

MONEY LAUNDERING IN BULGARIA: THE POLICY RESPONSE

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RiskMonitor Foundation

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EXECUTIVE SUMMARY

During the decade it took to adopt anti-money laundering measures in Bulgaria, cash flows of dirty money found their way into the economy and financial services in the country. The harmonization of these measures with global standards and the establishment of specialized institutions and mechanisms for collaboration took yet another decade. Despite the achievements, there is more to be done and progress is slow. The international assessment reports about anti-money laundering in Bulgaria confirm this observation.

The legal environment for fighting money laundering in Bulgaria is not favorable. It is difficult for investigations to gain access to confidential bank, tax, or commercial information. The Penal Code is obsolete, and the criminal law system needs to be revamped. The court system is ridden with slow judicial processes and court cases that drag on for years. And on top of that, the judicial system is corrupt.

According to many magistrates, the articles in the Penal Code criminalizing money laundering are ambiguous. The Supreme Court should issue an interpretative decision regarding the level of evidence needed to establish the predicate crime and the money received from that crime. The absence of a unified practice creates difficulties in the relationships and communication between the institutions and sets off conflicts, such as between the court and the investigative bodies.

In recent years there has been an increase in the number of indictments for money laundering filed in court. However, this trend is positive only on the surface. Beneath it one discovers a significant shortcoming of the investigations: the lack of high-profile cases. The system only reports on the quantity of indictments, not on their quality. The prosecution often has to adjust the charges on the go to make its case, and the low quality of indictments explains the high number of acquittals.

A further problem in Bulgaria is a lack of good practices, both in the work of the courts and during the pre-trial phase. It is even more serious, however, that the processes within key institutions do not provide for parallel investigations of both the predicate crime and the cash flows connected to that crime. There are no in-depth investigations getting to the core of the criminal enterprise; the defendants are mostly low and mid-level criminals, but the top bosses remain beyond reach.

The implementation of preventive measures for money laundering is also ineffective. Only about ten percent of the obligated entities have developed and accepted internal rules and control systems on money laundering, and most still lack functional indicators for detecting suspicious transactions. In 90 percent of the cases, the suspicious transaction reports are filed by banks and customs officers. Out of the 30 obligated entities, 28 are not compliant with their reporting and filing obligations. There are no preventive monitoring measures geared toward the high-risk sectors for money laundering, such as the construction business, real estate or tourism. Weak participation of the obligated entities and ineffective indicators are the reasons for the low quality and low number of suspicious transaction reports filed to the Financial Intelligence Agency. Furthermore, both the police and the investigation services are critical of the information they receive from the financial intelligence unit. According to the police and the investigation, these reports lack the required in-depth financial intelligence analysis.

A good practice in recent years has been the establishment and operation of small inter-departmental investigative teams. Under the supervision of prosecutors, they work on individual money laundering cases. This is one option for overcoming the difficulties created by a lack of adequate staffing – there are about 150 employees of the specialized institutions investigating money laundering – and the lack of adequate professional capacity and skills. Poor working conditions and low compensation of the officers are the contributing factors to this negative state. In addition, there are no training opportunities available to the investigators, specializing in money laundering

cases. This explains why many officers speak of a lack of motivation and job insecurity, and another 44 percent of the respondents consider money laundering to have a positive effect on the economy.

The scale of the Bulgarian economy does not allow the laundering of large amounts of cash, and often the dirty money goes in and out of the country multiple times in order to be washed. In this respect, international cooperation is extremely important for successfully fighting money laundering. However, the networking with international partners is not well-developed; communication is slow and inefficient.

The legislation regulating civil asset forfeiture is not an effective instrument for reducing the proceeds acquired from criminal activity. It is necessary to increase the control of the state institution responsible for implementing the legislation. The currently existing institution should be restructured and transformed into a new unit in order to improve its work and reduce the possibilities for corruption and misappropriation of funds.

In conclusion, the following five priorities are proposed as guidelines for improving the counteraction of money laundering:

- Streamlining the practices and reducing the investigative intensity of the prosecution of the predicate crime and the connection between that crime and the proceeds being laundered.
- Eliminating the conditions and presuppositions which can give rise to and facilitate money laundering. The philosophy underlying the entire legislative framework should be to reduce the possibility for money laundering to a minimum.
- Improving the professional qualification of the officers and introducing regulations in the relevant institutions for obligatory parallel investigations not only of the crimes involving financial proceeds, but also of the cash flows.
- Introducing a mechanism for ongoing monitoring and improvement of anti-money laundering measures.
- Changing the civil asset forfeiture procedure, based on the examples of the UK and Ireland.

The implementation of these five recommendations will significantly increase the effectiveness of anti-money laundering measures in Bulgaria. On their success is also dependent the success of the fight against organized crime and corruption.

INTRODUCTION

Money laundering is a serious issue; it is inherently associated with organized crime, in particular with the infiltration of the economy and politics by organized crime and its increasing influence on the economic and political life of society.

Albeit provisional, the scale of money laundering can be determined by the amount of dirty money washed every year. The International Monetary Fund has calculated that the money laundered in the world yearly makes up 2 to 5 percent of the world GDP, or between \$600 billion and \$1.5 trillion. The US Department of State provides similar figures, estimating the money laundered in the world at \$600 billion per year. But according to economists Reuter and Truman (Reuter and Truman, 2004), this amount is as much as \$3 trillion a year. Those estimates are based on various information sources and different macro and microeconomic theories and approaches. Admittedly, these calculations are provisional and do not claim to be exact, but they can give an idea of the enormous amount of funds laundered each year in different parts of the world. According to Geoffrey Robinson (2005), in terms of the scale and total number of cash flows, money laundering is one of the largest industries in the world.

Bulgaria is no exception to the rule. Various sources and authors confirm that, currently, money laundering is one of the most serious issues in Bulgaria for the following reasons:

- The transition period, defined by some researchers as „criminal,“ from socialism to a market economy (Bezlov et al, 2007);
- The process of privatization, which has been designated as particularly attractive for investing „dirty“ money (Prane na mrasni pari 1995; Dini 1997);
- The emergence and development of serious organized crime and corruption in the country (Bezlov et al 2007; Stankov 2000);
- The delay in criminalizing money laundering against the backdrop of the rapid evolution of organized crime (Stankov 2000);
- The geographic location of the country, which is favorable for transnational criminal activity (U.S. Department of State 2008).

In this context, the counteraction of money laundering becomes a significant problem for the country because it is inherently linked to the reduction of organized crime. As Franco Frattini states, „[M]oney laundering is at the very heart of organised crime“ (Frattini 2007: 63).

I. INTERNATIONAL REPORTS

A number of international organizations have focused their attention on the effectiveness of anti-money laundering mechanisms in Bulgaria in their reports, among them the European Commission and MONEYVAL (the Council of Europe's Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) (European Commission 2007; European Commission 2008; MONEYVAL 2008). The 2008 U.S. Department of State report on drug trafficking also discusses money laundering in Bulgaria.

The following main observations regarding anti-money laundering in Bulgaria are noted in the reports¹:

- The Bulgarian legislative framework is largely viewed as compliant with international anti-money laundering standards;
- Bulgaria has established specialized institutions for combating money laundering;
- There are special mechanisms in place for securing better collaboration between the various institutions involved in anti-money laundering;
- There is an increase in money laundering convictions;
- Despite the achievements, the counteractive measures are insufficient and more efforts are needed to solve the existing problems.

The main conclusion in the European Commission report (2007: 21) is that progress is insufficient with regard to Indicator 6: dealing with the combat of organized crime and money laundering. Based on the findings of the international reports, there is a need for new forms of monitoring the anti-money laundering measures in the country. The implementation of the monitoring requires expert analysis and an evaluation of the current anti-money laundering regime in Bulgaria. This is the rationale for the present study.

The empirical information for this study was collected through 54 semi-structured interviews, conducted by the author in the period of December 18, 2007 – April 25, 2008. The respondents included officials with expertise in money laundering investigations from the following institutions²: the State Agency for National Security (SANS), the Ministry of Interior, the National Investigation Service, the Prosecutor's Office of the Republic of Bulgaria, the Commission for Establishing of Property Acquired from Criminal Activity (CEPACA), as well as magistrates.

¹ The observations in previous reports are similar.

² My gratitude goes to the management and the representatives of the six institutions who agreed to participate in the present study and completed the questionnaires.

The present paper lays out the opinions and statements of the respondents, drawing attention to common issues and topics for further discussion.

The following section presents the main outcomes of the study, with a focus on the current state of anti-money laundering mechanisms in Bulgaria.

II. ASSESSMENT

In what follows, the opinions of the respondents in the study are presented; only in a few cases are the institutions they represent quoted. Two reasons support this decision: confidentiality and respect for the anonymity of the respondents and the belief that the institutions included in the study are part of the collective process of combating money laundering.

As mentioned above, the international assessment reports focus a great deal on the content of existing legislation; to avoid repetition, the current study focuses mainly on the interpretation and implementation of the legislative acts. We concentrate on the aspects of the anti-money laundering regime related to the practical implementation of relevant policies.

