



Jurisdiction update: Romania — AML

May 14 2012 [Octavian Popescu](#)

Member of the Financial Action Task Force? No.

On FATF black list? No.

Member of Egmont? Yes.

Legislative framework

The main law in this field is the Law no. 656/2002 on preventing and sanctioning money laundering as well as instating certain measures for preventing and fighting against financing of terrorist attacks. In addition to the Law no. 656/2002, particular primary and secondary legislation items have been issued by authorities such as the National Office for Prevention and Control of Money Laundering, the Government of Romania, the National Securities Commission, etc.

Among these legislative pieces, the most significant are the following ones:

- i. Emergency Government Ordinance no. 53/2008 amending and supplementing the Law no. 656/2002;
- ii. Government Decision no. 1272/2005 approving the list of individuals and legal entities suspected of having committed or financed terrorist attacks;
- iii. Government Decision no. 594/2008 approving the Rules for enforcing the provisions of Law no. 656/2002;
- iv. Government Decision no. 1437/2008 approving the List comprising third party states imposing similar requirements to those provided by the Law no. 656/2002;
- v. Decision no. 673/2008 of the National Office Board for Prevention and Control of Money Laundering, approving the Operation Methodology for sending cash transaction reports and foreign transfer reports;
- vi. Decision no. 964/2010 of the National Office Board for Prevention and Control of Money Laundering, amending and supplementing the Operation Methodology for sending cash transaction reports and foreign transfer reports, previously approved by Decision no. 673/2008.

Regulatory authority

The National Office for Prevention and Control of Money Laundering (NOPCML) reports to the Government. In order to fulfil its duties of preventing and sanctioning money laundering activities, the NOPCML receives, analyzes and processes information originating from institutions or entities having the obligation to report such activities. In view of fulfilling its duties, the NOPCML may request such data and information, while professional and banking secrets cannot deny such requests.

The obligation to report to NOPCML applies to credit institutions and Romanian branches of foreign credit institutions, to financial institutions, as well as to Romanian branches of foreign financial institutions, to managers of private pension funds, auditors, public notaries, attorneys, individuals having duties in the privatization process, associations and foundations, etc.,

Customer due diligence

Entities reporting to NOPCML have the obligation, in carrying out their activities, to adopt appropriate measures for preventing money laundering and financing of terrorist attacks, enforcing, for this purpose, based on an assessment of the risk level, standard simplified and additional measures of knowing their clients, allowing them, as the case may be, even to identify the real beneficiary of funds, Law no. 656/2002 providing certain criteria in this regard.

Thus, entities falling under Law no. 656/2002 must also apply, in addition to standard measures, additional measures for knowing their clients, in circumstances which may, by their nature, have a high risk of money laundering or financing terrorist attacks. The lawmaker expressly provided these kinds of circumstances, referring to persons who are not physically present upon performance of the operations, correspondent relationships with credit institutions from non-EU states or states not included in the European Economic Area, as well as business transactions or relationships with politically exposed persons, resident in another EU, EEA or third party state.

In cases like these, the Law no. 656/2002 provides certain measures, such as, inter alia: requesting additional documents and information in order to determine the client's identity, verifying or certifying the supplied documents or requesting a certification from a credit or financial institution, assessing the control mechanism implemented by the credit institution of the third party state for the purpose of preventing and fighting against money laundering, etc.

Law no. 656/2002 also stipulates that the entities having the obligation to report to NOPCML must pay particular attention to transactions which, by their nature, may foster anonymity or may relate to money laundering or financing terrorism.

Internal policies and procedures

Entities having the obligation to report to NOPCML also have the obligation to appoint one or more persons entrusted with legal compliance duties in the meaning of Law no. 656/2002. The names of these persons have to be notified to the NOPCML, together with the nature and limits of their specific duties.

Recordkeeping

Entities having the obligation to report to NOPCML must also implement secondary or operative recordkeeping policies, designed for internal control, risk assessment and management, in order to obstruct and prevent operations suspected of money laundering or financing terrorism, being, at the same time, compelled to appropriately ensure and train employees. When client identification is required, entities having the obligation to report shall keep copies of the documents attesting the clients' identity for a period of five years, starting with the date when the relationship with the client is terminated.

In addition, the above-mentioned entities shall keep secondary or operative records and registrations of all financial operations that are the subject to the Law no. 656/2002, for a period of at least five years after the business relationship ceases, in an appropriate format, in order to be used as evidence in court.

Suspicious activity

Through the amendments brought to the Law no. 656/2002, the lawmaker aimed to broaden the notion of "suspicious transaction", stating that the suspicion of an operation potentially aiming to launder money or to finance terrorist attacks may be deemed not only depending on the unusual nature and character thereof in relation to the activities of a client of one of the entities having the obligation to report to NOPCML, but also as concerns the apparent unlawful or un-economic purpose of that specific operation.

After receiving a notice regarding a suspicious transaction, NOPCML may order, for grounded reasons, the transaction to be suspended for a period of maximum 48 hours, and if this period is not deemed sufficient, the Prosecutor's Office of the High Court of Justice may be requested to extend the postponement of the operation for maximum 72 hours.

Crimes & penalties

The Law no. 656/2002 makes it a criminal money laundering offence:

- i. To trade or transfer assets, knowing that they are the result of criminal offences, for the purpose of hiding or dissimulating the illegal origin of these assets or for the purpose of aiding the person who committed the criminal offence the assets resulted from to elude criminal prosecution, trial or executing the punishment;
- ii. To hide or to dissimulate the true nature of the origin, location, disposal, circulation or ownership over the assets or the rights over them, knowing that the assets are the result of committing criminal offences;

- iii. To acquire, hold or use assets, knowing that they are the result of committing criminal offences.

The penal treatment of criminal offences mentioned above reflects the lawmakers' intention to make punishments applicable to persons committing deeds that fall under Law no. 656/2002 more severe than before.

Therefore, as regards punishments applicable to legal entities, the lawmaker instated the obligation of applying, in addition to the punishment by fine, of corresponding punishments provided by the Criminal Code, namely the dissolution of the legal entity, suspending its activity for a period between three months and one year or suspending one of the activities in connection with which the criminal offence was committed for a period between three months and three years or closing down lucrative facilities for a period between three months and three years, etc.,

In addition, the measures that can be taken for the purpose of facilitating the process of collecting evidence or identifying the perpetrator have also been supplemented, when there are clear signs of committing the criminal offence of money laundering or financing terrorist attacks. Thus, besides putting bank accounts and accounts assimilated thereto under surveillance, eavesdropping of communications, the prosecutor may order, for grounded reasons, the measure of supervised delivery of money.

Therefore, breaching the provisions of Law no. 656/2002 may lead to a civil fine in amount of up to RON 500,000 (approx. 115,000 euros) being applied, supplemented by one of the corresponding punishments provided by the Criminal Code, for a criminal offence committed by a legal entity, while for committing a criminal offence by an individual, the applicable punishment is imprisonment for a period between two and 12 years.



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