



Moneyval,

Svet Evrope in Nacionalna ocena tveganja, v očeh študenta prava

Boštjan Škrlec
Višji državni tožilec
Vrhovno državno tožilstvo RS



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- Moneyval
- Predstavitev R &SR
- Ocenjevanje
- Razvoj ocenjevanja
- Nadgradnja
- NRA v Slo
- Sklepno



Uvod

- Svet Evrope (www.coe.int)
 - 47 držav članic
 - 28 DČ EU
 - Human rights, Rule of law, Democracy
 - EKČP (1950, 1953)
 - ESČP
- Odbori
 - GRECO
 - Terorizem
 - Cybercrime ...
- Moneyval – ML&FT



Moneyval

- Kaj to je
 - 1997, odbor ministrov, 30 članic)
- FATF (1989) medvladna organizacija
 - FATF Forty Recommendations
 - FATF Nine Special Recommendations on Terrorist Financing



Moneyval

- Pravne podlage
 - United Nations Convention on **illicit traffic in narcotic drugs** and psychotropic substances (1988)
 - United Nations International Convention for the Suppression of the **Financing of Terrorism** (1999)
 - United Nations Convention **against Transnational Organised Crime** (2000)
 - Convention on Laundering, Search, Seizure and Confiscation of the **Proceeds from Crime** (CETS No. 141) (1990)
 - Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the **use of the financial system for the purpose of money laundering and terrorist financing**
 - Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the **definition of politically exposed person** and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis



Moneyval

Smeri delovanja

- “Peer” evalvacije – skladnost s priporočili
- Tipologije pranja denarja



Moneyval

Delegacija RS

- Urad za preprečevanje pranja denarja (UPPD)
- Banka Slovenije
- Državno tožilstvo
- Policija (UKP)
- Ministrstvo za pravosodje



Moneyval

Rezultati ocenjevanj:

- “Boniteta”
- Črna lista



Predstavitev R &SR

R 1 *Scope of the criminal offence of money laundering*

Countries should criminalise money laundering on the basis of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988 (the Vienna Convention) and the United Nations Convention against Transnational Organized Crime, 2000 (the Palermo Convention).

Countries should apply the crime of money laundering to all serious offences, with a view to including the widest range of predicate offences. Predicate offences may be described by reference to all offences, or to a threshold linked either to a category of serious offences or to the penalty of imprisonment applicable to the predicate offence (threshold approach), or to a list of predicate offences, or a combination of these approaches.

Where countries apply a threshold approach, predicate offences should at a minimum comprise all offences that fall within the category of serious offences under their national law or should include offences which are punishable by a maximum penalty of more than one year's imprisonment or for those countries that have a minimum threshold for offences in their legal system, predicate offences should comprise all offences, which are punished by a minimum penalty of more than six months imprisonment.



Predstavitev R &SR

- **R 2 *Scope of the criminal offence of money laundering***

Countries should ensure that:

- a) The intent and knowledge required to prove the offence of money laundering is consistent with the standards set forth in the Vienna and Palermo Conventions, including the concept that such mental state may be inferred from objective factual circumstances.
- a) Criminal liability, and, where that is not possible, civil or administrative liability, should apply to legal persons. This should not preclude parallel criminal, civil or administrative proceedings with respect to legal persons in countries in which such forms of liability are available. Legal persons should be subject to effective, proportionate and dissuasive sanctions. Such measures should be without prejudice to the criminal liability of individuals.



Predstavitev R &SR

- R 5 ***Customer due diligence and record-keeping***

Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.

Financial institutions should undertake customer due diligence measures, including identifying and verifying the identity of their customers, when:

- establishing business relations;
- carrying out occasional transactions: (i) above the applicable designated threshold; or (ii)
- that are wire transfers in the circumstances covered by the Interpretative Note to Special Recommendation VII;
- there is a suspicion of money laundering or terrorist financing; or
- the financial institution has doubts about the veracity or adequacy of previously obtained
- customer identification data.

The customer due diligence (CDD) measures to be taken are as follows:

a) Identifying the customer and verifying that customer's identity using reliable, independent source documents, data or information⁴.

b) Identifying the beneficial owner, and taking reasonable measures to verify the identity of the beneficial owner such that the financial institution is satisfied that it knows who the beneficial owner is. For legal persons and arrangements this should include financial institutions taking reasonable measures to understand the ownership and control structure of the customer....



Predstavitev R &SR

- I. Ratification and implementation of UN instruments
- II. Criminalising the financing of terrorism and associated money laundering
- II. Freezing and confiscating terrorist assets
- III. Reporting suspicious transactions related to terrorism
- IV. International co-operation
- V. Alternative remittance
- VI. Wire transfers
- VII. Non-profit organisations
- VIII. Cash couriers



Ocenjevanje

- Splošno o ocenjevanju
- Vprašalnik
- Odgovori
- On-site
- Poročilo
- Plenum



Razvoj ocenjevanja

- Krogi (1. - 4.)
- Razvoj: normativnost → učinkovitost



5. Krog - Nadgradnja

- Premik v kvaliteti ocenjevanja
- Risk-based
- Risk assessment – NRA
- Izdelava nacionalne ocene tveganja



NRA v Sloveniji

- Izdelava je proces
- Nacionalna raven - medinstitucionalno
- Vodi UPPD
- Sodelovanje s Svetovno banko
- Cilj: identificirati tveganja in določiti njihovo stopnjo.



“Risk Based” pristop

- Threat(ogoržanje)/Vulnerability (ranljivost)

=

- Tveganje (Risk)



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Threat+Vulnerability=RISK

Ogrožanje (threat)





Threat+Vulnerability=RISK

- Ranljivost (vulnerability)



- TVEGANJE (RISK)



NRA v Sloveniji

- Skupine
 1. Threat
 2. National Vulnerability
 3. Banking Sector Vulnerability
 4. Securities sector Vulnerability
 5. Insurance sector Vulnerability
 6. Ostale finančne institucije Vulnerability
 7. DNFBP's Vulnerability)
- Analiza enega in drugega
- Rezultat – magic box.



NRA v Sloveniji

Cilj NRA

- Ugotoviti naravo in stopnjo tveganja
- Omogočiti ocenjevanje, ki sledi realnim tveganjem



Sklepno

- Preprečevanje ML FT je prioriteta mednarodne skupnosti
- Deležno posebne pozornosti
- Vzdrževan neprekinjen nadzor izvajanja
- Konstanten razvoj
- Usmerjen od normativnega k dejanskemu



Vprašanja?



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Hvala