

THE ROLE OF COMMERCIAL BANKS IN PREVENTING THE FINANCING OF TERRORISM

In the process of globalization, the need to block financial flows to terrorist organizations is becoming more and more tangible. The fight against terrorist financing is becoming a national and supranational priority, and credit institutions are among the main mechanisms for committing such crimes, and are therefore covered by numerous regulations and institutions concerning their role in controlling and preventing them. The purpose of this study is to outline the commercial banks' place in terrorist financing processes by presenting their inherent characteristics within the scope of the Special Act on Measures Against Financing of Terrorism.

Pursuant to the Law on Credit Institutions (*Zakon za kreditnite institutsii*, 2017), the Bank makes public borrowing or other repayable funds and provides loans or other funding at its own expense and at its own risk, which is sufficient to justify the suitability of an adequate risk management in the security sphere of the credit institution itself; of the interests of its clients. In view of the issue under consideration, the activities of credit institutions, are subject to constant monitoring due to the potential for them to be used for the purpose of criminalization in the Criminal Code - financing terrorism, which could also be a prerequisite for the eventual occurrence of risky situations. In addition, it is precisely the specific activity of credit institutions that the special legal framework - Law on Measures against Financing of Terrorism (LMFT) obliges them to regulate the measures for prevention against the said crime.

For the purposes of this paper, the "terrorist financing" category is under analysis. In the legal framework, "terrorist financing" relates to the "direct or indirect, unlawful and deliberate provision and/or collection of funds and other financial assets or economic resources and/or the provision of financial services with the intention of being used or conscious that they will be used wholly or partly for terrorism within the meaning of the Penal Code" (*Zakon za merkite sreshtu finansiraneto na terorisma*, 2016).

With a view to protecting the international financial system, the Financial Action Task Force against Money Laundering (FATF), as an organization that sets standards in countering money laundering and terrorist financing, formulates special recommendations to prevent terrorist financing focusing on key mechanisms used by terrorist organizations to transfer capital: money transfers, electronic transfers and non-profit legal entities. In addition, the special law applicable in a national aspect (LMFT), which aims to "Prevent and Disclose the Action of Individuals, Legal Entities, Groups and Organizations Focused on the Financing of Terrorism" (*Zakon za merkite sreshtu finansiraneto na terorisma*, 2016), indicates measures in respect of the persons liable, .ch. commercial banks to counteract this type of crime as follows (*Zakon za merkite sreshtu finansiraneto na terorisma*, 2016):

- Customer Identification, Verification and Verification of Compliance with Restriction Lists;
- Implementation of additional identification and verification measures, follow-up on the basis of risk assessment;
- Blocking of cash, financial assets or other property;
- Prohibition to provide financial services, cash, financial assets or other property;
- Reporting in case of doubt or when implementing a measure under the LMFT.

In the relationships with their clients, credit institutions are obliged to apply the legal measures in cases where the participants in the operation (the account owner, the beneficiary) are from countries known to support terrorist activities and organizations. Charities, non-profit legal entities, companies with no real activity, and others without legal cause are often used for the purpose of terrorist financing. The law also includes cases where there is no comprehensive information about the parties and the reason for the operation, operations and transactions are executed without the presence of the client or using new technical means, etc.

When establishing the appropriate prerequisites for terrorist financing operations carried out through commercial banks, the blocking of all cash, financial assets and other property - property of the persons listed in the restriction lists (*Zako za merkite sreshtu finansiraneto na terorisma*, 2016) irrespective of the place of their possession, as well as any cash, financial assets and other property held in possession of, held or controlled by the persons listed. Immediately blocking the funds of persons in full compliance with the EU's restrictive lists for the implementation of UN resolutions (Resolution 1267/2000 et seq.) And under the relevant EU acts as well as funds or other assets wholly or jointly owned or controlled, directly or indirectly, by persons on lists, terrorists, terrorist financing or terrorist organizations and others that are generated by the above mentioned funds or assets.

