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Information Sources in the Process of Revealing the Legalization of Proceeds of Crime

Zdroje informácií v procese odhaľovania legalizácie príjmov z trestnej činnosti

Abstract

Authors point out the necessity of using reliable information sources (registers) as a basic prerequisite for effective detection of the legalization of proceeds of crime. The article is divided into two parts. The first part describes methodological baseline for latent crime detection as one of the police activities and outlines certain specifics of detecting of the legalization of criminal proceeds. The second part is dedicated to selected public registers that can be utilized by obliged entities as sources of information when analyzing and assessing business operations in order to detect possible cases of legalization of proceeds of crime. Basic theoretical methods such as analysis and synthesis of knowledge from professional and scientific publications and selected laws were used in the preparation of the article.

Keywords: laundering of proceeds of crime, crime activity indicators, latent criminal activity, information sources, public registers, ultimate beneficial owner.

Abstrakt

Autori v príspevku poukazujú na nevyhnutnosť využívania spoľahlivých informačných zdrojov (registrov) ako základného predpokladu na účinné odhaľovanie legalizácie príjmov z trestnej činnosti. Obsah príspevku člení na dve časti. V prvej časti popisujú metodologické východiská odhaľovania latentnej kriminality ako jednej z policajno-bezpečnostných činností a načrtávajú niektoré špecifiká odhaľovania legalizácie príjmov z trestnej činnosti. Druhá časť príspevku je venovaná vybraným verejným registrom, ktoré môžu povinné osoby využívať ako zdroje informácií pri analyzovaní a posudzovaní obchodných operácií za účelom detekovania možných prípadov legalizácie príjmov z trestnej činnosti. Pri spracovaní príspevku boli použité

základné teoretické metódy ako analýza a syntéza poznatkov z odborných a vedeckých publikácií a vybraných zákonov.

Kľúčové slová: legalizácia príjmov z trestnej činnosti, indikátory trestnej činnosti, latentná trestná činnosť, zdroje informácií, verejné registre, konečný užívateľ výhod.

1. Uncovering the Legalization of Proceeds of Crime - Methodological and Theoretical Foundations

In uncovering the legalization of proceeds from criminal activity¹ - money laundering and terrorist financing (hereinafter ML/TF), theoretical foundations and general characteristics of uncovering criminal offenses are applied, as one of the police-security activities.²

Uncovering criminal activity, including uncovering ML/TF, represents a process through which we recognize latent criminal offenses. Latent actions represent such criminal activity that remains concealed and unknown to police authorities or law enforcement authorities. These have no knowledge of its existence, while it has been actually committed. The decisive criteria for distinguishing latent criminal activity from known criminal activity, whether with a known or unknown perpetrator, is the existence of two conditions:

- a certain illegal action, the characteristics of which are defined in the Criminal Code (Section 233, 234);³
- an obstacle (intentional or unintentional) that prevents the knowledge and registration of this action by the police or law enforcement authorities (disclosure, notification).

Based on such formulated criteria, it is then possible to define latent criminal activity as an actual existing criminal activity, which for various reasons (ignorance, ambiguous qualification, undetectability, etc.) remains hidden and unknown to police authorities or law enforcement authorities and is not statistically captured anywhere. In terms of the character of the obstacle to knowledge, we divide latent criminal activity into:

- natural latent criminal activity;
- artificial latent criminal activity;
- latent criminal activity of a borderline situation.⁴

¹ In SR, the term legalization of proceeds of crime is used in Section 233 of Act No. 300/2005 Coll., the Criminal Code, and in Section 3 of Act No. 297/2008 Coll. on the prevention of money laundering and terrorist financing, as amended by later regulations. Given that the contribution is linked to Act No. 297/2008 Coll., the authors will use the term legalization of proceeds of crime in the article.

² PORADA, Viktor et al. *Bezpečnostní vědy – Úvod do teorie, metodologie a bezpečnostní terminologie*. 2. Revised and Extended Edition. Plzeň: Aleš Čeněk, 2022, p. 534.

³ Act No. 300/2005 Coll., the Criminal Code, as amended by later regulations.

⁴ ČUVILEV, A. A. and Ludevít PENZEŠ. *Organizace a činnost orgánů přípravného řízení trestního*. Praha: Vysoká škola Sboru národní bezpečnosti, 1983, p. 87.

Natural latent criminal activity is understood as a set of criminal offenses which police authorities and law enforcement authorities do not know about and the criminal offense remains hidden from them after its commission. In many cases, even the victims themselves are not aware of the violation of their rights.

Artificial latent criminal activity is understood as a set of criminal offenses, where the facts about the existence of a criminal offense shift from the unknown stage to the known stage but retain their latency. These are cases where the victim or a person who has learned about the facts that constitute a criminal offense and evaluates it as a criminal offense does not report it to the law enforcement authorities or to the police. The motives that lead them to such behavior can vary, whether of being criminally prosecuted themselves or causing moral harm. The question of legal consciousness plays a significant role in this behavior.

