

INTERNATIONAL EXPERTISE IN TRACKING AND RECOVERY OF ILLEGAL FINANCIAL FLOWS

Victoria IORDACHI, Phd., associate researcher, NIER

<https://orcid.org/0000-0002-9176-3729>, timush_v@yahoo.co.uk

Pavel CALPAJIU, PhD stud.,

Doctoral School of Economic Sciences, SUM

calpajiupavel@yahoo.com

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Summary

Illicit financial flows represent a global challenge for both developing and developed countries, and the accessibility of financial instruments and the level of inclusion in the global economy are directly proportional, both, to economic development and the value of these flows. At the same time, the countries of the world at the level of addressing the problem of illicit financial flows register different successes - from the refuse to sign international conventions in the field of preventing and combating corruption, money laundering, the fight against tax evasion, up to the development of their own reporting mechanisms at the global level of the information necessary to combat and recover illicit financial flows. In this article, the experience of some countries in the field of tracing and recovering illicit financial flows is reported, at the same time, the international regulations in this field are analyzed. The research methodology was based on the following methods and techniques: analysis and synthesis, induction and deduction, graphical and tabular methods, methods inherent in economic disciplines - observation, reasoning, comparison, classification, which allowed an in-depth analysis of the research topic. The data sources of the paper constituted the legislative basis of European Parliament in the domain of combatting corruption and illegal financial flows, as well as some states' progress reports of combatting financial corruption phenomenon.

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JEL: *E26, K42.*

UDC: *343.359*

Introduction. The achievement of independence and the transition to a market economy from a planned one anchored the Republic of Moldova to the international financial system. Although this transition was "painful" for the national economy, the Republic of Moldova benefited from the opportunities for external economic cooperation offered by the expanding globalization processes.

At the same time, with access to external economic cooperation instruments, connection to the international banking system, as well as the possibility of business development anywhere on the globe, the Republic of Moldova accessed "free of charge" the instruments used internationally for the generation and use of illicit financial flows, including bank frauds, "ghost" companies, money laundering

services, concealment of beneficial owners, fictitious invoicing of import-export transactions, etc.

Although the Republic of Moldova has ratified the international conventions and regulations in the field of identification and recovery of illicit financial flows, their formal implementation was one of the premises of the frauds committed, which generated illicit financial flows of an imposing global scale. The need to identify and analyze the existing international framework, as well as strengths and weaknesses in relation to the social-economic situation in the Republic of Moldova, is indispensable for an authentic fight with the phenomenon of illicit financial flows on the one hand, but also for identifying the best practices in the field of their recovery and the reduction of the negative impact on the state budget.

The need to identify and analyze the existing international framework, their strengths and weaknesses in relation to the social-economic situation in the Republic of Moldova, is indispensable for an authentic fight with the phenomenon of illicit financial flows on the one hand, but also for identifying the best practices in the field of their recovery and the reduction of the negative impact on the state budget and, implicitly, on social protection, medicine and education programs.

At the same time, for the quantification of illicit financial flows in the Republic of Moldova, it is imperative to study international practice in the field, in order to identify optimal solutions for their measurement, with a decisive contribution to reducing the volume of illicit financial flows.

The topicality of the research theme is conditioned by the need for a scientific-practical approach to international regulations, as well as the practices of other states in the field of identifying, tracking and recovering illicit financial flows, as well as the correlation of these instruments with the national specifics of the countries that implement them, as well as identification of practical solutions for the Republic of Moldova. At the same time, it is necessary to analyze the premises for the development of the existing national framework, as well as the actual state of the normative framework that regulates this domain.

The purpose of the conducted research consists in analyzing the international framework in the field of identification, evaluation and recovery of illicit financial flows. To achieve the proposed goal, the following objectives were proposed:

- identification and analysis of international conventions with defining incidence for the reduction and recovery of illicit financial flows;
- analysis of the experience of some countries in the field of tracing and recovering illicit financial flows for finding best practical solutions for the improvement of national normative framework in the field of reduction and recovery of illicit financial flows.

The research methodology was based on the following methods and techniques: analysis and synthesis, induction and deduction, graphic and tabular methods, methods inherent in economic disciplines - observation, reasoning, comparison, classification, which allowed a deep analysis of the research topic. The data sources of the work were the works of researchers in the domestic and foreign

economic field, official statistical data of some public institutions from the Republic of Moldova, as well as research in the field of international organizations.

