

Combating Money Laundering

The creation of the Euro as a physical currency and the adoption of the Euro together with the liberalisation of the EU financial markets has created exponential business expansion but at the same time created many new opportunities for money laundering.

A number of EU directives have been issued (such as DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC.

The principal sources of Maltese law on money laundering as a criminal activity and the prevention thereof are two statutory instruments, namely the Prevention of Money Laundering Act (Cap. 373 of the Laws of Malta), augmenting other provisions found in the Criminal Code (Cap. 9 of the Laws of Malta), and the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR S.L. 373.01). Furthermore, subject persons - which according to legislation means "any person required to maintain internal reporting procedures and to report transactions suspected to involve money laundering or funding of terrorism," are also required to comply with the detailed Sectoral Implementing Procedures on the Prevention of Money Laundering and Funding of Terrorism published by the Financial Intelligence Analysis Unit (FIAU) in conjunction with the Malta Gaming Authority (MGA).

In practice, in the last two decades, with the huge advance of global connectivity, and more recently the success of the Eurozone, business transactions have increased dramatically. The EU allows cross border activities very easily, however governments were not prepared to receive such huge intra-community business, creating a vacuum in tax collection. It was easy for criminals to transfer their proceeds in foreign "offshore" banks and recycle them back in a diverse range of business through the process of layering and reintegration.

The system that created the second largest economy in the world (after the United States) has struggled to control its own internal flows of funds and it is estimated

that 10% of the wealth is hidden¹ in offshore vehicles. Whether it is derived from illicit activities or from untaxed activities it is classified as money laundering since tax evasions falls under this regime. The best way to move money is obviously through financial institutions in the guise of legitimate businesses, for example, in Italy the mafia launders the proceeds of illicit activities by opening restaurants or other cash intensive business in the north of Italy so to turn their illicit proceeds into a legitimate business enterprise.

There are many tricks which criminals use to launder funds. Our country, being so close to Sicily was vulnerable and exposed particularly in recent years in high profile cases of illegal gaming companies setting up in our shores to pay taxes legally (using reintegration techniques) here by layering illegal proceeds in betting shops in Italy.

This has created havoc in Malta and it is a known fact that Maltese banks are closed for business completely, and this was bound to happen. Malta's financial system might have been too lax for years, and all of a sudden, the banks and financial institutions are adopting the 4th Anti-money laundering directive to the letter.

The recent introduction of CASPER², an online tool created by the FIAU, aims to process the submission of the Risk Evaluation Questionnaire (REQs). This is obligatory to all subject persons including gaming companies as it makes strong emphasis on the responsibility of subject persons to ensure compliance with the AML directives. This is also a reminder that subject persons are to ensure that they have compliance rightly in place. The perception might be mired to restricting new business, but in reality this will depend on the risk appetite of the subject person. No one can limit you to take business from a person who scores low and is a high-risk subject, but if you take the necessary precautions and carry out the right due diligence, one can easily onboard such a client. Unfortunately, many subjects persons in Malta are simply refusing such clients. The opportunity cost of losing their respective financial license is worse than not onboarding a high-risk client.

¹ Money Laundering and Tax Evasion EU Paper – pg 6
<https://ec.europa.eu/research/participants/documents/downloadPublic?documentIds=080166e5b6226650&appId=PPGMS> last accessed 1st May 2019

² CASPER stands for Compliance and Supervision Platform for Assessing Risk (CASPAR) can be accessed here <https://caspar.fiumalta.org/> if you are a service provider or subject person you are obliged to register.

Fair enough, but this has created an air of dissent amongst foreigners willing to set up in Malta, and in the long-run might negatively be repercussive. This is happening everywhere in Europe, particularly after the Panama Paper debacle, as it seems that Financial Authorities in Europe have stepped up their efforts to combat financial crime.

The sentiment at the present time is to question every transaction. Unfortunately there is not enough awareness on how to be practical. Five years ago, one used to go to the bank and deposit €50,000 in cash and no banker used to be too nosy about it, however today one struggles to deposit or withdraw €10,000 in cash without a questionnaire by junior unqualified people. By unqualified I mean they are trained bankers but not qualified in posing the right due diligence questions. The banks went from one extreme to another.

I always wondered how come the EU went so strong with the imposition of the latest Anti-Money Laundering directives, yet up to a few months ago was still printing the €500 note which is one of the largest notes in circulation. If the EU wanted to seriously combat financial crime, why didn't it take it out of circulation?

Is the EU studying the Swedish model?³ - with the advent of blockchain technology, the move to digital of Sweden might be a game changer and an eye opener to the EU and other countries interested in the fight against money laundering. Sweden is a highly regulated but technologically advanced economy which is close to become the first cash-less society in the world in 2023 having ironically been the first country to adopt banknotes in 1661. A cashless society is the perfect response to fight money laundering related activities such as drugs, counterfeiting and weapons. It also controls the flow of funds and limits tax evasion. Is the EU prepared for this to take the fight against anti-money laundering activities to the next level?

The governments have various tools to combat the fight of the Money Laundering. The FIAU⁴ is one such department, headed by a team of qualified professionals and working in conjunction with the Executive Police (Economic Crimes Unit) and also

³ Sweden – How to Live in the World's First Cashless Society - <https://interestingengineering.com/sweden-how-to-live-in-the-worlds-first-cashless-society> last accessed 1st May 2019.