Latent criminal activity of a “borderline situation” is represented by a set of criminal offenses, in which the facts about their commission are revealed, but the person who has discovered such act does not consider it a criminal offense. This evaluation stems from the ambiguity of the situation, various legal interpretations and evaluations.

The existence of latent criminal activity has very negative impacts and consequences on reducing trust in the rule of law, both among individuals and throughout society. It is undeniable that the larger the ratio of latent criminal offenses to the number of registered criminal offenses (revealed, detected), the more the contradiction deepens in the general interest of society in protecting citizens and their property. Latent criminal activity creates conditions for recidivism because the non-disclosure of criminal activity reinforces the perpetrators’ belief in the “undetectability” of the criminal activity they commit, which results in a continuation of criminal activity or the commission of further criminal activity. The existence of latent criminal activity also has a negative impact on the understanding of the actual state of crime, its dynamics, structure, development, and causes. It results in creating distrust towards the law enforcement authorities and the police, which ultimately leads to indifference, passivity, and reconciliation with the negative situation in the security area. Citizens’ distrust of the police results in unreported committed criminal offenses and non-cooperation in their clarification, thereby reducing the rate of crime detection. A low rate of detection, in turn, results in citizens’ distrust of the police, negatively affecting the effectiveness of their work. This “vicious circle” is called the “feedback effect” by German criminologist H. J. Schneider.

Therefore, it is in the general interest to effectively uncover latent criminal activity. At the beginning of the whole process of uncovering criminal offenses, there is information that contains knowledge, positive or negative, in relation to the substance it carries with it. Information can be understood as structured, humanly understandable data that has meaning for humans.⁵ In uncovering criminal offenses in general, including uncovering ML/TF, information is one of its basic categories. It is assessed

⁵ ERNEKER, Jaroslav; PORADA, Viktor a kol. *Poznávání potřeb a transfer vědeckých poznatků do policejní praxe*. Praha: Vydavatelství Policejní akademie, 2006, p. 153.

and explained through its relevant existence in this purposeful process of cognition, which is influenced by a whole range of factors.⁶

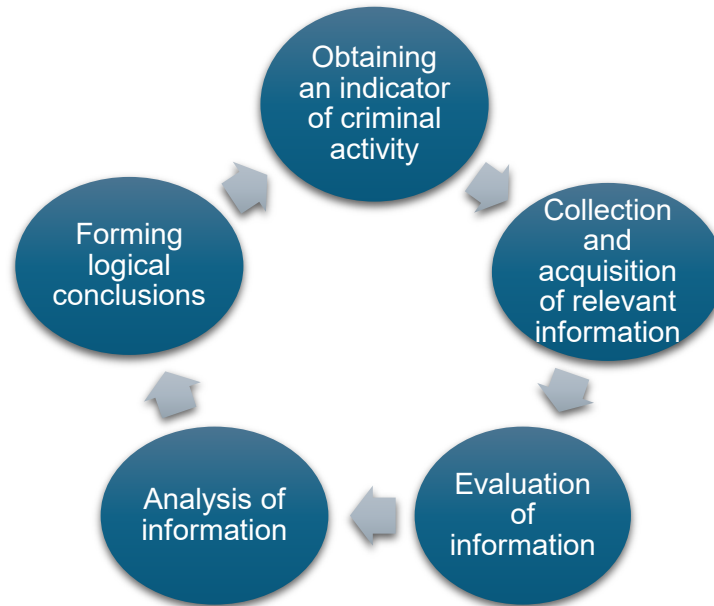
In the process of uncovering criminal offenses, information is a message or part of a message that goes from the source to the knowing subject and is necessary for performing certain tasks. It contains something new - original, which expands knowledge and skills and at the same time removes or at least reduces the degree of uncertainty in behavior.⁷

In the process of uncovering criminal offenses, work with information is crucial, when the unknown becomes known, and later understood. The collection, acquisition, and overall work with information form the "skeleton" of the entire process of detection, as a specific procedural cognitive activity, which progresses from the stage of ignorance to specific knowledge. In terms of content, the detection process is based on working with information in the information cycle. However, it is not an ideal cycle, as several stages of detection can be performed at once at a certain moment. At the same time, in the process of detection, cognition can return to the previous stage. It is an active activity aimed at finding out unknown information that has not been known until then and that characterizes the criminal event, or the protected interests at risk. In this case, the criminal event is a synonym for a police-relevant event.⁸ It is about fulfilling a whole range of separate, but mutually coordinated, logically interconnected and complementary activities. The procedural nature of detection emphasizes that these activities are not a one-time act but represent a set of activities that are performed in a certain sequence and information cycle.

⁶ STIERANKA, Jozef a Adrián VAŠKO. *Odhaľovanie trestných činov (nová stratégia a prístupy)*. P. 206.

