, i.e., making available or collecting any assets acquired by any means, or rendering any financial services for the purpose of using such assets or services, or knowing that they shall be used upon organisation, preparation for, or perpetration of, a terrorism offence, or by a criminal group or person in connection with a terrorism offence (Article 279 of the Criminal Code). Terrorism offence means any of the offences provided at Articles 140/1, 142, 275, 278, 278/1, 279/1, 279/2, 279/3, 280, 284 para. (2), 289/1, 292 para.(1/1) and para.(2) in the part they refer to deeds referred to at art.295, 295/1, 295/2, 342 and 343.

### *Enforcements*

Under the Moldovan Enforcement Code, court decisions become enforceable on the date they remain final. The court which examined the case in first instance shall submit the court decisions for enforcement.

Enforcement of court decisions shall be done, depending on the types of penalties, as follows:

- 1. Fine: imposed on individuals / legal entities shall be enforced by bailiffs. The fine shall be paid by the convicted person voluntarily within 30 days since the court issued the decision. The convict is obliged to inform the court about the payment of the fine. If the convict has not paid the fine, the court sends the document to the bailiff for enforcement.
  
- 2. Imprisonment: enforcement is done by prisons. The court which examined the case shall send the decision and the enforcement title to the administration of the detention place of the convict if the convict is in arrest or to the ministry of internal affairs if the person is not arrested. The administration of the detention place shall transfer the convict to prison within 15 days upon receipt of the enforcement title.
  
- 3. Deprivation of the right to hold certain positions or to carry out certain activities: is an additional penalty only for money laundering offence. Its enforcement is done after the enforcement of the main penalty — by the territorial probation authority in whose jurisdiction the convict is a resident. Regardless of whether the convicted person holds a particular office or exercises a certain activity, the probation authority keeps a record of the convicted compliance with the prohibition.

### *Penalties*

- Money laundering is punishable by:

-A fine of 1,350 to 2,350 conventional units (3,375 to 5,875 euros) for the person or imprisonment of up to 5 years with (or without) prohibiting the right to hold certain positions, or carry out certain activities, for two to five years.

-A fine of 8,000 to 11,000 conventional units (20,000 to 27,500 euros) for the legal entity and prohibiting the right to carry out certain activities or liquidation.

- Terrorist financing is punishable by:

-Imprisonment of five to 10 years with (or without) prohibiting the right to hold certain positions, or carrying out certain activities, for two to five years.

-A fine of 8,000 to 11,000 conventional units (20,000 to 27,500 euros) for the legal entity and liquidation.

### **Internal procedures and training**

The Moldovan FIU is an independent public authority in relation to other legal entities or natural persons. The FIU exercises its functional powers without any external, political or governmental interference that may compromise its independence or authority.

The employees have legal and/or economic university degree and experience in finance — banking and non-banking and/or law for at least two years.

The staff and structure of the FIU is approved by the Moldovan Government, at the proposal of the FIU. Currently, the limit

staff of the FIU is established at 30 employees. The employed personnel may not hold other positions. The FIU employees participate at different international and national conferences and seminars.

The reporting entities are bound to adopt internal policies and adequate methods of working with clients, saving data, internal control, evaluation and management of risks, management of conformity and communication to impede the activities and transactions related to money laundering or terrorism financing.

The reporting entities shall appoint the persons responsible for enforcement of the legal provisions, the names and responsibilities of which shall be reported within five business days to FIU.

The reporting entities shall approve their own programs of prevention and combating of money laundering and terrorism financing in line with the recommendations of the monitoring authorities, which shall at least include: (i) policies, methods, procedures, strict rules and internal control actions, directed towards prevention of money laundering and terrorism financing, including measures related to KYC rules, identification of complex and unordinary transactions, reporting, evaluation procedures and risk management and other applicable measures; (ii) the responsible persons (management employees included) for ensuring compliance with the policies and procedures related to prevention and combating of money laundering and terrorism financing; (iii) measures to promote ethical and professional norms in the supervised sector, and to prevent the use of the reporting entity, intentionally or not, by organized criminal groups or their associates; (iv) a program of continuous training of employees and selection of personnel; and (v) audit to ensure the control of the internal system.

