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Organised crime and money laundering trends and countermeasures: a comparison between western and eastern Europe

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1. Introduction

The scope of this contribution is to provide an overview of recent trends in organised crime and money laundering activities in the countries of central and eastern Europe, and to underline the contrast policies devised to prevent the infiltration of financial systems in these countries by organised criminal groups. However, in order to achieve a better understanding of these phenomena and to make an evaluation of existing contrast and prevention policies, it is necessary to adopt a wider perspective, which also comprises western Europe. Some of the factors, in fact, which affect the development of transnational crime and the countermeasures taken at the national and international levels, are particularly relevant in the European continent (Adamoli 1998). The first is the globalisation of the economy, which at the European level means the establishment of a single market, which brings citizens and corporations from foreign countries increasingly in contact. Related to this are the abolition of border controls between Schengen states and the integration between western and eastern Europe through the transition of these countries towards a market-controlled economy, which have increased the opportunities for illicit transactions across borders (Winer 1997). Moreover, particularly relevant when tackling the issue of money laundering are improved communication technology (including telephone, fax and computer networks), the explosive increase in the use of computers in business, the development of electronic systems in the banking and other parts of the financial sector which use wire transfers to shift enormous amounts of cash around the world very rapidly.

All these factors combine to make borders more and more permeable, favouring interdependence among businesses and their globalisation. Combined with the

persisting difference and segmentation of anti-money laundering legislation at the regional level, they contributed to a rapid increase in transnational criminal activities, making it of increasing concern. In fact, just as legal businesses are expanding internationally in response to the globalisation of markets, so are the criminal enterprises seeking to develop both their structures and illicit activities at the international level in order to gain access to new markets, taking advantage of the discrepancies between the legal systems of countries in different parts of the world.

These “environmental” changes, the changes in organised criminal structures and activities and the tightening of legislation and contrast policies in general, also had an impact on the changes in money laundering operations. In fact criminals, in their effort to maximise opportunities for earning profit while minimising, at the same time, the risk of being arrested and convicted, have been very quick to shift from one activity to the other and to enter new markets. In particular, the persisting discrepancies existing between anti-money laundering legislation in eastern European countries coupled with, in some of them, its scarce and ineffective implementation, have to a certain extent created a “displacement effect” which has lead criminal groups to find there more “friendly” environments where to conduct their illicit activities.

With a view to describing organised criminal activities, trends in money laundering operations and contrast policies in central and eastern Europe, the analysis has been divided into three main parts. In the first part, a brief outline will be delineated of the most recent developments in the structure and activities conducted at the European level by organised crime groups. The second part of the paper is devoted to the analysis of some money laundering trends in eastern Europe. The third and final part compares anti-money laundering legislation enacted by the countries of eastern Europe with European Union standards, highlighting at the same time the provisions existing in countries which have recently enacted domestic legislation (e.g Bulgaria, Estonia, Latvia and Romania).

2. Organised Criminal Activity in Europe¹

¹ This section draws from Adamoli, Di Nicola, Savona, Zoffi, 1999, pp. 37-57, and from Adamoli, 1999.

As already mentioned, there are a number of circumstances which favour the development of large-scale organised criminal activities in eastern Europe: for example the privatisation of state-owned property, the reduced size of the army (which results in a great number of surplus weapons), the new economic and political system and the new trade routes created after the restriction on travel (Aromaa 1998). As a consequence, the number and volume of criminal organisations has rapidly grown, and their activities have grown increasingly transnational.

In the international framework of organised crime, central and eastern European criminal organisations present an increasingly serious threat because of their rapid expansion and the large amount of illicit proceeds they produce. They are active at the European level in a variety of profitable illicit activities, such as trafficking in drugs, artefacts, stolen cars, arms and trafficking in women and children for the purpose of exploiting them for prostitution. In addition to these, other forms of organised crime linked to the transition to a market economy have rapidly developed: tax evasion, illicit activities in the privatisation process, infiltration of the legal economy by criminal elements, bribery, counterfeiting, extortion and, lastly, money laundering (Savona and Adamoli 1996).

Drug trafficking is still a very flourishing and lucrative criminal activity and it is a clear example of an illicit conduct traditionally carried out by organised criminal groups world-wide, and whose routes have always passed through eastern European countries, all the more since the fall of the Soviet Union. In fact, over the years and particularly after the fall of the Soviet bloc, the number of trafficking routes has increased.² The Europol reports reveal that this phenomenon is influenced not only by globalisation in general terms, but also by the migration of people, in particular migration for economic and political reasons.³ These reports highlight the increased role played by criminal groups of eastern European origin in the production and distribution of drugs. There are for instance the Albanian groups, who are carving out a significant role in the heroin trafficking especially in