⁷ LISOŇ, Miroslav; VAŠKO, Adrián a kol. *Teória kriminálno-polícijného poznania*. 2018. P. 145.

⁸ ŠIMOVČEK, Ivan, team leader. Final report from the research - Konštituovanie policajno-bezpečnostnej vedy. Bratislava: APZ, 1997, p. 68: "A police relevant event is a phenomenon, an event that is being prepared, arises, has its course and disappears and which provokes and conditions the emergence of a police situation, which the police are authorized and capable of resolving."



Picture: Illustration of the detection process in the information cycle
Source: authors

In the process of detecting criminal offenses, it is very important - right at the beginning, in the first stage of detection - to capture the changes that the crime has left or caused in its surroundings. This means capturing an indicator of criminal activity. The indicator represents the initial information about a possible, prepared, committed, or completed criminal offense or a violation of protected interests. The concept of the indicator is multidimensional. First and foremost, it is the initial information about a phenomenon, based on which the process of understanding begins. It can also be understood as a signal indicating the occurrence of a certain event, arousing interest or suspicion on the part of the observer, or as a “deviation from the normal situation that we know well, and which corresponds to compliance with laws, regulations, and other social norms.”⁹ In addition, it can represent a specific form of external manifestation of a certain phenomenon, meaning that we learn about objects and phenomena through their external manifestations, and vice versa. When detecting, it is very important to capture the changes that the crime has left or caused in its surroundings, meaning to capture an indicator of criminal activity. The methodological basis for detecting criminal offenses is derived from the theory of reflection. The essence of the reflection of a crime is the ability of material systems and objects to reflect in another form the properties of other material systems and objects. Changes occur in the reflecting system under the influence of the reflected system. These changes to some extent show, reproduce the properties of the reflected system. The result of mutual action is a reflection in the form of changes in the material environment (material traces) and changes in people’s consciousness (memory traces).¹⁰

⁹ LÁTAL, Ivo. Příznaková analýza a možnosti jejího užití v policejní praxi. In: *Kriminalistika*. 1996, edition. XXIX, no. 1, p. 73.

¹⁰ PORADA, Viktor and Jiří STRAUS. Kriminalistická stopa. In: *Kriminalistika*. 1999, no. 3, p. 187.

In the next step - the second phase of revealing, the crime indicator is supplemented by collecting and obtaining further information focusing on all the facts that confirm or refute the initial signals of the commission or perpetration of a crime, or violation of protected interests. Various information sources are used to collect information, mainly existing information systems and knowledge funds processed by the Police Force of the Slovak Republic and other security corps (e.g., intelligence services). Other databases and registers managed by public administration bodies, or possibly other legal entities, including business entities, can also be sources of information. It is also possible to obtain additional information using specific methods, forms, and means such as investigative and search activity¹¹ and information technology tools.¹² It is essential to determine the degree of truth and reliability of all obtained information, as a large amount of information of varying quality from a plethora of information sources is obtained during this process. Therefore, it is necessary for the information to be evaluated immediately upon its acquisition.

However, proper evaluation requires separate assessment of the reliability of the information source and separate evaluation of the truthfulness of the information content. Evaluating information is very important, particularly in terms of subsequent analysis of the obtained information and making logical conclusions. Therefore, a standardized information evaluation system must be applied, which allows comparing different information and their identical recognition by uninvolved persons. The obtained information needs to be sorted and fixed (stored) according to its quality, especially those pieces of information that can be used in accordance with the set objectives.

By fixing, a documentation reflection (documentation) of all essential facts characterizing the course and results of the revealing process is created. A separate stage of revelation is the analysis of the obtained information. Analyzing information involves examining the relationships between the evaluated pieces of information.¹³

Criminal analysis can be defined as the examination of all obtained, focused, and available information, evaluation of their mutual connections, and their interpretation with the aim of streamlining crime control.¹⁴ It is a process of thorough understanding of the mutual relationships and connections between the obtained information. By representing the criminal activity concerned in the broadest possible scope of its characteristics and relationships, it allows penetration into its essence and clarification of hidden connections. The primary goal of the criminal analysis of the obtained information is to create and "test" logical conclusions that would reflect who, what, when, where, why, and how was done in the commission of the crime. Various structured analyses are used, aiming to visualize the sequence of events, activities, or commodities in time and space. In practice, these are criminal analyses that focus on the crime, protected interests, and perpetrators. Case analyses, comparative case analyses, group of perpetrators analyses, specific perpetrator profile analyses,

¹¹ Act No. 171/1993 Coll. on the Police Force, Section 38a.

¹² Act No. 166/2003 Coll. on the protection of privacy against unauthorized use of information technology and on amendments to certain laws (Act on Protection against Wiretapping).

¹³ Regulation of the Ministry of Interior of the Slovak Republic No. 32/2023 on criminal analyses.