1. Current Trends

The exposition of the study's findings begins with the respondents' remarks on current trends in the counteraction of money laundering.

The interviews indicate clearly that there is a strong tendency to place special emphasis on anti-money laundering measures, in order to enact the recommendations and answer to the critical observations made in the assessment reports. Accordingly, the respondents identify a recent increase in efforts and focus on conducting more money laundering investigations.

This tendency may be an adequate reaction to the criticisms, yet not many of the respondents assess it positively. For some, „[m]any investigations are instituted on the grounds of Article 253 because it is very fashionable now and there is pressure from the European Union to do that.“ Other respondents mention that the number of convictions for money laundering is a more important priority than their quality. „In Bulgaria, we are after the numbers [for money laundering convictions], but the quality suffers. We better had one or two good convictions and verdicts a year.“

Another observation shows that often the charges for money laundering have to be changed in order to prove the predicate crime on the grounds of alternative articles of the Penal Code. „It is hard to connect the predicate crime from which the money was acquired and the subsequent investment of the money into legitimate business. We start with [Article] 253, but cannot get to the source of the money. Then we try [articles] 250, 251.“ The information from other interviews reveals that the attempts to get a conviction for money laundering often lead to acquittals, precisely because the focus is on money laundering instead of a different crime. „Why do we need to pursue a conviction for money laundering, [Article] 251 instead will guarantee a verdict. The penalty for

251 is imprisonment for up to 6 years, confiscation of the proceeds and double the fine.“

A third negative aspect of this tendency, as reported by the respondents, concerns the fact that the investigation is often rushed and the criminals who are low in the criminal hierarchy end up behind bars. They are replaced easily in the crime group and their arrest has no real impact on the criminal organization and its criminal activity. The following quote illustrates this situation: „Following the path of the least resistance and trying to get them as quickly as possible, this is what you end up with.“ Other respondents shared the same opinion.

Focusing the investigative work on the low levels of the criminal hierarchy dissuades the respondents and leaves the impression that the overall system of anti-money laundering mechanisms lacks effectiveness and fails to get to the core of the issue. Other respondents claimed that the confiscated assets are insignificant in amount and have no real influence on the criminal organizations: „They spend enormous amounts of money, but all we could recover was one automobile. Goodness, that’s how much he spends on drinks every night.“

A fourth aspect of the anti-money laundering regime in Bulgaria concerns the absence of an established practice to tie the investigation of crimes generating sizeable profits with a parallel investigation of money laundering.

Based on the information gathered, the following conclusion can be drawn: the investigative work gives priority to reports filed by the financial intelligence unit. The following quote confirms it: „[E]veryone prefers to work on a claim filed by the Financial Intelligence Agency (FIA), instead of one related to criminal activity. [This way] we get hold first of the structures that generate the money, follow the money trail, identify the managers that handle the cash flow, and finally get to him [the criminal].“

Other respondents voiced their concern that too much effort goes into investigating small-scale and petty crimes instead of focusing on money laundering carried out by organized crime. Furthermore, according to some of the participants, the anti-money laundering actions target cases in which the criminals spend the illegal money to acquire goods for personal use rather than cases where the money is invested in business. The respondents brought up the following question: „Many countries do not accept the so-called self-laundering, i.e., a crime is committed and the money is somehow spent. For one, anybody who has committed a robbery behaves like this; he may sell [the stolen item] or give it to someone else. Only if you keep it at home and do not put it to use [is the case different]. But then we are talking about concealment of unpurchased goods. For instance, if we can prove misappropriation, [he can get] 30 years in prison, so what’s the purpose of proving money laundering?“

The respondents identify as a setback in the combat of money laundering the lack of efficient implementation and application of the existing system. One of the respondents figuratively described the current

situation as follows: „[It's like] we bring in a crane to lift up a chair... [People] do not understand that the instruments for prosecuting the large-scale and the small-scale crimes are the same...The large-scale crimes, which nobody wants to take up, and the small-scale crimes require the same amount of effort.“

In concluding this section, here is how one respondent summed up the sentiments of a number of the participants in the study: „Our approach to money laundering is too formalistic, way too formalistic. We still cannot quite grasp the nature of the crime - money laundering.“

2. Preventive Measures

The present paper will not discuss in detail the legislation on preventive measures against money laundering.³ Based on the preliminary analyses and the interviews we conducted, as well as on the international assessment reports, we can conclude that the Bulgarian legislation is largely consistent with the legislation in other countries and complies with international standards in the field.⁴ However, the formal compliance of the Bulgarian legislation with international anti-money laundering standards does not translate into fighting the crime effectively. For that reason, the present analysis concentrates on the practical implementation of the law instead.

The Bulgarian legislation and the list of the 30 types of obligated entities written into Article 3, paragraphs 2 and 3 of the Law on Measures against Money Laundering (LMML) is largely compliant with the international standards. The verification of the available data⁵ in the BULSTAT registry showed that the total number of registered institutions included in the list of obligated entities is above 130,000. As the research team gathered, the number of obligated entities that have submitted their internal rules of control to the Financial Intelligence Agency is about 15,000. It is hard to tell if that number is correct, because no official statistics are available. However, several respondents quoted this number independently during the interviews; in view of the respondents' official position and the institutions they represent, it can be assumed that this number is accurate. If so, then only about 10 percent of the entities required by law to submit internal rules have fulfilled their obligations. Apart from that, the formal submission of such internal rules of control does not guarantee fulfillment of their obligations unless there are mechanisms for ongoing monitoring and relevant sanctions and the obligated entities are aware of them.

Many of the respondents indicated that the number of obligated entities listed in the LMML is too high considering the human resource

³ Law on the Measures Against Money Laundering and the Ordinance on Implementing the Law.

⁴ The 40 Recommendations of the Financial Action Task Force on Money Laundering (FATF), the three European Directives (91/308/EO of 10 June 1991; 2001/97/EO of 4 December 2001; 2005/60/EO of 26 October 2005), etc.

⁵ The inquiry included the number of registered institutions according to type of obligated entities. The available statistics are for the period ending on 01.01.2008.

capacity of the Financial Intelligence Agency. The staff of the FIA consists of 50 officers. Here is the comment of one respondent: „Prevention is weak and the officers do not perform well....We lack capacity; there are not enough people in the FIA. The prevention pillar is not effective because we have developed a system we cannot fully implement. If each of the obligated entities submitted three reports, we would be unable to process them.“ A number of the interviewees referred to a second issue, namely, that „[t]he obligated entities listed in the LMML have a direct financial interest not to file reports.“ Another participant in the study stated, „[W]hen you go to the bank, and I speak from experience, many of the bank officers do not pay enough attention to this obligation, not to mention that oftentimes they advise the clients concerning what to enter in the required declaration.“ The lack of adequate protection and security is another factor contributing to the low participation of the obligated entities. If the officers decide to file a report on suspicious money laundering transactions, then this is a potential threat to their personal security since these reports are not anonymous and contain information about the person filing the report.

Furthermore, the institutions required by law to file such reports are not well prepared to do so and lack full understanding of their obligations, as the research team gathered. Statistics published in the annual report of the FIA for 2007⁶ confirm this observation: close to 90 percent of the reports on suspicious transactions are filed by banks and customs officers. Of the thirty designated entities, banks have been the most compliant with their reporting and filing obligations. Other sectors are less compliant and include financial institutions, exchange bureaus and casinos.

An alternative study, dealing with illegal transactions in the real estate market, leads to a similar conclusion.⁷ Based on the interviews with brokers and real estate agents, it is evident that despite their inclusion in the LMML, most of the respondents do not fulfill their obligations and in some cases are not even aware of them. At the same time, the information gathered for the purposes of the present study shows that the construction business and real estate are the main targets for investing dirty money. The obligated persons working in these high-risk business sectors do not comply with their duties and responsibilities for counteracting money laundering.

As mentioned already, the professional qualification and preparation of the responsible officers and institutions vary greatly with regard to the control and prevention of money laundering. One reason may be the difference in the quality of the indicators for suspicious transactions adopted by the various institutions. For example, an overview of the internal rules of several institutions published on the website⁸ of the Financial Intelligence Agency showed that all of the obligated entities

⁶ The full report is available at the following website: <http://www.fia.minfin.bg/images_content/godishen_doklad_2007.pdf>.

⁷ The study was conducted as part of a research practicum, „Illegal Aspects of the Real Estate Market,“ in the Sociology Department of Sofia University „St. Kliment Ohridski“ during the 2007-2008 Summer semester.

⁸ Available at <<http://www.fia.minfin.bg/?cat=97>>.

have included the same indicators. It is clear, however, that the same indicators cannot be equally effective in different institutions because they operate in different spheres. A review of the internal rules of several organizations – legal entities, non-profit organizations – showed that they contained the exact same indicators as those included in the internal rules recommended for banks.

