Money Laundering Best Practices, Lessons to be Learnt and Steps to be Taken in the Area of Former Territory of Yugoslavia

BY
Tamara Brnetic

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MONEY LAUNDERING BEST PRACTICES, LESSONS TO BE LEARNT AND STEPS TO BE TAKEN IN THE BALKAN REGION

Written by Tamara Brnetic

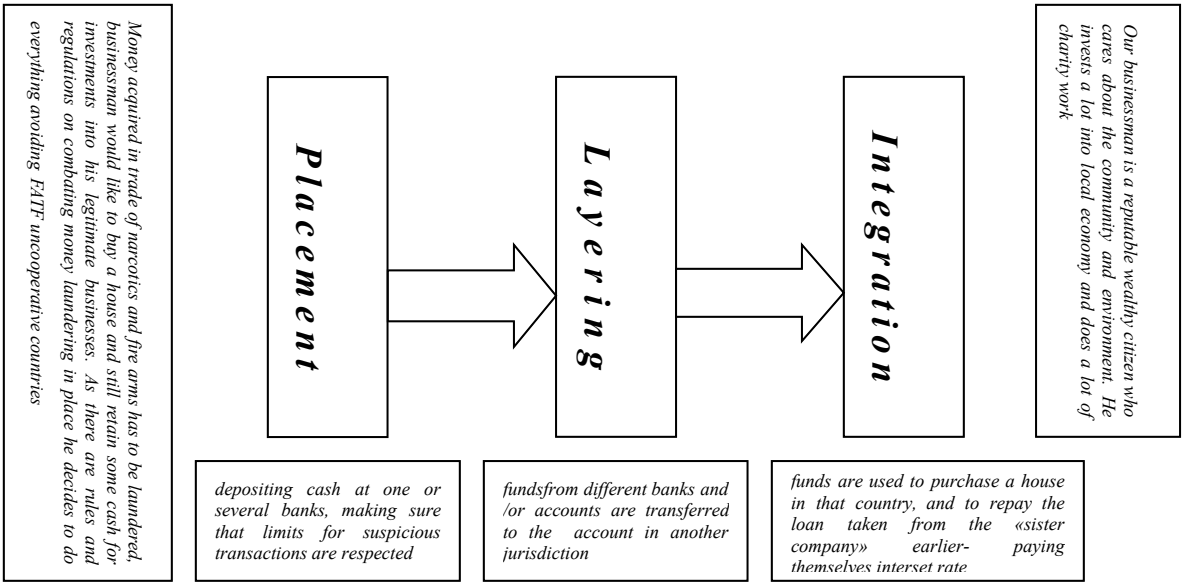
INTRODUCTION

There is a saying that the dream of each and every money launderer is to pay tax, but the road from dirty money to paying taxes is not cheap nor easy. Owners of "dirty money" that was acquired by weapons trade, trafficking of narcotics, robbery, pirating, as well as by blackmailing politicians, want to include this money into the legal system in order to be able to invest it into legal businesses and generate more profit, but this time legally. This is anything but a cheap process. According to recent information criminals are paying up to 25 % of the total amount to "financial expert advisors", and this percentage is constantly rising. In the eighties this service was costing them only 6 %, and in the late nineties it reached 20 %.

Peter Lilley in his book Dirty Dealing, states, among other definitions of dirty money, that it is any asset (financial and/or real property) that draws its origin from illegal activities. As such, money laundering presents a secondary crime, so there has to exist a preceding criminal activity has to take place before laundering of profits.

Money Laundering can be explained as a three phase process: First Phase – Placement - is the physical disposal of the criminal proceeds, such as: depositing cash at a bank and converting it into readily recoverable debt, physically moving cash in between jurisdictions, making loans in cash to businesses that are "legitimate" or are connected to legitimate businesses, purchasing high value goods, expensive services or negotiable assets, placing cash into client accounts etc. Second Phase – Layering – when money gets separated from its criminal source by creation of layers of transactions, such as: rapid switches of funds, use of cash deposits as collateral security in support of legitimate transactions, transferring cash through a network of legitimate and "shell" companies, resale of goods / assets etc.. and Third Phase – Integration – meaning integration of the criminal funds as legitimate ones, for example: false or inflated invoices – paying inflated or deflated invoices, real estate – using shell company to purchase property then sell the company with its assets for a "legal profit", front companies – companies lend themselves dirty money and then pay themselves "interest" on the loan, foreign bank complicity when dirty money is used as a security against legitimate businesses etc…[1]

[1] Bob Blunden, The Money Launderers, page 20



As the UN General Assembly very accurately emphasized in a special session in 1990 "the large financial profits derived from illicit drug trafficking and related criminal activities enable transnational criminal organizations to penetrate, contaminate and corrupt the structure of governments, legitimate commercial activities and societies at all levels, thereby vitiating economic and social development, distorting the process of law and undermining the foundations of states". Moreover, money laundering is often related to the existence and support of terrorist groups, a major problem nowadays that concerns governments worldwide. Any serious attempt to eliminate international terrorism has to prevent and counter-act its financing, associated with illegal activities and sources.

Traditionally money laundering has been viewed as the cleaning of dirty money that is generated by criminal activity. Lack of general knowledge about this topic and the perception of common people who see and perceive it as a “non-serious crime”, benefits this type of criminal activity by creating a gap for criminals to cover up the financial proceeds of their criminal activities, giving them a way for successful integration into daily life.

Profit margins which in today’s world can be very high, and also high demand for expensive services make it much easier for criminals to cover dirty money and integrate it in society as legal profits.

Historically, money laundering became a problem for criminals when their profits from illegal activities became too high to be easily covered and presented as legal returns coming from legal businesses. Lots of small investments that would not attract any attention of the authorities became insufficient.

At the beginning, the problem for criminals experiencing surplus of dirty money that was not possible to spend in daily life was solved by engaging in intense businesses allowing for profits to be included into money circulation on a daily basis. Some of these businesses were launderettes and car washes and today we can follow the theory that this is the origin of the term money laundering, although some authors dispute this origin claiming that the term money laundering comes from the term "need to wash the dirty money". It should be mentioned there are numerous theories about the origin of this term.

The prohibition of use of alcohol in the United States in early 20th century, we might say, was relatively easy to solve in regard to extinction of the need for money laundering. All it took was to legalize consumption of alcohol. Nevertheless, this created an atmosphere and an idea of quick turnover, high, needless to say illegal profits, that had to be covered up. One could argue at this point that the legalization of use of narcotics and official trade in weaponry with private persons would not be so easy, harmless and safe, as legalization of alcohol, given the potential risks. However, combating money laundering at its initial source, before the proceeds of these productions are transformed into money, could be one of techniques for lowering profits for the people involved. That puts us in the eternal debate regarding the difference between rich and poor, and the fact that a high percentage of primary criminal activities, such as growing of opium poppy or recruiting children for prostitution, happen in very poor countries and poor people committing these criminal activities do not see any profits rising from them, in fact, they can barely survive on what they make producing narcotics, pirate copies or selling children.....

Therefore, although this idea should be given full consideration in a way of deciding to which extent some things should be legalized and taxed in order to control sale and abuse (like legalization of use of marijuana in Netherlands, or selling cheaper copyrights for music and videos), one has to have in mind this is not an ideal world. Most of it is run by high profits generated from large investments.

At present, money laundering still does not have a complete and internationally recognized definition and there is also no unique strategy to combat money laundering on a world level. There are several international conventions that are ratified by most countries, and legislations of most of the signatory states are adjusted to fit the recommendations. However, these conventions only provide a good basis for fighting crime. It is up to each country to implement these conventions in daily functioning, which is not always cheap or simple. Globalization and growing difference between rich and poor, i.e. educated, rich and well trained people versus non educated, poor and untrained people, opens a wide highway for all sorts of criminal activities thus creating a huge lump sum to be laundered worldwide.

Lack of legislative measures, reporting structures and penalty systems in some parts of the world allow this lump sum to be laundered smoothly and with minimal risk. Money laundering is a secondary crime in a vast majority of cases (i.e. an initial crime took place previously to this). One should have in mind that all laundered money is a direct result of criminal activity and that it has a devastating effect on the stability of economy, level of corruption, national governments, property rights and human rights. Such proceeds mostly come from: drugs trade – manufacturing of illegal substances on a highly organized and commercial basis -- sales of arms – not excluding sales of nuclear weapons but also small arms; prostitution – the United Nations estimates that over 500.000 women and girls are entrapped in a modern version of slave trade; terrorism – we are facing frequent terrorist activities happening all around the globe where linkages between organized crime and terrorist cells support their operational activities.[2] All these groups need financing for their activities and weapons, corruption - there are number of cases when high ranking politicians after their retirement are accused or found guilty of accepting bribe, fraud – such as for example mortgage fraud, credit card fraud, pyramid schemes (well spread around Balkan region in the 1990), forgery, theft of money, blackmail and extortion, art and antique fraud, smuggling, customs, VATfraud and tax evasion, theft and illegal export of stolen vehicles, trafficking in human beings etc

However, experts agree that the real magnitude of money laundering is significantly underestimated. General Anti Money Laundering Act on a world level should be a key priority for a number of reasons. International standards have to be respected in the relevant countries and

[2] Buscaglia, Edgardo, Samuel Gonzalez-Ruiz, and William Ratliff (2005) Undermining the Foundations of Corruption and Organized Crime. Essays in Public Policy. Hoover Institution. Stanford: Palo Alto

promotion of the rule of law has to be undertaken. Since the proceeds of illegal activities such as corruption, organized prostitution networks and drug trafficking are channeled into the financial system through laundering techniques, making anti-money laundering a priority indirectly helps to combat such activities. Finally, money laundering poses great risks:

- at the country level, since it is a threat to any kind of sustainable development.
- at the financial sector level, because money laundering undermines financial soundness and stability.
- at the bank level, because being a victim of money laundering indicates a lack of research into the client rather than a deficiency of thorough risk assessment. [3]

Unfortunately, due to the lack of blood on their hands like in the case of murderers, narcotic and arm dealers, money launderers are still perceived as guys with sense for making businesses, successful, rich, smart…. The reality still remains the same - most of the times they are reputable citizens and the origin of their wealth has never been investigated or questioned.

WORLD HISTORY OF MONEY LAUNDERING AND MEASURES TAKEN IN PREVENTION

The fight against money laundering has been an essential part of the overall struggle to combat the activities of organized crime, and more recently the financing of terrorist activity. It became apparent over the years that banks and other financial institutions have been an important source of information about money laundering and other financial crimes investigated by law enforcement. Concurrently, governments around the world began to recognize the corrosive dangers that unchecked financial crimes posed to their economic and political systems.

FATF

One of the first organized efforts on a world level to address the problem of money laundering, is the Financial Action Task Force on Money Laundering (FATF). The FATF was set up by the Group of Seven industrialized countries at its Economic Summit in Paris in July 1989. It is an

[3] Peter Lilley, Dirty Dealing 2003

inter-governmental body whose purpose is the development and promotion of policies, to combat money laundering and terrorist financing, both at national and international levels.

The FATF membership is currently made up of 31 countries and territories and 2 regional organisations.

The FATF does not have a tightly defined constitution or an unlimited life span. The Task Force reviews its mission every five years and it will only continue to exist and to perform its function until the member governments agree that this is necessary.

The original FATF Forty Recommendations were drawn up in 1990 as an initiative to combat the misuse of financial systems by persons laundering drug money. In 1996 the Recommendations were revised for the first time. The 1996 Forty Recommendations have been endorsed by more than 130 countries and are the international anti-money laundering standard.

In October 2001 the FATF expanded its mandate to deal with the issue of financing of terrorism, and took the important step of creating the Nine Special Recommendations on Terrorist Financing. These Recommendations contain a set of measures aimed at combating funding of terrorist acts and terrorist organizations, and are complementary to the Forty Recommendations.

These Recommendations set minimum standards for action for countries to implement the detail according to their particular circumstances and constitutional frameworks.

In 2003 FATF issued a revised version of the Recommendations. Major changes to the revised Recommendations include:

• specifying a minimum list of designated categories of predicate crimes for money laundering;
• extending several AML requirements to cover financing of terrorism, including suspicious transaction reporting (STR) requirements;
• introducing risk-based application of customer due diligence (CDD),
• imposing specific conditions and CDD for business and transactions where third parties are relied upon for completing CDD;
• extending required AML/CFT measures,
• including additional key institutional measures,
• prohibiting shell banks; and
• improving transparency of legal persons.