¹⁴ Regulation of the Ministry of Interior of the Slovak Republic No. 32/2023 on criminal analyses.

investigations analyses, etc., are mainly used. If the partial results of the conducted analyses acquire such a nature that it is possible to create logical conclusions indicating the commission of a crime, the processing of overall conclusions (interpretation of conclusions) is initiated, while it is necessary to respect the principles of the theory of analytical activity.

Revealing ML/TF has certain specifics, mainly related to the first and second stages (phases) of revelation carried out in the information cycle. One significant specificity is the fact that in the first stage (phase) of revealing ML/TF, the so-called obligated entities play an irreplaceable role, who, among other responsibilities, have the task of identifying ML/TF indicators. In accordance with Act No. 297/2008 Coll. on the prevention of money laundering and terrorist financing and on amendments to certain acts, an ML/TF indicator represents an unusual business operation.¹⁵ Obligated entities are subjects (natural and legal persons) through which it is possible to legalize income (revenues, property) originating from criminal activity or finance terrorism. In Slovak legal regulations, they are precisely defined in Act No. 297/2008 Coll. on the prevention of money laundering and terrorist financing (hereinafter referred to as the "Act"). These are mainly subjects such as banks, other financial institutions (e.g., central securities depository, stock exchange, management company and depository, securities dealer, insurer when carrying out life insurance activities, pension management company, Export-Import Bank of the Slovak Republic and others), other non-financial institutions (e.g., gambling operator, postal company, bailiff when selling real estate, movable property or business and when receiving money, documents and other movable items for safekeeping in connection with implementing an execution, administrator performing activities in bankruptcy proceedings, restructuring proceedings or debt relief proceedings under a special regulation, auditor, accountant, tax advisor, legal entity or individual authorized to mediate the sale, lease and purchase of real estate, and others).¹⁶ The activity of obligated entities in the process of revealing ML/TF crime acts as a sort of entry gate to the detection process itself.

Based on the above, it is essential in revealing ML/TF to systematically collect relevant information, sort it, analyze and evaluate it. At the level of obligated entities, in the first and second stages of revealing ML/TF, we can talk about a constant flow of information that they must aggregate and sort, resulting in the creation of a risk map in their information systems in relation to ML/TF. For this purpose, investigative teams/departments are created, which are dedicated to data collection and at the same time assign value to the obtained information, thus creating a sort of value/risk matrix, which enables to indicate an unusual business operation.

There are several ways in which information collection is carried out, whether it is a system of structured client interviews, also as a less reliable method of collecting objective data, or finding through registers and internet traces.¹⁷ The aim is to obtain as much relevant information as possible. This process is especially significant for an

¹⁵ Section 4 of Act No. 297/2008 Coll. on the prevention of money laundering and terrorist financing and on amendments to certain acts.

¹⁶ For more details, see Section 5 of Act No. 297/2008 Coll. on the prevention of money laundering and terrorist financing and on amendments to certain acts.

¹⁷ SØRENSEN, K., E. Access to Information in Company Registers: Nordic & European Company Law Working Paper No. 19-01, p. 9.

obligated entity because, like any business entity in the market, it is trying to avoid obvious risks that it cannot manage.

Reliable information sources for the collection of required information are primarily divided into two areas. These are freely available databases, where the public has access without restrictions or with minimal restrictions, and paid databases, which aggregate information relevant for a specific assessment of potential risks, not only for the banking sector. In this paper, we will primarily focus on public database sources that provide resources for the collection and subsequent evaluation of information about the client and the verification of the documents he submitted during the risk assessment in a financial institution, with subsequent use of the information base in the process of revealing crime.

2. Registers as basic reliable sources of information in revealing ML/TF

Various registers are among the basic reliable sources of information in revealing ML/TF. Among publicly available ones, these are primarily sources that are regulated by legislation and are managed by state bodies. It is in the interest of the state and state institutions to create an environment for as many valuable economic entities as possible, for example, through mutual control and the possibility of verifying information from reliable sources. In the Slovak Republic, it is possible to use a whole range of information sources in the form of registers, information systems, and databases, such as the business register, population register, legal entities register, central register of accounts, register of public sector partners, central register of contracts, in the process of revealing ML/TF, especially in the first and second stages of the information cycle.

2.1 Commercial Register

One of the most crucial factors in the present information age is access to information that carries relevant value for a given entity. This access should be public and should remove the level of information asymmetry. The state-run Commercial Register, established under Act No. 530/2003 on the commercial register and on the amendment of certain acts, contains this information about legal entities. It is a public list under the administration of the Ministry of Justice, managed at eight registered courts.¹⁸ The Commercial Register records mandatory data specified by the aforementioned act on business corporations, cooperatives, other legal entities under a special law, enterprises, and organizational units of foreign entities, branch offices, and other organizational units.¹⁹ From application practice, several advantages have emerged that the register brings in the process of finding out relevant facts in real time. It is a reliable source of business connections and ownership structures for both obligated and other persons. It provides sufficient information about controlling persons (unless it is a joint-stock company with multiple shareholders, a simple joint-stock