² One of the major routes recently used for heroin is the Balkan “northern” route, which goes through Turkey, the Balkans, Hungary, Uzbekistan, Azerbaijan and Tajikistan. In Tajikistan the drugs may take two paths. One goes through the CIS, in which case the consignment is sent through Slovakia and Poland to Germany, the Scandinavian countries and the Baltic states. A diversion of this route goes through Austria and the Czech Republic to Germany and Belgium, the Netherlands and Luxembourg. In the past, Turkish “heroin” was sent to Austria and Germany via Albania, Bosnia, and Croatia, and to Poland through Bulgaria, Hungary, Slovakia and the Czech Republic (Ivanov 1999, 5). Austria, for example, has become a transit country for heroin coming from the central Asian regions and for cocaine, as far as it is arriving from central Europe and Russia.

some EU Member states, traditionally in the hands of Turkish groups. In Southern Europe, in fact, Albania has replaced the traditional transit route through the former Yugoslav republics for drug trafficking and, to some extent, for smuggling aliens into Italy, a point of entry into Europe.

Money laundering or smuggling are frequently linked with drug trafficking. According to leaks in the foreign intelligence services of some CIS countries, money from Turkish drug turnover is still coming through Europe. The Balkan routes are preferred because the warring parties in the civil wars taking place in the former Yugoslavia always need money. And this is true for the Kosovo Albanians, who are desperately in need of money, and there is only one way to earn it: become a mediator for the Turkish underworld which sends drugs to Europe. Law enforcement agencies know about how large consignments of heroin were disguised as humanitarian aid, easily crossed several European borders, and arrived to Russia (Ivanov 1999, 5).

Besides drug trafficking, however, in recent years a number of other crimes have gained importance and caused social alarm because of their diffusion.

For instance, fraud in general – and, in western Europe, fraud against the financial interests of the European Union – is an area in which organised crime groups work on a cross-border basis. Fraud, in fact, is increasingly committed not only by professionals in legitimate industry on the margin of their businesses, but also by extensive organised crime networks. The existence of a budget of the European Institutions, in fact, creates an atmosphere where a misuse of such funds represents a very favourable opportunity for criminals all over Europe, and it is a burgeoning source of illegal proceeds (European Commission 1998, 10). Organised European Union fraudsters operate more often than not on a cross-border crime basis. While the organisational kernel is small, they need a large and experienced network of co-operating fraudsters and legitimate entrepreneurs to carry out their fraud schemes.⁴ It has recently become clear that eastern European entrepreneurs are no longer only “receiving” documents and/or cheap goods, but are themselves exploring the fraud options on the European market. At the end of the illegal chain, the laundering of the proceeds from fraud becomes a necessity for criminals if they are to be able to enjoy their illegal earnings.

³ Interregionaal Rechercheteam Zuid-Nederland, Fenomeenonderzoek synthetische drugs, Eindhoven, 1996, as cited in Fijnaut (1998).

⁴ For a more detailed analysis of fraud against the budget of the European Union see Savona, 1997.

The “threat” of the progressive expansion of organised criminal groups from eastern and central Europe has been seen as a very relevant part of Europe’s modern criminal history. However, it would perhaps be more advisable to speak in terms of the “threat” represented by the increased links between criminal groups from western Europe and those from eastern Europe. It must be noted that organised criminal groups from western Europe, for example, have been very quick to exploit the many opportunities for profit created by the opening of the frontiers to eastern European countries during their transition to a market-controlled economy.

However, it must be noted how local criminal groups in these countries have rapidly grown and even started crossing national borders. Russia is a clear example of this development. The role played by organised crime in the ongoing political and economic processes in Russia is extremely significant, since every sector of the economy seems to be at risk of criminal infiltration. According to some figures provided by the Russian Duma for 1998 (Fituni 1998, 360), organised crime controls over 40 per cent of private enterprises, 60 per cent of public enterprises and 85 per cent of commercial banks.⁵ Not even the civil service is free from criminal infiltration: corruption has in fact infiltrated all levels of bureaucracy, thus creating a favourable environment for the growth of organised crime, which often has ethnic links.⁶

This process of criminal fragmentation has taken place in Russia, other CIS republics and is still happening in the states of the former Yugoslav republics. It is important that it is closely watched, especially because of its future implications for the European geography of organised crime. Talks with national law enforcement agencies in many European countries, in fact, confirm for example that groups of Russian, Polish, Czech, Romanian and former Yugoslav origin are active in Spain, Germany, Belgium, Denmark, France, Italy, Austria, the United Kingdom, the Netherlands and Sweden. Besides drug trafficking, their main activities are the export of stolen cars, alien smuggling and trafficking in human beings for sexual exploitation.

⁵ RTR, «Parlamentski Clas», 25 January 1998.