MONEYVAL

Moneyval was formerly known as the Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures (PC-R-EV). Today, it has 27 permanent members, 2 temporary members and 1 active observer. In addition, an important number of countries and organizations have regular observer status[4].

The aim of MONEYVAL is to ensure that states have effective systems in place to counter money laundering and terrorist financing and to comply with the relevant international standards in these fields.

Moneyval mutually evaluates States against all relevant international standards in the legal, financial and law enforcement sectors.

As of June 2006, Moneyval has become an Associate Member to FATF.This status provides an opportunity for more countries within Moneyval to attend and actively participate in FATF meetings as part of the Council of Europe/Moneyval delegation.

EGMONT GROUP

Separate legislations created specialized governmental agencies as countries around the world developed systems to deal with the problem of money laundering. These entities are now commonly referred to as "Financial Intelligence Units" or "FIUs". [5]

Recognising the benefits of a FIU network, in 1995, a group of FIUs at the Egmont Arenberg Palace in Brussels decided to establish an informal group for the stimulation of international co-operation. Now known as the Egmont Group, these FIUs meet regularly to find ways to cooperate in the areas of information exchange, training and sharing of expertise.

There are currently 101 countries with recognized operational FIU units, with others in various stages of development. Countries must go through a formal procedure established by the Egmont Group in order to be recognized as meeting the Egmont Definition of an FIU. The Group as a

[4] www.coe.moneyval
[5] www.egmontgroup.org

whole meets once a year. There is no permanent secretariat, and administrative functions are shared on a rotating basis.

Although initially the focus of the Egmont FIU was essentially on money laundering, FIUs also play an important role in the international effort to combat the financing of terrorism.

Egmont approved the following definition of an FIU in 1996, consequently amended in 2004 to reflect the FIU's role in combating terrorism financing:

A central, national agency responsible for receiving, (and as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information:

1(i) concerning suspected proceeds of crime and potential financing of terrorism, or
2(ii) required by national legislation or regulation,
in order to combat money laundering and terrorism financing[6].

According to the Statement of Purpose of the Egmont Group, the Financial Intelligence Units (FIUs) participating in the Egmont Group resolve to encourage co-operation among and between them in the interest of combating money laundering and terrorism financing.

MONEY LAUNDERING SITUATION IN THE TERRITORY OF FORMER YUGOSLAVIA BEFORE THE WAR IN 1990

Lack of legislation on all levels and general perception of the population that money laundering is a joke happening somewhere else, along with other contributing factors like the existence of a black market of convertible currencies, low or easy avoidable property tax, out of date cadastral and property books, regularly high inflation, beneficial loans which were in the long run eaten by inflation, as well as many other factors, contributed to somehow unique position for the states created after the fall of former Yugoslavia, and wars between former republics in the early nineties.

Before 1990 there was hardly any regulation regarding money laundering in the banking system of former Yugoslavia. Private international transfers were not possible, i.e. the banking system operated in a way that it prevented individuals from transferring money abroad for private

[6] www.egmontgroup.org

purchases. There were import/export and forwarding companies that were licensed for imports of goods and individuals who for some reason did not want to use them were to carry cash abroad and pay for goods in cash. Banks, complying with the policy at the time, only investigated private deposits and transfers upon the request of the Secretariat of Interior (Ministry of Interior)[7]. Although there were quite strict rules about carrying cash abroad, as one had to have a bank certificate proving that the money he is carrying was previously deposited in the bank, origin of the money on the account was of virtually no importance.

The Former state of Yugoslavia declared all non-resident bank accounts of Yugoslavian citizens who were not working or residing abroad illegal. Unfortunately, even nearby countries did not have the legislation which would favor the efforts of the Yugoslav government. It was possible to open bank accounts in any country by depositing cash, in some countries even using the so called locked accounts. For example in Austria there was an option of so called sparbuch – an account locked with a password which did not require any details of the account holder to be presented to the bank[8]. At the time this was only one of the very popular ways of saving your money abroad from former Yugoslavia....

A large percentage of the population was paid in cash which would to some extent in a later stage be deposited in banks in domestic or foreign currency. There was a well developed black market of foreign convertible currencies which, was blooming during the tourist season. This brings us to the paradox that it was perfectly legal to have bank accounts opened in any convertible currency, but it was illegal to trade in any currency but Yugoslav Dinars, and over and above when depositing money into the bank one was not obliged to justify the origin of the money (foreign currency).

As just one more of the important contributing factors we can follow the parallel economy, going on after official working hours, in which goods and services were paid for exclusively in cash with no invoices issued, that went on for decades fully untaxed or registered.

Topping it up was the opinion and the perception of the large percentage of the population that public goods, state goods and all common use goods were nobody's and that there was always someone else to pay for the damage, disinvestments, stolen construction materials etc. As well, getting few shortcuts here and there by helping and being helped by friends is not an offence, as

[7] Information received from several banks in Croatia, however there are no documents confirming this information.
[8] David Southwell, Dirty Cash, Organised Crime in the 21st Century

long as the burden was carried by general public, or, as perceived, by nobody in particular (somebody else).

Contemplating on this, one cannot miss that the corruption levels were very high in former Yugoslavia. Also, as it was an one party system there were little regional gods that were allowed to tailor the local economic investments, spatial plans, education etc in accordance with their own ideas, needs, interests, and give beneficial contracts to "friendly companies". These officials, who were willing to assist the good people with their problems for voluntary contributions, had no problem depositing the same contributions into banks with no unpleasant questions being asked.

All these were, and still are, some of the possibilities for money laundering that create significant navigating space for a successful, what we might call a "moderate size" money launderer. Unfortunately with the collapse of socialism, i.e. planned economy, and transition to market economy during the time of war there was, and still is, a big black hole opened in privatization process which has been ongoing for the last 13 years, and will still be a very dubious area not only in former Yugoslav republics but in all former eastern block countries for many years to come. Transition is beneficial not only for money launderers but for any criminal with cash intensive business who is looking for a quick way to become a legal and reputable citizen. In almost all countries created after the fall of Yugoslavia there were numerous privatization audits with very limited findings. Only in Croatia we are still facing scandals about privatization of hotels and companies that were sold for decreased value and very few of them continued operating. In most of the cases workers were fired and assets of the company were sold with high profits. Such situation significantly ruined the production part of the economy and created high unemployment of middle-aged workers which was, and still is, an additional burden for social services.

MONEY LAUNDERING SITUATION IN CROATIA

Republic of Croatia is positioned on the west part of the Balkan Peninsula and is a part of the so called "Balkan route". The country's economy was devastated during the war with large number of factories remaining on the occupied territory. Large part of Croatian border lines are so called soft borders with former Yugoslav republics, which provides a wide range of opportunities to "entrepreneurs". There is also a long sea border with 5 international cargo ports, which puts Croatia in a position open to world smuggling chains.

Croatia has a preventive system established in a way to minimize the risk of use of credit and the financial sector for the purposes of money laundering. The core of this strategy is the Law on Prevention of Money Laundering which was promulgated on 1 November 1997 and the Rulebook which elaborates in detail some of the obligations from this Law and was brought to force on 15 November 1997. Last changes and additions to the Law were brought to force on 1 August 2003 and have been in application since 1 January 2004. Both of these documents were drafted in accordance with the guidance of Council of Europe and FATF.[9]

The Law on Prevention of Money Laundering has a preventive character as it prescribes the measures and actions in banking and financial sectors that are to be undertaken in order to discover and prevent money laundering, as well as to prevent financing of terrorism. Furthermore, the same Law prescribes actions of the Office for Prevention of Money Laundering in discovering or suspicious transactions which aim to cover up the origin of the money, property or rights for which there is a well founded suspicion that they have been acquired in an illegal way, within the country or abroad.

Law on Prevention of Money Laundering lists bodies bounded by law for the implementation of reporting suspicious transactions. The Law defines those subjects to the legal framework as legal and physical persons as follows: banks and saving offices, saving and credit associations, investment funds and associations for managing of investment funds, retirement funds and associations for managing of retirement funds, Financial Agency and Croatian Mail Service, Croatian Privatization Fund, insurance companies, stock exchanges and other legal persons authorized to deal with shares, authorized exchange offices, pawnshops, lottery, casinos, booking offices and all above listed that have branches abroad in countries where standards for prevention of money laundering are not implemented[10].

Additionally, the Law lists other legal persons, such as salesmen individuals, craftsmen and physical persons dealing with receiving and dispatching financial means, sale and purchase of claims and liabilities and managing of properties of third persons, involved in issuing of debit and credit cards, leasing, organization of trips, auctioneers, real-estate agents, art and antiques salesmen involved in trade of precious metals and gems, as bounded bodies.

[9] Sonja Cindori, Sustav spriječavanja pranja novca, 2004
[10] Art 2 of the Law on Prevention of Money Laundering

Additional improvement of the Law lies in the expansion of this list to lawyers and lawyers' associations, public notaries, audit companies, authorized auditors, authorized accountants and tax advisors. It should be mentioned at this stage that lawyers, lawyers' association and public notaries are obliged to report on suspicious transactions to the Office on Prevention of Money Laundering only in the case when they are performing financial or property transactions[11].

The Law forbids opening and possession of anonymous accounts. It is mandatory to establish the identity of the client when opening any kind of bank account or:

- At each transaction made in cash, foreign currency, shares, precious metals or gems in cases when total value of transaction exceeds HRK 105.000,
- When performing linked financial transactions that in total amount value of HRK 105.000 or more,
- Insurance companies are obliged to identify customer on matters of life insurances if the total annual amount of premium exceeds HRK 40.000,
- At all other cash or property transactions where a suspicion of money laundering exists.

Additional change in the Law is that when establishing a business relationship of a more permanent nature, the party has to provide a statement specifying the owner of the legal person and list of the Executive Board in order to establish the identity of the real owner.

In year 2005 in Croatia there were 282 cases of Money Laundering amounting to suspected "laundering" of 100 million EUR or 740 million HRK. Additionally there were 4.2 million HRK of suspicious transactions blocked by banks, and 70 cases were reported to the competent authorities. For the last 9 years of existence of the Office for Prevention of Money Laundering there have been 2 omnipotent sentences for Money Laundering.

The Office, in cooperation with some foreign Offices, was also involved in discovering a part of the chain of international mafia wanted by Interpol, in which transactions amounted to 13.5 million dollars.Up to 2 million dollars were transferred through non resident bank accounts of an off-shore company, 5 million euros in the case of additional capitalization of the financial institutions by the foreign investors, 2.5 million dollars from drugs trafficking and 4 million dollars from cigarette smuggling. Additionally, five bank accounts of suspected terrorists were frozen by the office.

[11] Art 9a of the Law on Prevention of Money Laundering

In a well known case which took place in 2001 when husband and wife Kalebic were sentenced, and their property, including business premises, apartment, construction site, money and loans that were financed by the abuse of narcotics, seized. They received long imprisonment sentences, Zeljko Kalebic 20 years, Vedrana Kalebic 14 years and Vedrana's brother who sold narcotics 8 years[12].

Recently, one of the major drug dealers on the island of Korcula was arrested after a 7 month chase. As a result of the investigation, lawyer Ana Virmisa was taken into custody. It was published that she was involved in money laundering for the organization of Jaksa Cvitanovic Cvik and that in three years that group laundered cca HRK 10.000.000,00 mostly coming from selling heroin on the island of Korcula. According to the statement of the prime suspect, they purchased vehicles and real estates. Official investigation is still ongoing, but it is very discouraging to know that profits can be so high, having in mind that this amount was earned on one island of 279 square kilometers with approximately 16.500 inhabitants[13].

On 1 March 2006, US State Department published the annual report on world strategy for controlling narcotics. This report does not classify Croatia as one of the financial centers for money laundering in the region.

They find the appearance of Money Laundering in Croatia mostly in the area of tax evasion, fraud in privatization and drug trafficking coming from so called "Balkan Route" going to West Europe. State Department finds legislation in Croatia in compliance with international rules and standards but also finds the number of arrests and court cases insufficient, thus, lacking implementation.[14]

COMPLIANCE OF CROATIAN LEGISLATION AND PRACTICE WITH FATF RECOMMANDATIONS

Since the first version of the Law on Prevention of Money Laundering in 1997 and the beginning of organized efforts to prevent money laundering, Croatia made important improvements and promoted combating money laundering as one of the important steps in stabilising local economy and combating organised crime, realising the importance of preventing money laundering in a

[12] Slobodna Dalmacija, 22 December 2000, Kronika 92
[13] Slobodna Dalmacija, 7 June2006, Kronika 92, www.mup.hr/1805.aspx
[14] www.voanews.com/croatian/archive/2004-03/a-2004-03-'2-15-1.cfm

global picture and benefits to come from it in the long run. However, as we shall see, there always was and still is great room for improvement in several areas, one of them being the implementation of FATF Recommendations in the field. As we have already explained, the FATF Recommendation should be minimal standards implemented, so comparing them with the standards in Croatia should help one to get a clear picture of the work ahead.