3. Criminal Law Measures

A third area of problems on which the present study focuses deals with the criminal law provisions against money laundering. The text in point is Article 253 of the Penal Code. This particular clause is similar to a provision in the Spanish Penal Code, however, as the respondents stated, „the fact that it is included in the Spanish Penal Code does not mean it will work in Bulgaria.“ Respondents emphasized a number of difficulties associated with this article: „[I]f a text from the Penal Code is not clear and needs interpretation, this is a problem.“ Moreover, some of them claimed that „[t]he main difficulty in fighting money laundering is, as a matter of fact, the legislation.“ Many of the participants in the study argued that the stipulations of Article 253 in the current Penal Code need revision. However, we must also note that a bigger number of the participants were critical not so much of the phrasing of Article 253, but of its interpretation.

More specifically, the issue concerns the so-called predicate crime, i.e., the crime from which the dirty money is generated, and the difficulties related to establishing the connection between that crime and the money from it that is laundered. The interpretations of the respondents on this issue vary greatly. To be exact, the differences concern what comprises sufficient evidence for establishing the predicate crime. The following viewpoints were expressed:

- There must be both proof of the predicate crime and proof that the proceeds were generated from that particular crime;
- To begin investigation on the grounds of Article 253, there must be pre-trial proceedings in effect regarding a different crime;
- There must be a conviction already into effect in order to begin a money laundering case;
- No conviction is necessary, but there must be sound evidence available;
- Circumstantial evidence must be available, strong enough to convince the authorities that the individual has committed a crime.

Apart from the differences in opinion regarding the predicate crime, here are the views of the respondents when it comes to establishing the money trail: „We must prove that this money is exactly the money from the crime. How can we do this?“ Supporters of this view argue that „[t]he bar is set too high for establishing this connection [between the crime and the money] and we are not capable of gathering enough evidence for that.“ Therefore, the overall conclusion of the participants in the study comes

down to the following: „[T]he first thing that must be done is to clear up the issue with the predicate crime.“

Lack of clarity about the predicate crime brings up further questions, for example: „[I]magine a situation when the prosecution claims that the money being laundered has been stolen, i.e., it claims misappropriation. The court rejects misappropriation. There is no conviction. How can you proceed further with the money laundering case?“

The respondents pointed out another issue related to the criminal-law measures against money laundering. It deals with the requirement to provide evidence for the entire amount of money that is laundered: „[we] must provide evidence for every single lev.“ As one respondent put it, „[W]e have proof of the predicate crime in the amount of 100,000 leva, but the money being laundered is much more. However, the court says, ‘We will only acknowledge the amount of 100,000 leva, there is no evidence for the rest of the money.’“

A few of the interviewees mentioned specific weak spots in Article 253 of the Penal Code. According to the respondent, the phrase „who receive“ excludes those who act on behalf of legal persons. Another respondent focused on the lack of clarity in the phrase „another socially dangerous act“ and in the definition of „financial transaction.“ However, according to others, those critiques of the legislation are not pertinent and do not merit further examination.

In another group of interviews, the respondents expressed their uncertainty as to whether one could bring charges on the grounds of Article 253 of the Penal Code if the criminal transactions take place between financial institutions on the territory of a foreign country. A similar case has been discussed in the reports of the international institutions; according to them, this should not be an obstacle. For a few of the respondents „there is no essential difference between the phrasing of Article 253 and the classical concealment of unpurchased goods.“

The main conclusion based on the collected information shows the existing differences in interpretation of the legal stipulations regarding money laundering, even by representatives of the same institution. Still, most of the respondents insist that „in order for [anti-money laundering] measures to be effective, we need to follow a unified practice, which is missing at present, and this is an obstacle to all of us.“ Therefore, it is imperative to introduce unified practices in order to improve the counteraction of money laundering.

4. Relations Between Institutions

The study identified another essential issue which concerns the interrelations and the coordination between the institutions involved in the anti-money laundering process.

4.1. The relations between the court and the investigative bodies

The differences in the interpretation of the law and the lack of unified practices are the cause of confusion and poor coordination between the responsible institutions. During the interviews, the representatives of each institution often complained about the work of other institutions. This holds true in particular about the interaction between the court and the investigative bodies; at the root of their animosity are the differences in the interpretation of money laundering.

For example, the investigation officers claim that the court's understanding is the problem: „Unfortunately, what is needed is a change in the court's attitude, in the way they interpret the text from the Penal Code, otherwise, there will be no progress.“ Judges, on the other hand, criticize the work of the investigation: „[I] think that the main problem is the prosecution – they do not put enough effort into gathering sound evidence; they just stick to the premise of the predicate crime....They should not file a case in court if they have not confirmed the predicate crime.“

The judges who were interviewed alleged that the investigation fails to do their part of the job on the cases they have filed; some of them asked: „[W]hy does the prosecution file a case if they are not certain and have not been able to provide evidence for each element of the crime?“ According to the magistrates, the „[prosecution] rushes the investigation... and fails to support the charges. But a case will be struck down without enough evidence.“ Further criticism against the investigation concerned their „lack of adequate understanding of money laundering.“ Some respondents went even further, stressing that „[the investigators] have failed to identify the source of the money and they are still filing the case. ...They should have the courage to admit it instead of blaming the court afterwards.“

The investigators did not spare their criticism of the judges, either. Here are a couple of their opinions: „I believe, and many colleagues share this belief, that the courts need to change. At present, there seems to be a trend of giving up justice“; „In my opinion, the judicial system has a debt to society. The courts, not the investigation, are to blame for the delays in court trials.“ A few respondents claimed that the courts would send back cases for insignificant omissions. They quoted a specific example: „[We had prepared] 15 volumes of 200 pages each. In volume 10, on p. 12, the witness' signature is missing. The judge ruled this as a substantial procedural violation and sent back the case with eight defendants. Simply because the witness failed to sign page 12 of 16 pages, the entire case was defeated. We can call the witness, for him to apologize and sign it – why can't this take place in the court? The Penal Procedure Code gives the court advantage, and sometimes they just do not feel like judging but want to play procedural ping-pong, juggling the cases between us and them.“

The case study in the following section illustrates the fact that even the introduction of special measures to improve cooperation, if not followed by strict monitoring, could have unwanted consequences. The case in point is the Instruction for Cooperation of 2006, signed by the

Prosecutor's Office of the Republic of Bulgaria, the Financial Intelligence Agency, and the Ministry of Interior.

4.2. The Instruction for cooperation and coordination

Before the specific instruction went into force, the Financial Intelligence Agency used to send its reports to various institutions: „Before that, they used to send their reports to any institution they deemed necessary – the prosecution, the police, the organized crime unit, etc.“ One positive effect of the Instruction was that it designated a centralized information gathering point, namely the Chief Directorate „Combating Organized Crime“ (CDCOC).

This new closer cooperation brought forth some problems, as indicated by the information gathered. The way the FIA carried out its work was subject to criticism by the other institutions. „The FIA is an information service; we are not satisfied with the job they do. There are only a few major cases that have been initiated by the FIA, the rest come from the CDCOC or from foreign countries. The FIA conducts no analysis or case assessment. They only refer the information to us.“

More specifically, the criticism waged against the financial intelligence addresses the low-quality information they send to the other institutions; only a small percentage of it proves investigation-worthy for the CDCOC. The following quote supports this observation: „[T]he information coming from the FIA is shallow. How can we start looking for a crime in a case when someone has assets for two or three million and he bought an imported car for a 100,000 leva? The checks we need to do are the same as when we investigate drug trafficking. The exact same checks and inquiries.“ Coupled with this is the problem that „the prosecution is afraid to make a decision, i.e., to turn a minor case down and refer it to the National Revenue Agency.“

In addition, respondents reported that an obstacle to inter-departmental cooperation is the fact that the CDCOC is a paper-only office, preventing the creation of an electronic database.

The respondents also mentioned that the period for correspondence between the institutions, set at 30 days by the Instruction, is too short. The deadline was meant to speed up the work but has in fact become a hindrance. „We have 30 days to report to the prosecutor about the investigation, but for money laundering cases 30 days are just a short moment. It takes a while to send the requests for information to the different institutions, to dig out all confidential information, and one month's time is far from sufficient. ...The minimum period to complete the investigation of a case is between 6 and 9 months.“ Apart from that, fixing the deadline at 30 days creates more problems; in the respondents' words, „[W]e must call the person in for interrogation, but this way we send a warning signal to them and the most we can get is a cannon fodder. We are basically telling him to cover up everything or to cut the ties [we're after].“

In addition, the information sent by the FIA is often overdue, i.e., there is a delay between the time the offence is committed and the filing of the report for investigation. „The FIA is late in sending its reports to us. If they report something that happened in 2004, how can we trace it back? A lot of the paperwork is gone by now.“ Representatives of different institutions shared the same view: „Usually we are talking of a time span of 2-3 years. I remember a case in which eight years had passed after the money laundering or the so-called „suspicious transaction“ had taken place, some bank transfers. ...It took the bank more than six months to gather the documents I had requested, as they were already archived.“

The analytical capacity of the FIA and its ability to execute its information-gathering function well has also come into question – the files often lack supporting documents and analysis. „The FIA just hands in a sheet with some data, and now I have to collect the rest of the documents. [We] are nothing but a mailbox.“ Participants in the study also mentioned that when they receive a report from financial intelligence, it does not contain information about a predicate crime; yet the deadline to investigate it is 30 days. Furthermore, „when the financial intelligence unit files a report, usually it is about a single transaction; they are not searching to find the connections between the transactions.“

According to the Instruction for Cooperation from 2006, the FIA files the information to the Chief Directorate „Combating Organized Crime“. As a result, many of the Directorate's officers feel they are swamped with work. „It takes a long time to sift the evidence coming in from the financial intelligence unit. We have no time to carry out the actual investigations.“ Many agree that the new organization of the work process has negatively affected the capacity of the CDCOC to counteract money laundering.

