

Third training seminar
on
Anti-Money Laundering (AML)/Countering Terrorist Financing
(CTF),

[May 26 - May 27](#), Sofia

Training content: Know Your Customer (KYC), Customer Due Diligence (CDD), beneficial owner, reporting obligations, record keeping, evidence gathering and regulatory technology

Introductory Report

**Anti-Money Laundering and Countering Terrorist Financing in
the legal order of the European Union**

Judge Mariana Kancheva,

Court of Justice of the European Union, Luxemburg

Respected ladies and gentlemen,

Dear guests,

Dear colleagues,

I am happy that despite my busy judicial schedule that prevents me from being in person in the National Assembly of the Republic of Bulgaria, I can share with you virtually, via this video address, the third training seminar in the framework of the international project “Legal Competency to Prevent Money Laundering and Financing of Terrorism”.

In the beginning of my introductory report I would like to congratulate the organisers as well as the participants in today’s event and to express my gratitude to all my colleagues who effectively monitor the financial flows and operations, since it is thanks to their efforts that the notorious phrase from the end of the 1970s “Follow the money” (from the movie [All the President's Men](#)¹) has turned into a reality and a major public, European and international policy.

Indeed, when we follow the money, the truth will always surface, while the money laundering, i.e. the process that legitimizes the source of the proceeds of crime is a continually growing phenomenon of a distinctly international character that aims at precisely concealing the links between this source and the proceeds of crime. This includes both money earned through criminal activities (traditionally – trafficking in human beings, drugs and arms) and money accumulated following misappropriation of publicly owned funds. At the same time the ways to legitimize the funds become more and more innovative and the challenges to counter both crimes and proceeds of crime get bigger and bigger, especially in the era of mass digitalization.

Global and European policies in this area are closely linked since money laundering and financing of terrorism are global threats and the European Union follows invariably the **Recommendations of the Financial Action Task Force on Money Laundering**, (FATF)² established by G7 in 1989. This special Task Force sets standards that are implemented worldwide and is a leading authority globally. As the last document of the European Commission from May 2020, namely Communication on action plan to comprehensive Union policy on preventing money laundering and terrorist financing³ shows, the cooperation on international level will continue with the Commission’s active involvement.

¹ All the President's Men is a 1976 American biographical political drama-thriller film about the Watergate scandal that brought down the presidency of Richard Nixon.

² <https://www.fatf-gafi.org/about/historyofthefatf/>. FATF is an inter-governmental body that sets international standards and encourages effective implementation of measures aimed at countering money laundering and financing of terrorism. FATF members are the Commission, 14 EU Member States and the two EFTA countries that are members of EEA; 13 Member States take part in the regional organization MONEYVAL.

³ Communication from the Commission on action plan to comprehensive Union policy on preventing money laundering and terrorist financing (2020/C 164/06), OJ C 164/21 of 13 May 2020, pp. 21-33.

It is worth underscoring that the scope of EU rules has grown considerably beyond the FATF recommendations last updated in 2012 and currently it appears that the global standards follow the European ones. Thus, the scope of enterprises and professions that are the subject matter of these rules, the so-called “obliged entities” is constantly growing, while the role of the intermediary is becoming more and more important in the financial transactions deemed “significant” according to the European standards. In particular, in addition to the financial sector, legal practitioners and accountants, the EU legal framework applies to real estate agents, gambling services, persons trading in goods, suppliers engaged in exchange services between virtual currencies and fiat currencies, custodian wallet providers, and art dealers.

For more than thirty years now the EU has been developing a sustainable regulatory anti- money laundering and terrorist financing (AML/TF) framework while guaranteeing personal data protection. This regulatory framework has been enhanced and further developed by the case-law of the Court of Justice of the European Union (CJEU). The Court has held in this relation in *Jyske Bank Gibraltar*, judgment of 25 April 2013, (C-212/11, EU:C:2013:270) and *Zheng*, judgment of 31 May 2018, (C-190/17, EU:C:2018:357), as well as in a recent judgment of 6 October 2021 *Ecotex Bulgaria Ltd*, (C-544/19, EU:C:2021:803), that the objective of anti-money laundering is related to the protection of public order and thus can justify a restriction of the fundamental freedoms provided for in the Treaties and the Charter of Fundamental Rights of the European Union (the Charter), including a restriction on the free movement of capital or the freedom to provide services, however, subject to the mandatory requirement of proportionality and provided that the restriction does not exceed what is necessary to achieve the objective.