Among many other important steps taken so far, Croatia also ratified United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention).

Last amendments to the Law on Prevention of Money Laundering promulgated on 1 January 2004 significantly expanded the list of predicate offences, adopting the all crimes approach.

Money Laundering in Croatia is prosecuted pursuant to Article 279 of the Criminal Law. Para 1 defines the criminalisation of money laundering as using money for which the individual knows is profit from illegal activities as the basis for the conviction for money laundering varying from six months to five years. Penalty for group members or members of criminal organizations is imprisonment from one to ten years. Only in the cases of Money Laundering out of negligence the Law foresees the penalty from three months to three years.

Article 14 of the Criminal Law regulates the issue of predicate offences (any criminal acts) being committed abroad by Croatian citizens and/or foreigners against Republic of Croatia, any other state, Croatian citizens and/or any other person defining them as criminal acts liable for criminal prosecution. In this part Croatian legislation fully complies with FATF Recommendation No1.

In Croatian legislation, sentencing a perpetrator for predicate offence does not exclude sentencing for the offence of money laundering as provided for in this recommendation.

Croatia ratified the Vienna and Palermo conventions and implemented the recommended standards regarding the intention and knowledge needed to prove the criminal act of money laundering and included in the Art 279 of the Criminal Law that intention and knowledge are some of the prerequisites needed to prove the criminal act of money laundering. The Law on Criminal Liability of Legal Persons regulates the application of Criminal Law, Law on Criminal

Proceedings and Law on Office for Prevention of Corruption and Organised Crime on legal persons. The Law on Prevention of Money Laundering in Art 4 and 5 describes the identification of the party, including legal persons.

Croatian legislation fully complies with FATF Recommendation No. 3. Criminal Law in Articles 82 and 279 regulates actions undertaken in order to confiscate, seize and/or freeze illegally acquired property and assets. According to the Law, nobody can retain benefit that he acquired by criminal act. Furthermore, the Law entitles the court to establish the value of the illegally acquired benefits during the court proceedings and to decide on the confiscation at the same time when sentencing an individual for committing a criminal act. The Law also regulates the benefits that will be confiscated from a third party if the party knew or was obliged to know that these benefits were proceeds of the criminal act, but at the same time it respects bona fide rights of the third party. Also, the Law regulates cases when there is no possibility to confiscate in full the illegally acquired benefits and entitles the court to oblige the perpetrator to reimburse a certain amount of money. Also the Law in Art 279 reiterates that all property acquired in money laundering will be confiscated and rights will be void. Croatian legislation requires criminal sentence (verdict) in order to provide grounds for confiscation of illegally acquired property.

Croatian legislation fully complies with FATF Recommendation No 4 and, according to the information from several financial institutions, the same recommendation is fully implemented. Art 15 of the Law on Prevention of Money Laundering provides for the confidentiality of all information gathered on the basis of this law, classifying them as confidential and allowing for them to be used only as prescribed, i.e. only for prevention of money laundering or criminal action linked with it. Also, Para 2 of the same article explicitly regulates that submission of the data to the Office on the basis of this Law will not be considered breach of bank, or any other secrecy. Art 98 of the Law on Banks determines that bank secrecy is not in breach in case data is necessary for the establishment of facts in criminal or investigative proceedings and defines the appropriate procedure for obtaining the same. The same article also regulates informing of the Office for Prevention of Money Laundering.

Croatia partially complies with FATF Recommendation No 5. To a certain extent, in-depth analysis recommended by FATF is included in the basic analysis required by Article 4 of the Law on Prevention of Money Laundering.

Croatian Law does not allow anonymous accounts or fictitious names accounts..

Prescribed analysis is performed by the financial institution on the occasion of opening of any kind of bank account or at the time of establishing any kind of business relationship of a more permanent nature. Identity is also established when the value of an individual transaction or more linked transactions in cash, foreign currency, shares, precious metals or gems exceed the amount of HRK 105.000 (EUR 15.000). In the case of life insurance the identity of the party has to be established when annual premium exceeds HRK 40.000. Over and above, the party has to be identified every time there is a suspicion of money laundering.

The Law on Prevention of Money Laundering does not provide for the in-depth analysis of the party by the financial institution when the transaction is suspected to be money laundering, but in Art 8 Para 3 it regulates that such transaction has to be reported to the Office for Prevention of Money Laundering for further investigation. The Office has to be notified by any means before the transaction is executed or within 24 hours since its completion the latest. Within three days the financial institution has to report about such transactions in writing.

Art 5 of the Law includes part of the in-depth analysis that is required, including establishment of the identity of the party on the basis of an ID card, passport or other valid public document containing information about the name and family name, permanent or residential address, registry number or date of birth and data on the document on the basis of which the identity of the party has been established.

Para 2 – 6 of Art 5 of the Law and Art 5 of the Rulebook on Implementation of the Law regulate requirements regarding the establishment of the identity of the real owner of the legal person. It is also required for a legal person to submit the list of Board members and statement of ownership to the financial institution when opening an account or establishing a business relationship. Requested statement has to contain: title of the party, information on the submitter of the statement, information on the real owner, physical person and list of Board Members for legal persons.

However, the Law does not provide for collecting information on the nature of business relations, and permanent monitoring of transactions performed during this relationship is left to be the decision of the financial institution.

Law on Prevention of Money Laundering or the Rulebook on the Implementation of the Law do not foresee any more specific in-depth analysis when suspecting the data on the identity of the party, but banks are entitled to refuse to open an account in that case.

Art 7 of the Law on Prevention of Money Laundering provides legal basis for the refusal of performing transactions by the financial institution listing following reasons: inability of establishing information on transaction, data on recipient and sender: title, central office, registry number of the legal person, name and family name, address, ID no or date of birth for physical persons, purpose of transaction, data on transaction, transferred amount, currency in which transaction is done.

Apart from partial compliance on in-depth analysis of the party on which we already commented in Recommendation 5, Croatian Law does not foresee any kind of risk estimates, as required in FATF Recommendation No 6. Financial institutions are not required any kind of approval for establishing a business relationship with politically exposed parties.

Also, politicians, as well as any other citizens, are required to submit annual tax cards. So far there were only sporadic cases of checking of this submissions and investigating on the origin of the property.

The only additional means of controlling high ranking public officials are property cards submitted at the beginning and at the end of their mandate. However, so far, neither of these have been taken very seriously, as we can follow many discrepancies that are obviously of no concern to Croatian authorities and public. The most exposed case happened in 2006 when several journals and newspapers started counting the watches belonging to the Prime Minister Ivo Sanader, whose value exceeded 150.000,00 EUR. The collection includes some of the finest pieces exceeding the value of EUR 20.000,00, although most of them are valued around EUR 10.000,00 (among them are: Cartier, Rolex, Blancpain, IWC, Roger Dubuis and other). Mr.

Sanader explained that he did not know how to fill in the property card, but until now there is no official explanation on their origin[15].

Taking everything into account, it should be said that although Croatian legislation provides for partial compliance with FATF Recommendation No 6, there is great room for improvement in this field.

Croatia does not have anything included in the Law on Prevention of Money Laundering or any other way to regulate the requirements set out in FATF Recommendation No 7. According to recent information, it is included in the draft of the new Law that will be send for first reading before the Parliament in early 2008. At this time, all subjects are passing the same identification requirements by financial institutions and the same rules are applied for reporting suspicious transactions to the Office for Prevention of Money Laundering, which then initiates appropriate detailed in-depth investigation of the subject on an "as needed" basis.

Furthermore, Croatian Legislation does not regulate in any way any of the requirements from the FATF Recommendations No 8 and 9. In depth analysis is expected to be included in the new Law on Prevention of Money Laundering.

On the basis of Art 16 of the Law on Prevention of Money Laundering and in compliance with Recommendation No 10, all bodies bound by law have to store data gained on the basis of this Law, and documentation on the basis of which the transaction was completed for at least five years from the day of its completion, even more from the last of several linked transactions unless it is otherwise foreseen by the Law. Additionally, the same article regulates the storing of information on the party with whom the body bound by law (subject) had a business relationship of a more permanent nature and requires storing of information for at least five years.

The Law in Articles 8 and 11 defines the Office for Prevention of Money Laundering as the competent body authorised to request any data on the transaction from the subject of the law.

[15] *Glas Istre, 11. siječanj 2007*
http://www.mojevijesti.com/story/1931/title/Pingpong-oko-Sanaderovih-satova-u-Otvorenom

The last amendments of the Law on Prevention of Money Laundering in year 2003 provide for the obligation of reporting to the Office for Prevention of Money Laundering in cases when the transaction that the subject performed amounted to HRK 200.000 or more but only for two types of transactions:

- Transactions in cash, foreign currency, bonds, precious metals and gems (in the amount of HRK 105.000 or more), as well as for the linked transactions (that added exceed HRK 105.000). Namely, the limit for the identification remains HRK 105.000. However the body bound by law (subject) will register the information on all transactions that exceed HRK 105.000 in his archives, that will be available upon request from the Office for Prevention of Money Laundering, but will not automatically inform the Office about them.

- In addition, the Office has to be informed by the Insurance Companies about all transactions concerning life insurance, in case the annual premium exceeds 40.000 HRK. However, in case there is suspicion on money laundering, the Office has to be notified about any transaction with no regard to the amount transferred.

On the request of the Office for Prevention of Money Laundering a financial institution is obliged to provide all stored information on the party.

As Croatian legislation did not foresee in depth analysis of the non financial sector there are no specific rules and regulations in accordance with FATF Regulation No 12. All bodies bound by law are obliged to maintain and store their records as in Recommendation No 10. The Law does not require from casinos, real estate agencies, traders of precious metals and gems and lawyers, public notaries, other independent legal professionals, accountants and trusts anything different in in-depth analysis and storing of data from any other financial institution.

In accordance with the FATF Recommendation No 13 in case a financial institution has founded suspicion on the origin of the finances as coming form illegal activities or they can be connected with financing of terrorism it is included in the Art 8 of the Law on Prevention of Money Laundering and Art 13 of the Rulebook on its implementation that each body bound by law

(subject) must inform the Office before they actually perform the transaction about the time when it will take place. They are obliged to pass the written notification within three days in case they informed the office by phone. Note on the transaction has to be written and registered in case of verbal notification. However, in case that the body bound by law (subject) is not in the position to inform the office in time, due to the nature of the transaction, it is obliged to do the same within 24 hours after the transaction was completed at latest. Art 11 also foresees that state bodies, local self governance and other legal persons with public authorities are obliged to submit data needed for discovering of money laundering to the Office.

Croatian Law on Prevention of Money Laundering does not explicitly say that Financial Institutions and their employees are protected from civil and criminal liability for breach of the limitations of disclosing argument determined in the contract when they are bona fide informing the Office as requested in Recommendation No 14., as it says they are obliged to inform the Office in cases already prescribed and whenever they suspect money laundering activity. The Law in Chapter IV also provides for the confidentiality of the collected information.

Subjects of the Law are obliged to finance regular and permanent education of their employees in accordance with FATF Recommendation 15 and as foreseen in the Rulebook on Implementation of the Law on Prevention of Money Laundering. Also, the financial institution is obliged to inform and educate its employees in new techniques of performing transactions and about ways of notifying the Office. The Rulebook also determines in Art 19 that financial institutions are obliged to perform internal audit on the implementation of the Law.

Croatian Law does not prescribe any special standards in employment in order to secure high standards. As put forward in Art 16 of the Rulebook, requirements are set only for the profile of the person dealing with money laundering examinations. The Rulebook is not clear whether the same standards should be applied to the two deputies. The requirements are set to: Croatian citizenship, clear of criminal investigation or prosecution, three years of experience in relevant work field, knowledge in business of financial institutions, relevant education. In para 2 of the same Article the Rulebook leaves space for the financial institution to set up its own additional rules.

Croatian Law on Prevention of Money Laundering pursuant to FATF Recommendation No 16 in Art 9a regulates the reporting by lawyers, law companies, public notaries, audit firms, authorised auditors, legal or physical accountants or tax advisors, stating they are obliged to inform the office in a prescribed way in case they suspect money laundering activity. Para 2 of the same article regulates reporting by lawyers and Legal firms in cases when they are representing a client in the court stating clearly they are excluded from this obligation in this case... All others listed are obliged to report to the office when suspecting money laundering activity while performing their job. Nevertheless, all of the listed will report to the office in case they are asked for advice regarding money laundering.