Research results. Corruption, acts of corrupt behavior and crimes associated with corruption are both the cause and the consequence of illicit financial flows. As a result of the analysis of the international legislative framework that exercise an impact on illicit financial flows, it is necessary to analyze the *Convention of the United Nations Organization against corruption*, adopted in New York on 31.10.2003, to which the Republic of Moldova acceded by law no. 158/2007, being published in the Monitorul Oficial no. 103106 of July 20, 2007, entered into force for the Republic of Moldova on July 20, 2007.

The United Nations Convention against Corruption is the only legally binding universal anti-corruption instrument that covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery and technical assistance, and information sharing (Cazacu, A., 2020).

The international approval of such a document came as a result of the concern of the international community about the seriousness of the problems posed by corruption and the threat it poses to the stability and security of societies, undermining democratic institutions and values, ethical values and justice and compromising sustainable development and the rule of law, by the links between corruption and other forms of crime, especially organized crime and economic crime, including money laundering, by the fact that the phenomenon of corruption is no longer a local problem, but a transnational phenomenon that affects all societies and all economies, which makes international cooperation essential, as well as the fact that the illicit acquisition of personal wealth can be particularly harmful to democratic institutions, national economies and the rule of law and, not least, the convention was to contribute to the detection and effective deterrence of international transfers of goods of illicit origin and to strengthen international cooperation in the recovery of goods (UN, 2003).

It should be noted that, through Chapter V "Recovery of assets" of the Convention mentioned above, each signatory state has undertaken to accept the necessary measures so that financial institutions are required to verify the identity of customers and take reasonable measures to determine the identity of the beneficiaries of the considerable funds deposited in accounts, as well as to subject to increased supervision the accounts held by persons who exercise or have exercised important public functions and family members, including those held through an intermediary. In this vein, under the Convention, the signatory jurisdictions were obliged to develop a public institution responsible for the recovery of criminal assets, whose attributions were to include the identification and tracking of illegally obtained assets, international cooperation in the field of asset identification, as well as to ensure effective mechanisms for the recovery of confiscated goods regardless of the country's borders.

Thus, having studied the purposes of the promotion and adoption of the United Nations Convention against Corruption, as well as the tools offered by it, we

can conclude that the Convention is a strategic vision document in the field of reducing illicit financial flows originating from acts of corruption and related to corruption, as well as from embezzlement of funds intended for public procurement. This has another major role due to the fact that for the first time at the international level, the issue of recovering assets from crimes was addressed both at the country level and at the international level.

If we are to talk about the indirect influence on illicit financial flows of the Convention, then it is important to note that illicit financial flows cannot be generated without corrupting the officials and persons responsible for respecting the legal framework, at the same time, the recovery of illegally obtained goods has a character demotivating, more than that, depriving criminals of illegal profits, leaves them without the necessary sources to invest in new illegal activities.

At the same time, the ratification of the Convention in the Republic of Moldova did not have the expected immediate effect due to the lack of transposition of its provisions in the national normative framework, as well as due to the lack of practical implementation, an eloquent example in this regard being the creation of the Agency for the Recovery of Criminal Assets only in 2017, after ten years after implementation and only after the frauds that generated illicit financial flows unprecedented in the current history of the Republic of Moldova - "Bank Fraud" and "Laundromat".

The problem of money laundering, as the most eloquent example of illicit financial flows, appeared with the liberalization of international commercial relations and the deregulation of national internal rules, but at the same time, it created premises for the development of the phenomenon of off-shore areas, which ensured the transfer of capital from the areas of production in areas of capital accumulation – jurisdictions with reduced fiscal regulations. This fact generated enormous illicit financial flows, which are still growing today.

Precisely for the reasons stated above, an intergovernmental organization was created that was supposed to temper the harmful effects of liberalization. *The International Financial Action Task Force* (FATF, after the Financial Action Task Force) was formed at the G-7 summit in Paris in 1989 as part of an effort to strengthen practices to combat money laundering and terrorist financing. In its own words, the FATF's primary objective is to ensure that "financial systems and the economy are protected from the threats of money laundering and the financing of terrorism and proliferation, thereby strengthening the integrity of the financial sector and contributing to safety and security." Today there are 39, of which regional organizations - the European Union and the Gulf Cooperation Council and 37 states, of full members.