¹⁸ Ministry of Justice of the Slovak Republic List of Courts [online] 9. 10. 2023 [ref. 27. 10. 2023]. Available at: <https://obcan.justice.sk/infosud/-/infosud/zoznam/sud?f.656=28277&f.670=682&f.670=673&f.656=657&f.670=672&f.670=674&f.670=676&f.670=677&f.670=678&f.670=679>

¹⁹ Ministry of Justice of the Slovak Republic Commercial Register, 28. 8. 2017 [ref. 28. 9. 2023]. Available at https://www.slovensko.sk/sk/agendy/agenda/_obchodny-register0000000000,

company with multiple shareholders, or complex ownership structures extending abroad), the identity of statutory representatives, directors, and other authorized persons creating commitments for the company. This is because the register also maintains historical records, which are visible even though they currently do not correspond to the factual state. However, if we were to encounter a complex ownership structure involving many controlling legal entities in the company structure while fulfilling our obligations arising from the law, the information in the Commercial Register would be insufficient and would need to be supplemented by other types of registers, if these entities are included in them (i.e., it is not a shareholder reaching abroad).

The law stipulates that when assessing and collecting information about legal entities, the obligated entity must work its way up to the physical person/persons who effectively control the entire entity, i.e., stand at the top of the structure. Here, the Commercial Register reaches its limits because it only displays and identifies another legal entity in the structure if it is a partner or a sole shareholder who can potentially hide other legal and physical persons.²⁰ Therefore, the European Union has introduced new regulations for the mandatory disclosure of the controlling person and the introduction of a register for the entry of this person.²¹ I discuss this in more detail in the sections on the Register of Legal Entities and the Register of Public Sector Partners, which also serve the function of registering ultimate beneficial owners (hereinafter referred to as the “UBOs”).

The Commercial Register faces significant challenges in the area of personnel understaffing of the registering courts, resulting in time delays in entries and thus creating a discrepancy with the current situation. This discrepancy can lead to a lack of trust in the register itself and in the entity that was verified through the register. As part of its protection, the state decided in its program declaration for the years 2020-2024 to consider external registrars, involving lawyers and notaries,²² which should increase the timeliness of publicly available information and thus strengthen the basic functions of the register as a means of obtaining and verifying information.

2.2 Population Register

Another reliable source of information is the Population Register under the administration of the Ministry of the Interior. According to the Act No. 253/1998 Coll. on reporting the residence of citizens of the Slovak Republic and on the Population Register of the Slovak Republic, the register is an information system of public administration, which contains a set of data on the inhabitants of the Slovak Republic, on the basis of which a person can be identified, their residence and relationships to other persons can be determined, as well as other administrative data defined by this law. It is a relevant source of information about the inhabitants of the Slovak Republic

²⁰ ROZEHNAL, Aleš. *Teorie korporátního práva*. Plzeň, 2018, pp. 26-28.

²¹ The first legislative regulation of the EP and the Council of the EU was contained in Regulation No. 2005/60/EC, the so-called 3rd AML Directive (“3AMLD”) on the prevention of the use of the system for the purposes of money laundering and financing of terrorism.

²² National Council of the Slovak Republic. Notaries will also be able to register data in the commercial register. Representation by a lawyer is expected in the proceedings, In: [epi.sk \[online\]](https://www.epi.sk/clanok-z-titulky/registraci-u-dajov-do-obchodneho-registra-budu-moct-vykonavat-aj-notari-v-konani-sa-predpoklada-zastupenie-advokatom.htm), 22. 6. 2023 [ref. 27. 9. 2023]. Available at: <https://www.epi.sk/clanok-z-titulky/registraci-u-dajov-do-obchodneho-registra-budu-moct-vykonavat-aj-notari-v-konani-sa-predpoklada-zastupenie-advokatom.htm>

not only for the needs of state authorities, local government bodies but also other legal entities or natural persons.

It is a database created for the purpose of recording and verifying citizens with permanent or temporary residence in the territory of the Slovak Republic as well as foreigners with reported residence or asylum seekers in Slovakia.

The register was created to reduce bureaucracy by amending the act on reporting residence and the population register in 2013. Thus, it represents one of the four basic registers. The concept was created so that a citizen would submit data to the register once, and the information would automatically reach other public administration systems through processing. Likewise, public administration bodies do not have to verify and search for information in various sources. This register is a sufficient and trustworthy source. Upon request in written form, information can also be provided to legal entities such as banks, while it is necessary to state the reason for providing the information. In the conditions of prevention of legalization and association of necessary information to minimize risk, the bank usually verifies information related to foreign entities registered for residence, or the authenticity and completeness of submitted documents in the contracting process.

2.3 Register of Legal Entities

Among other important sources of information when verifying potential clients as well as those permanent ones when reassessing the risk level at the level of the obligated entity, there is the Register of Legal Entities (Act No. 272/2015 Coll. on the Register of Legal Entities, Entrepreneurs, and Public Authorities, hereinafter referred to as “RLE”), which also serves as a register of UBOs.