Everybody else, including traders of precious stones and trusts in Croatia, is treated as regular obligatories and has the same duties and obligations.

The penalty prescribed for subjects for disrespecting the Law in accordance with FATF Recommendation No 17 and pursuant to Art 18 of the Law, are administrative, and vary from HRK 10.000 to 100.000 in case the subject;

- does not establish the identity of the party in accordance with Art 4 and 5 of the Law,
- does not collect data on the transaction in accordance with the Art 6 of the Law,
- does not check on the Power of Attorney pursuant to Art 7 of the Law and,
- fails to inform the office within the timeframe prescribed.

Penalty for the responsible individual in a legal person who does not establish the identity of the party varies from HRK 5.000 to 30.000, and in case the value of transaction exceeds HRK 1.000.000, subject will be fined with HRK 50.000 to 300.000, and responsible individual in legal person with a fine of HRK 10.000 to 50.000.

In Art 19 the Law foresees fines for subjects who complete transactions contrary to the instruction from the Office from HRK 10.000 to 100.000, and fines for responsible individual from legal person from HRK 5.000 to 30.000 for the same offence.

The Law also foresees higher fines in case the amount of the transaction exceeds HRK 1.000.000. Fines for improper storing and recording of information on the transactions vary from HRK 5.000 to 100.00 as prescribed in Art 20 of this Law. Taking into consideration that average salary in Croatia is HRK 4.200 one sees these fines as high enough. Unfortunately, there is no public data about the number of cases when these fees were applied.

Croatian legislation does not regulate in any way business relationships with shell banks. According to announcements, it might be included in the new Law on Prevention of Money Laundering.

Pursuant to Recommendation No 19, Article 8 of the Law on Prevention of Money Laundering regulates that the obligatory will identify the party and provide the Office for Prevention of Money Laundering with all information prescribed in Articles 5 and 6 within three days from the time of the transaction, for all transactions from Article 4 para 2 and 3, in case if the value of the transaction exceeded HRK 200.000, as well as if an annual fee of life insurance exceeds HRK 40.000. It should be mentioned that subjects are binded by law to establish the identity of the party in case the transaction amount exceeds HRK 105.000 but have no obligation to inform the Office unless they suspect that the transaction is money laundering. Office for Prevention of Money Laundering has a databank of suspicious transactions for its internal use.

Article 9a of the Croatian Law on Prevention of Money Laundering regulates the application of FATF Recommendations on the following non financial sectors: attorneys, law firms, public notaries, audit companies, authorised auditors, legal or physical persons doing accounting or tax consultancy which are perceived as likely to be involved in or informed about money laundering. It is foreseen that attorneys, law firms and public notaries are obliged to report to the Office on a regular basis whenever they are performing a financial transaction or any other property transaction in case there is suspicion of money laundering, except in the cases when they are representing a party. Audit company, authorised auditor, legal or physical persons doing accounting or tax consultancy are obliged to report to the Office whenever in performing their

duties they suspect that transaction was money laundering activity. The Law does not include any other non financial sectors as its subjects.

All bodies bound by law are obliged to inform the Office in case they are ever asked advice on performing money laundering. The Law unfortunately does not foresee any support for development of modern and secure techniques of financial management that are money laundering-safe.

Croatian Law does not have a developed strategy or request any specific or additional attention for transactions performed with countries which are uncooperative or do not apply FATF recommendations. These transactions are treated as any other and, in case the financial subjects do not find them suspicious for money laundering, they are completed without any additional analysis.

Requests set up in the Recommendation 22 are regulated by Art 2 Para 2 of the Law on Prevention of Money Laundering, which explicitly states that all subjects listed in Para 1 of the same article, who have branches and sub offices abroad, or are major shareholders or owners of foreign companies in the countries which do not have standards for prevention of money laundering in force, are obliged to implement measures foreseen by this law, except when they are in breach of laws or regulations of countries concerned.

Supervision of financial institutions, as required in Recommendation 23, according to Art 21a of the Croatian Law on Prevention of Money Laundering is implemented by two bodies:

- Croatian National Bank
- HANFA Croatian Agency for Financial Services

HANFA is composed of three entities: Commission for shares, Agency for Supervision of Retirement Funds and Direction for Supervision of Insurance Companies

The supervisory body of the Ministry of Finance and the Office supervise all subjects they are responsible for. Croatian legislation in the Law on Foreign Currency regulates licensing and

registration of Exchange Offices. The Law does not prescribe licensing and registration for other financial institutions.

In spite of the requests set forth in Recommendation 24, Croatian Legislation does not see casinos as a specific subject that would need a separate and more rigid regulatory system and treats them regularly. As such, they have the same duties and obligations on reporting suspicious transactions as banks, as set forth in Art 2 of the Law on Prevention of Money Laundering.

Croatian Office for Prevention of Money Laundering is not compelled by Law to provide information feedback to any financial institution or designated non-financial business or profession on reported suspicious transactions. However, in the past few years, on its own initiative, the Office has provided such information on reported transactions to banks. Still, it has not been happening on a regular basis and can not be observed as a trend.

The Rulebook on the Implementation of the Law in Art 12 Para 2 regulates the obligation of the Office to compile a list of indicators for recognizing suspicious transactions. There are four sets of guidelines as follows: banking sector, lawyers and accountants, casinos and exchange offices.

In accordance with Recommendation No 26, which regulates establishment of the Finance Intelligence Unit, Republic of Croatia established the Office for Prevention of Money Laundering. The Office operates within the Ministry of Finance, Financial Police. It collects, processes, analyses and stores data received from obligatories, and provides the information to the relevant authorities, which the Office uses to undertake measures for prevention of money laundering. The Office, Financial Police and Ministry of Internal Affairs work together very closely in the implementation of measures for prevention of money laundering.[16]

The Office for Prevention of Money Laundering has direct access to the tax authorities, but according to the information from the Office, this access is not used very frequently. In its investigations, the Office, more often explores indirect approaches.

[16] Art 3 of the Law on Prevention of Money Laundering

Pursuant to Recommendation No 27, Croatian Law foresees the Ministry of Interior, i.e. the police, as the body that will, along with their other duties, also conduct investigations on money laundering and financing of terrorism. However, Croatian Law does not foresee any special investigative techniques for these criminal acts apart from the techniques already available to the police. There is no additional public information on investigative techniques in Croatia.

As already explained in Recommendation No 27, the police, i.e. Ministry of Interior, as an investigative body, uses the State Attorneys Office in order to gain any information required for the investigation. That includes acquiring documents and information needed in their investigations, as well as for the criminal prosecutions or similar activities.

In accordance with Recommendation No 29, Croatian Legislation in Art 21a of the Law on Prevention of Money Laundering defines relevant bodies for the supervision of subjects bound by Law as follows: Croatian National Bank, and Croatian Agency for Financial Transactions(HANFA). Article 19 of the Rulebook on the Implementation of the Law explicitly states that at least once a year subjects are obliged to perform internal audit on the implementation of the Law and inform in writing the authorized person and the Office. External control is within the competence of the Croatian National Bank, as it isdefined in the Law as the relevant state body.

Croatian Legislation does not provide for compliance with FATF Recommendation No 30. However, the state has set up a set of employment standards used for recruiting into state bodies, but unfortunately there are no special standards for bodies involved with prevention of money laundering. As well, the law does not foresee any check of the moral and integrity of employees.

The Law on Prevention of Money Laundering and the Rulebook on its Implementation do not regulate or in any way guide the cooperation of bodies engaged in the prevention of Money Laundering, so one can say there is no compliance with Recommendation No 31. However, according to unofficial information from the Office, they cooperate through the Office.

Croatian Law provides for full compliance with Recommendation No 32 by arranging for the Office for Prevention of Money Laundering to, as a supervisory body, gain all information and maintain statistical analysis on issues relevant to the efficiency of these systems. This recommendation is fully implemented.

Legislation in Croatia is very liberal regarding requirements set forth in Recommendation No 33. As required by Art 3 of the Law and Art 5 of the Rulebook on the Implementationof the Law, it is sufficient to present a written statement on the real owner to the financial institution. Furthermore, in case it is impossible to establish the identity of the real owner (physical person) in accordance with Para 4 of Art 4 of the Law, subject will accept a written statement in which the legal person is stated as the real owner (legal person which is registered in countries that implement international standards in prevention of Money Laundering). However, the Law does not specify countries which are implementing standards on prevention of money laundering in a satisfying manner and does not regulate whose list of countries will be taken as relevant. One can assume it will be the FATF list of uncooperative countries but subject is not officially compelled to use it by law.

There is no legislation regulating requirements set forth in FATF Recommendation No 34 in Croatia.

Croatia ratified all conventions listed in Recommendation No 35 and is working on their full implementation.

The Croatian Law on Prevention of Money Laundering is very general when defining issues about international cooperation. Article 14 of the Law on Prevention of Money Laundering clearly states that the Office for Prevention of Money Laundering is the relevant body in charge of the information exchange with its counterparts from other countries and international organizations that deal with money laundering, but it also states that this cooperation is based on

the condition of reciprocity. Croatian Office in its work cooperates and exchanges information with Slovenia, Italy, USA, Belgium, Austria, Hungary, Switzerland, Great Britain, Czech Republic, Cyprus, Bulgaria, Germany, Denmark, Ireland, Luxembourg, Panama, Turkey, France, Canada, Netherlands, Chile, Bahamas, Spain, Sweden, Liechtenstein, Monaco, Mexico, Russia, Malta, Thailand, Romania, Bolivia, Poland, Argentina, Portugal, Finland, Greece, Slovakia, Australia, Isle of Man, Virgin Islands and Brazil.[17]

In accordance with recommendations by FATF and Egmont Group, the Office has so far signed the Memorandums of Understanding with offices from Slovenia, Belgium, Italy, Czech Republic, Panama, Latvia, Former Yugoslav Republic of Macedonia, Lebanon, Israel, Bulgaria and Romania. At the moment MOUs are being signed with USA, Australia, Liechtenstein, Cyprus, Poland, Hungary, Austria, Canada, Sweden, Spain and Brazil[18].

According to unofficial information from the Office for Prevention of Money Laundering, all requests for international cooperation were appropriately answered in the best interest of prevention of money laundering, although the Office was not compelled to do it by law. So, even if one could say that Croatian legislation does not provide for the full and absolute compliance with Recommendation 36 in its work, the Office fully complies with the requests.

As already explained in Recommendation 36, Croatian Law is very general when regulating international cooperation, stating only that it is done on the basis of reciprocity and bilateral agreements. However, as explained before the Office for Prevention of Money Laundering maintains good cooperation with numerous counterpartying offices and, notwithstanding the existence of dual criminality, it provides legal assistance.

As requested in Recommendation No 38, Croatian Criminal Law establishes the State Attorney's Office as a body that will, on the request of the Office for Prevention of Money Laundering, promptly establish, cease, deprive and confiscate laundered property, profits from money laundering or predicate criminal offences or means that were supposed to be used in committing this criminal act or property in corresponding value. Requests for assistance coming from foreign

[17] Sonja Cindori, Sustav spriječavanja pranja novca, 2004
[18] Sonja Cindori, Sustav spriječavanja pranja novca, 2004

countries have to pass prescribed state protocol procedure, which to some extent depends on the bilateral agreement signed with the respective country. There are no public records on this matter but, as already said, according to the impression from several interviews with state officials from the Office for Prevention of Money Laundering, all international requests were appropriately answered.

Croatian Law on Prevention of Money Laundering does not regulate extradition for this particular criminal act. However, the Law on Criminal Proceedings, as requested in Recommendation 39, Article 19, Para 5 authorizes County Courts as competent bodies to decide on the extradition of accused and convicted persons unless the Law says it lies within the competence of the Supreme Court of Croatia. Chapters XXX and XXXI of the same Law regulate proceedings for providing international assistance and execution of international contracts in criminal matters and proceedings for the extradition of accused and convicted persons.....

Croatian Law is not very precise in defining international cooperation rules and regulations. It does not mention the tax aspect of the request, and it also does not regulate the adequate foreign body which is supposed to initiate the request for investigation. Nevertheless, according to the impression given in several interviews and publications of officials from the Croatian Office for Prevention of Money Laundering, all requests for international cooperation were answered. Data from police regarding the investigation initiated on the request of foreign states is confidential. According to some announcements, the question of international cooperation will be addressed in the new Law on Prevention of Money Laundering that is still in draft.