4.3. Inter-departmental investigative teams

A good number of the participants in the study all expressed their belief that „cooperation is successful because people know each other personally, not because the institutions are making it possible. If you have a friend or an acquaintance in the other office, he will do the job for you as a personal favor; otherwise, you don't know how long you'll be waiting.“ Personal connections speed up the work because the administrative procedures are heavy: „[Y]ou need to run it by the director, then he needs to assign the job to someone; so, something that could be done in an hour may eventually take three weeks.“

To overcome these obstacles, the institutions create inter-departmental teams to work on money laundering cases. Repeatedly during the interviews, the respondents emphasized how important teamwork was for them: „[T]eamwork is extremely helpful in the investigations of this type of criminal activity.“ In their opinion, the significant improvement of the inter-departmental cooperation is due to this teamwork on money laundering cases: „[W]e build our teams and the progress is visible.“

However, some of the respondents also addressed the weak sides of the joint investigation teams, for instance, „if the good will is not there and there is no mutual understanding, then we are stuck in square one.“ Some of the respondents who had been involved in such teams claimed that this is just a pretense – the teams work well on paper, but in reality they are not functioning as they should. They pointed out that „[in these circumstances], normally the team members would be working under one roof, instead of sending letters to each other to set up the team in the first place.“

Based on the interviews, one of the further issues concerns the prosecution: „[T]he prosecutor acts as if he were the top dog of the investigation. No one is denying that he is the boss, but he should not flaunt it. Don't just stand there and give orders!“ There were also people who shared the opposite view, namely that the pressure from the prosecutors in the inter-departmental investigation teams has a positive effect and leads to better results.

5. Issues Related to the Organization of the Work Process

5.1. Human resources

Based on the interviews, we can conclude that most of the institutions lack the necessary human resources and organizational capacity. Taken together, in the institutions we studied only about 150 officers are qualified to work on money laundering cases. The main problem identified in the interviews with representatives of the Ministry of Interior, the FIA and the Prosecutor's Office was the lack of adequate staffing and professionals specialized in this field. Given that there are only two special investigators, the national investigation service still has not found a way to engage efficiently an entire department of magistrates specialized in economic crime investigations. Despite declaring its readiness to fight money laundering, the state fails to secure adequate staffing and administrative capacity for the responsible institutions.

The second main issue is the professional qualification of the people investigating money laundering cases. It is not enough to double the number of people in the agencies if they lack the necessary skills and knowledge. Some of the participants in the study pointed out that many of the officers engaged in money laundering investigations „are not familiar with the criminal world, they do not know the different crime groups. They only see a house, a car, etc., being bought, but not the persons involved in organized crimes: this information makes sense within a certain context.“ According to some of the respondents, the lack of well-prepared specialists often leads to confusing, for instance, „a money laundering crime and tax fraud.“

The professional requirements for the people working on financial crime investigations are very high and this creates further difficulties for the relevant institutions, such as the Ministry of Interior and the FIA. Those who possess the necessary qualifications are a hot commodity

on the job market and can easily find better-paid positions elsewhere. „We need people who are well-qualified, for example, former accountants, bankers, but they can make much more [working for someone else]. The organized crime groups have their own experts and professionals and are always one step ahead of us.“ Further complications exist, for instance, for officers in the Ministry of Interior who must be graduates of the Police Academy in order to receive an appointment in the money laundering division. Consequently, many of those institutions are not competitive enough and fail to recruit high-quality personnel. Apart from that, the issues of low compensation and poor working conditions also seem to deter applicants from this job.

5.2. Compensation and working conditions

The participants in the study repeatedly named the lack of adequate compensation as an obstacle to recruiting and retaining better-trained staff. „Our salaries are very low compared to the competencies we are required to possess; in the private sector, the compensation would be much higher.“ This is an especially serious issue for police officers. Raising their salaries is therefore a necessary condition for attracting and hiring better-qualified personnel.

Next is the issue of the poor working conditions. Most of the respondents underlined the fact that they are forced to work either with outdated equipment or without proper equipment.

5.3. Lack of job security and low motivation

The respondents also spoke openly about the lack of motivation. As they stated, „One thing that crushes down all your motivation is that you invest all of your energy and efforts into something just to find out that what you have done is simply dismissed ‘upstairs’, and not because you have done a lousy job, but because someone or something is in your way. Can you imagine how hard that is?“

In that vein, respondents also discussed another issue – the existence of levels and sectors in the government that are off-limits; as one respondent put it, „anybody who had ventured to do anything about that has burned himself.“ Furthermore, many of them share the feeling that „intentionally, in the last few years our work has been obstructed, whether directly or not. Take, for one, the changes in some of the legislation, the unwillingness [of the state] to accept alternative proposals.“ In such conditions, the respondents feel left out and without the necessary support from the government: „It is questionable whether or not there is a [political] will and resoluteness to get to the bottom of things because the ordinary employees are forced to work under great uncertainty, on purpose, I think. If you do not feel that you have the support of the government, how can you go on and persist in your job? At some point, you just give up and say to yourself, ‘I am not the one to change the world.’ So the role of the state is extremely important.“

Others shared that, „On the one hand, listening to the politicians, you have the impression that they are willing and ready to fight organized crime; on the other hand, when you look at what they do every day, you get the impression that they are doing it just to please the European Union, not because they believe in it.“ Understandably, issues like this as well as the lack of job security account for the low motivation of the employees and their indifference toward achieving their objectives. I You will do your job and close the case, and so what?“ That attitude and the lack of motivation exist across the board and many of the respondents spoke about that.

In addition, participants fear that they could become victims of foul play while investigating money laundering cases: „[All] of us working on these cases, we can be played at any time. It only takes someone to feed my bank account and then file a corruption report.“

The respondents were asked the following question: „In your opinion, what is the influence of money laundering on the country's economy, rather positive or rather negative?“ Their responses provide more evidence of the lack of motivation among them. Forty-four percent responded that the influence is rather positive, 37 percent cannot decide and only 19 percent believe that money laundering has a negative effect on the economy. Given these statements, with almost half of the respondents assessing money laundering as beneficial for the economy, it is not hard to see how strong their motivation would be to investigate money laundering crimes.

5.4. Institutional structure and organization of the working process

As gathered from the interviews, the internal structure and mandate of the institutions at hand do not require parallel investigations of the predicate crime and of the associated cash flows. This is true above all for the Ministry of Interior, even though that principle of work should be followed in both the pre-trial and the trial phases.

The Ministry of Interior is one of the institutions where the need is strongest for better management and more effective organization of the work process. The available information clearly indicates that the distribution of duties is purely formal; the unit responsible for investigating money laundering cases is autonomous and rarely takes part in parallel investigations of the predicate crimes. The units in charge of investigating the predicate crimes do not investigate the trail of the proceeds generated from the crime, but target only the primary crime. According to their internal rules, these units are required to include the task of tracing the proceeds in their operations plan, but it hardly ever happens. Besides, officers who are qualified to work on money laundering cases do not always make the teams in charge of investigating the predicate crime. They are required to inspect the information submitted by the financial intelligence unit and this takes a significant part of their time.

The lack of regulations and adequate management of the information flow on predicate crimes is another shortcoming of the work process as organized in the Ministry of Interior. Consequently, the officers from the money laundering unit often learn from the media about successful police operations against crimes linked to illegal proceeds.

Participants in the study identified one further issue related to the internal structure and organization of the work in the judiciary: the random assignment of judges to court cases. They call the practice into question because a money laundering case can be assigned to a judge who has no specialized training to preside over such cases, while someone with training would have to decide on unrelated cases. According to the respondents, the principle of random assignment seems to spoil everything; it is an obstacle, not an advantage, of the internal system of management and work organization.

6. International Cooperation

Many of the specialists who have worked on money laundering cases ascertain the international nature of the crime. Therefore, international cooperation plays a significant role in the success of the anti-money laundering operations. „Our efforts against this crime would have been futile had it not been for the assistance of our international partners.“

On the other hand, based on the information gathered, it is evident that communicating with the international partners is not an easy matter and leads to significant delays in the institutions' work.