The Slovak legal system defines UBOs in two legislative regulations. One is Act No. 297/2008 Coll. on the prevention of money laundering and terrorist financing and on amendments to certain acts, the other is Act No. 315/2016 Coll., which is focused on the Public Sector Partners Register (hereinafter referred to as “PSPR”). Both have a similar definition, with the PSPR further specifying an active business relationship with the state, from which they ultimately benefit.

The establishment of similar registers, which allow for the entry of UBOs, is primarily due to the dynamization in the field of the AML legislation through the European Union, specifically in 2015, when the 4th AMLD was approved, and later in 2018 with the approval of the 5th AMLD. The impetus in this area was provoked by cases from the document leaks known as the Panama Papers²³ and Paradise Papers.²⁴ These impose an obligation on obligated entities to find out information not only about the ownership structure of potential and permanent clients but also about their controlling persons, who stand at the top of the pyramid - UBOs. The condition

²³ GEORGIU, CH. In the wake of the Panama Papers. A guide for multinational corporations. In: Deloitte.com [online] [ref. 28. 9. 2023]. Available at: <https://www2.deloitte.com/bd/en/pages/finance/articles/gx-panama-papers-guide-multinational-corporation.html>

²⁴ LEHNERT, A.; SCHMITT, A. A decade in the fight against money laundering and terrorist financing Achievements, challenges, and perspectives. In: Deloitte.com [online] 8. 6. 2023 [ref. 28. 9. 2023]. Available at: <https://www2.deloitte.com/lu/en/pages/investment-management/articles/decade-fight-aml-terrorist-financing.html>

for these directives was publicly accessible registers with the entry of this person, which would make ownership structures transparent. The aim was to create pressure against the misuse of legal entities to hide persons with a potentially higher risk of corruption, possible indicators of money laundering, fraud, or criminal background.

A UBO is any natural person who effectively manages or controls a legal entity, directly or indirectly. A person who benefits economically from the activities of a legal entity, has a predominant share in voting rights or basic property, and has the right to appoint, dismiss or otherwise change the arrangement of the bodies of this legal entity.²⁵

The administrator of the public administration information register is the Statistical Office and the information is considered complete and corresponding to reality.

The register is intended to facilitate work with information and make the functioning of legal entities and their controlling entities transparent. The information entered into the register is definite, reflects reality, and should have a declarative value about ultimate beneficial owners. It is considered one of the most important elements and sources of information in the process of verifying information by the obligated entity arising from the Act.

The content of the register includes the records of legal entities based in the territory of the Slovak Republic, individual entrepreneurs, individuals who independently carry out activities under a special regulation in their own name and on their own responsibility, which is not a business activity, foreign person's business, organizational unit, and public authority bodies.²⁶

The Act on the Register of Legal Entities has recently been amended due to the requirements of obligated entities arising from application practice and also the transposition of the Directive (EU) 2018/843 of the European Parliament and Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018) in the scope of the provisions.²⁷

The amendment should create conditions for the inclusion of the register in the system for interconnecting the ultimate beneficial owner registers at the European level, as a result of the above-mentioned Directive of the European Parliament and Council (EU) in the field of AML, and also easier access for notaries, public bodies as well as banks and branches of foreign banks to the register. The benefit should mainly

²⁵ A more detailed definition is provided in Section 6a of the Act and also by the Ministry of the Interior of the Slovak Republic. UBO Position [online] 28. 7. 2023 [ref. 28. 9. 2023]. Available at:

https://www.minv.sk/swift_data/source/policia/fsj_biro/usmernenia/Stanovisko%20KUV.pdf

²⁶ Act No. 272/2015 Coll. on the Register of Legal Entities, Entrepreneurs and Public Authorities and on amendments to certain acts

²⁷ Explanatory Report to Act No. 302/2023 Coll. amending and supplementing Act No. 272/2015 Coll. on the Register of Legal Entities, Entrepreneurs and Public Authorities and on amendments to certain acts, as amended, and supplementing Act No. 483/2001 Coll. on banks and on amendments to certain acts as amended. In: epi.sk [online], 26 July 2023 [ref. 28 September 2023]. Available at: <https://www.epi.sk/dovodova-sprava/dovodova-sprava-k-zakonu-c-302-2023-z-z.htm>

be in minimizing administrative burden for banks in the process of obtaining information, preparing and providing banking services. Last but not least, the aim will also be to sanction legal entities for not providing cooperation to obligated entities, not providing truthful information, or providing outdated data.

The law also requires banks (and other obligated entities) to report any discrepancies with the information in the register to the registration court.²⁸ This obligation to unify and coordinate the truthfulness of recorded data should be taken over by the planned Central Account Register.