On the one hand the last amendments in the European legislation aimed at strengthening the Union legal basis and thus ensure that member States avail of a stable and comprehensive regulatory environment to adopt harmonized national AML/TF legislation. These amendments include among others 5th Directive 2018/843 on anti-money laundering,⁴ and amending 4th Directive 2015/849 in this area. These two directives have been transposed in the Bulgarian legal order by means of the **Anti-Money Laundering Act**,⁵ adopted in March 2018 and last

⁴ Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018, p. 43).

⁵ Promulgated State Gazette No. 27 of 27 March 2018., <https://www.lex.bg/bg/laws/ldoc/2137182924>.

amended and supplemented in March-April 2022.^{6 7} Pursuant to Article 96, para 1 of this act, in the end of 2021 the Bulgarian Council of Ministers adopted an **Action Plan for reducing money laundering and terrorist financing risks**.⁸

On the other hand, in the framework of the European Banking Supervision Mechanism, the competence of the European Banking Authority was extended in 2019⁹, thus entrusting it with the task of managing, coordinating and monitoring AML/TF measures throughout the EU in relation to the financial institutions, and monitoring and controlling the efforts of all financial service providers and the competent EU bodies. The European Banking Authority was further authorized to establish Union-wide database of risks and supervision measures in this regard, to make risk assessment in relation to the competent authorities and where necessary to request financial investigations bodies to investigate and take action in relation to individual financial institutions. There is extensive case-law of the two CJEU jurisdictions in this relation. The following judgments were rendered recently: *Ukrselhosprom PCF* and *Versobank/ECB* of 6 October 2021, (T-351/18 and T-584/18, EU:T:2021:669) and *Pilatus Bank and Pilatus Holding/ECB* of 2 February 2022, (T-27/19, EU:T:2022:46), whereby the General Court of the European Union upheld the decisions of the European Central Bank (ECB) for revocation of the authorization of a banking or financial institution on the basis of collected evidence on national and European level for failure to comply with statutory obligations provided for in the European legal order regarding counter-acting money laundering and terrorist financing (AML/FT) and in the transposed national legal provisions.¹⁰

Likewise, many other legislative amendments were adopted in the EU, such as, without citing exhaustively the long list of legal acts:

- New provisions applicable as of June 2021 on controls on cash entering or leaving the Union;¹¹

⁶ Amended and supplemented SG No. 25 of 29 March 2022, <https://www.balans.bg/normativen-akt/zmip>.

⁷ Amended SG 32 of 26 April 2022.

⁸ Decision No. 672 of the [Council of Ministers](#) of 17 September 2021.

⁹ Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds ([OJ L 334, 27.12.2019, p. 1](#)).

¹⁰ The cited judgments are pending appeal before the CJEU: *Versobank/ECB* (C-803/21 P) and *Pilatus Bank/ECB* (C-256/22 P).

¹¹ Regulation (EU) 2018/1672 of the European Parliament and of the Council of 23 October 2018 on controls on cash entering and leaving the Union and repealing Regulation (EC) No 1889/2005 ([OJ L 284, 12.11.2018, p. 6](#)).

- Amendments to the Directive of capital requirements;¹²
- New rules regarding law enforcement bodies' access to financial information for the prevention, detection, investigation or prosecution of certain criminal offences;¹³
- Perhaps one of the most significant amendments is the harmonization of the definition of criminal offences and sanctions for combating money laundering by criminal law,¹⁴

as well as a series of other legislative amendments in the EU.

These decisive steps towards a global and centralized solution at European level for countering money laundering and the grave consequences from “dirty” money penetrating and affecting the economies, politics, media and justice, are a convincing sign of hope.

Furthermore, the EU established a new comprehensive regime for the protection of persons who report breaches of Union law.¹⁵ Pursuant to Directive 2019/1937, Member States had to transpose it in the national legal order by December 2021. The new protection regime for whistleblowers enhances the capacity of national and EU authorities for preventing, detecting and resolving breaches, including such related to rules for counter-acting money laundering and terrorist financing. Pursuant to this new protection regime, for example, a **National Strategy for preventing and combating irregularities and fraud affecting the financial interests of the European Union for the period 2021-2027** has come into force.¹⁶

I would like to further recall that this year the Bulgarian legislation is subject to a new test of quality evaluation in the area of anti-money laundering and countering the financing of terrorism (the so-called fifth evaluation cycle). As is well known, the Bulgarian legal toolbox is regularly analysed by the **Group of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)**,¹⁷ which was set up in 1997 and which

¹² Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures ([OJ L 150, 7.6.2019, p. 253](#)).

