

## COUNTRY UPDATE-Moldova: AML

Sep 03 2015 [Roger Gladei and Stefan Milicenco](#)



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).

On FATF Blacklist? No.

Member of Egmont? Yes.

ML background in region

### Overview of country risks

In the Republic of Moldova, traditionally certain forms of tax evasion or illicit entrepreneurship have been associated with money laundering. More recently, especially after enactment and first instances of enforcement of the last Law on Prevention and Combating of Money Laundering and Terrorism Financing dated July 26, 2007 (the "AML Law") clear distinction has been made between money laundering and tax evasion or illicit entrepreneurship. While the latter are quite widespread, the former remain far and few between.

The actions of the Moldovan authorities responsible for analyzing, 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.

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). MONEYVAL held its 44th plenary meeting in Strasbourg from March 31 to April 4, 2014. At this meeting, the Plenary examined measures taken by Moldova on identified important deficiencies as a result of the process regarding the state of compliance on all NC and PC ratings in the third round and decided to terminate the NC/PC process given the legislative progress achieved by the Republic of Moldova.

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).

### Key directives/legislative framework

The current AML Law sets forth the framework for anti-money laundering and terrorist financing measures. Amendments to this Law adopted in April 2011, May 2012, March 2014 and July 2014 aimed to bring the national law in line with the Directive 2005/60/EC and the Directive 2005/60/EC.

The National Strategy for 2010-2012 for Prevention and Combating of Money Laundering and Terrorism Financing has set out clear key performance indicators, against which the implementation of the strategy objectives shall be measured, as well as clear deadlines for each activity to be undertaken. The Moldovan FIU (Service for Prevention and Combating of Money Laundering of the National Anti-corruption Centre has enacted: (i) 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 (November 2010); (ii) the Guidelines for Detecting Suspicious Transactions in Relation to Terrorism Financing, which deals specifically with the matters concerning reasons for suspicion in terrorism financing and detecting the associated risks (March 2011); (iii) important amendments to the 2007 Guidelines of Suspicious Operations and Activities, introducing criteria and signs of suspicious operations towards activities of the new reporting entities: insurance companies, microfinance and mortgage lending entities, credit cooperatives, credit bureaux, private pensions funds and leasing companies (August 2011).

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

- the Law on the National Anticorruption Centre 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);

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- [Practitioner's Guide for Broker-Dealers](#)
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- Law on Financial Institutions dated July 21, 2005.

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, the National Bank of Moldova, the National Commission of Financial Market, the Licensing Chamber, the Ministry of Information Technology and Communications, the Ministry of Justice and the Ministry of Finance 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 (insurance companies, microfinance and mortgage lending entities, credit cooperatives, credit bureaux, private pensions funds and leasing companies), other reporting entities are: bureaux de change, stock exchanges, dealers and brokers, insurance companies, investment funds, casinos, real estate agents, dealers of precious metals and stones, notaries and attorneys at law (when acting on behalf of clients in connection with the sale and purchase of real estate, management of affairs, incorporation and running of legal entities), auditors, independent accountants and financial consultants, investment and fiduciary assistants, postal and telegraphic or assets transfer service providers. These entities are legally required to report suspicious transactions to the AML monitoring authority.

Additionally, the National Strategy for 2013-2014 for Prevention and Combating of Money Laundering and Terrorist Financing based on the recommendations of the FATF, provides that as reporting entities will be determined: (i) licensed savings and loan associations, (ii) pawnshops, (iii) dealers of luxury goods, and (iv) auction houses.

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:

- Before establishing business relations with the customer;
- When carrying out any occasional transaction with a value of at least 50,000 Moldovan lei (about 2,500 euros) or electronic transaction with a value at least of 15,000 Moldovan lei (about 750 euros), whether the transaction is executed in a single operation or in several operations;
- 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;
- When there are any doubts about the veracity or accuracy of previously obtained client's identification data.