For some respondents, „the international legal mechanisms are not up to date. [Our foreign partners] are quite negligent – they fail to respond or their responses are not relevant.“ This opinion was seconded by other participants, claiming that „there are serious problems, nobody cares, [they] respond whenever they like and what they like.“ According to a third group, international cooperation seems to be the biggest obstacle in money laundering investigations: „One major issue is the delay in receiving the information requested through [the mechanism for] legal cooperation.“ Sometimes the international partners ask about the specific charges against the defendant; yet, when the person is already charged, the Penal Procedure Code sets deadlines that must be observed and such information requests shorten the actual time needed for investigation.

Legal cooperation seems to hit a roadblock when investigations pursue cases of money laundering in which the Bulgarian dirty money is invested in the foreign country. As one respondent put it, „I get the impression, actually, I am almost certain that they do not care if it's dirty money or not when it stays in their country – they do not have a problem with this. They are not interested in finding out what their citizens are up to in Bulgaria or that Bulgarian citizens launder dirty money in their country. You do not believe that hotels and other construction projects are financed abroad with dirty money from the Bulgarian criminal organizations? It does happen, but nobody asks any questions over there.“

Another group of respondents had a mixed view of international cooperation; it is sometimes helpful and sometimes not: „[Currently] I am working with foreign colleagues on a case and we are cooperating, but sometimes there really are substantial problems.“ A fraction of the respondents did not report any difficulties in communicating with international institutions. They did emphasize the importance of personal contact, though; otherwise, the communication stalls.

7. Further Problems in Combating Money Laundering

The interviews helped identify more issues that could impede the counteraction of money laundering. The next section briefly discusses them.

7.1. Access to confidential information

The access to confidential information has been repeatedly recognized as an important issue, especially for the officers of the Ministry of Interior. „A huge obstacle is the legislation regulating the access to confidential information, be it bank account information, tax information, commercial or any professional secrecy. To obtain this information, you need court permission.“ Respondents complained that the most difficulty exists in the communication with the banks: „It is really tough to obtain bank account information. This is almost impossible on the level of the preliminary investigation.“ With regard to the legislative framework, the respondents explained: „Take the changes in the new Tax Insurance Procedure Code of 2007, for example. Until then, we had direct access to information; the director would write a letter to the National Revenue Agency, and they would provide audit reports, company dossiers, etc.... Now we do not have this privilege and we need to go the court. First, I hand in a request to the director, he writes a letter to the director of the police, then it goes to the court and the court decides whether to grant access or not. It is not that we have no access to bank information, the problem is that it takes a long time and that affects the investigation.“

From the information gathered it seems that even when access to confidential information is granted, there still may be problems. As one respondent put it, „We are granted access to bank accounts by the court, but only for concrete accounts and for a specific period. Once that period is over, the bank no longer sends us information about the account. This is an obstacle to the efficiency of the investigation.“

Sometimes issues with obtaining confidential information and the time needed for this may prove detrimental to the investigation. The respondents believe that as long as the current regulations are in place, „the effectiveness of the investigations will suffer. We lose something very important, and this is timeliness and speed.“

7.2. Unfavorable legislative environment

The anti-money laundering legislation and its implementation face another obstacle – the overall legislative framework, especially the legislation regulating the economic activity, is not favorable to and does not support anti-money laundering measures.

One example is the lack of regulation regarding loans and charity donations, for which there is no official registry. Thus, a backdated loan agreement can be produced at any time, or a witness can testify that they have lent the defendant the amount. That leaves the investigators no option: „It is obvious the document has been prepared just for the case but there is nothing we can do. They have worked out all the details.“ A further difficulty arises with the banks and their loose criteria for granting credit lines: some banks do not even require proof of income. There is no effective legislation regulating the registration of phantom companies. According to leading experts in accounting (Dushanov 2006), the legislation in this field creates favorable conditions for criminal activities and money laundering in particular.

To the above list we can add the practice of real estate businesses to officially declare taxation values much lower than the market values in order to reduce the amount of taxes they owe. A notorious example includes a notary certified deed for a land swap deal involving 4.5 acres of land on the seacoast for a mobile phone. An additional problem is cash payments, which make up a significant part of all financial transactions in the country, even for large-scale investments.

We also need to account for high levels of the so-called „grey economy“ in the country. A recent survey conducted by the Bulgarian Industrial Chamber (Danev 2008) shows that these levels are alarmingly high in the construction business: according to the data, 75 percent of the concrete produced in Bulgaria is illegal as no taxes have been paid. The high percentage of illegal economy creates perfect conditions for money laundering and the investment of dirty money.

Another issue reported by the respondents is the lack of adequate expertise and sociological analyses of social, economic, etc., issues in the country, as well as the lack of experts who can prepare such reports. The use of expert reports in the investigations has significantly dropped in recent years.

Respondents also emphasized issues of information leaking from the public registries to people or organizations under investigation: „[I]nformation is leaking and so the most important aspect of our work – surprise – is destroyed.“ The fact that there is no single online registry is a serious stumbling block to the investigation, despite all the money invested in developing such a tool over the years. The lack of a centralized information system, of centralized electronic registries and online access to data significantly slows down the investigation: „[G]athering all the data takes time; we depend on the efficiency and promptness of the other institutions.“

It is worth mentioning that most respondents see the inadequate response of the revenue agency as a hindrance to effective anti-money laundering measures: „The tax officers are only interested in collecting the taxes; they do not care what the source of the income is.“ The belief that fighting money laundering is only the responsibility of the investigation is far from the truth. To be successful, the fight against money laundering requires the joint efforts of financial institutions, including the customs and the revenue departments.

Furthermore, it is necessary that all relevant legislation be geared toward reducing the criminal activities that generate financial profit as well as reducing the opportunities for money laundering in any business sphere. The final step in this process should be the adoption of special anti-money laundering legislation designed to stop the dirty money that has bypassed the other barriers. If the entire legislative framework is inadequately developed – if it does not provide the means to eliminate or restrict to a minimum the generation and subsequent laundering of dirty money – no matter how much the fight against this crime intensifies, it will fail. Yet, no anti-money laundering legislation can change the economic environment, no matter how good the laws are or how dedicated the responsible institutions are to its implementation.

7.3. Training

The lack of appropriate training in anti-money laundering practices is also an issue in Bulgaria. Most of the respondents state that they need further specialized training. As drawbacks of the current education and training methods, they see the emphasis on theoretical topics instead of interactive practical formats. For the respondents, courses reviewing the legislative framework in different countries are not helpful; training formats that allow exchange of experience, practical sessions on money laundering schemes, bank systems, international legal cooperation, etc., are more beneficial. The personal contacts established during the seminars are especially valuable for the respondents.

8. General Issues Related to Combating Money Laundering

The participants in the study brought up several other issues common to anti-money laundering and the combat of organized crime, which are discussed in the section below.

8.1. Legislative aspects

One problem repeatedly identified as an obstacle to money laundering is the obsolete Penal Code and the formalist nature of the Penal Procedure Code: „The entire Penal Code is obsolete; it was developed in 1968, and despite numerous amendments, it is still wanting. We cannot work with it. Instead of speeding up the process, the new Code is even more burdensome.“ According to other participants,

„[T]he reform going on is for the sake of the reform itself, and instead of improving the operational work, it has made it more difficult and slow.“

8.2. Pre-trial proceedings

Based on the information gathered, most respondents advocated for a simplified pre-trial phase. One of the questions raised concerns the new Penal Procedure Code, according to which the pre-trial phase is only preparatory; however, investigators are required to gather all of the evidence.

Furthermore, evidence gathered during the pre-trial phase is not admissible in court. „If, for example, the witness is not questioned before a judge, his testimony is not admissible, unless [his] lawyer consents.“ Besides, „in a big case, as all money laundering cases are, tens of witnesses will be interrogated. Practically, it is impossible to conduct all of them before a judge. On the other hand, if we are going to question them in the presence of a judge, then what is the purpose of the pre-trial phase...the fact that a testimony was not obtained before a judge is no reason to dismiss it.“

Some are against the stipulations requiring the interrogation to take place before a judge: in their opinion, since the investigators and prosecutors are also part of the judicial system, the presence of the judge, as an observer, is not needed. „If the court dismisses our investigation reports and admits only an interrogation before the judge, then why do it at all? I had a case that the judge sent back because I had missed signing one protocol; fine, but if the judge does not admit the protocol, why all the hassle?“ A majority of the respondents also believe that there are too many instances during the investigation when permission from the court must be obtained; in their view, „the judge should not be that involved in the pre-trial phase.“

A setback of the law is also the fact that during the detention hearing, the defendant is given access to the pre-trial materials. This allows him to find out what charges to expect, for which transactions, and to take measures, accordingly, to cover up the evidence: „[A]t any point during the proceedings, he can produce a loan agreement and show that the money is legal.“

8.3. Court trial proceedings

Participants in the study also discussed issues related to courtroom proceedings. According to investigators, the main problems arise with court rulings that send the lawsuit back to the prosecution. „There have been cases when, after several hearings, the court sends the case back to the pre-trial phase.“

Apart from this, the respondents identified as a stumbling block those stipulations in the law which allow the defense to request postponing complex cases with multiple defendants as many times as needed.