⁶ The bond created by ethnic ties is one of the most significant features of organised criminal groups of Russian origin. A number of ethnic groups are active both in Russia and in the other countries of the region. Among these, the role played by the Ukrainians, often perpetrators of violent crimes and, in some cases homicides, has recently increased. Moreover, the Georgian mafia is specialised in burglaries and the control of gambling. But the most significant threat comes from the Chechen organised criminal groups, who are particularly active in frauds and money laundering, and in some cases motor vehicle theft and the collection of taxes from prospective buyers.

Many stolen cars exported to central and eastern European countries originate in the European Union. It is necessary to start by saying that these crimes, which are easily executed, can be perpetrated by single individuals, and is therefore very hard to make a distinction in data because they often include other illicit conducts such as joyriding and insurance fraud. However, more often the trafficking in stolen cars is an illicit conduct perpetrated by organised criminal groups. For example, according to local press sources, in recent years car theft has become a serious problem in Hungary. About 16,000 cars were stolen in 1996, 3,000 more than in 1995, and car theft resulted in a loss of 16 billion forint to the country. Since 1990, the number of stolen cars in the whole of Europe has doubled, but in Hungary it increased 20 times.⁷ There has been a noticeable increase in the trafficking of stolen cars organised by, amongst others, Russian and Ukrainian criminal groups. In fact, Russia, the Baltic states and, to a lesser extent, Ukraine appear to be the most promising markets for stolen cars (Liukkonen 1997, 16).

In Bulgaria, organised criminal groups bribe customs officers and traffic police authorities, and 'legalise' cars stolen from western countries with forged documents.⁸ Many car shops in Sofia have stickers in their windows announcing that they are protected by a security or insurance firm known to have underworld links. As a warning to rival gangs to keep clear, this practice seems the safest option for many Bulgarians (Savona 1998).

Alien smuggling, or trafficking in human beings - whether adults, child prostitutes, or illegal aliens destined to forced labour in workshops - is a dramatic phenomenon. It is a business that links immigration more and more closely to crime, and is characterised by the increasing involvement of organised criminal groups.⁹ The break-up of the Soviet Union greatly increased the traffic in illegal immigrants, not only substantially increasing migration flows between eastern and western Europe, but also opening up numerous new routes for traffickers, mainly from East, South and central Asia.¹⁰ Russia, together with the Baltic States and

⁷ Car theft serious in Hungary. In: Xinhua News Agency, April 17, 1997.

⁸ Three main trafficking channels have been uncovered: the 'Vienna channel', where stolen cars are imported from Germany, Italy and Austria and sold wholesale to local car shops; the 'Russian or Moldovian channel' which exports stolen Bulgarian cars to the former Soviet Republics; and the 'Macedonian channel' which deals in stolen cars from Bulgaria and exports them to Macedonia and Albania.

⁹ As for 1996, the International Organisation for Migration (IOM) has estimated the proceeds of this crime at the world level to be around 8 billion dollars. For more information on this topic see Paiva, 1996, pp. 381 ss. See also Savona in co-operation with Di Nicola and Da Col, 1996.

¹⁰ There are for example the Baltic routes used mainly by people from central Asia. One route originates in the states of the former Soviet Union, from which Asians and Africans take trains reaching the Scandinavian countries after a final sea crossing from Estonia, Latvia or Lithuania.

other eastern European countries, together with Finland, Sweden are becoming the new two-way-routes for illegal activities: drug trafficking and illegal alien smuggling from Southeast Asia to the West, and car theft from Germany, the UK and the Netherlands towards the eastern countries and Asia (IOM 1997). Two main migration routes pass through Poland. Another passes through the Balkans starting from Turkey and then through the Balkan States, usually with Germany as the final destination. Through this route the smuggled migrants either cross over to Romania and Hungary *en route* to Germany; or are transported through Macedonia and Albania and then head straight for Italy, from where they may continue to Germany or to other West European states. Another access way is not a route in the proper sense of the term: it comprises a number of countries on the borders of West Europe with lenient legislation on entry permits and lax police border controls: Poland, the Czech Republic, Hungary and Romania are thus used as transit countries towards Europe.¹¹

Moreover, smuggling of nuclear material, a relatively new criminal activity which is causing significant alarm in western Europe, may also involve eastern European organised criminal groups. For the time being, inspection of nuclear smuggling incidents between 1993 and 1996 allows no conclusions to be drawn as with regard to nuclear smuggling as an emerging activity connected more with organised crime¹², than with professionals. For the moment traffickers seem to be individual criminals, greedy freelancers, traders, adventurers or opportunists trying to make a profit¹³ and looking for a demand in this market.

