stručni članak

Sanja Tomić
Udruženje banaka Srbije
sanja.tomic@ubs-asb.com

NOVA EU DIREKTIVA ZA SPREČAVANJE KORIŠĆENJA FINANSIJSKOG SISTEMA U SVRHU PRANJA NOVCA I FINANSIRANJA TERORIZMA

Rezime

Nova V Direktiva za sprečavanje korišćenja finansijskog sistema u svrhu pranja novca i finansiranja terorizma predstavlja odgovor Evropske unije na terorističke napade u Evropi tokom 2016. godine i *Panama papers* skandal. Ova direktiva ima za cilj da se u najvećoj mogućoj meri osnaže standardi koji poboljšavaju uslove za preventivno delovanje protiv pranja novca i finansiranje terorizma.

Ključne reči: V Direktiva, Direktiva (EU) 2018/843, pranje novca, finansiranje terorizma, transparentnost, registar stvarnih vlasnika, lista obveznika

JEL: G20, K42

NEW EU DIRECTIVE ON THE PREVENTION OF THE USE OF THE FINANCIAL SYSTEM FOR THE PURPOSES OF MONEY LAUNDERING AND TERRORIST FINANCING

Sanja Tomić

Association of Serbian Banks
sanja.tomic@ubs-asb.com

Summary

The new Fifth Directive on the prevention of the use of the financial system for the purposes of money laundering and terrorist financing is the European Union's response to the 2016 terrorist attacks in Europe and the *Panama Papers* scandal. This directive aims to strengthen the standards that improve, as much as possible, the conditions for preventive action against money laundering and terrorism financing.

Keywords: Fifth Directive, Directive (EU) 2018/843, money laundering, terrorist financing, transparency, beneficial owners register, taxpayer list

JEL: G20, K42

Nakon terorističkih napada u Evropi tokom 2016. godine i *Panama papers* skandala, te uočenih manjkavosti sistema sprečavanja pranja novca i finansiranja terorizma u zemljama Evropske unije, iniciran je proces sačinjavanja predloga V Direktive za sprečavanje korišćenja finansijskog sistema u svrhu pranja novca i finansiranja terorizma. Evropski parlament i Savet Evropske unije doneli su Direktivu (EU) 2018/843 o izmeni Direktive (EU) 2015/849 i Direktiva 2009/138/EU i 2013/36/EU, koje su objavljene u Službenom listu EU 19.06.2018.

Naime, iako je poslednjih nekoliko godina došlo do značajnih poboljšanja u donošenju i sprovođenju standarda i preporuka FATF (*Financial Action Task Force*) širom Evropske unije iskristalisala se potreba za daljim i sveobuhvatnim razvojem transparentnosti državnih i finansijskih sistema u kontekstu borbe protiv pranja novca i finansiranja terorizma koji za cilj ima postizanje boljih rezultata u ovoj oblasti, a naročito na polju prevencije. U više navrata je zaključeno da ne može biti delotvorna borba protiv finansijskog kriminala dokle god je okruženje uređeno tako da omogućava kriminalnim grupama da svoja finansijska sredstva legalizuju ili transferišu korišćenjem netransparentnih struktura korporativnih i drugih pravnih subjekata, trustova i sličnih pravnih aranžmana. Stoga je cilj ove direktive da se omogući ne samo da postoje preduslovi da se naknadno otkriju i istraže slučajevi pranja novca/finansiranja terorizma, već i da se spreči da do njih dođe, odnosno da se preventivno deluje u onoj meri koliko je to moguće. Poboljšanje transparentnosti u svakom pogledu bi moralo imati snažan preventivni uticaj u sprečavanju pranja novca ili finansiranja terorizma. Zbog otvorenih kritika načelno se vodilo računa da planirane izmene ne budu u neskladu sa pravom na zaštitu ličnih podataka i poštovanjem načela proporcionalnosti obrade.