⁴ Financial Intelligence Analysis Unit

other international Financial Intelligence Units, receives STRs⁵ from financial institutions and subject persons who are obliged to report. The issue with this department is constantly outlined in the press that they are not doing enough, with the government rebutting that the budgets allocated to this unit are being constantly increased, yet for our robust financial sector the perception is that that unit is understaffed. On the other hand, in a seminar I personally attended a year ago regarding such topic, the panel speakers were of the opinion that the professional subject persons (such as accountants, auditors, lawyers) were not doing STRs with the majority (90% of STRs) coming from banks/financial institutions and gaming companies banks whilst professionals have made less than 2% STRs together⁶.

For compliance monitoring, the FIAU conducts on-site and off-site supervision of subject persons and conducts also a number of supervisory AML/CFT Meetings. The FIAU also has a joint agreement with the MFSA as a joint procedure to supervise subject persons under their responsibility (for e.g. banks are licensed by the MFSA and monitored by the Supervisory Unit housed at the MFSA). The FIAU also requests an Annual Compliance Report (which was a short version of the recently introduced CASPER), and provides assistance on AML/CFT obligations of subject persons. The Unit is there to help Subject Persons compliance obligations. The unit also has the power to impose fines and sanctions in relation to potential breaches of the PMLFTR.

Similarly, Gaming Operators are required to apply a Risk-Based Approach (RBA) with their on-going business which is a core foundation of the 4th Anti-Money Laundering Directive and thus requires 'Subject Persons' to conduct and document a Money Laundering (ML), Terrorist Financing (TF) Business Risk Assessment. Gaming Operators (like any other Subject Persons) are also bound to appoint a Money Laundering Reporting Officer (MLRO) of sufficient seniority whose main responsibility is to consider any internal reports of unusual or suspicious transactions and, where necessary, follow up the same by filing a STR with the FIAU. Furthermore, the Directive provides that licensees are to apply CDD

⁵ Suspicious Transaction Reports

⁶ FIAU Annual Report 2017 -

<http://www.fiumalta.org/library/PDF/annualreports/AnnualReport2017.pdf> page 17 last accessed 1st May 2019

measures 'upon the collection of winnings, the wagering of stakes, or both, when carrying out transactions amounting to EUR 2000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked'.

Furthermore, to understand how countries cooperate together, Maltese gaming authorities started exchanging anti-Mafia intelligence with their Italian counterparts following a major crackdown that uncovered Malta's role in a major organised crime money laundering racket⁷.

Malta is also a member of MONEYVAL - the assessment of the implementation of anti-money laundering and counter-terrorist financing (AML/CFT) measures in Malta was conducted by MONEYVAL. MONEYVAL is an important and high-profile monitoring body within the Council of Europe and is the leading FATF-style regional body. MONEYVAL works in close cooperation with the Financial Action Task Force (FATF) and the International Monetary Fund (IMF) in assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation.

The introduction of the Beneficial Ownership Register in 2018 is a new measure to enhance transparency of legal entities arrangements whereby entities in Malta (and similarly this measure is being implemented in other EU countries via the EU directive), including companies, partnerships, foundations, trusts and associations, have an obligation to disclose the ultimate beneficial owner/s (physical person) of the entities. The disclosure needs to be made to the respective registries such as the Registry of Companies Agency in the case of companies, the Malta Financial Services Authority in the case of trusts and Registrar for Legal Persons in the case of associations and foundations.

The information contained in the Register is accessible to national competent authorities with designated responsibilities for combating money laundering and terrorist financing; national competent authorities that have the function of investigating or prosecuting money laundering, associated criminal offences and

⁷ Malta-Italy gaming intelligence agreement following major crackdown - <https://www.timesofmalta.com/articles/view/20181114/local/malta-italy-gaming-intelligence-agreement-following-major-crackdown.694289> last accessed 1st May 2019

terrorist financing, or of tracing, seizing, freezing and confiscating criminal assets; the Financial Intelligence Analysis Unit (FIAU); national tax authorities; any other national competent authority within the meaning assigned to it under the Prevention of Money Laundering and funding of Terrorism Regulations, not already covered above; subject persons who are providing services in or from Malta for the purpose of carrying out customer due diligence; and any person or organisation that upon written request can satisfactorily demonstrate and justify legitimate interest of the beneficial owners of the company, foundation or association.

As has been seen in this short paper, there are a number of instruments that help in combating the fight of money laundering. This is all good, but professional money launderers will find a new way to layer money around, cross border transactions make it difficult for the Executive Police to prosecute because they get bogged down in bureaucracy or have limited powers to assist in investigations and take very long time to prosecute, meaning that would be perpetrators have enough time to either move illicit money again. The enforcements of above instruments have made it more difficult for criminals to keep disguising such funds and those who benefit from the proceeds of crime are more susceptible to being caught thanks to the various instruments that have been put in place, hence limiting the appetite to launder. Yet, criminals know no boundaries and would eventually evolve and find new ways how to launder, layer and reintegrate so the struggle is continuous.

Directives / Laws / Codes referred:

DIRECTIVE (EU) 2015/849 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing.

Criminal Code (Cap. 9 of the Laws of Malta)

Prevention of Money Laundering Act (Cap. 373 of the Laws of Malta),

Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR S.L. 373.01).

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