Analysing these illicit activities, some considerations can be drawn as regards recent developments. A first set concerns the links which appear to be existing between western and eastern Europe. In their operations, in fact, criminals seem to use the same routes from eastern Europe to western Europe and vice versa. This suggests that there are well-established routes, such as the Balkan or Baltic ones, used by organised crime in one direction (from eastern to western Europe) to traffic, for instance, drugs, nuclear material and human cargo, and in the opposite direction (from western to eastern Europe) for the illicit transport of drugs and motor vehicles (Savona 1998). Moreover, the number of transportation routes through Europe was fairly limited for many years, but everything changed radically

¹¹ For a more detailed analysis see Savona, 1998.

¹² German Senate Committee on Governmental Affairs, Permanent Subcommittee on Investigations, Chronology of Nuclear Smuggling Incidents. Worldwide Demand for Nuclear Weapons Materials, 20 March 1996.

with the disintegration of Yugoslavia and the Soviet Union, when new routes were created.

Therefore, we can hypothesise the existence of established expertise in these crimes involving collusive agreements among the criminal groups in the countries along the trafficking routes, who co-operate in the illicit activity, or with customs authorities.

3. Money laundering dynamics in eastern Europe¹⁴

All the above-mentioned crimes generate large amounts of illicit proceeds, which organised criminals need to disguise by integrating them into the financial system in order to use them freely. The global nature of the money laundering phenomenon, in fact, has rendered geographical borders increasingly irrelevant. Moreover, the introduction of stricter regulations against money laundering in most western European countries, in response to the enactment of the European Directive 91/308¹⁵ (hereinafter the Directive), has compelled money launderers to find new and “more friendly” countries and sectors, with non-existent or weak anti-money laundering controls or strict bank secrecy, in which to invest their illicit proceeds (the so-called “displacement effect”). In other words, launderers tend to move their activities where there are fewer risks for their transactions to be scrutinised and identified as suspicious, and this is one of the reasons why organised criminals are now directing their illicit proceeds towards countries belonging to central and eastern Europe, to poorly regulated countries in Asia and Africa as well as placing them in international banking and other financial centres and offshore facilities with ineffective anti-money laundering regulations.

One of the reasons in particular which has led them to the eastern European countries can be identified in the transition from a state-dominated to a market-controlled economy, which involves the liberalisation of markets and the abolition of state control in a variety of financial and economic sectors. These countries try to develop their economic systems by attracting foreign investments, but failing to

¹³ Atkinsons, R., Officials Say Contraband not a Threat. In: The Washington Post, 28 August 1998.

¹⁴ This section draws from Adamoli, Di Nicola, Savona, Zoffi, 1998, pp. 37-57, and from Adamoli, 1999.

¹⁵ Directive of the Council of European Communities on prevention of the use of the financial system for the purpose of money laundering, n. 91/308/EEC of 10 June 1991, in Official Journal of the European Communities n. L 166/77.

introduce the relevant monetary and legal infrastructures, which would enable them to control the origin of the money which is invested, create the risk of exposing their economies to “free flowing” illicit wealth (Ali 1997).

This trend has been confirmed by many international organisations active in the fight against money laundering. According to the latest FATF report on money laundering typologies (FATF 1999, 16-17), the countries in the region remain a significant money laundering concern. The transition to a market economy has provided criminals with ample opportunities to invest their illicit proceeds, while the opening of frontiers to western Europe and the privatisation process act as strong incentives for the investment of dirty money.

Some considerations regard the sectors of financial system that can be misused for money laundering purposes. From the banking sector to financial non-bank institutions, from privatised enterprises to the real estate market, these are all potential targets for criminals.

Unlike in the European Union, where the Directive on money laundering contains specific provisions to protect the banking system, banks in central and eastern Europe are still widely used for money laundering because of loopholes and, in some cases, a lack of legislative provisions. Moreover for various reasons, among which lack of resources and training of employees, even in countries provided with anti-money laundering legislation depositing large amounts of cash into bank accounts for subsequent transfer is not likely to be reported to the law enforcement, such as the Czech Republic, Hungary or Bulgaria. This makes them an ideal choice for the initial placement of illicit funds and enables criminals to place vast quantities of black money into these new banking systems and then to move it to other jurisdictions, avoiding the risk of being identified.¹⁶

Because of the lack of an anti-money laundering legislation, Estonian banks have been routinely used as a conduit for illegal proceeds flowing to and from Russia and western countries: these funds are transferred from one bank to another through a variety of businesses, shell companies and off-shore centres such as the Channel Islands, Gibraltar and the Caribbean basin. Local organised criminal groups involved in the illegal oil trade and other smuggling activities launder their