## Sanctions

### *International conventions*

The Republic of Moldova has ratified the following international conventions:

- UN International Convention for the Suppression of the Financing of Terrorism, New York, dated December 9, 1999 (ratification Law No. 1241 dated July 18, 2002).
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Strasbourg, dated November 8, 1990 (ratification Law No. 914 dated March 15, 2002).
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw, dated May 16, 2005 (ratification Law No. 165 dated July 13, 2007).
- International Convention for the Suppression of Acts of Nuclear Terrorism, New York, dated April 13, 2005 (ratification Law No. 20 dated February 21, 2008).
- Council of Europe Convention on the Prevention of Terrorism, Warsaw, May 16, 2005 (ratification Law No. 51 dated March 7, 2008).



- International Convention for the Suppression of Terrorist Bombings, New York, January 12, 1998 (ratification Law No. 1239 dated July 18, 2002).
  
- The Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism, Riga, October 22, 2015 (ratification Law No.274 dated December 16, 2016).
  
- The Decision of the Council of Heads of State of the Commonwealth of Independent States (CIS): On the Program of Collaboration of the CIS states in combating terrorism and other violent expressions of extremism for 2017 – 2019 (adherence Law No.64 dated April 5, 2018).

If there are inconsistencies with international instruments on fundamental human rights, international regulations have priority and are directly applicable.

These conventions shall not apply in the territory of the self-declared 'Republic of Transnistria' until full resolution of the dispute related to the status of the region.

### **CTF — Countering terrorist finance**

In line with the undertaken international commitments, the Republic of Moldova has introduced corporate liability for legal entities and broadened the notion of "terrorism financing" (i.e. consumption of the crime does not depend on the perpetration of the act or the use of the funds).

Any action of making available or collection by any means, directly or indirectly of any type of acquired assets or rendering any financial services for the purpose of using of such assets or services, or knowing that they shall be used (i) upon organization, preparation for, or perpetration of, a terrorism offence, or (ii) by a criminal group or person in connection with a terrorism offence shall be punishable as 'terrorism financing' (Article 279 of the Criminal Code).

Terrorism offence means any of the offences provided at Articles 140/1, 142, 275, 278, 278/1, 279/1, 279/2, 279/3, 280, 284 para. (2), 289/1, 292 para. (1/1) and para. (2) in the part they refer to deeds referred to at art.295, 295/1, 295/2, 342 and 343. Additional offences (278/1, 279/1 and 279/2) related to terrorist actions have been incorporated in the Criminal Code to implement the provisions of the ratified international conventions.

### **Anti-bribery and corruption laws**

The legislative framework of the Republic of Moldova related to corruption has evolved significantly in the past years and important laws have been passed Law No. 133 on the declaration of wealth and personal interests (dated June 17, 2016), Law No. 25-XVI on the Code of conduct of the public officer (dated February 22, 2008), Law No. 82 on integrity (dated May 25, 2017), Law No. 239-XVI on transparency in decision-making (dated November 13, 2008); Law No. 271-XVI on verification of candidates to public offices (dated of December 18, 2008) etc.

The Moldovan Criminal Code provides the following offences related to bribery and corruption: passive corruption (Article

324) active corruption (Article 325), offering of bribe (Article 334) and accepting of bribe (Article 333).

### **Forthcoming issues/legislation**

Unlike the previous AML Law, the new 2018 AML Law uses the term "illicit assets", while the Moldovan Criminal Code still uses the term of "illicit income" (Article 243). To prevent non-uniform law enforcement, it would be recommendable the Criminal Code is amended, to replace the term "illicit income" with "illicit assets", as used in the AML Law.

In September 2019 the Moldovan Government has issued for public consultation a draft Law on Procedure of Detecting Violations in Preventing Money Laundering and Terrorist Financing and Sanctioning. The draft law contains provisions on the compliance check of the reporting entities, liability and individualization of sanctions, sanctionable wrongdoings, and imposes harsh pecuniary and non-pecuniary sanctions on the non-compliant entities.



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