Typically, in such cases the reasons are either the defendant or the lawyer report sick; the lawyers have other court appearances or have not had time to read the court materials, etc.

An equally important problem is the heavy workload of the judges, not to mention the lack of enough courtrooms, which also causes delays in the trial hearings.

8.4. Corruption

Representatives of various institutions participating in the study stated that corruption is a serious issue and obstacle to effectively fighting organized crime; in their views, corruption has penetrated every institution. What is more, some respondents claimed, „[C]orruption is so pervasive, that no matter what we do, it will go corrupt.“ From the information gathered, there is evidence of corrupt magistrates, but it is hard to say if corruption has spread over the entire system. Other respondents confirmed that „there are problems with corruption within the institutions themselves, information is leaking.“ They perceive this as a serious threat to any positive accomplishment: „If there is even one rotten apple in the system, everything will go bad.“

But corruption is only one of the enemies; often, a case will be dismissed because of negligence and carelessness: „[We] have had cases dismissed because of negligence, not corruption. Negligence may be a time bomb. When you put together incompetence, corruption, and laziness, all the way up...[then,] when the case comes to court, the judge will [inevitably] dismiss it.“

8.5. Other problems

Among the other issues named by the respondents is the admissibility of information collected through special intelligence devices (SID): the courts do not consider it admissible evidence if it is not gathered during the pre-trial proceedings. „We can wiretap their phone lines, we can follow them, but it is for our own purposes. It is not admissible evidence in court. When we proceed with the inquiry officially, the person is already warned about this and prepares. Why use an SID then? He knows we are listening.“

Along the same line, many of the investigators share the opinion that in Bulgaria human rights are placed on a pedestal: „In Bulgaria, there is a human rights cult. We cannot, as a society, ignore the public interest for the sake of one person – which does not mean we should not respect human rights.“

Similarly, a considerable drawback in the law, according to the respondents, is the possibility to seek reduced sentencing: if a person who has committed a serious crime pleads guilty, he can receive a sentence below the minimum set in the law. The opinions on that topic range from „The whole system is conceived in sin“ to „So many laws were written for just one person.“

Apart from that, participants criticized the current situation which leaves the investigators out of the investigation process and, as a result, out of work: „The new Penal Procedure Code of 2005 violates the Constitution and the Judiciary Act by assigning the investigators under 1 percent of all cases.“ Additional problems exist related to the statute and mandate of the various institutions. For example, officers from the current Chief Directorate Combating Organized Crime feel humiliated because their institution was demoted to a directorate instead of remaining a national-level service. Magistrates, on the other hand, shared their disappointment in the fact that they were stripped of their immunity.

In conclusion, the discussion in this chapter touches only partially on the most important issues in the fight against organized crime, and money laundering in particular, that were brought up during the study. A more thorough analysis is beyond the scope and purpose of the present study.

9. Civil Asset Forfeiture as a Supplementary Instrument in Reducing the Assets Acquired from Crime

In this last section of the analysis of anti-money laundering measures in Bulgaria, we look at the civil asset forfeiture procedure and its significance in the overall context of the policy against illegally acquired property. The respondents in the study discussed the differences between the civil and the criminal asset forfeiture procedures. According to them, „There must be a clear distinction between the civil and the criminal asset forfeiture procedures. The civil recovery cases should be relatively easy to file in court.“ The civil asset forfeiture procedure should be employed as a supplementary instrument to restrict and reduce the profits acquired from crime, and the provisions in the law should make its implementation easier than the criminal procedure.

Nevertheless, the interviews with representatives of the Commission for Establishing of Property Acquired from Criminal Activity brought up some questions that seemed to be of common concern to all those involved. Some of the issues described above, in particular the unfavorable legislative environment for money laundering confiscations, also have an affect on the civil asset recovery. At the same time, the CEPACA faces new challenges in its day-to-day work. One such challenge is that recently more and more individuals under investigation for a crime on the grounds of Article 3 of the Law on the Forfeiture to the State of Proceeds of Crime have begun to transfer their property to third parties before the Commission could issue an imposition of seizure. „Recently, there has been much publicity about the law and their [the criminals'] attorneys warn them about the impositions on their property. I do not know how we will proceed in the future.“

The issues we discuss in the following chapter primarily concern the Law on the Forfeiture to the State of Proceeds of Crime (LFSPC).

9.1. Loopholes in the current law

One of the main weaknesses of the LFSPC is the provision that there must be an effective sentence in order to issue an imposition of seizure: „The fact that asset recovery depends on a criminal conviction already in effect is a huge problem, in my view.“ Consequently, the CEPACA has no right to begin inquiry in cases of wealth with uncertain origin if the person is not directly involved in criminal activity, as established by a court. In addition to that, „[T]he requirement to have a conviction causes great delays in seizing the property and, eventually, in serving justice. But this is what society wants from us.“ Furthermore, if an imposition has been issued based on the LFSPC, but there is no conviction or the CEPACA fails to prove the discrepancy in the income and the assets owned by the individual, a counter lawsuit could be filed against the CEPACA on the grounds of the State Liability Act.

Another issue is that the burden of proof in such cases is on the CEPACA and the defendant is not required to provide proof of his income. Members of the Commission consider this a serious difficulty: „Our job is to prove the negative - that a person does not have income. In principle, negative facts need not to be proven by law, because it is impossible to gather evidence for something that did not happen. ... [T]hat's a tough job.“

A third problem is the provision in the Law on the Forfeiture to the State of Proceeds of Crime, which permits proceedings to be initiated by CEPACA against property valued in excess of 60,000 BGN (approximately EUR 30,000). According to some of the participants, this amount is too high. On the one hand, the LFSPC stipulates that setting this amount as a minimum requirement guarantees efficiency and cost-effectiveness of the work of CEPACA. On the other hand, setting the limit at 60,000 leva makes difficult the imposing of seizure, for instance, in the following case: „[A] person has assets in the amount of 65,000 leva. We gather evidence for this, and in the course of the investigation we find out that he could prove that 30,000 leva are lawfully obtained. That is, the unlawful assets are reduced to 35,000 leva....It is obvious that all of his property is acquired from crime, but because it does not exceed 60,000 leva, we cannot confiscate it. At this point however, we have spent enough time and efforts to carry out the investigation, but in vain.“ For the respondents, this is the main issue: „Any assets acquired from criminal activity should be subject to confiscation, the current limit [of 60,000 leva] works against us.“

Setting a fixed minimum amount of criminal assets is also an obstacle for tracing back the property owned.⁹ The participants in the interviews firmly stated, „There must be objective criteria for assessing the property, but with changing denominations and the inflation rate – it's hard to calculate everything. Comparing funds in leva for a period of 25 years back is impossible, so we use the minimum salary as a measuring unit. This method is not very reliable either, because it reflects different political

⁹ The Commission has the right to check the assets of the investigated person for 25 years back.

and social circumstances.“ Despite the margin of error, the respondents agree that it is preferable to calculate the criminal assets in terms of minimum salaries.

A further complication is the fact that often during the court trial new evidence and new information becomes available about the defendant to which the officers from CEPACA did not have prior access. Moreover, Article 3 of the LFSPC, which lists the crimes the CEPACA is eligible to investigate, does not include all criminal activities that could generate large proceeds. „There are many clauses from the Penal Code that do not apply to us.“ Some of these crimes referred to by the respondents are corruption by public officials, administering budget resources or expedient resources not according to their purpose, thus causing harmful consequences to the state, illegal trading of cultural and historical valuables, and cyber crimes.

One more problem reported in the interviews concerns the restriction on the Commission to investigate only the suspect and his/her spouse and minor children; the law prohibits investigations of parents, siblings, children above 18, life partners, etc. Employees of the CEPACA argue that very often assets acquired from criminal activity are not in the name of the investigated person but in the name of third parties.

The conclusion is that the current Law on the Forfeiture to the State of Proceeds of Crime „in effect is restrictive because a considerable group of potential clients remains beyond its reach – people who have assets and demonstrate a high living standard without having any legal income.“ For the reasons stated above, it is imperative for the responsible institutions to address these issues. As the next section shows, there are a number of loopholes in the law that also need attention.

9.2. Loopholes in the Law of Divestment in Favor of the State of Property Acquired from Criminal Activity

Most of the respondents agree that the scope of the current law should expand to cover more criminal cases, but also that the existing gaps should be fixed.

Almost all of the respondents stated that a significant downside of the law is the lack of a specialized methodology for assessing the value of assets: „In the law there is nothing regarding the method to determine the value of the assets. Do we go by the official value declared in the papers or the market value or the size of the actual investments, if they have built a house?“ Because such methodology is not available, the respondents are forced to apply old methodology from the already abolished Law on the Property of the Citizens. However, they believe that the value included in the official papers is not reliable either and should not be taken as a guide.