¹⁶ This is, for instance, also the case in Poland, where activities related to money laundering take the external form of either legal financial transactions (e.g., banking operations) or legal transactions which violate particular administrative arrangements (e.g., safety standards in the banking system), or illegal operations forbidden by regulations and subject to economic and penal law sanctions. This also seems to be true for Lithuania where, soon after its independence, there is evidence that attempts were

proceeds by transferring them to commercial accounts of an apparently legitimate company registered in a western European country. Although Estonian law regulates traditional financial institutions such as banks, other financial institutions still remain unregulated and offer a readily accessible means to launder money outside the banking system (INCSR 1999). This situation, however, should improve after the entry into force of the new law in July 1999. Like the other two Baltic countries, Latvian banks may be facilitating the laundering of capital coming from Russia, since Latvian legislation does not explicitly prohibit Russian businesses and citizens from opening accounts with Latvian commercial banks.¹⁷ In Russia too the banking system is also widely used for laundering illicit proceeds. According to the latest information available (January 1998), about 1,450 of the 2,000 Russian commercial banks were controlled or influenced, to some extent, by criminal groups (Fituni 1998, 366).

Some serious cases of money laundering through the banking system have been recently discovered and investigated. In a case recently revealed by the Slovak Finance police, other countries were also involved, namely the Czech Republic, Hungary and Cyprus. A total sum of 1.4 billion Slovak crowns, gained through criminal activities in Ukraine and Slovakia, was transferred to bank accounts in the three countries.¹⁸

Banks are only one of the money-laundering mechanisms used. In Bulgaria, for example, as the country moves towards a market economy, not only the “classic” laundering methods have been used, but huge amounts of money are also reported to have been laundered through participation in the privatised tourist industry, light industry and other profitable branches, and through investment in “projects of exclusive necessity”.¹⁹

In particular, the task of organised crime to launder their illicit proceeds has been facilitated by the privatisation programmes and voucher privatisation schemes. This applies for instance to Russia, where the particular conditions existing, with a certain degree of chaos in its legislation, transparent borders and high levels of corruption, make it a favourable environment for money laundering operations. The authorities’ lack of control over joint ventures and other private

made to launder millions of rubles through the banking system using forged documents sent in some cases from Chechnya, and in others from Kazakhstan.

¹⁷ Mukhina, T., Capital Flight via Latvian Banks. In: Moscow News, 3 July 1997.

¹⁸ Slovakia: World’s Finance Intelligence Units Meet in Slovakia. In: CTK News Agency, 27 May 1999.

enterprises in Russia, as it moves toward a market economy, hinder the Government's ability to control such activity. The privatisation program was carried out through vouchers (government securities called "privatisation cheques") issued by the government to represent the share of national wealth to be divided. Organised criminals bought a significant amount of these vouchers, but the authorities made very little attempt to prevent their participation in privatisation. Moreover, the "bearer" nature of vouchers allowed a safe way for laundering dirty money (Fituni 1998, 360 ss.).

The money laundering operations carried out by eastern European criminal organisations often acquire a transnational dimension, involving countries in western Europe, which to some extent explains the enormous size of capital flowing from some countries in central and eastern Europe. There is, in fact, evidence that very large amounts of capital have been illegally transferred to western banks over the recent years. Off-shore centres (like Antigua, Aruba, Cyprus and Vanuatu), but also others not traditionally considered off-shore financial centres (like Latvia, Estonia, Moldova or Hungary) seem to be favourable money laundering centres. After being moved to off-shore companies in one or more of these countries, the illicit proceeds undergo a complicated process of layering and are finally invested, quite frequently in western European countries.

4. Anti-money laundering legislation in eastern Europe²⁰

Since the fall of the ex-Soviet bloc, countries in central and eastern Europe have started to look at western Europe and initiated a process of progressive harmonisation with European standards, regarding *inter alia* money laundering.

¹⁹ Police Officials Interviewed on Banking Offences and Organised Crime. In: BBC Summary of World Broadcast, 10 February 1993.

²⁰ Some of the information provided in this section is drawn from Task Force on Organised Crime in the Baltic Sea Region, 1999.

A useful element, which indicates the attitude of countries in central and eastern Europe towards money laundering, is represented by the level of implementation, in their legislative system, of the obligations contained in the existing international instruments. Ten of the countries in central and eastern Europe²¹ have Association Agreements with the European Union.²² Therefore, the Directive 91/308 can be used as the basis for an evaluation of the general situation in the region concerning anti-money laundering efforts. In the various countries, however, this harmonisation process is not uniform. In some cases, today some countries still have not introduced comprehensive and complete anti-money laundering legislation, such as in Poland, while in others the piece of legislation is still in a parliamentary procedure, such as in Russia. For some countries, which have very recently introduced anti-money laundering legislation, it is yet too early to provide an evaluation of its effectiveness.²³

In order to provide a comparative analysis of the legislative situation of the countries in the area with relation to money laundering, the following elements will be highlighted: the existence of the crime of money laundering, the identification and reporting obligations for financial and credit institutions, the existence and effectiveness of a Financial Intelligence Unit to receive and analyse the reports. More detailed information and specific examples will be provided for those countries which have most recently enacted anti-money laundering measures.