In April 1990, less than a year after its creation, the FATF issued a report containing a set of Forty Recommendations, which were intended to provide a comprehensive plan of action needed to combat money laundering. After the 9/11 attacks in 2001, the development of standards in the fight against the financing of terrorism was added to the mission of the FATF. In October 2001, the FATF issued

Special Eight Recommendations to address the issue of terrorist financing. The continued evolution of money laundering techniques led the FATF to comprehensively revise the FATF Standards in June 2003. In October 2004, the FATF published its ninth special recommendation, further strengthening the agreed international standards for combating money laundering and terrorist financing, also known as under the name of 40+9 Recommendations. Together, the forty recommendations on money laundering and nine special recommendations on the financing of terrorism set the international standard for measures to combat money laundering and combat the financing of terrorism and terrorist acts.

At the same time, the International Financial Action Task Force developed a mechanism for jurisdictions to comply with the Group's Recommendations. Thus, in February 2004, the FATF published a reference document Methodology for assessing compliance with the 40 FATF recommendations and the 9 special recommendations. In this vein, the organization assesses a country's performance based on the assessment methodology that covers:

- technical compliance, which refers to the legal and institutional framework and the competences and procedures of the competent authorities;
- efficiency evaluation, which refers to the extent to which the institutional framework produces the expected results (FATF, 2021).

There are many differences between the legal and financial systems of the countries that are assessed by the FATF, but there is a minimum set of actions that meet a standard that all countries can use in their own situation. This standard covers all the actions that a nation should take within its regulatory and criminal justice systems, as well as the preventive measures that should be taken by certain businesses, professions and institutions.

In general, the extent of illicit financial flows at the global level is also maintained by the inability of the authorities to track the disguised financial transactions, which, in turn, are set in motion by means of complex corporate structures registered in the names of the interposed persons.

In this regard, Colombia has begun efforts to identify the beneficial owners of incredibly complex corporate structures, as a first step to ensure that complex corporate structures are not used as a tool for illicit financial flows (Alfonso, K., Yansura, Y., 2022).

Thus, the obligation to identify beneficial owners was promoted in Colombia at the legislative level in 2021, first as part of a tax reform and then as part of an anti-corruption bill. These changes are largely based on recommendations from a number of international organizations and standard-setting bodies, including the Financial Action Task Force (FATF) and the Organization for Economic Co-operation and Development (OECD). In this vein, the Colombian authorities have decided that the Register of Beneficial Beneficiaries will be connected to the Single Fiscal Register (Registro Único Tributario). This register is in the custody of the Customs and Tax Service of Colombia. The decision to connect the Register of Beneficial

Beneficiaries to the Single Fiscal Register was based on criteria such as the capacity of government agencies to collect information, the use and protection of data from a logistical, technological, regulatory point of view, as well as the quality of their registers and databases, as well as their ability to monitor data for financial crimes such as tax evasion, money laundering or corruption.

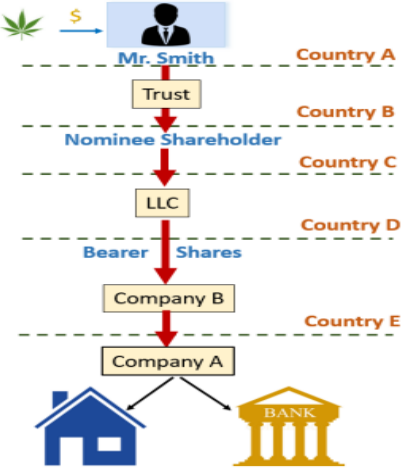


Figure 1. Effective beneficiary of the complex corporate structure
 Source: (Alfonso, K., Yansura, Y., 2022)

More than 200 jurisdictions around the world have committed to the FATF Recommendations through the global network of regional bodies and FATF members. In this context, the Republic of Moldova is a member of MONEYVAL, the evaluation of the implementation of measures to combat money laundering and the financing of terrorism in the Republic of Moldova is ensured by MONEYVAL.

MONEYVAL was established in 1997 and its operation is regulated by the general provisions of Resolution Res (2005)47 regarding committees and subordinate bodies, their mandate and working methods. During the meeting of October 13, 2010, the Committee of Ministers adopted the respective resolution. Thus, starting from 1.01.2011, MONEYVAL becomes an independent monitoring mechanism within the Council of Europe, directly responsible to the Committee of Ministers.

