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Actual context of fight against the money laundering by means of credit institutions

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Abstract

Credit institutions, as well as the other institutions integrated into the financial system, are subject more and more to some attempts from the simplest to the most sophisticated, with some most various means and instruments, of their perspicacity and utilization with a view of money laundering of some assets obtained from illegal activities, and also the assurance of funds necessary for terrorism financing, from the part of some groups with abstruse interests. In this context the financial community has to adopt measures meant to protect it from the implication in such actions. The more and more emphasized connection of Romanian financial to those European and international ones, brings upon that the Romanian credit institution should adopt the necessary measures, according to those adopted globally, so that to ensure their security and credibility.

Keywords: money laundering; clients; clients' knowledge; banking control;

JEL classification: G20, G21, G29

1. Global actual context of fight against the money laundering

The preoccupation of the national and international authorities to the ensurance of the financial stability and the avoidance of involvement of bank systems in operations of capitals laundering, has stressed out once with the financial-economical globalization and the intensification of some groups attempts to carry out criminal and illegal operations, as well as those intention to use the financial institutions in order to launder the capitals obtained from this kind of operations.

Thus, to avoid using the bank-financial systems in order to launder the capitals got by their potential clients out of criminal and illegal operations and to avoid implicating the banking and financial institutions in such kind of operations, regulations have been adopted both at international and national level, which allow the perfecting of a logistic and some adequate mechanisms, regulatings meant to impede the use of the financial institutions in questionable operations of capitals „whitening”.

There have been created at international, European and national level competent bodies to deal with the research of the dubious operations, and to

cooperate with the financial institutions, in the common effort to avoid their coming in illegal operations.

A Group of financial action and fight against capital laundering (GAFI) has been created inside the Bank of International Regulations, in order to support the national authorities and financial institutions efforts in their fight against their use in criminal operations and also of financing of such kind of operations. This Group has elaborated two highly important documents used by the credit and financial documents from all over the world, namely: 40 recommendations of GAFI to fight against capitals laundering (2003) and the special recommendations of GAFI - in number of 9, referring to the financing of international terrorism¹. In order to encourage the world states in the application of the two documents mentioned above, GAFI has elaborated also a methodology of evaluation for national systems of fight against capitals laundering and financing of terrorism (LAB/CFT)², that has been agreed by the international financial institutions, including the World Bank and the International Monetary Fund.

The central place of these regulations of fight against the use of financial systems for capital laundering and financing of terrorism is occupied by the responsibility of the financial institutions related to „*clients'knowledge*”. To match the national efforts with those of the international and national financial institutions in establishing the criteria and the clients knowledge mechanisms, the Committee from Basel for banking control has preoccupied and elaborated more recommendations in the field of clients knowledge, addressed to international banking community.

At a European level, the preoccupation for implementation of the recommendations of GAFI, recognized as being the main international body of fight against capitals „whitening” and financing of terrorism³, has been effected in the adoption by the European Parliament of Directive number 60/October 25th, 2005, regarding the prevention of using the financial system in facts of „whitening” the capitals and financing of terrorism⁴. Such European regulation is applicable to the credit institutions, financial institutions, legal and natural person who exercise professionally, such as: accounts commissaries; accountant experts, fiscal counsellors; notaries and other members of independent juridical professions who participate personally or in their clients' name at financial or real transactions or assist their clients in the accomplishment of the transactions stipulated expressly in the Directive; real agents; other natural or juridical persons who effect payment operations bigger than 15,000 Euro and the casinos,

¹¹ Duty of diligence of banks on the subject of clientele, Committee of Bales on the banking control, Bank of International Regulations, October, 2001,page 1, Textbook of intention for payment and of evaluators, FATI/GAFI, February, 2006, page 5

²² Textbook of intention for payment and of evaluators, FATI/GAFI, February, 2006, page 5

³³ Directive 2005/60/EC of the European Parliament and of Council of October the 25th, 2005, regarding the prevention of using the financial system for whitening the capitals and financing the terrorism, Official Journal of the European Union, L309 of 25th of November, 2005, page 15

⁴⁴ The same

as well. Each of the „actors” implied in the European Directive application have established responsibilities and express statutory obligations in this. At the same time, the obligation of the member states of the European Community is regulated, to create specialized institutions, in which to assure, on one hand, national coordination of fight against money laundering and fight against financing the terrorism, and, on the other hand, the collection of information given by the actors implied in application of Directive.

Therefore, a specific legislation has been adopted in our country and has also been created, ever since 1999, The National Office for Preventing and Fighting Money Laundering, whose attributions and responsibilities have been actualized back in 2006¹.