Article 2 of the Directive provides that money laundering shall be prohibited. Like the 1988 UN Convention, it requires that measures be introduced to counter the laundering of proceeds at least of drug trafficking and related offences. In practice, however, nearly all eastern European countries have extended the definition of money laundering to cover the laundering of the proceeds of many other serious crimes. Russia, though still lacking specific anti-money laundering legislation, has enacted a new criminal code which defines such illicit conduct as a crime.²⁴ Poland revised its anti-money laundering measures in 1998, providing for

²¹ They are Bulgaria, Czech Republic, Estonia, Hungary, Latvia; Lithuania, Poland, Romania, Slovakia and Slovenia.

²² These agreements, which are signed between the European Union and third countries, systematically include a specific anti-money laundering clause providing for a framework of co-operation targeted at the harmonisation, among others, of anti-money laundering legislation comparable with European standards.

²³ Some of the countries which have adopted or updated such legislation very recently, are for instance Bulgaria, Estonia, Latvia and, in January 1999, Romania.

²⁴ Money laundering (or legalisation of illicit incomes or property) is in fact criminalised in Article 174 of the Russian Criminal Code. The penal latitude is a fine of up to 100 times the amount of minimal labour wage or imprisonment for a term up to 4 years. If the crime is committed by a group or repeatedly, the penalty ranges from 4 to 8 years. If the crime is committed by an organised crime

the prohibition of such illicit conduct in Article 299 of its Penal Code.²⁵ Also in Slovenia, a draft law is pending which aims at widening the definition of money laundering and the list of predicate offences contained in Article 252 of the Penal Code (Council of Europe 1997-98, 10-11).

In July 1998 the Bulgarian Parliament enacted a new anti-money laundering act²⁶, thus revoking the 1996 law on prevention of money laundering, which did not criminalise money laundering and addressed primarily record-keeping and reporting requirement, but only provided for administrative fines for violations of its articles. Under the new law, those engaging in money laundering risk an imprisonment of three to twelve years, a fine of up to 30 million leva and confiscation of part or all their properties.

Also in Estonia a wide definition of money laundering has been introduced. According to the new Money Laundering Prevention Act, which was enacted on the 1st July, 1999, money laundering means the transformation, transfer of, or the conduct of legal operations with assets received as the direct result of a criminally punishable action, with the objective of concealing the illegal origin of such assets or the beneficial owner. The penalty for such illicit conduct ranges from a fine to ten years of imprisonment.

Also under the new Romanian legislation adopted in January 1999, money laundering becomes a specific criminal offence, punishable by three to 12 years of imprisonment. The legislation covers the proceeds arising from a wide range of serious crimes including trafficking in drugs, armaments, human beings and protected animals; illegal trade in human tissue and organs, in addition to prostitution, fraud, kidnapping, illegal gambling, nuclear crime, the proceeds of organised crime, fraudulent bankruptcy and robbery.²⁷

group, the penalty ranges from 7 to 10 years imprisonment. Besides that, money or some other property that has been the object of money laundering should be forfeited to the State.

²⁵ Article 299 of the Polish Penal Code defines money laundering as follows: «Someone who has means of payment, securities or another foreign currency, property rights, property movable or immovable originating from the profit connected with a crime committed by other person in particular relating to producing or trading in narcotic drugs, psychotropic substances, robbery, counterfeiting of money and securities, extortion or ransom or trade in weapons, ammunitions, explosive materials or radioactive substances, accepting them, moving, transferring or taking them out of the country, assisting in moving their ownership or possession or undertaking other activities, which may defeat or significantly difficult assertion, hide their criminal origin or place of putting, their detection, seizure or decision of forfeiture is liable to imprisonment from 3 months to 5 years».

²⁶ Law on the Measures against Money Laundering, published in the State Gazette, issue 85 of 24 July 1998.

²⁷ Romania Adopts Legislation to Combat Money Laundering. In: *The East European Banker*, 1 February 1999.

The Directive applies to credit and financial institutions, as defined respectively by Community banking legislation²⁸ and by the Second Banking Directive²⁹, including any professional financial intermediary, but Member States of the European Union which have an anti-money laundering legislation provide for the application of its measures also to professions and activities beyond the financial sector. With regard to countries in central and eastern Europe, on the contrary, the situation is not as homogeneous. In some countries, the definition of such institutions is stricter and a series of financial intermediaries still has no obligation to implement anti-money laundering measures. This is, for instance, the case in Poland, whose 1997 Act of Banking Law and 1998 Directive of the Commission of Banking Supervision provide for requirements to be applied only to the banking sector, thus failing to protect other sectors of the economy which could potentially be used for money laundering purposes. Recently, however, a trend is noticeable, especially in the newly enacted legislation towards the inclusion, as institutions subject themselves to the anti-money laundering legislation, of professions and other operators beyond the strict financial and credit institutions. In this regard, some of these countries seem to fall in line with the proposal of amendment of the Directive³⁰, which in article 2a mentions, among others, accountants, auditors, real estate agents, notaries and other independent legal professions.³¹

Furthermore, in the subsequent articles the Directive introduces a number of obligations financial and credit institutions have to abide by, concerning the identification of customers conducting transactions and the reporting of unusual and suspicious operations.³² Some of the countries in the region, like Hungary and Slovenia, had already introduced this obligation in previous years. Others have done it more recently.