Reporting requirements/obligations

*Recordkeeping*

Under the AML Law, the reporting entities should keep information that relates to the identity of persons, the information regarding accounts and the primary documentation, which includes the business correspondence, for a minimum of five years after the business contract has ended. Data on suspicious activities or transactions are indicated in a special form, which is sent to the FIU, within 24 hours of receipt.

Transactions which amount exceed 500,000 Moldovan lei (approximately 25,000 euros), performed in one or several operations during 30 consecutive days, should 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 has adopted Recommendations on Implementation of Programmes on Prevention and Combating of Money Laundering by the Banks. 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 (for non-banking financial authority) has enacted the Regulation on the Measures of Prevention and Combating of Money Laundering, in force as of December, 2011. According to the Regulation, the reporting entities shall report to both FIU and National Commission 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 and their employees are bound not to inform the third parties of their report that a report has been made to the monitoring authority. 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 finalized 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 as of July 2012 any of the offences provided at Articles 140/1, 142, 275, 278, 278/1, 279/1, 279/2, 280, 284 para. (2), 289/1, 292 para.(11) 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 1,000 to 5,000 conventional units (1,000 to 5,000 euros) for the person or imprisonment of up to 10 years with (or without) prohibiting the right to hold certain positions, or carry out certain activities, for two to five years.
  - A fine of 7,000 to 10,000 conventional units (7,000 to 10,000 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 7,000 to 10,000 conventional units (7,000 to 10,000 euros) for the legal entity and liquidation.

## Internal procedures and training

The Moldovan FIU is included in the overall organizational structure of the National Anti-corruption Centre. The staff of the service is of 17 permanent employees. The employees have legal and/or economic university degree and experience in finance — banking and non-banking. 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 in order 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 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) methods, procedures and internal control actions, including own programs of collection of data from authorities, in order to check the data of the individuals and legal entities; (ii) the employees with management attributions responsible for ensuring compliance with the policies and procedures related to prevention and combating of money laundering and terrorism financing; (iii) know-your-customer rules; (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 Act No. 196 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 Act 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 Act No. 165 dated July 13, 2007).
- International Convention for the Suppression of Acts of Nuclear Terrorism, New York, dated April 13, 2005 (ratification Act No. 20 dated February 21, 2008).
- Council of Europe Convention on the Prevention of Terrorism, Warsaw, May 16, 2005 (ratification Act No. 51 dated March 3, 2008).
- International Convention for the Suppression of Terrorist Bombings, New York, December 12, 1998 (ratification Act No. 1239 dated July 18, 2002).

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 organisation, 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 as of July 2012 any of the offences provided at Articles 140/1, 142, 275, 278, 278/1, 279/1, 279/2, 280, 284 para. (2), 289/1, 292 para.(11) 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. 16-XVI on conflict of interest (dated February 15, 2008), Law No. 25-XVI on the Code of conduct of the public officer (dated February 22, 2008), Law No. 90-XVI on preventing and combating corruption (dated April 25, 2008), 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 333) and accepting of bribe (Article 334).

Forthcoming issues/legislation

#### *Money transmitters*

The parliament has passed the National Strategy for 2013-2017 for Prevention and Combating of Money Laundering and Terrorist Financing (Act No. 130 dated June 13, 2013). It aims to develop an efficient national system of prevention and combating money laundering and terrorism financing according to international standards and recommendations. The strategy indicates as core objectives: minimisation of risks of using the banking and non-banking financial systems for money laundering and terrorism financing; consolidation of institutional capacities of AML institutions; improving the cooperation of institutions on local and international level and implementing the recommendations of international organizations (FATF, MONEYVAL and others).

From the legal point of view, amendments to the AML Law shall be operated, to include new reporting entities, to define "reduced precautions measures" in contrast with "enhanced precautions measures", "unusual and complex transactions", to introduce specific legal protection measures for managers responsible for reporting of transactions etc.

Also, certain amendments to the Contravention Code and the Criminal Code are envisaged on order to establish a regime of proportionate and dissuasive sanctions for non-compliance in the prevention and of combating money laundering and terrorism financing. The State Registration Chamber will be required to identify the ultimate beneficiary of legal entities, to submit information related to the modification of the statutory capital and change of shareholders.



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