2. Romanian standards for clients knowledge

As it has been mentioned above, the key element to avoid the use of financial system in money laundering and financing terrorism, is represented by the clients knowledge, of the institutions which develop financial activities and enter in connection with a very numerous clientele and also extremely varied.

In order to prevent the use of credit institutions with a view of money laundering and out of the necessity of diminishing the reputational risk, operative, credit, liquidation, compliance to law requests, as well as the protection of safety and stability of banks and, through this, of banking system integrity, the Romanian legislator has adopted special regulations to prevent and sanction money laundering, and the National Bank of Romania has established a minimum set of ***standards for clients knowledge by the credit institutions***², in accordance with the recommendations of Basel Committee for banking control.

According to this regulation, the credit institutions that function in Romania have the obligation to adopt politics and efficient procedures of clients knowledge, which are supposed to promote high ethical and professional standards and to prevent the use of bank by its clients in the development of some criminal or lawless activities.

Internal procedures for clients knowledge, of each credit institution, must comprehend all the banking operations effected that imply the receiving or distribution of clients' funds, comprising without being limited:

- opening of accounts current, deposit, savings, credit, card;
- opening real values evidence accounts;
- values boxes rental;

¹⁵Law 656 from the 7th of December 2002, for prevention and sanctions of money laundering, as well as setting up some measures for the prevention and fighting against financing facts of terrorism, the Official Gazette of Romania no.904/December the 12th, 2002, with the further modifications. This law abrogates Law no.21/1999 for prevention and sanction the money laundering.

²⁶ Regulation no.3 of February the 26th, 2002, referring the clients' knowledge standards, the National Bank of Romania, the Official Gazette of Romania, Part.One, no.154 of 4th of March, 2002.

- effectuation of real values transactions or with other financial instruments, foreign currency, precious metals, whose value worths more than 10,000 Euro in equivalent;
- cash operations that overruns 10,000 Euro in equivalent;
- giving some credits and operations with trade effects.

As it can be noticed, the Romanian Directive is more exacting than the European one referring to the prevention of using the financial system in facts of capital whitening and financing the terrorism, adopted in 2005, which foresees a minimum limit from which the financial operations are more carefully analysed, monitorized and reported to the established national institutions, of 15.000 Euro, as compared to 10,000 Euro, as the Romanian regulation foresees.

The credit institutions that function in Romania have the obligation to elaborate proper programmes of clients knowledge that have to be approved by the board of directors and known by the entire staff. Inside these programmes, the credit institutions, have the obligation to comprise at least:

- clients acceptance politics;
- clients identification procedures and their framing in the cathegory of adequate clientele;
- modalities of setting and keeping up the proper evidences;
- procedures of monitoring the operations run by accounts with a view to detect the dubious transactions and their ways of report;
- modalities of approach of transactions in and/or to the jurisdictions where there are no proper regulations in the field of money laundring prevention;
- programmes of staff preparation in the field of clients knowledge.

The credit institutions have the obligation to identify the clients' identity and at the same time to verify these information, including by means of direct observation of the place when it is considered as necessary. The minimum compulsory information that the credit institutions have to request to their clients, natural persons, are as follows: first name and surname; domicile address; date and place of birth; personal number; employer's name; source of funds; signature'specimen. For the juridical persons the banks, the identification procedures resides on the verification of real existence of the proper entity, registering at the National Trade Register Office or at another public Registry; getting information regarding the name, legal form, address of the headquarters, type and nature of the developped activity, identity of the administrators and managers. The banks have to dispose on the copies after their clients' identification documents.

The banks must request their clients involved to give a declaration regarding the real beneficiary of the amounts, when speaking about the operations whose individual or accumulated sums overrun 10.000 Euro.

The credit institutions should show themselves a great precaution towards the clientele who is offered „e-banking” services.

The credit institutions are responsible to dispose on a proper control system on the way in which the clients’knowledge programmes and their knowledge by the staff are implemented.

3. Recommendations from Basel Committee for bank control referring to clients’knowledge

At the same time as the growth of the financial operations complexity, of innovation in the bank and financial field, but also as the manifestation of the interest of some groups with criminal and illegal activity to drag the national banking and financial systems and also international into operations of laundring of funds obtained by these operations, the Committee from Basel for banking control inside the Bank for International Regulations has initiated and preoccupied of elaboration for some studies and recommendations about the clients’knowledge, which have been addressed to international banking society, in order to support it in the adoption of adequate measures to avoid their training in criminal and fraudulent operations .