Mada nisu jedine, ključne izmene koje donosi V direktiva u odnosu na IV su sledeće:

- od zemalja članica se zahteva uspostavljanje centralnog registra računa ili adekvatnih sistema za pretragu kako bi se identifikovali vlasnici računa,
- poboljšanje ovlašćenja finansijsko-obaveštajnih jedinica u svim zemljama EU

i olakšavanje njihove međusobne saradnje. Naime, saglasno direktivi će pomenute jedinice formalno imati prava na pristup većem broju podataka kroz registre računa ili kroz pristup sistemima za pretraživanje istih. Jedinice iz različitih EU zemalja će moći lakše da sarađuju između sebe, ali i sa drugim relevantnim državnim organima uključujući i Evropsku centralnu banku, ali uz puno uvažavanje pravila poverljivosti podataka,

- unapređenje nivoa transparentnosti stvarnih vlasnika kroz uvođenje:
 - registra stvarnih vlasnika privatnih kompanija/pravnih lica koji treba da obezbedi da podatak o tome ko je stvarni vlasnik kompanije bude javno dostupan,
 - registra stvarnih vlasnika trusta koji treba da obezbedi pristup podacima o stvarnim vlasnicima trusta bez bilo kakvih ograničenja svim relevantnim državnim organima, finansijsko-obaveštajnim jedinicama, obveznicima, ali i drugim licima koji mogu dokazati legitiman interes za pristup ovakvim podacima,
 - obaveze da nacionalni registri stvarnih vlasnika moraju da budu međusobno povezani unutar unije kako bi se obezbedila bolja saradnja i razmena podataka između zemalja članica.
- S tim u vezi zemlje članice će morati da uspostave mehanizme za prikupljanje podataka od strane registara kako bi se obezbedila tačnost i pouzdanost informacija koje se vode u ovim registrima.
- proširenje obaveznosti primene pravila za sprečavanje pranja novca i finansiranja terorizma na lica koja se bave:
 - trgovanjem, čuvanjem i transferima virtuelnih valuta,
 - lica koja se bave uslugama koje su slične uslugama koje pruža revizija, poreski savetnici i eksterno računovodstvo (koji su već bili obuhvaćeni IV direktivom, ali su sad prošireni na lica koja se bave sličnim delatnostima, a zapravo ne spadaju u pomenute kategorije),
 - lica koja se bave trgovanjem umetničkim delima.
- unapređenje provera transakcija sa trećim

Following the 2016 terrorist attacks in Europe and the *Panama Papers* scandal, as well as the detected shortcomings of the anti-money laundering and terrorist financing system in the EU countries, the process of drafting the Fifth Directive was initiated, for preventing the use of the financial system for the purposes of money laundering and terrorist financing. The European Parliament and the Council of the European Union adopted the Directive (EU) 2018/843 amending the Directive (EU) 2015/849 and the Directives 2009/138/EU and 2013/36/EU, published in the Official Journal of the European Union on 19.6.2018.

Namely, although the last couple of years have seen significant improvements in the adoption and implementation of the FATF standards and recommendations, a need arose across the European Union for a further and more thorough development of transparency in state and financial systems when it comes to anti-money laundering and terrorist financing, aimed at achieving better results in this field, particularly regarding prevention. It has been repeatedly concluded that fighting financial crime cannot be effective as long as the business environment is organized so as to enable criminal groups to legalize or transfer their financial assets via non-transparent structures of corporate or other legal entities, trusts and similar legal arrangements. Thus, the aim of this directive is to enable not only the prerequisites for subsequently spotting and investigating the cases of money laundering/terrorist financing, but also to prevent these instances, i.e. to act preventively as much as possible. In every way, improving transparency would surely have a strong preventive influence in deterring money laundering and terrorist financing. Due to open criticism, care was taken for the planned changes to be harmonized with the right to personal data protection and to respect the principles of proportionality in processing.

Among others, the key changes arriving with the Fifth Directive are as follows:

- Member States are required to establish a central account registry or adequate search systems to identify account owners;
- Higher authority of Financial Intelligence Units in all EU countries and facilitating their mutual cooperation. Namely, according to

the directives, the said units will formally have the right to access a larger number of data through account registers or through access to register search engines. Units from different EU countries will be able to collaborate more easily among themselves, but also with other relevant state bodies including the European Central Bank, fully respecting the rules of data confidentiality.