The above-mentioned essential features and normative justification of terrorist financing processes are sufficient grounds for each commercial bank to set up in its structure a specialized service for controlling and preventing the financing of terrorism to organize and control the implementation of the legal measures (*Zakon za merkite sreshtu izpiraneto na pari*, 2016). Consequently, in performing its core business, each commercial bank should monitor and prevent terrorist financing processes in accordance with national law and relevant international regulations and best practices by developing its own policy of prevention measures against use of the bank for the above purposes. In this connection and in view of the above analysis, the following may be formulated as exemplary principles:

- The Bank should not engage in relationships with persons who are known to have been convicted or charged with crimes such as terrorist financing;
- The Bank should not engage in any relationship with individuals, legal entities and groups believed to be related to criminal activities, members of criminal or terrorist organizations, or that they support politically or fund such organizations;
- The Bank must not open or operate anonymous accounts and accounts of fictitious names, perform fictitious transactions and transactions, and accept funds and property suspected of being acquired through or in connection with a crime or will be used to fund such.

As an initial measure to prevent the use of the bank to finance terrorism are required an adequate material base at the disposal of the bank, incl. specialized software applications, time resource, expert potential. The main goal is to "block" the relationship between credit institutions and criminals.

Commercial banks should not enter into relationships and do not provide financial services, funds, financial assets and other property to the persons included in the list of natural persons, legal persons, groups and organizations to which the measures under the LMFT apply. In the event that a person included in the above list is a client of the bank, his funds, financial assets and other property are blocked. Payments and other dispositions with the blocked accounts, cash and financial assets are made with the permission of the Minister of Finance. In addition, when there are suspicions that certain operations or transactions are directed to the financing of terrorism, bank officers are required to immediately notify the specialized internal intelligence service for the control and prevention of money laundering and terrorist financing of all additional facts and circumstances famous. In the event of a suspicion of terrorist financing, the Bank shall notify the Ministry of Interior and the State Agency "National Security" (Article 9a of the LMFT). In addition, the Bank shall report immediately any significant suspicions of terrorist financing that are likely to have a significant reputation for the Bank or its financial position, such as cases involving senior government officials or amounts over the statutory certain dimensions.

In order to have an effect on the implementation of statutory, regulatory and internal commercial bank regulations on the prevention of terrorist financing as well as monitoring and control procedures in relation to their core business, close cooperation between credit institutions and competent authorities dealing with suspicious customers and financial operations. At the same time, the improvement and modernization of the national and supranational regulatory framework is a sine qua non for real countering the latest criminal practices for which priority is being given and to credit institutions.

The above analysis is sufficient grounds, on a national scale, for the commercial banks to be constituted as a priority subject of permanent monitoring and control by the specialized administrative directorate "Financial Intelligence" in order to study, analyze and disclose information received under the procedure and at the conditions of the LMFT because they are obviously among the main options used for the purpose of financing terrorism. For this reason, the global policy regarding the fight against the mentioned crime places the activity of the credit institutions on the legal norms and the focus of their activities in order to prevent their use for the implementation of criminal schemes. This is a good reason for credit institutions to set strict and transparent internal bank rules and procedures to be respected when selecting clients and executing financial operations and to prioritize the prevention of their use for the purpose of financing terrorism.

References

1. *Nakazatelen kodeks.* (2017, юли 5). Retrieved юли 5, 2017, from lex.bg: <https://lex.bg/bg/laws/ldoc/1589654529>
2. *Zakon za kreditnite institutsii.* (2017). Retrieved август 4, 2017, from BNB: http://www.bnb.bg/bnbweb/groups/public/documents/bnb_law/laws_creditinstitutions_bg.pdf
3. *Zakon za merkite sreshtu finansiraneto na terorisma.* (2016, октомври 14). Retrieved януари 1, 2017, from lex.bg: <https://www.lex.bg/laws/ldoc/2135463446>
4. *Zakon za merkite sreshtu izpiraneto na pari.* (2016, октомври 14). Retrieved януари 1, 2017, from lex.bg: <https://www.lex.bg/laws/ldoc/2134420482>