In Romania, one of the countries which recently enacted anti-money laundering legislation, the scope of the law is not limited to credit and financial institutions; but also applies to persons involved in gambling activities, auditors, notaries,

²⁸ Directive 77/780/EEC (OJ L 322 of 17.12.77).

²⁹ Directive 89/646/EEC (OJ L 386 of 30.12.89).

³⁰ Commission of the European Communities, Proposal for a European Parliament and Council Directive amending Council Directive 91/308/EEC of June 1991 on prevention of the use of the financial system for the purpose of money laundering, COM(1999) 352 final, 99/0152 (COD).

³¹ In Lithuania, for instance, not only financial and credit institutions, but also notaries and persons entitled to perform notary acts, and insurance companies are required to abide by the identification and reporting requirements.

³² This principle of "know your customer" is of fundamental importance for the prevention of money laundering operations. The Directive requires that clients opening an account or making transactions over a certain amount be identified, and that the records regarding such identification be kept for at least five years after the relationship with the customer has terminated.

lawyers and accountants. Institutions are now required to identify customers which have effected transactions exceeding a determined threshold or where there is a suspicion that money laundering may be involved.

These identification requirements are a necessary precondition for the obligation to report suspicious transactions. When conducting money laundering investigations, in fact, it is fundamental to be able to follow the “paper trail” to identify the origin of the illicit proceeds, and this is only possible if an accurate record of transactions is kept by financial institutions. The purpose of criminals, in fact, is to make it difficult for the law enforcement to follow the trace of the money by “layering” a series of transactions often involving different institutions in different jurisdictions, with a particular preference for those which have strict bank secrecy and confidentiality rules and for those in which reporting of suspicious transactions is less likely. With regard to the legislative situation in eastern European countries on this issue, all the countries which had already introduced anti-money laundering legislation in previous years respect the reporting requirements. The same kind of suspicious transactions reporting system has also been introduced in the other countries which, most recently, enacted anti-money laundering provisions.

Among these, the recent Romanian law also institutes a system of mandatory reporting for any transaction which, by its nature, may be linked with money laundering. In the case of cash operations, reporting is mandatory for all amounts exceeding 10,000 Euro. A written report must be sent to the National Office for the Prevention and Combating of Money Laundering.³³

The Directive implies that an authority or authorities be designated, which should be responsible for receiving and analysing the reports of suspicious transactions. These bodies are sometimes referred to as Financial Intelligence Units. However, in some countries they take different forms: some are administrative/intermediary bodies, while others are police or judicial authorities, or even a mixture. In central and eastern European countries the situation regarding this issue is far from homogeneous. Some countries, such as Latvia and Lithuania, have created Financial Intelligence Units. Others, such as Estonia will have a central agency (the Money Laundering Information Bureau) responsible for the receiving and analysis of suspicious transactions. In other countries, finally, there is

³³ Romania Adopts Legislation to Combat Money Laundering. In: *The East European Banker*, 1 February 1999.

no central agency, and suspicious transactions have to be reported to the police. This is again the case in Poland, where several institutions are involved in the fight against money laundering.³⁴ The Polish Ministry of Finance is anyway drafting a project for the creation of such a central unit, whose task would be that of processing and analysing information regarding financial crimes in general, and money laundering in particular. It is clear that the effectiveness of an anti-money laundering legislation depends in relevant part on the efficiency of the work of these central agencies, which have the task of analysing and screening the suspicious transactions reports coming from credit and financial institutions.

As already highlighted, Russia is one of the few countries which still has no anti-money laundering legislation. The State Duma of the Russian Federation has adopted the draft federal law on countering the laundering of illegally acquired profits in its third reading (even though enactment is still uncertain). This law would provide for all the basic identification and reporting requirements which are necessary to prevent the financial system from being infiltrated by illicit proceeds. A first step in this direction was made in 1998, when a law “on State control over the correspondence of large consumption expenditures to actual income received by physical persons” was enacted. Among the assets whose licit origin is to be controlled are: real estate, aircraft, sea and river vessels, stocks, shares and saving certificates, cultural valuables and gold bullion.³⁵ Given the recent scandals involving alleged money laundering operations in and through the country, it would be advisable that this legislation be enacted as soon as possible.