2.4 Central Account Register

The introduction of the planned Central Account Register (hereinafter referred to as “CAR”) is a consequence of the transposition of Article 32a of the Directive (EU) 2018/843 of the European Parliament and Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing and Directives 2009/138/EC and 2013/36/EU (OJ L 156, 19.6.2018) (hereinafter “5AMLD”) as well as the transposition of the Directive (EU) 2019/1153 of the European Parliament and Council laying down rules facilitating the use of financial and other information for the prevention of certain criminal offences, their detection, investigation or prosecution and repealing Council Decision 2000/642/JHA (OJ L 186, 11. 7. 2019, also referred to as the “information directive”).²⁹

Its introduction should meet the requirements arising not only from the 5AMLD but also from the evaluation report of the Council of Europe’s MONEYVAL committee and the recommendations of the Financial Action Task Force (hereinafter “FATF”) from 2012, as a direct response to the ever-evolving field of money laundering and terrorist financing. It is also a reaction to the incorrect transposition of the 4AMLD.³⁰

As stated in the explanatory report, the purpose is to timely identify the owners and managers of bank, payment and asset accounts, and safety deposit boxes as well as ultimate beneficial owners.

The aim is to effectively prevent, detect, and subsequently investigate financial criminal activity, thus preventing the legalization of proceeds of crime. This should result in the timely detection of perpetrators of money laundering schemes. Banks and branches of foreign banks will be obliged to report on a daily basis all mandatory data and changes effective on the given day.

²⁸ See Section 10a (3) of Act No. 297/2008 Coll. on the prevention of money laundering and terrorist financing and on the amendment to certain acts.

²⁹ Explanatory report of the Ministry of Interior on the Central Account Register [online] NRSR: ©2022. 12. 1. 2022 [ref. 28. 9. 2023]. Available at: <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=505678>

³⁰ European Parliament and Council Directive (EU) 2015/849 of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending European Parliament and Council Regulation (EU) No 648/2012 and repealing European Parliament and Council Directive 2005/60/EC and Commission Directive 2006/70/EC (Text with EEA relevance) (OJ L 141, 5. 6. 2015) as amended – 4AMLD.

The decision to introduce the CAR represents an effective solution for mass data gathering at the level of all financial institutions, with a simple model of sending comprehensive data and with a secure storage protected against attack. Access is only allowed to authorized public authority representatives, individuals involved in criminal proceedings, courts in criminal proceedings, the financial administration of the Slovak Republic, etc. The administrator of the CAR is the Ministry of Finance.³¹

The legal framework will fine-tune the connection of the Banking Act with the CAR Act in the area of banking secrecy. Changes will also affect the Securities Act and the Financial Administration Act.

The optimistic scenario for the start of the actual use of the CAR is the end of 2024, by which time banks and branches of foreign banks, or other financial institutions managing accounts, should be sending mandatory data starting from 2018 to the database. From the bank's perspective, the CAR represents a simplification of the model of requesting information in the process of verifying persons from the bank's internal system for the Financial Intelligence Unit (local FIU). This will also put pressure on banks for greater control and relevance of the information they gather in banking information systems. Their discovery and analysis will also be more precise.

2.5 Public Sector Partners Register

Another in the series of credible sources of information and means of verifying information for the bank and a branch of a foreign bank is the public Register of Public Sector Partners, which is regulated by Act No. 315/2016 Coll. on the Register of Public Sector Partners and on amendments to certain acts ("PSPR"), which smoothly followed up on the register of ultimate beneficial owners from 2017. The administrator of the PSPR is the Ministry of Justice.

From the law it follows that the PSPR primarily registers a natural or legal person who receives funding from public resources based on a procurement contract. The publication of the entry with a verification document is mandatory for everyone who plans to participate in public procurement, receive state aid, or receive other performance from the state. The entry is submitted not by the legal entity itself, but by an authorized person, which is usually a law firm. It is responsible for the accuracy and completeness of the verified data, otherwise both the public sector partner and the authorized person face a sanction. The up-to-date nature of the published data is ensured by annual updates, which means that a new identification must be submitted by December 31 each year. The public sector partner is obliged to update whenever a verification event occurs, which is the fulfilment of the contract, the conclusion of a new contract or signing of amendments, etc.