Other respondents pointed out that the LDFSPACA does not regulate the work of the Commission in the pre-trial proceedings. „When the case reaches the courts, i.e., after we have filed a statement of claim with the

court, the Civil Procedure Code is applied. But the bulk of our work is prior to that, outside the courtroom – verifications, gathering evidence which might be useful for the Commission. The current law, however, says very little about that process.”

Members of the CEPACA also emphasized that the law does not include provisions about the legal weight of the collected evidence, so that the court is by no means required to consider it. Consequently, once the case is in the courtroom, the court may order the same expert’s examinations again. This not only delays the process, but is also a potential threat to the work of the CEPACA: „Imagine a situation when our expert’s assessment, upon which we have based our decision, does not match the assessment carried out by the court-assigned expert. There is a significant discrepancy in the two assessments. Then the court can rule that we have no valid case.”

Another example of a gap in the law has to do with the evidence that the CEPACA is required to provide. The law does not stipulate how oral evidence can be collected and documented by the Commission, nor does it allow members of the Commission to conduct on-site inspections: „We can do a search and seizure but not an on-site inspection, i.e., we are allowed to do the more important things, but not the little ones. And an inspection is important for us.” The respondents also stressed that half of the provisions in the current law regulate the setting up of administrative bodies. Only Article 18 describes the specific powers and functions of the Commission, but does not provide detailed procedures for their implementation. The absence of a provision allowing the Commission to initiate an investigation is also a drawback of the law.

Another issue which is not settled in the current law is what to do when the criminal assets are either missing or have been destroyed; „The law [LDFSPACA] does not stipulate what to do in cases when the property has been destroyed or is missing, as the Penal Code does that, i.e., when a recovery order is issued and the property is missing, its equivalent value is subject to recovery. If we can prove that a criminal asset has been in possession of the person in question, but it is not available any longer, for whatever reason, we must stop here – there is nothing we can do.”

In the next section the discussion focuses on CEPACA’s cooperation with other institutions.

9.3. Obstacles to cooperation in civil recovery cases

Cooperation with other institutions is extremely significant for the successful work of the Commission for the Establishment of Property Acquired from Criminal Activity. This explains a number of opinions that „the slow information exchange with other departments – state and municipal institutions – is the biggest problem for the Commission.”

To improve that, a special Instruction for Cooperation on civil recovery cases has been signed; the parties to the document, however, are

skeptical: „The instruction is in place, but inter-departmental collaboration is still beyond reach.“ Similar to the opinions discussed above, members of the Commission also see personal contacts as the necessary condition for collaboration. Here is what one representative of the CEPACA had to say: „In order to do my job, I have to look for friends and acquaintances in the other institutions to help me out. Otherwise, it is an endless cycle of correspondence and no result at the end.“

Others alluded to more difficulties between the CEPACA and the other institutions. For example, representatives of other institutions reported that they always file the relevant information to the Commission but do not receive any feedback. Officers from the Commission, on their part, say that they would like a closer cooperation with the Ministry of Interior and would like to receive more information from them. „It is of utmost importance that we receive information on ongoing investigations from the Ministry of Interior about a certain person – for instance, what vehicles he drives or where he goes....We could then check this unofficial information and gather further evidence....We have, in the past, received such information and it was very helpful.“

In the interviews with representatives of other institutions, we heard arguments that the existence of the Commission is superfluous and that it has not met the public expectations. Representatives of CEPACA on the other hand see the current level of cooperation with other institutions as an expression of their reluctance to fully and completely assist this new specialized body.

Another serious issue for CEPACA is international cooperation. Respondents stated that „[a]t this point, we have no access to information from foreign countries, yet in 90 percent of the cases the investigated persons travel abroad. There is no legal mechanism allowing the Commission to request an inquiry to be conducted in a foreign country.“

All that said, for many of the respondents one conclusion has to be drawn: „The law needs to change. Everybody in the Commission believes that.“ Furthermore, according to the participants, the current Law of Divestment in Favor of the State of Property Acquired from Criminal Activity is much less effective when compared to the previous Law on Citizens' Property. „The older law stipulated the same grounds for asset forfeiture....It also required a comparison of assets and liabilities. But there was no requirement for a conviction or a criminal investigation and there was no minimum size of the property; the burden of proof was on the defendant.“

III. AVENUES FOR IMPROVING ANTI-MONEY LAUNDERING MEASURES IN BULGARIA

In the last part of this paper, we look at some ideas and proposals presented by the participants in the study. These proposals can contribute to solving the issues described above as well as to finding a more adequate response to money laundering.

New trends in the counteraction of money laundering:

- Some respondents propose a more active implementation of the so-called „politics of the possible“: if there are obstacles to proving money laundering, other options, e.g., tax fraud, should be used.
- The investigations initiated on the basis of information filed by the preventive pillar should be limited and the investigations of cases resulting from criminal activity should be given priority.
- Criminal investigations should avoid rushed arrests of people on the low levels of organized crime, but aim to uncover the entire criminal enterprise.
- There should be more active work on running parallel investigations of money-generating crimes and investigations of money-laundering.
- There should be strict adherence to the method of „following the money trail.“

Improving the work of the prevention pillar:

- One possibility for improving the effectiveness of the prevention pillar is the development and application of a special program, requiring all of the obligated entities as designated in the Law on Measures Against Money Laundering to introduce and implement internal control systems.
- An alternative proposal envisions the introduction of additional monitoring and control mechanisms in relation to the obligated entities, such as higher sanctions or bonuses when important information is submitted.
- A system of adequate indicators for suspicious transactions should be developed and introduced, based on the specific area of service of each obligated entity. Additional indicators for suspicious transactions should be introduced and regularly updated, especially for high-risk business spheres.
- Ongoing high-quality training should be provided to the obligated entities as part of the improvement of the preventive work.

- The administrative capacity should be increased and the staffing of the financial intelligence unit should be adequate.
- Regular review of the existing legislation and new legislative initiatives, if necessary; regular review of performance and introduction of additional performance criteria for the specialized institutions, etc.

Improving the criminal law measures against money laundering:

- Participants in the study proposed removing the requirement to prove the predicate crime.
- Another proposal suggests that the Supreme Court issue an interpretative decision allowing circumstantial evidence on money laundering cases, as is the practice in Spain. Respondents in the study argue that the Supreme Court should issue such a decision regardless of the lack of precedents: only a few cases on money laundering are tried each year, and it may take a long time to accumulate a substantial number of court cases required for an interpretative decision. In the words of one respondent, „If the Supreme Court does not issue a statement, then the legislator must amend the law.“
- Participants propose a „change in the phrasing of Article 253, which should first state: „whoever makes use of assets with uncertain origin,“ and then list the specific crime....Besides, the burden of proof as regards the so-called „wealth with uncertain origin“ should be on the one who owns it.“
- Another issue, for which an interpretative decision is proposed as a solution, is the abolishment of the requirement to prove the entire amount that has been laundered. Respondents claim that such a decision would not be a precedent because there is already „an interpretative decision for misappropriation, which rules out the need to provide evidence for every single lev spent.“

Improving the coordination and collaboration between institutions:

- To improve the counteraction of money laundering, some of the investigative bodies propose the establishment of „specialized courts. This could be only a practical solution, no need to introduce a new law. The courts will rule on specific cases and will be staffed with experienced, well-prepared magistrates.“
- There should be changes in the Instruction on Cooperation: some respondents recommend that it should be revised, if only on account of the fact that the Financial Intelligence Agency has now become a directorate within the SANS.“

- Concerning the improvement of the work of the financial intelligence unit, the proposal is: „There should be a board making the decisions....They should report 3-4% of all the cases, aware that some may fall through the cracks; when information [from other institutions] accumulates, the case will be investigated.“ In the interviews, the respondents also proposed that information from the FIA should remain in the Agency's database until additional supporting evidence is collected, which should be then forwarded to the investigation body.
- According to respondents, the FIA „should conclude its work [on a case] with a statement or a decision for further action, instead of just compiling raw information.“
- Eliminating the deadlines for the money laundering investigations and considering instead the statute of limitations as a deadline.
- Shared information databases should be developed.
- Some respondents recommend monitoring of the inter-departmental investigative teams: „Someone should exercise control over the team to make sure if it's working or not, if the teamwork is efficient or if everybody is doing what they please and there's only teamwork on paper.“

Improving the organization of the work process:

- According to the participants in the study, in order to improve the anti-money laundering actions, it is necessary to increase the number of specialized personnel working to fight this crime in all of the involved institutions.
- The introduction of simpler recruitment and hiring procedures is recommended for the anti-money laundering unit in the Chief Directorate „Combating Organized Crime“ and for people outside of the system of the Ministry of Interior.
- Raising the salaries of the officers working on money laundering cases with bonuses for successful convictions; for example, a certain percentage of the confiscated assets could be distributed to the officers.
- The institutional structure and work organization within the Ministry of Interior should be improved: „If one person works on the primary case, the second can handle the money laundering case. I should step in once some information is already accumulated, instead of just exchanging letters [with other institutions].“ Another proposal recommends „building a team involving an expert from the money laundering unit. While the others are investigating the predicate crime, s/he could investigate the money trail.“
- Some of the other recommendations propose that each department in the Ministry of Interior should include „two specialists on money laundering, who will closely follow the financial transactions and direct their colleagues' work.“

- Respondents also propose introducing a system of internal rules within the Ministry of Interior which would require all units within the Ministry and the CDCOC investigating predicate crimes to notify the anti-money laundering unit of their case. „In the same way that the FIA requires such reports from the obligated entities, the crime investigation units should report to us.“
- To overcome the heavy workloads, participants in the study propose that the random selection principle for assigning cases to investigators be preserved. However, the random selection should take place only within the special anti-money laundering unit where the staff is professionally trained to handle the cases. In addition, the proposal also recommends limiting the number of cases that could be assigned to one person, which cannot be exceeded until those cases are closed.