Croatian legislation partially complies with Special Recommendation I. Since its foundation in 1991 Croatia took over or ratified and took steps in implementation of the UN Convention on Prevention of Financing Terrorism (1999) and Resolutions 1267, 1333 and 1373 of the UN Security Council. However, Croatia is still in the process of implementation of UN Resolution 1269.

Croatia is in full compliance with FATF Special Recommendation No II. Financing of terrorism, terrorist actions and terrorist organizations are considered criminal acts and as such qualify as money laundering predicate offences.

Croatia fully complies with FATF Special Recommendation No III, as its legislation provides for freezing, seizure and confiscation of the means of terrorists, and of the people who finance terrorism and terrorist organizations.

Croatia is also in full compliance with FATF Special Recommendation No IV, as its legislation established a requirement for making a report to relevant authorities when there is a founded suspicion that funds are linked to money laundering i.e. terrorist financing.

International Legal Assistance that Croatia provides to other countries, as requested in the Special Recommendation NoV, as already explained in Recommendation 39, is regulated by the Law on Criminal Proceedings (Official Gazette 28/96) Chapter XXX dealing with procedure for providing of international legal assistance and execution of international contracts in criminal matters and Chapter XXXI dealing with extradition proceedings for accused and convicted individuals. It should be mentioned that it also depends on the bilateral agreement signed with the respective country.

Croatia fully complies with Special Recommendation No VII. As already explained in Recommendation No 5, Croatian Legislation, although it does not provide for a full, in-depth analysis and follow up of the preformed transactions, is very strict about the initial analysis at the time of opening of accounts, and there is no possibility to transfer money without data requested in this recommendation.

Croatian legislation fully complies with the Special Recommendation No VIII. The Law on the Criminal Liability of Legal Persons and Criminal Law regulate the abuse of legal persons for execution of various criminal acts, including terrorism. Act 169 of the Criminal Law defines actions of international terrorism, and foresees penalties from at least three years to at least ten years for various categories of actions.

The Law on Non-Profitable Organisations and the Rulebook on the Accounting and Budgeting of Non-Profitable Organisations regulate the existence, accounting and bookkeeping of non-profitable organisations. Nevertheless, it should be mentioned that on a world scale, as well as in Croatia, non-profitable organisations remain one of the most abused ways of laundering dirty money.

Croatia fully complies with Special Recommendation No IX. Law on Prevention of Money Laundering in Art 9 and the Rulebook on Implementation of the Law in Art 11 regulate that illegal and attempted illegal transport of cash or cheques in domestic and foreign currency amounting to more than HRK 40.000 has to be reported to the Office by the Customs Authorities within three days since they learnt about it.

Written notification has to contain data on the carrier, place and time of crossing of state boundary and data on the intended purpose..

MONEY LAUNDERING SITUATION IN SERBIA AND MONTENEGRO

Having the heritage of a part of the so called “Balkan Route”, Serbia and Montenegro through its numerous modifications over the past 15 years, and the recent one that will not be reflected here, ended up with a soft border with Republika Srpska and other political and other problems. Being an active participant in all wars in the Balkans and having sanctions and air strikes, produced a devastated economy and high corruption. Recent events complicated the situation further, but as

there is no information on independent Montenegrian legislation or any statistical data, we shall still take the two states as one..

The Money Laundering Act in the Republic Serbia and Montenegro was promulgated on 1 July 2002. Money Laundering prevention lies within the competence of the State Authority for the Prevention of Money Laundering and most of its work is classified. From 2002 until 2005 they were investigating 400 suspicious cases and there were 19 criminal investigations for Money Laundering.

This Law defines money laundering as depositing of the money acquired in illegal activity on bank accounts or other financial institutions, or in introducing it in legal financial flow in any other way[19]. The Law prescribes two ways of execution of this act

1. Placement of money on bank accounts,
2. Integration the money into legal financial system.

The Law also incriminates the actions of assisting, supporting and catalyzing money laundering as follows:

1. covering of the origin of money, investment, investment purpose, intended use and all rights that draw their origin from performing of illegal activity
2. exchange or transfer of property that is derived from illegal activity
3. gaining, possession or use of property that originates from illegal activity,
4. covering the transformation of company's property, illegally acquired public property and public capital[20]

In order to fulfill the prerequisites of money laundering or its enabling in one of the foreseen ways, it is necessary to deal with the activities directed to money that is illegally acquired as well as property that was purchased with such money.

Money Laundering Act in Serbia and Montenegro determines the subjects for discovering and prevention of money laundering naming them "obligors" as legal persons and their authorized representatives. As mandatories of measures and actions in prevention of money laundering the ones listed are: banks and other financial institutions, Post Office Units, other enterprises and cooperatives, government agencies, organizations, bureaus and funds, institutions as well as the

[19] Art 2 of the Money Laundering Act
[20] Art 2, Para2 of the Money Laundering Act

other legal persons that are fully or partially financed from public income, National Bank of Yugoslavia –Clearing and Payment Department, insurance companies, stock exchanges, stock brokers and other subjects involved with transactions involving cash, securities, precious metals and gems, as well as purchase and sale of claims and debts, exchange offices, pawn shops, casinos, booking offices, slot machines clubs and organizers of lotteries and other fortune games, as well as the other legal and physical persons dealing with purchase or sale of claims and liabilities or financial transactions[21].

The Law sees money laundering as a separate criminal act. It appears in three models: basic, special and aggravated. The basic model of this criminal act, for which the law foresees a penalty from six months to five years, exists when any activity is undertaken that is not in accordance with provisions of this law by which money should be deposited in a bank or other financial organization or institution or in any other way included in legal financial system. The awareness or knowledge of the perpetrator that money involved was acquired in a criminal act is the basis of the criminal responsibility of this individual.

A special model of this criminal act, for which the law foresees a penalty up to three years, exists in cases when the perpetrator did not know that money involved is acquired by some criminal act, but he could have known or he was obliged to know.

The gravest mode of this criminal act, for which the law foresees a penalty from one to eight years, exists in cases when more than one million dinars is laundered. This means that the laundered amount is a determining parameter for this criminal act.

In any case, and with no regard to the model of the criminal act, the court, along with the prison sentence, proclaims the safety measure of ceasing the money or gains that were subject of laundering.

Transparency International, even with the improved legislation, still finds the problem of grey economy in Serbia, although lower than a few years ago, a big problem and one of the major challenges that Authorities for Prevention of Money Laundering have to face[22].

According to Dragan Đuricin, professor at the Economic Faculty in Belgrade, there are two causes of the money laundering situation in Serbia. The first one can be found in the

[21] Art 5 of the Money Laundering Act
[22] http://www.transparentnost.org.yu/index_s.htm

overwhelming model of creation of one group of private companies in the situation of insufficiently regulated privatization process, including some mistakes in defining of the transitional draft of the Law on Privatization brought to force in 2001 and the Law on Financial Markets which led to the economically unjustified concentration of capital. The second cause can be found in delaying of privatization of companies from the public sector, which led to the phenomena of "party property", so the companies were run by the political parties instead of professional management teams, which left navigating space for unregulated privatization and several types of non – economical arrangements[23].

Several individuals from Serbia committed the criminal act of money laundering by using their reputation and political affiliations to assist the representatives from the Swiss company Holcim in pushing the offer of the company "Breitenburger" as the most beneficial for the purchase of the concrete production company "Novi Popovac". The public tender was completed in January 2002 and a contract was signed on the basis of which "Breitenburger" transferred 52 million dollars from Doysche Bank.

The same company transferred 2.099.968 dollars to the account of the intermediate subject, the company ''Mayron Sales'' in CEI Bank in Budapest. This amount was divided between four individuals and transferred to private accounts in Serbia. During 2003 this money was legally invested in Serbia.[24]

On 19 July 2007, Serbian Police submitted 31 indictments for criminal acts, 3 indictments for criminal organizing, 22 for misuse of official duty and 6 for money laundering. Investigation showed that, among others organizers, Dejan Mitrić and Velisav Dragojlović were authorised to operate with non resident bank accounts for the companies Martos holding LTD", "Jelana trading LTD" i "Lanseti trading LTD" at Tutunska Bank in Skopje. Formal owners of these bank accounts were Cipriots. Investigation showed that these three bank accounts were used for performing money laundering transactions amounting to more than EUR 50 million. [25]

MONEY LAUNDERING IN THE REPUBLIC OF BOSNIA AND HERZEGOVINA

[23] http://www.24x7.co.yu/default.aspx?cid=400&fid=300&pid=PRANJE_NOVCA_I_KORUPCIJA
[24] http://www.24x7.co.yu/default.aspx?cid=400&fid=300&pid=PRANJE_NOVCA_I_KORUPCIJA
[25] http://www.b92.net/info/vesti/index.php?yyyy=2007&mm=07&dd=19&nav_category=120&nav_id=256032

The Law on the Prevention of Money Laundering on a state level in Bosnia and Herzegovina was brought to force on 28 December 2004. With the promulgation of this law, three laws on the prevention of money laundering were abrogated, namely: Federation of Bosnia and Herzegovina Law on Prevention of Money Laundering (2000), Republika Srpska Law on Prevention of Money Laundering (2001) and Brcko District: Law on Prevention of Money Laundering (2003).
Bosnia and Herzegovina was, and still is to some extent, in a very specific and unusual situation. Therefore, drafting and implementation of the program for prevention of money laundering in Bosnia and Herzegovina was an extremely complex matter. Dayton Accord signed in order to facilitate the peace process in Bosnia, and within it a complex structure of power and transition of public and private institutions make it difficult for international standards to be implemented. The Office of the High Representative is the ultimate authority in BiH. He/she can pass and impose legislation, and dismiss officials, including judges. These powers have been largely used so far.

Along with the two entities, Federation of Bosnia and Herzegovina and Republika Srpska, that in the first post war years were taking care of the national law and administration, there are 10 counties with their authorities, including prime ministers and ministers who perform functions in their governments.

In April 1998 an Anti Fraud Unit was established in Bosnia as a part of the Office of High Representative in Sarajevo. Part of its mandate is to collect information on fraud, corruption and economic crime in Bosnia and Herzegovina.

Shortly after the war, most of the transactions on the BiH market were done in cash, i.e. most of the illegal transfers were done out of the financial system, so it was even harder for the justice bodies to follow and prosecute such actions. Along with that, the program of post war reconstruction amounting to 5 billion dollars had led to huge potentials for corruption and fraud. There were big mismanagements of these funds that authorities were not prepared to deal with and prosecute. The most important of these cases was the charging of the former prime minister of Tuzla County for fraud and corruption. It was proven that governmental funds were used for payments to friends and "party people" and also the allocation of a number of business contracts[26].

[26] MONEYVAL FIRST ROUND DETAILED ASSESSMENT REPORT ON BOSNIA AND HERZEGOVINA Report on the observance of standards and codes

Bosnia also has a wide spread problem of smuggling, as it has a soft border with more than 400 border crossings and a customs office that started to be unified for the whole territory not so long ago. Along the border line, mountainous terrain and historical connections with the so called "Balkan Route" make Bosnia in whole very vulnerable for all sorts of smuggling, including narcotics, weapons and humans. Along with that, a high number of policing and prosecution bodies and a unified investigation judicial system are a big obstacle on the way to reaching efficient investigations and prosecutions.

According to Moneyval evaluators, exchange of policing and judicial information between the counties is very often insufficient. In order to start solving the problem of money laundering, there should be close and efficient cooperation between counties and entities that is just starting in BiH.

On 1 January 2001, the financial system in BIH was transformed and adjusted to the market economy. Banking sector, which was only starting, was allowed to take over the credits and banking functions which were in the past within the competencies of the Office for Financial Transactions.

Dayton Peace Accord had set the legal basis for the monetary union and creation of the Central Bank (CBBH) as the only institution in charge of fiscal and monetary policy. Currency is Konvertible Mark and CBBH had a reserve of 1 German Mark for each issued KM. Apart from that, the role of CBBH was limited to the role of the clearing bank and did not have all the competencies that the Office for Financial Transactions had in the past. By this arrangement all information that was previously collected by the Office for Financial Transactions was lost and at the beginning there were no financial subjects who were able to replace them in their role on prevention of money laundering.

As in most Balkan countries, an additional problem is the existence of the parallel economy. Although all activities in this system are not necessarily illegal, they open great potentials for un-registered financial transactions and by that means also for efficient and undisturbed money laundering for organized crime and corrupted state officials, etc. A perfect example is what the official figures of the state of Croatia showed as assistance to Croats in BiH compared to what users have reported receiving.