5. Conclusions

In conclusion, some considerations can be drawn from the analysis of both the trends in criminal phenomena and of legislative developments.

As regards the criminal activities perpetrated in the region by organised criminal groups, several factors can be seen as favouring the growing exploitation of eastern European countries for criminal purposes. These countries have

³⁴ These agencies are: the Polish National Bank’s General Inspectorate of Supervision, the Ministry of Finance’s General Inspectorate of Treasury Control, the Public Prosecutor’s Offices, the police and the State Security Office.

³⁵ Situation on Combating the Laundering of Funds derived from Criminal Activities and Money Laundering Legislation in Russia, presentation by the Russian Delegation at the Training Seminar on Money Laundering in the Baltic Sea Region, Vantaa, Finland, 22-26 February 1999.

undergone major political changes which have also involved the reorganisation of economic systems into free markets. Both local and foreign criminal organisations have benefited from the situation, using the opportunities offered by economic systems to expand their traffics and to invest their illicit proceeds in the financial system by corrupting political figures and public officials. Since the fall of communism, at the state level in some countries local groups have acquired significant power over illicit activities in the big cities but also started to develop their illicit activities at the transnational level, crossing the borders of their respective national markets. In doing so, these groups are either in competition or build strategic alliances with foreign-organised criminal groups, who have extended their activities to these countries.

Besides the emergence of new organised crime groups and the internationalisation of those already existing, these countries encounter a number of additional problems. Political instability and corruption, coupled with high inflation and unemployment rates, facilitate the emergence of unregulated investment markets. The privatisation programmes which allowed for the establishment of new banking and financial institutions have also created problems of infiltration by criminal groups in some countries. A friendly environment was consequently created for money launderers, who have begun investing large amounts of capital through money laundering operations.

Experience in the fight against money laundering shows that as one door closes, launderers find their way through the window with new methods and countries where to launder their ill-gotten gains, and this is particularly true for the countries under consideration. The introduction of strict and effective anti-money laundering legislation in the European Union Member States has caused what has been called the “displacement effect”, which means that launderers have had to resort to less effectively regulated jurisdictions where it was easier to conduct their illicit operations. This has led to the use of eastern European countries and other countries in transition in Asia and Africa, in addition to financial centres and off-shore facilities.

In the attempt to fight money laundering almost all eastern European countries have enacted measures to protect the transparency of their financial systems. What many countries in the region are still lacking is effective implementation of these provisions. Anti-money laundering legislation, well drafted “in the books” but often still insufficiently implemented “in practice”, makes it in fact relatively easy

for criminals to circumvent the fundamental identification and reporting obligations of banks and other financial institutions. Moreover, there are very little reliable data on reports of suspicious transactions, nor are money laundering cases effectively prosecuted. If we combine this situation with the opportunities for investment created in these countries by the transition period, the risk of these countries being exploited for money laundering purposes becomes evident.

In general terms, it is possible to identify the main problems created by money laundering in the countries of central and eastern Europe. First, the failure of prevention strategies makes it easier, for criminal organisations, to manage the profits of their illicit activities. Second, such failure allows criminal groups to invest those proceeds in further criminal activities. Third, the easy use of the financial system by launderers jeopardises both the single financial institutions and the financial system as a whole. Finally, the accumulation of power and wealth by organised criminal groups, made possible by money laundering operations, can seriously place national economies and democratic systems at risk.

Therefore, a comprehensive strategy needs to be elaborated, which should focus on a series of different but integrated approaches. Gathering information on organised criminal groups and their activities is fundamental to devise contrast policies. This “know your enemy” rule involves the introduction of measures such as the establishment of specialised law enforcement agencies, special means of investigation and witness protection programmes. Moreover, being profit the main goal of criminal organisations, effective legislation on seizure and confiscation of illicit proceeds will greatly increase their costs, thus making it less profitable to commit crimes.

Controlling organised crime and money laundering is by no means easy. Legislation is only a part of the package of measures which are necessary to control and prevent money laundering. A number of other issues are very important: to begin with, an environment which facilitates the integrity of the financial system, in order to avoid that illicit proceeds infiltrate the economy through the non-regulated investment in privatisation programmes and other sectors. Secondly, an effective anti-corruption strategy, which can make it more difficult for criminals to take advantage of complaisant bank employees or public officials. Thirdly, a co-ordinated effort through an effective international co-operation on law enforcement matters, facilitated by bilateral agreements between countries tailored to the

specific needs and problems, can surely speed up investigation on organised crime, often hampered by existing national borders.

All countries in Europe are aware of the existence of organised crime, money laundering and corruption. The threats posed by them differ from country to country, but a co-ordinated and joint action between western and eastern European countries is essential to ensure that the most recent trends in money laundering are effectively taken into consideration and contrasted.

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