In the end we can conclude that one of the main objectives of the FATF, including its regional bodies, is to establish norms and standards of legal, regulatory and operational measures to combat money laundering, terrorist financing and other related threats to security and the integrity of the international financial system. An eloquent example in this sense can serve FATF Recommendation 15, which stipulates that jurisdictions are required to develop mechanisms to identify and control transactions with virtual currencies, in order to exclude the possibility of

using those instruments as vehicles for illicit financial flows with the aim money laundering and terrorist financing.

As a result of investigations for the identification and recovery of criminal assets, in the last five years, the Agency for the Recovery of Criminal Assets has seized virtual currencies and their generation systems worth about 5 million MDL. At the same time, due to the lack of a regulatory framework related to virtual currencies and their generation activity, the state institutions are unable to ensure the preservation of the value of seized goods, in this way their recovery could become impossible.

At the same time, in the Republic of Moldova until now virtual currencies are not regulated, a fact that directly harms the ability of the bodies empowered to prevent and combat money laundering and the recovery of criminal assets to fulfill their functional duties.

In response to the increase in illicit financial flows resulting from tax evasion, the *Strasbourg Convention on Mutual Administrative Assistance in Tax Matters* was adopted on January 25, 1988, drawn up by the Organization for Economic Cooperation and Development (OECD) and the Council of Europe. Thus, the Convention is the most comprehensive multilateral instrument available for all forms of tax cooperation to combat tax evasion.

The Convention facilitates international cooperation for a better functioning of national tax legislation, while respecting the fundamental rights of taxpayers. It provides for all possible forms of administrative cooperation between states in the assessment and collection of taxes. This cooperation ranges from the exchange of information, including automated exchanges, to the recovery of foreign tax debts (OECD, 2010).

Since 2009, the G20 has consistently encouraged countries to sign the Convention, including most recently at the G20 summit in Buenos Aires in 2018, where the communiqué stated that "All jurisdictions should sign and ratify the Multilateral Convention on Administrative Assistance mutual in fiscal matters".

Currently, 146 jurisdictions participate in the Convention, including 17 jurisdictions covered by territorial expansion, including major financial centers and a growing number of developing countries.

The Convention on mutual administrative assistance in fiscal matters was ratified by the Republic of Moldova through Law no. 149/2011. The development of the Convention started from the considerations that the development of the international movement of people, capital, goods and services has increased the possibilities of tax evasion and fraud, requiring increased cooperation between tax authorities, the need to coordinate efforts at the international level in order to encourage all forms of assistance administrative in fiscal matters of any kind, ensuring at the same time adequate protection of taxpayers' rights.

The Republic of Moldova has ratified the convention in the part related to the income tax of natural and legal persons, state social security contributions, real estate

tax, value added tax, excise taxes, road taxes, taxes for natural resources and local taxes.

At the same time, the Republic of Moldova has not ratified the Convention in the part related to the taxes on capital interests that are taxed separately from income or profit tax, taxes on net wealth, taxes on income, profit, capital interests or net wealth that are taxed by political units or local authorities, taxes on property, inheritance or gifts, taxes on the use or ownership of movable assets.

In the developing countries of Latin America and Africa, considerable efforts are made to estimate illicit financial flows, the analyzes being based on the differences identified in the values of external transactions in the information systems of the exporting countries with the values declared to customs in the importing countries.

Thus, the erroneous invoicing of international transactions by wrongly indicating the value, quantity or quality of the goods is one of the causes generating illicit financial flows from tax evasion and smuggling. According to the Report "Barriers to increasing tax revenues in developing countries" (Mils, L., 2017), the governments of developing countries collect taxes, the share of which in the gross domestic product is much lower than similar shares in OECD countries - 10-20% versus 30-40%. The lowest shares of accumulated taxes are seen in Southeast Asia and the Pacific region, at levels close to 10%. Sub-Saharan Africa, the MENA (Middle East and North Africa) region and Latin America have higher average tax-to-GDP ratios (around 18%), although there is wide variation within each region. Latin America and the MENA region have seen higher increases in tax revenues in recent years than Sub-Saharan Africa. In Africa, countries differ according to the level of income, with the share of tax revenues in GDP of some states approaching the level of OECD countries.