As well as in other republics, transition of public and state enterprises in Bosnia also opened a wide navigating space for money launderers. In Bosnia soldiers were paid for their services in certificates that can be used as a mean of payment. As such, transactions performed on this basis should be registered and monitored.[27]

FORMER YUGOSLAV REPUBLIC OF MACEDONIA

The country‘s geographical position as a transit corridor on the Balkan route, together with its transition to a market economy, has resulted in highly profitable criminal activity, particularly trafficking in arms, humans, drugs, and smuggling. With the increasing entry of foreign capital, and the development of the privatization process, economic and financial crime is becoming ever more widespread (particularly fraud and tax evasion). In Moneyval evaluation reports corruption is a major threat to the economic stability of the state. Additionally, as its economy remains heavily cash-based, there has been significant progress in breaking down the distrust towards the financial system within the general public.

The Former Yugoslav Republic of Macedonia is a party to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the Convention on Mutual Legal Assistance in Criminal Matters (1959) and its Additional Protocol. They have also signed several bilateral agreements regulating extradition and legal assistance. As a general rule, all promulgated international conventions are binding on the Macedonian authorities and directly applicable.

Although the Former Yugoslav Republic of Macedonia‘s economy has been depressed by political instability and the security crisis of 2001, one can follow positive developments occurring with regard to the legal and institutional framework for the fight against money laundering. The most significant developments were the 29 August 2001 adoption of the Law on Prevention of Money Laundering and Other Proceeds from Crime (”the AML Act‘), which became operational on 1 March 2002, and the creation of a NFAU - National Financial Analytical Unit as an administrative body within the Ministry of Finance.

[27] MONEYVAL FIRST ROUND DETAILED ASSESSMENT REPORT ON BOSNIA AND HERZEGOVINA Report on the observance of standards and codes

On 19 November 2003, the Macedonian Parliament passed legislation under which money transactions are licensed and supervised by the National Bank.

Money laundering as an offence, as foreseen in Article 273 of the Criminal Code, had been in force since 1996, and until 2003 there had been no money laundering convictions and very few investigations. Confiscation, as envisaged in the Strasbourg Convention, is very limited and bank accounts very rarely frozen in enquiries.

Macedonian legislation on prevention of money laundering complies with the basic FATF requirements for identification of customers. However, the identification requirement in relation to transactions and linked transactions relies only to cash transactions in the amounts of EUR 15,000.00 and it does not include other transactions.[28]

Macedonian officials have indicated in several interviews that it is state policy not to have numbered accounts and that it is in the competence of the National Bank to suppress such accounts in case they are found.

There were several complaints in Moneyval first and second evaluation report about the unclear strategy for the FAU‘s role in supervision.

By 2003, the cash transaction reporting regime under the new AML Act had resulted in 9,300 reports. Two were from the insurance sector and all the rest were from banks. There were 105 suspicious transactions reported. The breakdown was: Banks – 92, Insurance – 2, Attorney-at-law – 2, Private citizens – 6, Other FIUs – 4.[29]

MONEY LAUNDERING SITUATION IN GREECE

From a geographical, economical and political point of view, Greece can be described as an attractive money laundering target. It is a part of the "Balkan Route" (borders with three Balkan countries: Bulgaria, Albania, FYROM) and is close to both the Middle East and the South-West Asia, with many islands and long coastlines that are difficult to control. More importantly, Greece is a part of the European Union and the Schengen area, so in relation to all the above factors, it is a gate to the whole western world. According to the second Moneyval report, some investigations

[28] Art 9 of the Law on Prevention of Money Laundering and Other Proceeds from Crime
[29] Moneyval Second Round Evaluation Report on Former Yugoslav Republic of Macedonia

showed that drugs, arms, illegal immigrants and cigarettes from South-West Asia and the Middle East are smuggled to northern and Western Europe via Greece. Greece is an attractive potential money laundering target also because of the current opening of its economy and financial system, a dynamic banking sector and policing that is often inadequate. Another important parameter that should not be neglected is that purchasers of government debt issues receive tax exemption that, if paid in cash, results with them not being subject to any kind of identity requirements. Taking in account that the sale of Greek treasury obligations now amounts to about 22.5 billion US dollars annually, one safe way of laundering money becomes obvious.

Recently, the crime phenomenon of money laundering in Greece has taken large dimensions (with a yearly increase of suspicious transactions at the rate of 186%, according to the data of the responsible Special Committee in 2000), and it is estimated that criminals make annual profits of $11.5 billion within the country. [30]

During this last decade there has been an important influx of refugees and so-called "economic migrants" from neighboring Balkan countries, that has led to increased crime activity. Immigrants from the former Soviet Union have contributed in a strong presence of Russian and Albanian Mafia involved in several kinds of criminal activity (women trafficking, drugs etc). [31]

Apart from world common opportunities to launder dirty money, Greece provides two particularly handy ways:

- By investments in the Stock market. In Greece the purchase of stocks and bonds is not controlled or checked, the profits from Stocks are not taxed.
- Via Casinos, which are a convenient vehicles for money laundering. Criminals can purchase big quantities of chips that are later cashed without actually gambling[32].

It should be mentioned that foreign criminal organizations, and more specifically Russian and Albanian Mafia use as medians in Greek "Ellinopontioi" (members of Greek omogenia of former USSR) and "Vorioipirotes" (members of Greek omogenia of Albania). They are entitled to Greek citizenship and then move freely inside the EU.

The money laundering offence covers 20 predicate offences, covering trafficking in drugs and weapons, robbery, blackmail, kidnapping, serious larceny, embezzlement or fraud, illegal trade in

[30] Moneyval First Round Evaluation Report on Greece
[31] David Southwell, Dirty Cash, Organised Crime in the 21st Century
[32] Moneyval First Round Evaluation Report on Greece

antiquities, theft of cargo of a vessel, illegal trade in human tissue and organs, smuggling, nuclear crime, prostitution and illegal gambling.

It should be noted that a person can be charged with the money laundering offence only if he knew that the property derived from criminal activity. This provision of knowledge very often makes money laundering difficult to be proved.

Because of the big sums of money that have already been laundered, the Greek state now has to face big enterprises with multinational capital, established names of the country's enterprising world. These cases are hard to investigate for economical, political and practical reasons.

MONEY LAUNDERING SITUATION IN ROMANIA

Romania, as a state in South Eastern Europe which is bordered by the Black Sea, is strategically positioned between the East and the West. It is an important part of the "Balkan Route", particularly for the trafficking of drugs from outside Europe and for arms trafficking. Since the political changes in 1989 and the transition to a market economy, the crime rate has increased significantly. According to the Moneyval evaluators, the main sources of illicit proceeds are currently considered to be: trafficking in drugs, arms and radioactive substances; alien smuggling; smuggling of cigarettes, coffee and alcohol; trafficking in counterfeit bank notes and in stolen vehicles.

There was no anti-money laundering law before 1999. The Romanian new Criminal Code, which entered into force in early 2006, expressly criminalizes money laundering in Article 268, as a crime against patrimony. The intent and knowledge required to prove the offence of money laundering may be inferred from objective factual circumstances. Also, penal provisions, which entered into force in 2005, established the criminal liability of legal persons, including liability for money laundering.

The National Office for the Prevention and Control of Money Laundering (NOPCML) was created as a multi disciplinary unit, to act as a filter between those with reporting obligations under the law and the Public Prosecutor's office. The office receives, analyzes, and processes information about suspicions on money laundering from a very comprehensive range of banking

and financial institutions and persons, and transmits relevant information to the Public Prosecutor[33].

In accordance with the Law no.656/2002, the list of predicate offences for money laundering has the "all-crimes" approach, and requires that every banking operation involving a sum exceeding EUR 10,000 has to be reported to the NOPCML and monitored. The "know your customer" identification requirements have also been honed so that the identification of the client becomes necessary upon both the beginning of a relationship and upon single or multiple transactions meeting or approaching a EUR 10,000 standard and, in addition, tipping off has been prohibited. Romanian law permits the disclosure of client and ownership information to bank supervisors and law enforcement authorities, and protects banking officials with respect to their cooperation with law enforcement.

The NOPCML receives and evaluates STRs as well as CTRs. The law also provides for feedback to be given, upon request, to NOPCML from the Public Prosecutor's office, and for NOPCML to participate in inspections and controls.

The crime of money laundering is also treated in Romanian law as a possible "crime directly related to a corruption offence", and, therefore, if there is a direct connection between money laundering and a corruption offence, the pre-trial investigation and prosecution of both crimes will be conducted by the National Anticorruption Prosecutor's Office. Generally, money laundering is penalised by 3-12 years of prison. Association in order to commit money laundering is punished by 5-15 years of inprisonment. [34]

According to the second Moneyval evaluators, the main economic sectors affected by money laundering are: interior/foreign commerce, banking-financial sector, capital market. A special problem is the foreign currency exchange involving Romanian citizens. Illegal funds to be laundered are generally routed through Romanian and foreign banks and other financial institutions.

FIU receives, analyzes and process information about suspicions of money laundering and terrorist financing, transactions (Lei or foreign currency) above EUR 10,000 and information

[33] Art 6 of the Law no.656/2002
[34] Chapter IV of Law no.656/2002

about unusual transactions from a very comprehensive range of banking and financial institutions and persons (including lawyers, notaries and accountants).[35]

Once a report has been made, after analyzing it and, eventually, after ordering the suspension of the transaction, the NOPCML will transmit information to the Public Prosecutor when the NOPCML considers there is "solid indication" of money laundering. NOPCML may suspend the suspicion operation for 3 days, and the Public Prosecutor may, if this period is not enough for the investigation, prolong the measure for another 4 days. [36]

Predicate offences on which the money laundering offence is based is the all crimes approach; the coverage area of the reporting entities includes art objects dealers, personnel with responsibilities in the privatization process, postal offices, companies that ensure fast electronic transfer of funds, real estate agents and the State treasury. Identification obligation applies as from the date of entering into a business relation with a client.

From the end of 1999, when the NOPCML became operational, to the end of 2005, more than 900 notifications have been submitted to the General Prosecutor's Office. More than 4.000 people and 300 legal entities were investigated for money laundering. Police initiated criminal investigations in more than 60 cases, and in 31 of these cases the persons charged were convicted of money laundering. Two convictions are final and there are 15 cases pending before court. The persons under investigation are mainly Romanian citizens (52%), but also Chinese (16%) and Turkish (7%). Also, joint teams of office experts and National Bank of Romania specialists conducted 16 inquiries into several financial institutions and issued fines totaling RON 540 million.[37]

MONEY LAUNDERING SITUATION IN BULGARIA

While the situation in the former Yugoslavia has forced traffickers to shift routes, Bulgaria continued to play a key role as a transit area for Southwest Asian heroin. Bulgaria's location on the Balkans make it the most significant East European transit country. The difficulty of inspecting the large number of bonded (TIR) trucks that transit the "Balkan route" increases

[35] Art 3 of Law no.656/2002
[36] Art 3 of Law no.656/2002
[37] Moneyval Second Round Evaluation Report on Roumania

Bulgaria's attractiveness to traffickers; the Kapitan Andreevo border control post alone now processes up to 1,000 vehicles daily, according to Bulgarian officials.

Bulgaria's geographical position means that it is vulnerable to the traffic of drugs from outside Europe, and a convenient transit point for traffic in human beings. Bulgarian authorities advised that the most serious money laundering problems currently involve the proceeds of drug trafficking and proceeds obtained from financial/economic crime. The banking sector is primarily considered to be vulnerable at the placement stage (exchange offices and casinos).

Bulgaria began to engage with the money laundering issue in 1996, but the first law was never implemented. In 1997 a separate money laundering offence was established by the introduction of Article 253 of the Penal Code. In 1998 a new Law on Measures against Money Laundering was adopted, providing a coherent framework for fighting money laundering but criticized for failing to prosecute unlawful money transactions. It established a specialized unit responsible for implementing the law, the Bureau of Financial Intelligence (BFI), which has the status of a General Directorate in the Ministry of Finance. It is an Administrative Unit responsible for collecting, processing, disclosing, keeping and analyzing information on STRs from obligated entities. An extensive range of undertakings which are potentially vulnerable to money laundering are covered, including banks and non-banking financial institutions, insurers, investment companies and intermediaries, persons organizing games of chance, notaries, stock exchanges and stockbrokers, auditors and chartered accountants. [38]

In 2003 the amendments to the Measures against Money Laundering Act, aimed at bringing the law into compliance with the Revised 40 Recommendations of the FATF, entered into force. According to the amendments, legal advice remains subject to the obligation of professional secrecy, unless the legal counselor is taking part in money laundering activities, legal advice is provided for money laundering purposes, or the lawyer knows that the client is seeking legal advice for money laundering purposes. The amendments establish requirements for the identification of the real owner of clients - legal persons, for the collection of information about the purpose and nature of relations with the client. [39]

The most often used method of money laundering according to the FIA in Bulgaria begins with depositing a sum in cash in the banking system. The second step is an order to transfer the money

[38] Moneyval First Mutual Evaluation Report on Bulgaria
[39] Art 28 of Law on Maesures against Money Laundering

abroad to the account of an offshore company. A transfer to another off-shore company's account follows, and the money returns to Bulgaria in the form of a credit to the amount of the exported sum, which the off-shore company grants to a legal entity that has a legal business.