¹³ Directive (EU) 2019/1153 of the European Parliament and of the Council of 20 June 2019 laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences, and repealing Council Decision 2000/642/JHA r ([OJ L 186, 11.7.2019, p. 122](#)).

¹⁴ Directive (EU) 2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law ([OJ L 284, 12.11.2018, p. 22](#)).

¹⁵ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, [OJ L 305, 26.11.2019, p. 17](#).

¹⁶ Adopted by Decision No 833 of the Council of Ministers of 12 November 2020, <https://www.strategy.bg/StrategicDocuments/View.aspx?lang=bg-BG&Id=1331>

¹⁷ A specific Group of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) was established in 1997. Since 2006 MONEYVAL has been not merely an observer but a full FATF member.

since 2006 is not just an observer in FATF but a full member. The new country report on Bulgaria was expected to be adopted at the 63th plenary session of MONEYVAL, which took place in Strasbourg from 16 to 20 May 2022.¹⁸

There is a growing consensus at EU level that the legislative framework in the Member States must be significantly improved. Attention needs to be paid to the huge discrepancies in its implementation at national level, as well as to the substantial weaknesses in the creation of the rules themselves. The trend, ladies and gentlemen, is for the rules to get stricter and stricter in order to render money laundering an unprofitable activity with a view to the extremely grave consequences, both financial and administrative and criminal.

We should bear in mind that a sixth package of AML measures is expected to be adopted at European level. It has been debated by European institutions and in the public space since 2019, one of the central topics being the establishment of a European Authority for Anti-Money Laundering¹⁹ by adopting a new European regulation to that end.

The proposal was presented on 20 July 2021 by the European Commission and according to it the main goals and tasks of this Authority should be:

- To establish a single EU-wide integrated supervisory system of anti-money laundering and countering the financing of terrorism (AML/CFT) on the basis of common methods for supervision and approximation of the high supervisory standards;
- To exercise direct control over the financial sector entities that are exposed to the highest risk of money laundering and terrorist financing or that require immediate action for resolving imminent risks;
- To monitor and ensure coordination between national supervisors responsible for the respective financial entities, as well as coordination of national supervisors responsible for non-financial entities;
- To facilitate the cooperation between the national financial intelligence units, in particular by establishing reporting standards and information exchange and by promoting joint analyses with an objective of improving the detection of illegal transborder financial flows.

¹⁸ <https://www.coe.int/en/web/moneyval/-/moneyval-carries-out-a-face-to-face-meeting-with-bulgaria>

¹⁹ Proposal [2021/0240\(COD\)](#) of 20 July 2020 for a new Regulation establishing the Authority for Anti-Money Laundering.

It is proposed that the European Authority be established in the beginning of 2021 and starts its supervisory work in the beginning of 2026. The proposal is pending first reading in the European Parliament.

It is clear that the process of centralization of the information will inevitably take the road of centralization at EU level, this being done at national level through a series of transposed European directives during the last several years. This future centralization at European level will enhance even more the control and will reduce the potential deficiencies at national level in a broad spectrum of AML/CFT measures.

This is precisely why this necessary process of centralization of information requires that Member States transpose properly and timely this impressive group of European directives in the area.

It is well known that the European Commission is tasked by the Treaties with the obligation to monitor closely the correct and timely transposition of EU directives at national level, while the CJEU has repeatedly held that Member States have by all means to adopt a specific measure transposing a Directive, if this Directive expressly requires Member States to ensure that their measures transposing the Directive include a reference to it or that such reference is made when they are officially published.²⁰ It should be noted that with the entry into force of the Lisbon Treaty and in particular Article 260(3) TFEU, an accelerated procedure has been introduced for infringement of the Treaties by Member States, with the possibility to directly seize the CJEU with an objective of imposing faster penalties for failure to comply with transposition obligations. In this way the European Commission has acquired an effective means that aims at stimulating Member States to transpose timely and correctly directives in their national legislations, thus ensuring the effective application of EU law.