The Committee from Basel for bank control has published its recommendations in the field of clients’knowledge (CC) in the framework of three important documents, that reflect the evolution in time for the cautious¹ thinking. The first document «*Prevention of using banking system for laundring funds of criminal origin*» was elaborated and diffused in the year 1988 and comprises the basis ethical principles for clients’knowledge and encouraging the bank to set up and dispose on the efficient procedures for clientele’s identification.

The document was recommending to the banks to apply the principle of refusal for dubious transactions and the cooperation with the authorities implied in the application of the lawfulness.

The second document «*Fundamental principles for an efficient banking control*» was spread in 1997 and comprises a wide analysis on internal control, underlining that the banks should dispose on politics, procedures and rigorous rules of clients’knowledge. The documents recommended at the same time to the control authorities to encourage the adoption of recommendations corresponding to the Group of financial action and fight against capital laundring (GAFI). The document is filled in with recommendations referring to the clientele’s identification, as well as the increase of the preoccupations of financial institutions to detect and notify the dubious transactions.

¹⁷ Duty of diligence of banks on the subject of clientele, Committee of Bales on the banking control, Bank of International Regulations, October, 2001, page 4

In the year 1999 the document from 1997 is completed with the third document named: «Methodology of the fundamental principles», among them there are to be numbered other additional essential criteria. Simultaneously, in 2003 GAFI brings to actuality and develops the former recommendations concerning the problems of fight against capitals laundering and their use to finance the terrorism.

In the year 2001 the Committee from Basel for banking control, through the Group of Work regarding the bank activities over boarders, having as members great personalities from banking world from nowadays, elaborates and publishes a new document «*Duty of diligence of banks on the subject of clientele*»¹. A few elements are to be remembered from this document:

- Efforts of the Committee are part of the fight against the funds laundering by means of banking institutions, out of a cautious perspective much wider.
- The recommendations of the Committee are based upon the experience and practices followed in the member states and taking into account the evolution in the caution domain.
- The lack of regulations referring to the clients' knowledge or their inadequation are meant to expose the banks to serious risks, such as reputational risks, operative risks, juridical and concentration risks.
- All banks must be compelled to dispose on a range of politics, practices and procedures meant to promote to the highest the ethics and professionalism and to prevent from their usage, intended or not, in the framework of criminal activities. In the elaboration of their programmes the banks have to take into account essential elements of risks administration and control procedures, being mentioned: politics of acceptance for the new clients; identification of clientele; a continuous surveillance of accounts and transactions bearing a high risk; risks administration. The recommendation makes detailed references to each of the elements mentioned above.
- The banks have to define their politics and obvious procedures for the new clients' acceptance.
- The documents underlines the fact that the clients' identification represents the key element of CK regulations (clients' knowledge).
- It is also underlined the role of national control authorities to elaborate their proper programmes in this field, on the basis on CK international regulations.
- The control authorities are responsible to oblige the banks dispose on proper CK procedures and also to pursue their way of compliance.
- The national authorities are requested to elaborate rules and procedures in accordance with the international regulations in the field of

¹⁸ The same

clients'knowledge in order to assure security and integrity to international and national banking systems.

The conspicuous globalization of entire financial and economical life brings surely about efforts, resources, and more and more sophisticated mechanisms, in order to face the intentions and attempts of coming in of local financial systems and thus the access to the international ones, with a view to capital laundring, come from illegal operations and of assurance of resources necessary for financing the terrorism. Financial institutions are obliged, therefore, to give financial amounts to assure that their systems are a good filter for the identification and stoppage of any access attempt of the potential users with a view to effect some operations such as those of money laundring and the assurance of the financial resources for financing the terrorism.

Bibliography:

1. Directive 2005/60/EC of the European Parliament and of Council of October the 25th, 2005, regarding the prevention of using the financial system for whitening the capitals and financing the terorism, Official Journal of the European Union, L309 of 25th of November, 2005
2. Duty of diligence of banks on the subject of clientele, Committee of Bales on the banking control, Bank of International Regulations, October, 2001
3. Textbook of intention for payment and of evaluators, FATI/GAFI, February, 2006
4. Duty of diligence of banks on the subject of clientele, Committee of Bales on the banking control, Bank of International Regulations, October, 2001
5. Law 656 from the 7th of December 2002, for prevention and sanctions of money laundring, as well as setting up some measures for the prevention and fighting gainst financing facts of terrorism, the Official Gazzette of Romania no.904/December the 12th, 2002, with the further modifications.
6. Regulation no. 3 of February the 26th, 2002, reffering the clients'knowledge standards, the National Bank of Romania, the Official Gazzette of Romania, Part.One, no.154 of 4th of March, 2002.