On June 21, 2006, the Parliament tightened up Bulgaria's anti-money-laundering law as a prerequisite to intensifying the fight against organized crime and to complying with European Union requirements. Amendments to the Measures against Money Laundering Act oblige banks to ask for information concerning the individuals behind company accounts, on the origin of funds, and on the reason for spending. In the case of individual accounts, bank officials have to request more detailed information about the account holder. Financial institutions must also inform authorities of suspicious activity by their clients.[40]

For one or more related transactions in an amount greater than BGL 30,000 or its equivalent in foreign currency, the client is obliged to declare the origin. Wherever suspicion of money laundering arises, the obligor is under an obligation to collect information about the essential elements and other identifying data.

According to the Law, it is not a requirement that the predicate offence needs to be committed in Bulgaria. Subject to judicial ruling, a person can be convicted for both the predicate offence and a money laundering offence. The Law uses an "all crimes" approach to predicate offences. The mental element of the offence of money laundering covers both knowledge and strong suspicion that proceeds have been acquired by crime. Confiscation is mandatory, ordered by the court and follows conviction.[41]

According to the data that the Financial Intelligence Agency (FIA) director Vassil Kirov presented, from 1999 until 2003 FIA investigated 530 reports. By December 31, 2003, FIA had completed 281 of these investigations, referring 238 cases to law enforcement authorities and 11 cases to supervisory bodies and stopping proceedings in 32 cases for lack of evidence. In 2003 investigators worked on 45 cases, including 16 reported by FIA. The investigative proceedings were completed on 22 cases and recommendations were made to either institute lawsuits (four), dismiss the cases (seven), or suspend them (eleven).

[40] Chapter 2 of Law on Maesures against Money Laundering
[41] Moneyval First Mutual Evaluation Report on Bulgaria

Krasimir Nedelchev, the deputy director of Bulgaria's Agriculture State Fund, has become the first person to be charged with money laundering in his country[42].

One of the recent examples of globalisation and non-existence of borders in the phenomenon of money laundering this time within Europe involve Bulgaria and the IRA. It was reported in February 2005 that IRA was in negotiations to buy a bank in Bulgaria for the purposes of money laundering.

The Provisionals have been working with a Bulgarian crime syndicate for a year trying to take control of a bank to be used to launder cash from their criminal operations. The banking operation would have lasted until Bulgaria joins the EU, and would then become subject to stringent financial controls, according to the *Irish Times*. The IRA's "colossal" money laundering business has unraveled after Irish security services spotted a Bulgarian arms dealer at a meeting in Ireland.

According to the official sources, police believe the Bulgarian bank would have been used to launder an estimated $72 million a year the IRA receives from counterfeiting, robberies, extortion, racketeering and smuggling[43].

Using a scam which the Italian mafia devised of buying banks in Latvia before it joined the EU, the IRA would have used the bank to provide it with paperwork and cash from a legitimate institution. Of particular interest to police is the role played by a high-ranking member of Sinn Fein said to have almost complete control over party financing. His personal assets are said to include a nightclub in Bulgaria and an Algarve villa where he entertains leading republicans. Seven men and one woman have so far been arrested over the alleged money-laundering, although all but one have been released without charge.

MONEY LAUNDERING SITUATION IN ALBANIA

Until 2004 in Albania, as for the money laundering situation, the major sources of criminal proceeds were reported to be drug-related crimes, robberies, customs offences, exploitation of

[42] http://bg-nl.com/news.php?newsid=56&
[43] http://www.smh.com.au/news/World/IRA-eyed-bank-to-launder-dirty-cash-says-paper/2005/02/22/1109046921718.html?from=moreStories

prostitution, trafficking in weapons and engines (incl. cars) and theft through abuse of office. Also tax crime, fraud and counterfeiting of currency appeared relatively often.

As for money laundering typologies, the use of the financial system is slowly becoming more frequent. As the financial system is not very well developed, trade-related money laundering is frequently reported, including the investing of the proceeds into villas and cars and other goods. According to some articles, around 80 % of all economic transactions are still carried out in cash, which makes it difficult to conduct money laundering investigations.[44]

Recognizing the importance of having an effective anti-money laundering regime, the Albanian government approximated the legislation and anti-money laundering structure of Albania to international standards. The national FIU has been established in August 2001 as a Directorate of the Ministry of Finance. The general preventive anti-money laundering act, has been implemented, and was amended in June 2003[45]. Professions outside of the financial sector were also included into the preventive regime by the ammendments. Specific money laundering offence has been drafted in article 287 of the Criminal Code, and the definition of money laundering is replicated in the Law on the Prevention of Money Laundering.[46]

Regarding the predicate offence, the approach of the prosecutors is that there has to exist a prior or simultaneous conviction for the predicate crime in order to indict for money laundering.

As for seizure, the law explicitly states that proceeds from crime and any other property which can be subject to confiscation can be seized. There is no information available on confiscated property or money.

On the preventive issues, the Law on the Prevention of Money Laundering, as amended in 2003, designates a large number of financial and non-financial institutions as subjects of the Law.[47] Customer identification requirements have improved, and since 2004 there is legal obligation to identify customers prior to establishing business relations, i.e. at the time of account opening. [48]

[44] Moneyval Third Round Detailed Assesment Report on Albania
[45] Law on the Prevention of Money Laundering of Albania
[46] Art 2 of the Law on the Prevention of Money Laundering of Albania
[47] Art 3 of the Law on the Prevention of Money Laundering of Albania
[48] Art 4 of the Law on the Prevention of Money Laundering of Albania

According to the Law, subjects are obliged to register cash and non-cash transactions exceeding 2 million leke, or any cash and non-cash transactions when there is a suspicion of money laundering.

The Law obliges attorneys, notaries, and representatives with power of attorney to report to the responsible authority all transactions in cash and or transfers of funds for amounts greater than Lek 70.000.000 (seventy million) or the counter value in foreign currencies. They should notify the Responsible Authority when they come into possession of information that either confirms or negates the suspicion. [49]

All subjects of the Law must retain the data, information and reports of transactions performed on behalf of the customers for a period of not less than 5 years from the date the customer terminates civil and juridical relations with the subject or after the transaction has taken place. The Law does not prescribe the period of record keeping after account closing. [50]

In 2000, Moneyval team of evaluators recommended to the Customs authorities to take a more proactive and dedicated role in money laundering investigations, i.e. more systematically expanding their own investigations into the economic dimension of crimes within their competence and by detecting illegal proceeds in relation to money laundering. One of the biggest areas for improvement according to Moneyval is the introduction of a central police database which would also be beneficial in cases concerning financial crime and money laundering.

Until 2004 only one conviction for money laundering has been reached. Under the current reporting regime by 2004 the FIU received a total of 265 reports, 68 STR's and 197 CTR's. Of the 265 reports, 36 reports were passed to the police and 8 reports directly to the prosecutor's office. Surprisingly, a relatively low percentage is passed on for further investigation. [51]

As reported in the international press Albania's five largest commercial banks have installed special software to help detect money laundering. It allows suspicious transactions to be verified in real time, thus reducing delays in the investigation of suspicious accounts. The finance ministry expected the software to be installed in all the country's banks by the end of 2006 but there is no information on it.

[49] Art 5 of the Law on the Prevention of Money Laundering of Albania
[50] Art 6 of the Law on the Prevention of Money Laundering of Albania
[51] Moneyval Third Round Detailed Assesment Report on Albania

PONZI'S SCHEMES

One of the very common frauds in the Balkan Region in the 90's were so called pyramid structures that draw their origin from the Charles Ponzi scheme which he created and started in Boston in 1920. In his pyramid scheme Ponzi promised to his investors more than 200 % of annual profit.

The scheme was elaborated in a way that Ponzi's agents were supposed to exchange dollars collected from investors into European currencies, and then purchase mail coupons for that money. These coupons would be exchanged back to dollars once in the USA. Everything started big when first investors confirmed 50 % profit in only 45 days...

Charles Ponzi attracted 40.000 investors amounting in total 15 million USD. There was an enormous interest of potential investors to the extent that people were selling their properties and investing their life savings, as we shall see happening in the Balkans 70 years later.

Although Ponzi was celebrated as the benefactor, several months later there were some critical articles in the "Boston Post". Investors were still interested in the "Securities Exchange Co" and Mr. Ponzi was still paying out interests and initial deposits, which was not a problem at the time, as most of the investors were reinvesting their initial deposits.

In July 1920 Richard Groazier started a series of articles in Boston Post proving that Ponzi's system will collapse at some stage. These reports in which mathematicians and other experts contributed to the court decision that Ponzi was not allowed to receive new deposits and that the whole situation had to be checked.

Federal Mail system proved that Ponzi could not have such profits as there were not enough mail coupons in the float. Ponzi tried to pull out of that saying that profits were coming from two companies that he had purchased in the meantime and that the story about coupons was just to fool the competition.

Although Ponzi was still paying out the interest rates, investors became discouraged when it was discovered that he had sat in jail for frauds in Canada and the USA. Soon after that, there was a complete collapse of the empire and there were a large number of investors in total despair. Ponzi was jailed and released only in 1934 to be immediately deported to Italy. [52]

[52] Sonja Cindori, Sustav spriječavanja pranja novca, 2004

Even till today we can follow the trail of the Ponzi's schemes that started appearing in the Balkan Region in the early nineties. The war at the territory of former Yugoslavia brought a lot of confusion and mismanagement to the financial market, so we can first see the appearance of such schemes in Croatia and Serbia.

In Croatia monthly profits were varying from 10 to 30 %, depending on the time term of the investment. Most agencies for financial engineering, as it was called, were offering the shortest deposits from three months with the monthly interest 10 to 12 %. The interests often rose up to 25 % or 30 % if the money was deposited for one year or more. The system became widely popular sometime in spring 1992, and lasted until December the same year. At the time there were estimates in newspapers how much money was actually invested in those kinds of schemes but, although there were some requests for indictments of the two most popular owners, there was never any serious investigation undertaken into where the money had disappeared. There were rumors and serious allegations that some politicians were involved in this scam, but real investigation was never undertaken. One also has to take into consideration that this was the time of some of the most serious fights in the war between Croatia and Serbia, so the attention of the people was somehow sidetracked by the daily situation. However, many people invested their life savings and, especially at the time, found themselves in a financially desperate situation. The estimates are that investors in Croatia invested approximately DEM 600 million that were inevitably lost for them.

However, one cannot help but wonder how come it was publicly allowed to have schemes advertised in newspapers for almost one year without authorities looking seriously into their sudden appearance.

Approximately at the same time, (although a bit earlier), from 1991 to 1993, we can follow the rise of similar investment schemes in Serbia. Interest rates were approximately at the same scale as was the collapse. Two of the most famous benefactors were Dafinka Milanovic – owner of Dafimetbanka[53] and Jezdimir Vasiljevic[54], with the difference that they are in living in Serbia at the moment and are under some kind of investigation. Dafinka Milanovic even implicated former president Slobodan Milosevic as one of the players in the scheme. She virtually robbed her depositors of approximately DM 1.5 to 2.3 billion. However, official sources claim that the

[53] http://www.vreme.com/cms/view.php?id=96130
[54] http://www.vreme.com/arhiva_html/529/02.html

foreign currency debt amounts to DM 350 million, and the number of victims has also rapidly "shrunk", so that instead of five million, only about 100,000 ruined people are mentioned.

The shady past of Dafinka came out and proved to be similar to the one of Charles Ponzi. As chief accountant in a Belgrade firm, she issued 350 bad cheques, forged the signatures of workers, stole gasoline coupons and abused her function. She spent several months in prison and was then released with a certificate on mental incompetence. In court, as a rule, she confessed to everything, invoked her motherhood, repented and started repaying money. As soon as she was free, in another firm, she made the same mistakes all over again, with crossed cheques of the firm she bought everything that crossed her mind, took ten big credits from four banks and then did not pay the installments. As soon as there would be new criminal charges brought against her, she became pregnant.