The CJEU judgments of 6 June 2020 in *Commission v. Ireland*, C-550/18 and *Commission v. Romania*, C-549/18 are a good case in point as regards sanctioning Member States for failure to discharge their obligations to transpose timely and fully a directive, in this case – Fourth Directive 2015/849 on countering money laundering and the financing of terrorism. In each of these judgments reviewed by the Grand Chamber the Court sanctions strictly the

²⁰ See, in this regard judgments of 27 November 1997, *Commission v. Germany*, C 137/96, EU:C:1997:566, s. 8, of 18 December 1997, *Commission v. Spain*, C 360/95, EU:C:1997:624, s. 13 and of 11 June 2015, *Commission v. Poland*, C 29/14, EU:C:2015:379, s. 49.

member States that have failed to transpose in the prescribed time limits Directive 2015/849. Pursuant to the opinion of Advocate General Evgeni Tanchev, the Court imposed a lump sum of EUR 3 million on Romania and a lump sum of EUR 2 million on Ireland. The Court found that both Member States had incurred delays of two years for complying with the European anti-money laundering legislation. The deadline for transposing the said Directive was July 2017, while Romania transposed it in July 2017, and Ireland – in December 2019.

In principle sanctions may be lump sums or penalty payments and may be imposed cumulatively. In this case it is important to underscore that as of expiry of the time limit for transposition, there is an infringement, which is sanctioned in a systemic way by imposing a lump sum, which aims exactly at stimulating the respective Member State to transpose timely subsequent European Directives. As far as penalty payments are concerned, these may be avoided if in the course of the judicial proceedings the European legislation has been transposed at national level and thus the infringement in question has been terminated, as is the case in the cited judgments *Commission v. Ireland*, C-550/18 and *Commission v. Romania*, C-549/18, where no penalty payments were imposed on Ireland and Romania.

The European Union plays an important role in countering the financing of terrorism by imposing individual restrictive measures, which the Council adopts by decisions providing for freezing of assets of natural and legal persons related to terrorist activities or organisations. To this end the different regimes for imposing restrictive measures, as well as the lists of particular natural and legal persons is regularly updated at European level. The purpose is to block terrorist activity by blocking the financial means for conducting it. Member States bear the main responsibility in countering terrorism and radicalization, thus the effective implementation of EU legislation for combating terrorism, including strict enforcement of the imposed restrictive measures in the territory of the EU is a priority.²¹

These restrictive measures are subject to judicial review before the two CJEU jurisdictions (the General Court and the Court) which scrutinize the legality, justification, proportionality and sufficient reasoning of the Council decisions regarding these measures. There are many examples in the extensive

²¹ For example: The Council adopted restrictive measures in relation to ISIL (Daesh) and Al Qaeda, as well as special restrictive measures against specific persons and entities with a view to combating terrorism. See EU sanctions map (<https://www.sanctionsmap.eu/#/main>) for an overview of all restrictive measures.

case-law of the CJEU jurisdictions as regards the EU foreign policy and the international cooperation for eliminating all sources of terrorist financing and for freezing assets in the territory of the EU in the context of combating terrorism.²²

In conclusion, I would like to emphasize that the international seminar held today is part of the fight against money laundering and the financing of terrorism and is a step forward in achieving the important objectives that the EU has set forth. The international cooperation and exchange of knowledge and experience in the framework of this training seminar undoubtedly will help raise awareness, enhance compliance and the correct application of the regulatory framework in this area, which is a promising sign for success! Therefore, I wish all participants in the seminar a fruitful, constructive and enriching work in the name of the big cause to which you have dedicated yourself – protection against the crime of money laundering and the financing of terrorism.

Thank you for your attention.

²² Some of the numerous judgments in this area are: *Yusuf and Al Barakaat International Foundation v. Council of the European Union and Commission of the European Communities*, (T-306/01, EU:T:2005:331) and *Kadi v. Council of the European Union and Commission of the European Communities* (T-315/01, EU:T:2005:332), of 21 September 2005; *Organisation des Modjahedines du peuple d'Iran v Council of the European Union* (T-228/02, EU:T:2006:384), of 12 December 2006; *Sison v Council of the European Union* (T-47/03, not yet published, EU:T:2007:207), of 11 July 2007; *Al Matri v. Council of the European Union*, (T-200/11, non publié, EU:T:2013:275), of 28 May 2013; *Chiboub v. Council of the European Union*, (T-188/11, not yet published, EU:T:2013:274), *Commission and Others v. Kadi* (C 584/10 P, C 593/10 P and C 595/10 P, EU:C:2013:518) of 18 July 2013; *Ben Ali v. Council of the European Union* (T-133/12, not yet published, EU:T:2014:176), of 2 April 2014.