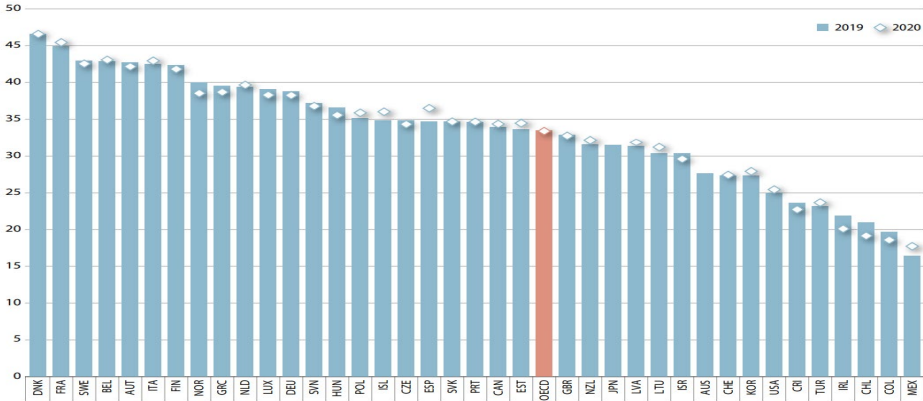


Figure 2. Share of collected taxes in relation to GDP of OECD countries
Source: (OECD, 2021)

Thus, following the analysis of the value of taxes collected by OECD member countries, related to their GDP, which is exposed in figure 2, it is found that the average value of the share of taxes in GDP is 33.5%. At the same time, it is important to mention that the lowest values for the given chapter are recorded by the countries of Central America and Latin America, thus in Mexico the share of taxes collected in GDP is 17.9%, in Colombia – 18.7%. On the other side are Denmark with a share of 46.5%, France – 45.4%, Italy – 42.9 and Sweden with a share of taxes collected in total GDP of 42.6%.

It is worth mentioning that over the past 20 years, the OECD has designed and updated standards for the automated exchange of information on types of income covered by the OECD Convention to ensure that information can be collected, processed and disseminated quickly and efficiently.

Signatories to the Agreement on the automatic exchange of financial information in fiscal matters on 28.07.2022, there are 117 jurisdictions, including the Republic of Moldova. It should be noted that, on 10.03.2022, the Parliament of the Republic of Moldova adopted Law no. 45/2022 for the ratification of the Multilateral Agreement of the competent authorities for the automatic exchange of information on financial accounts, signed in Berlin on 29.10.2014. Thus, the Republic of Moldova will benefit from this instrument starting with the year 2023 (OECD, 2021), under the conditions in which the Government and the Parliament of the Republic of Moldova will adopt the primary and secondary legislation implementing the Agreement (SFS, 2022), at the moment the draft Law on the implementation of the Multilateral Agreement of the Competent Authorities for the Automatic Exchange of information on financial accounts, the draft Law on the amendment and completion of Law 202/2017 on the activity of banks and the draft Order of the Ministry of Finance on the approval of the Regulation on the automatic exchange of information on financial accounts are at the stage of perfecting the synthesis of objections and proposals related to the project.

As a result of the automated exchange of financial information for tax purposes, the tax authorities will receive/transmit data regarding the name, address, tax identification number, date and place of birth of the person (in the case of a natural person) of each reportable person who is the account holder and, in the case of an entity that is the owner of the account and that, after applying precautionary procedures in accordance with the Common Reporting Standard, is identified as having one or more persons who, having control, become reportable persons, the name, address and tax identification number of the entity, as well as the data related to each reportable person, the account number, the identification number of the financial institution, the balance or the value of the account, and in the case of any account in custody - the total gross amount of interest, the total gross income from the sale or redemption of assets financial, paid or credited to the account, in the case of the accounts of deposit – total gross amount of interest paid or credited during the calendar year.

Conclusions. At the international level, conventions and regulations are adopted that aim to reduce and recover illicit financial flows. At the same time, although the Republic of Moldova ratified the conventions adopted in the field, their implementation was not carried out at a sufficient level to prevent the extent of illicit financial flows. In this sense, the following measures are required:

➤ evaluation at national level the degree of implementing the UN Convention against corruption, as well as the development and application of a short- and medium-term action plan from the perspective of eliminating the premises that favor illicit financial flows, as well as reducing their volume;

➤ adjusting the regulatory framework in the Republic of Moldova to the FATF standards in order to regulate and control virtual currencies and their generation, that would allow the reduction of illicit financial flows carried out through virtual currencies and their generation devices;

➤ revision of the ratification of the Convention on mutual administrative assistance in fiscal matters that was ratified by the Republic of Moldova through Law no. 149/2011, in order to expand the types of taxes that would fall under its scope in the Republic of Moldova.

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