Improving international cooperation:

- Participants recommend that investigation officers be permitted to travel abroad on assignments to gather evidence in the country where the crime was committed. Prior practice confirms that this method is very effective.
- Possibilities should be expanded to utilize video-conferencing to conduct interrogations more frequently.

General proposals:

- A large number of the respondents recommend relaxing the regime on accessing confidential information (bank accounts, taxes) as an efficiency measure to improve the anti-money laundering efforts. For instance, each institution could designate one person to have access to this information; in the Ministry of Interior, this could be the Secretary General.
- The anti-money laundering activities should involve all financial and tax institutions and the customs agencies.
- A restriction on cash payments for sums above a certain amount should be introduced in order to improve the anti-money laundering efforts.
- One proposal recommends that loans and charity donations above 10,000 leva should be certified by a notary, for example, and a centralized loan registry should be established.
- Measures should be introduced to restrict the fraudulent declaration of fictitious prices or taxation values in real estate deals.
- Participants recommend building shared information databases and developing a central registry.
- According to the participants in the study, there is a need to conduct joint seminars and discussions to exchange experience on anti-

money laundering practices. Representatives of all institutions should attend such sessions – police officers, investigators, prosecutors, magistrates. „The institutions should conduct their training sessions together in order to exchange information and viewpoints and cooperate more effectively. ...The adoption of unified criteria concerning the understanding and implementation of anti-money laundering measures is most important.“ Such gatherings will allow the issues to be analyzed and the answers to be found collectively. The results of the training should be included in a database with information sources and best practices; information and analyses from the discussions should be disseminated to everyone working in the field.

General proposals on improving the combat of crime:

- Participants recommend the development of a new Penal Code and a new Penal Procedure Code.
- Changes should be introduced in the Penal Procedure Code to eliminate the injunctions which allow the court to send the case back to the investigation: „The court cannot send back the case if it has been approved by the reporting judge.“
- Participants propose that information gathered through special intelligence devices should be admissible evidence in court, even when it has been gathered prior to the pre-trial proceedings.
- Changes should be introduced into the Penal Procedure Code to allow investigators to work on certain types of serious crimes, primarily organized crime and economic crimes.

Proposals for improving the civil forfeiture procedure:

- Participants propose that „[w]hen there is evidence that a person owns more assets than what is included in his income tax form, the Commission [CEPACA] should be allowed to begin an investigation, no matter whether a conviction is available or not.“
- A second proposal recommends expanding the scope of Article 3 of the LDFSPACA. The crimes that should be included in the law, according to the participants are corruption of public officials, administering budget resources or expedient resources not according to their purpose, thus causing harmful consequences to the state, illegal trading in cultural-historical valuables, and cyber crimes.
- The CEPACA should have the power to impose seizure on the assets of persons associated with the criminal under investigation, such as parents, siblings, children over 18, life partners, etc.
- Representatives of the CEPACA propose that „the prosecution should require a declaration as per Article 40b of the LDFSPACA

at the onset of a criminal investigation and it should be kept in the person's file."

- The introduction of a deadline within which „the person should declare his income and should not be allowed afterwards to produce any new documents or to change the balance sheets over time."
- The current limit of 60,000 leva, set in the LDFSPACA in relation to assets acquired from crime, should be reduced to 20,000 or 30,000 leva.
- Participants propose the assets being recovered to be calculated in minimum working salary.
- Respondents also propose that the provision regarding the minimum amount of recoverable property „should remain, but once the investigation has started and we have evidence of criminal assets, it should be confiscated, regardless of whether its value is below what the law stipulates."
- In order to improve the procedures for civil asset forfeiture, it is necessary to develop a special property assessment methodology.
- Participants propose „to take the market value as a basis for property assessment in real estate deals, and in construction – the pecuniary asset. The burden of proof should fall on the investigated person."
- When there is evidence that a certain property is illegal, but it is no longer available and cannot be recovered, its equivalent value should be adjudged.
- Representatives of the CEPACA propose the establishment of an „electronic network for all institutions with which [CEPACA] is cooperating...at least with USCRASP (Unified System for Civil Registration and Administrative Services to Population) and BULSTAT."
- More working meetings and discussions with representatives of other institutions should be organized.
- In order to improve international cooperation, it is necessary to develop a mechanism for its implementation.
- Participants also recommend conducting „periodic evaluations of the work and accomplishments, analysis and exchange of experience in order to gain expertise in the area covered by the LDFSPACA... This analysis should be sent to judges as well."
- The final proposal concerns the establishment of specialized procedures for criminal asset forfeiture cases; the purpose is to reduce the length of the legal proceedings while taking into account the social significance of such cases.

CONCLUSION: PRIORITIES IN THE IMPROVEMENT OF ANTI-MONEY LAUNDERING MEASURES

The present study shows that there are serious issues confronting the anti-money laundering efforts in Bulgaria. The proposals for solutions and improvement involve developing more effective policies and legislation, better cooperation and interaction between the institutions, increasing their administrative capacity, etc. Based on the information collected, several main priorities can be identified; their realization could result in a significant improvement in the counteraction of money laundering in Bulgaria. Among these priorities are the following:

- The main difficulty in proving a money laundering crime and imposing a respective sanction is the close connection between money laundering and the **predicate crime**, as stipulated by the law. To make the counteraction against money laundering easier, it is necessary to streamline the practices required to provide sufficient evidence for establishing the predicate crime, along with the connection between that crime and the proceeds involved in the laundering. The process of establishing this connection should be facilitated by doing the following:
 - Allowing the use of circumstantial evidence to prove the predicate crime, as long as there is reasonable certainty that the person under investigation is involved in criminal activity.
 - Eliminating the requirement to account for each penny of the amount that has been laundered.

Reducing the opportunities and conditions favorable to money laundering. To put it differently, we are keeping the water gates wide open to the cash flows while trying to channel the ensuing flooding. Such efforts are futile. We must be aware that money laundering is carried out just as any other regular business activity. If the existing legislation is designed to prevent and reduce the making and laundering of dirty money to a minimum, and if it is implemented efficiently, then money laundering will drop significantly. Therefore, it is imperative that we conduct an impact assessment of the basic legal acts regulating the economy (the laws on accounting, on taxation, etc.) with regard to money laundering. New provisions can be introduced in the legislation if needed – for instance, limiting or prohibiting cash payments above a certain limit.

Improving the human resource capacity and the work process

in the institutions involved in anti-money laundering. It is imperative to increase the number of people working in these institutions and to improve their professional qualification. New rules must be introduced requiring parallel investigations of the money-generating crimes and the cash flows.

- Creating a mechanism for **ongoing monitoring** and improvement of the anti-money laundering measures. An analytical center must be established with the task of both studying the money laundering phenomenon, its scale and magnitude, and the existing counteractive measures and proposing new ones. This should be a research unit with well-qualified, autonomous, and independent professionals in its staff, outside the network of the other institutions working on money laundering. The unit should not engage in investigations and operations; it should be politically neutral, not subordinated to other government structures. Among its tasks should be carrying out an ongoing monitoring and analysis of:
 - The parameters and dynamics of money laundering,
 - The effectiveness of the major legislation on money laundering, preparing regular Impact Assessment reports,
 - The effectiveness of the main institutions directly engaged in the anti-money laundering process, following and analyzing the proceedings on concrete investigation cases from beginning to end.

This analytical unit should prepare annual reports to be presented to the respective bodies of the executive and legislative powers (for instance, the Committee on Internal Security and Public Order in the Parliament), as well as to relevant international institutions. The reports could also serve to improve the operational capacity and staffing of the responsible institutions.

Changing the legislation on criminal asset forfeiture, using as a model the practices of the UK and Ireland. It is necessary to ensure strict control over the specialized commission for the establishment of criminal property, by:

- Transferring this body to another institution, e.g., the SANS or the Ministry of Interior,
- Ensuring centralized management and responsibility for the decision-making process in the specialized body,
- Setting a fixed deadline for completing each case according to the LDFSPACA,
- Creating a special methodology for property assessment, including assessment over past periods.

Based on the present study, these are the main priorities that should be the focus of future efforts in anti-money laundering processes in Bulgaria.

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