She was arrested in Germany in 2002 and extradited to Serbia in 2003 where she was allowed to defend herself from freedom due to poor health. When giving a statement as a suspect, Dafinka Milanovic stated before the investigating judge that her bank was actually run by an informal group headed by Slobodan Milosevic who, according to Dafinka, gave approvals for all money transfers and business decisions[55].

The schemes went to Romania where by 1994 “Caritas System” robbed four million of people of the total amount of 100 million of US dollars only to be followed by Russia in 1995 where 10 million of people were robbed followed by Bulgaria, Former Yugoslav Republic of Macedonia and others like Vietnam.

In 1996, a bit later than in the rest of the Balkans, we can see the raise of the same kind of schemes in Albania. It came public on 15 January 1997 when 5.000 investors demonstrated in the capital Tirana. They were promised 300 % profit by several scheme organisers. Estimates are that 40.000 Albanians lost more than 1.2 billions of dollars. There were reports that people were even selling their houses in order to invest into schemes and everything was lost with the collapse of the system. They blamed the state for the loss they suffered which led to a state of emergency in March 1997 and new elections, when Fatos Nano won, promising the return of losses to a wide audience. As we could see last year, Sali Berisha regained power in Albania. In the meantime nothing had happened on the plan of return of the money to the investors.

[55] http://archives.cnn.com/2001/WORLD/Europe/12/13/people.vs.milosevic.4/ - Epic Corruption

As we can see there is a pattern of such schemes every time a country is passing through transition between market systems, leaving a wide trail for quick money making when people who like shady waters take chances in order to have financial gain. Even 80 years after the well known Ponzi scheme and all repetitions around the world there will still be people willing to do risky investments.

NIGERIAN LETTERS

Alleged money laundering like "Nigerian Letters" appeared in the late eighties and with the emergence of internet they became much more frequent. Essence of it is that businessmen looking for an individual who would help them transfer a larger amount of money abroad. Recipient should open an account to which this money would be transferred and for that he would receive a fee even up to 25% of the deposited amount. The only "catch" is that the recipient is supposed to pay for some manipulative and administrative costs. After this money is transferred, the perpetrators disappear without a trace.

There are cases when the criminals even asked for an invitation letter with the excuse that they want to organize the transfer themselves and they requested the investors to pay for their travel and accommodation costs. On the basis of this letter, they even asked for an immigration visa. During their stay in the future victim's country, the bank in which the account is open receives the forged letter of guarantee from the Central Bank of Nigeria announcing the transfer within the next 8 days. At that point criminals usually request a deposit of 0.5 to 1 % of the agreed sum in order to cover for example for rate fluctuation. In the second case the victims are invited to Nigeria where they are taken to the Central Bank of Nigeria or some ministry where they have to present presents for bribing the officials.[56]

The appearance of these letters is not too common in the Balkans, but there were few cases when victims came forward with all details in order to warn the others about this. It is amazing that they are still in existence after all this years. According to the data from Interpol, in 1995 20.500 people answered these letters, and in 1998 only 6.000. Nevertheless, we can still follow people willing to risk investing in such schemes.

[56] Sonja Cindori, Sustav spriječavanja pranja novca, 2004

POSSIBILITIES FOR MONEY LAUNDERERS IN THE BALKANS

After this short breakthrough, the situation in the Balkan Region regarding money laundering, trying not to get too involved with other criminal activities like prostitution, narcotics, weapon trade, human slaves, smuggling etc, it is interesting to see how it would be possible for an individual based in Croatia, operating primarily on the territory of Former Yugoslavia to launder money without attracting attention. This is a very specific situation, as there are many individuals with multiple citizenships which can move easily between countries and can start companies. We should explain this specific situation acquiring multiple documents: if a man born in Bosnia who later became an army officer married a woman born in Macedonia and was sent for his first appointment in Croatia (in the Yugoslav Army one could choose only the last appointment, and the first two were usually outside his republic of origin) were their two sons were born. Ten years later he was reappointed to Slovenia, where they were when the war started. They all were entitled to Slovenian citizenship as they were residing there, but, as they were living in Croatia and their sons were born there they were also entitled to Croatian citizenship and, as their parents were from Bosnia and Macedonia, they could apply for both of these citizenships. This is not an extremely common situation, but is very possible, and there are cases when people have passports of all states of former Yugoslavia. That also means that they can run independent businesses in all these countries….If we take the following situation: one successful entrepreneur has a transport company as his original business. His company based in Croatia has lorries transporting goods worldwide. Apart from the official goods that he transports, he also transports cocaine arriving by ships to Croatian harbors for the West European market, heroin mostly from Turkey to Netherlands being an important link in the Balkan Route… At some time during the war in Croatia, because of the sudden changes in the market, he also got involved with smuggling of arms and humans. As Croatia has a soft border with Slovenia, he is very happy with the recent developments when Slovenia became a member of the EU.

After the completion of combat activities in Croatia our businessman started to find it a bit more difficult to continue his business, as the Croatian state started tightening up its financial market.

He realized that all other countries will follow soon and decided to keep most of his activities in Croatia and reorganize himself in order to have a legitimate cover for his wealth.

All of his illegal activities produce amounts up to US$ 700,000.000 per month of dirty money that has to be laundered. Having in mind the increase of the cost of laundering the dirty money, which would be app 140,000.000 US$ per month, our businessman has decided to launder the money himself, as well as to keep his laundering activities within the Balkan Region, as he is familiar with the region and he can change jurisdictions very easily.

As police is already familiar with him due to the numerous criminal investigations against him, he is aware the new investments registered in his name would attract police interest, and with the fact that he is aware of his lack of experience in the laundering field, he decides to cooperate with an experienced accountant/auditor who will be the general manager of the newly established financial company.

The auditor starts the business by establishing a small local bank. Using the loan from this bank he buys a hotel in the privatization process which, thanks to his silent partner, he pays undervalue as it is another one of the privatization black holes.[57] A big part of the price is previously accumulated debts that the new owner has taken over and will be paying them off…. First thing he does in the new hotel is to open a casino. Thanks to the present rules that do not mandate investigation on the origin of the money in casinos, our friend can launder up to 200,000.000 US$ per month. In order to launder an additional US$ 150,000.000, he opens a betting shop, first one of the future chain. As the same rule applies here, our auditor does not have to justify the origin of the money. In total that provides for US$ 350,000.000 per month and more in the tourist season... However that leaves our friend with an additional US$ 350,000.000 to launder every month…. Therefore he opens a real estate agency that operates in the whole Balkans buying cheap old houses and selling them for profit. When purchasing properties he pays them partly in cash, officially for Taxes purposes, and sells them with profit after a lift up. His agency is very active in Romania and Bulgaria where he is not known to the police and estates are still of a lower value than elsewhere… When in shortage of money, the agency takes a loan from his bank and then pays it off… All these efforts still leave our auditor with an additional US$ 100,000.000

[57] Latest of privatisation scandals in Croatia led to arrest of 8 people, 3 of them Deputy Directors of the State Fund for Privatisation as it was discovered in the police operation „Maestro“ they were taking bribe in setting up privatisation purchases. Investigation is still in proces and many of the privatisation decisions are to be reopened and investigated

to launder monthly, so he starts to invest in the stock market. He also hires a consultant who he pays per hour on inflated invoices. This consultant is also a part of the gang from Albania who, as a counter measure, hire his agency and pay inflated invoices for their services…

These are just a few of endless possibilities to lauder money, and our friend did not want to leave the Balkan region. However for more than the last 15 years there have been advertisements in the papers for opening of off shore accounts and companies. Also, there is the more and more interesting market of arts and antiques that is also very usable in money laundering….

In the future, our friend plans to buy more hotels, maybe even along the coast in Montenegro, Albania and Greece and in each one of them he will open a casino.. He will refurbish each one of them in order to be able to launder higher sums of money there….

CONCLUSION

As in the past, criminal activities provide endless possibilities for a keen individual to become powerful, rich… Nowadays, to become successful money launderer is maybe even easier than ever before. Means offered by technological advancement and guidance and instructions widely available on the internet and in bookshops are opening unlimited possibilities for people with such aspirations to start their activity, and find ways to continue and cover it successfully. Profits in criminal activities are so high that it is of no surprise that criminals can afford to pay the best experts in some fields in order to perform their activities in the best possible manner and to cover up the proceeds of the same. A good and inventive criminal is always at least half a step ahead of legal and law enforcement system otherwise he would be caught already. We can follow the latest developments on the world markets and changes in the legal systems, and maybe foresee the gaps that will be used by criminals in order to avoid legislative measures and cover up their profits. It should be mentioned that globalization and international cooperation are assisting parties, (law enforcement and criminals) in providing operational area for their activities. One could justifiably speculate that criminals are much more flexible and better organized and therefore cooperate more easily and more efficiently than legal systems of some countries but that is only one of the areas where combating money laundering can be improved.

We can follow new initiatives in combating money laundering and recently discovered cases around Balkans and as in the past, we can see, not only lots of similarities but successful cooperation between mafias much wider than in the region. As one of the prerequisites of successfully combating money laundering is international cooperation in exchange and share of information and joint actions of national law enforcement agencies.

One of the new and fresh initiatives in the region is a new proposal in Croatia that property lists, income, taxes paid and similar information of factors relevant for possibilities of money laundering should be magnetically stored in the national ID Cards and the data should be made available only to the authorized personnel. It is a motion worth mentioning, but one can immediately see possibilities for avoiding this for criminal purposes, for example: there are fake IDs available on the black market, in Croatia one can transfer its possessions to the immediate family and guardians using bestowal certificates without paying taxes, so it is very easy for property to change ownership…, how will people with double citizenships be treated, how will property abroad be treated, and a very important part as is the problem of unregistered multiple nationalities that should be mentioned and considered at this point. After the fall of former Yugoslavia, as explained above, there are citizens who have unregistered multiple nationalities and it will take some time before that is sorted out…..

At this point we also have to mention that Kosovo as a UN protectorate with unsolved status, partially still Autonomous Province within the Republic of Serbia, but actually independent to a high degree, provides endless possibilities for money laundering. To a degree caught in a legal limbo and recently passing through a conflict, young to be state is a heaven for any criminal activity. One does not have to be a money laundering expert to notice certain events that are ongoing in front of the international community which are tolerated as controlling them would require more engagement and expertise that international community is not able or willing to provide. There are more than 20 gas stations in approximately 40 km of the main road from General Jankovic/Hani I Elezit to Pristina and only a slightly smaller mnumber of motels. One should wonder about the business done there, as there are queues of cars waiting for fuel, but so far none of them shut down and there are no possibilities to check their books in order to see the turnover and fuel consumption. Also, it is very normal there to have stores with fake CDs and DVDs. However, there is one thing specific for Kosovo, there is no need for money laundering in Kosovo itself as nobody investigates the origin of the capital. A large number of Kosovars who

work abroad bring the money into the province and then have the perfect possibility of depositing it into a bank and wiring it abroad for relatively small fee, 25 EUR for shipments under EUR 10.000, and then it raises. So far, there was only one indictment for Money Laundering and the main suspect was released on bail after the office of high state official issued a guarantee letter. The case is still pending investigation with international judiciary….

Due to the hazy status of Kosovo I did not reflect on the background in the first chapters, but it is sufficient to say that it has a very soft border with Albania, and there were cases of people caught smuggling narcotics, weapons…. across that border. We can also follow cases of production of synthetic drugs in Kosovo, where it is a kind of family business, and basements are converted into laboratories where common people follow recopies when preparing synthetic drugs. Kosovar Albanians are wide spread around the Balkans, especially former Yugoslavia, and are mostly goldsmiths, bakers and cake makers. A large number of them spend their holidays in Kosovo, where they meet with other Kosovo Albanians who work in Western Europe. As previously explained this is one of the easiest ways to launder money….

Whatever one country does, if it is not followed by all of them, the action has no effect, as money is very easy to move. The appearance of electronic banking has improved the control to a certain degree, but has also provided possibilities to be faster, more efficient and physically away when dealing with money.

Whatever is done in the prevention of money laundering and whichever regulations and laws promulgated in order to stop it, it will also provide for the holes and shortcuts to do it, so combating money laundering will always remain a process with its ups and downs, as there will always be people involved in criminal activities which generate illegal profits. Law enforcement agencies actually have to act proactively and think like criminals in order to prevent money laundering. For the time being the situation is: if you have the money to launder, i.e. the crime has already brought you the profits the major part of the job is done because laundering is a simple process, quite expensive but quick, efficient, offering variety of options and endless possibilities.

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