- Improved level of transparency of beneficial owners through the introduction of:
 - A register of beneficial owners of private companies/legal entities that should ensure that the information on the beneficial owner of the company is made publicly available,
 - A registry of beneficial owners of the trust who should provide access to the information about the beneficial owners of the trust without any restrictions to all relevant state authorities, Financial Intelligence Units, taxpayers, and other persons who can prove a legitimate interest in accessing such data;
- The obligation that national registers of beneficial owners must be interconnected within the Union in order to ensure better cooperation and exchange of information between Member States. In this regard, Member States will have to establish mechanisms for registers to collect the data, to ensure the accuracy and reliability of the information contained in these registries.
- Expanded obligation to implement rules for the prevention of money laundering and terrorist financing so as to involve the entities engaged in:
 - Trading, saving and transferring virtual currencies;
 - Persons dealing with services that are similar to auditing services, tax advisers and external accountants (already covered by the Fourth Directive, but now extended to persons engaged in similar activities, which do not actually fall into the mentioned categories);
 - Persons engaged in artwork trading.
 - Improved verification of transactions with third countries that can be treated as high risk countries. Namely, the Directive prescribes

zemljama koje se mogu tretirati kao zemlje visokog rizika. Naime, direktivom se predviđa da relevantne industrije iz zemalja članica koje imaju ili mogu imati finansijske transakcije sa zemljama koje su na listi zemalja Evropske komisije sa strateškim manjkavostima sistema za sprečavanje pranja novca i finansiranja terorizma, moraju obezbediti pojačano sistematsko praćenje transakcija prema i iz tih zemalja. Takođe se predviđa da pomenuta lista treba da obuhvati i zemlje koje nisu EU članice, a koje imaju nezadovoljavajući nivo transparentnosti informacija o stvarnim vlasnicima, ili koje nemaju na adekvatan način propisane sankcije za pranje novca ili finansiranje terorizma ili koje ne razmenjuju informacije na prihvatljiv način.

- ograničavanje anonimnosti za proizvode elektronskog novca. Direktiva propisuje da postoji mogućnost dozvoljavanja zadržavanja anonimnosti prilikom korišćenja (ne i izdavanja) elektronskog

novca (u našem slučaju do sada poznat kao pripejd kartica) samo do iznosa od EUR 150 ukoliko korisnik koristi taj instrument za plaćanje u radnji ili do iznosa od EUR 50 ukoliko instrument koristi za onlajn plaćanja ili podizanja gotovine.

U svakom slučaju, vreme će pokazati da li će propisane mere dati očekivane rezultate u prevenciji pranja novca i finansiranja terorizma barem tokom određenog vremenskog perioda ili je njenim donošenjem zapravo označen kraj rada na petoj direktivi, a ujedno otpočeo rad na sledećoj. Bilo kako bilo, regulatorni okvir Srbije u momentu pisanja ovog teksta, zahvaljujući trenutno važećoj zakonskoj regulativi, u značajnoj meri pokriva ključne segmente pomenute direktive, negde je čak otišao i dalje od onoga što EU očekuje od svojih članica, negde nije dovoljno precizno definisao očekivano, ali ako krenemo od toga da je sve ovo samo jedan beskonačan proces, možemo filozofski zaključiti da svaki kraj zapravo predstavlja i novi početak.

Literatura / References

1. DIRECTIVE (EU) 2018/843 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU

that relevant industries from Member States which engage in financial transactions with the countries on the European Commission's list of countries with strategic deficiencies in their anti-money laundering and terrorist financing system must provide enhanced systematic monitoring of transactions towards and from those countries. It also prescribes that the list should include non-EU countries which have an unsatisfactory level of transparency of information about beneficial owners, which do not have the appropriate sanctions for money laundering or terrorist financing or which do not exchange information in an acceptable way.

- Limitation of anonymity for electronic money products. The Directive prescribes a possibility of allowing anonymity to be retained when using (but not issuing) electronic money (in Serbia, the so-called prepaid card) only up to the amount of EUR 150, if the beneficiary uses the payment

instrument in a store or up to EUR 50 if an instrument is used for online payments or cash withdrawals.

In any case, time will tell whether the prescribed measures will yield the expected results in the prevention of money laundering and terrorist financing, at least for a certain period of time or if the adoption of the Directive actually marks the end of working on the Fifth Directive, and the commencement of working on the following one. Nonetheless, the regulatory framework of Serbia at the moment of writing this text, due to the current legislation, significantly covers the key segments of the said Directive, occasionally even extending further than what the EU expects from its members, and occasionally not defining the expectations precisely enough, but if we start from the fact that this is simply an infinite process, we can philosophically conclude that each end is actually a new beginning.