From the perspective of information gathering, this is one of the most dominant sources for obligated entities in the area of uncovering the ultimate beneficial owners in legal entities, even though the AML act imposes an obligation not to rely solely on one source of verification of information provided by clients. The need to uncover every

³¹ Ministry of Finance of the Slovak Republic MPK/Central Account Register [online], Bratislava, 27. 08. 2023 [ref.28. 9. 2023]. Available at: https://www.minv.sk/swift_data/source/mvsr_a_eu/poo/priame_vyzvanie_mf_sr_1/Priloha%20c.%202%20k%20Zmluve_Opis%20projektu%20a%20casovy%20harmonogram%20realizacie%20-%201.docx...pdf

truly controlling person, including one who fictitiously fronted another person whom they control and from whom they ultimately benefit through fictitious activities such as invoicing for goods or services that were not actually delivered, etc.³²

The register ensures transparency in the manipulation of public resources, which is part of the societal demand for state financial security. It represents a direct response to numerous shell companies, often “offshore” companies (hence it is also called the “anti-shell register”) which through public procurement obtained substantial resources and provided the service or goods in low quality for excessive prices not corresponding to market value. Shell companies have a few common characteristics. They usually have their headquarters in tax havens, i.e., in countries that have low or no taxation for business entities, thus allowing tax evasion.³³

The need for the state to regulate the functioning of the register and to make the handling of public finances transparent was inevitable due to the increase in the high number of companies where the controlling person was a publicly active person, or a family member of such a person, or other persons who pursued personal interest, or had criminal activity and a negative track record.

However, what is insufficient in terms of control is that only entities trading with the state, which are interested in participating in procurements, are registered in the PSPR.

2.6 Central Registry of Contracts

The PSPR is primarily a tool for controlling public finances, but in itself it only represents half of transparency. The second part of transparency control is complemented by the Central Registry of Contracts, in which companies are obliged to publish contracts concluded with the state, invoices, and orders. This obligation is regulated by Act No. 498/2011 Coll. Regulation of the Government of the Slovak Republic, which establishes details about the publication of contracts in the Central Registry of Contracts (hereinafter referred to as “CRC”), effective from 2011. The goal was to achieve a certain degree of transparency and credibility towards citizens and partners of these companies. This regulation automatically reduced the scope for corruption.

As of 2020, over 2.44 million contracts were published. It is a tool for control not only for the state itself, but also for other state institutions, local governments, journalists, politicians, and last but not least, obligated entities in the private sector, which often manage accounts of these companies.³⁴ The CRC represents a kind of credible source for verifying information about the origin of funds flowing in favor of financial institutions. This measure was aimed primarily against emission or bulletin

³² TKÁČ, Juraj and Marek GRIGA. *Zákon o verejnom obstarávaní*. Veľký komentár. Bratislava: Wolters Kluwer, 2016, p. 275.

³³ LEONTIEV, Andrej a Marek ANDERLE. Register konečných užívateľov výhod – stop pre schránkové firmy vo verejnom obstarávaní? In: *Bulletin Slovenskej advokácie*. 2017, no. 1-2, p. 7.

³⁴ IVANČÍK, J.; PIŠKO, M. Publishing contracts is ten years old, the info law needs an upgrade, In: *TRANSPARENCY INTERNATIONAL SLOVAKIA* [online]. 1. 1. 2021 [ref. 28. 9. 2023] Bratislava. Available at: <https://transparency.sk/sk/zverejnovanie-zmluv-ma-desat-rokov-infozakon-potrebuje-upgrade/>

board tenders when it was no longer possible to prevent the outflow of funds through the financial system.

The obligation to publish information in the given register lies primarily with the state bodies and public institutions, legal entities that are required by law to decide on the rights and obligations of natural or legal persons in public administration, and legal entities established by the state or a state body.

The act on the CRC precisely determines which contracts are or are not subject to publication.

However, from practical application it also follows that there are a significant number of shortcomings in the management of this register; despite this, it is one of the most effective tools for collecting and evaluating information in the process of detecting criminal offenses.

Conclusion

By uncovering criminal activity, latent crimes are identified. ML/TF represents a highly sophisticated criminal activity with a high degree of latency. In its detection, general theoretical and methodological starting points of detection as a specific police-security activity are used. However, it is necessary to emphasize that it has certain specifics, including the fact that the most important role in obtaining indicators of ML/TF is played by obligated entities. Obligated entities within their business activity, in addition to other obligations, must assess and analyze the business operations they perform in order to evaluate whether it is not an unusual business operation – a legalization indicator. For effective evaluation, it is necessary to obtain and collect further relevant information from various information sources in the detection process, including public registers, such as the commercial register, population register, legal entities register, central account register, public sector partners register, and central contract register.

Based on the aforementioned facts, the authors emphasize the need to use as many information sources as possible, as only a comprehensive analysis of all available and credible information can determine whether the analyzed information represents a UBO – ML/TF indicator. They also point out numerous discrepancies resulting from the use of the aforementioned registers, such as an inconsistent approach to registers. In practice, situations often occur where the information obtained from the registers is not provided in full. Obligated entities, as an important link for obtaining information in the process of detecting criminal offenses, which also provide the results of their analyses to other public authorities, including the financial intelligence unit, should have comprehensive access to databases maintained and established by the state. This is not only about the banking sector. However, it represents the widest network coverage of natural and legal persons. Therefore, the authors recommend that obligated entities, especially banks and other financial institutions, be provided with an “identification key” that would allow these entities to enter state registers verified in full. This would fulfill the expectations for an effective in-depth analysis of their business and financial operations, which obligated entities are required to perform by law.

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