



LATVIJAS
NOTĀRS

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Challenges faced by the notariate as a result of the General Data Protection Regulation

I Theoretical part

1. First, I would like to inform you, that at the beginning of November the Notariate of Latvia took part in an on-site visit by Moneyval (MONEYVAL's Fifth Evaluation Round of Latvia). The Council, as a supervisory and control institution of notaries, informed Moneyval about AML/CFT prevention measures in the notariate, whereas Moneyval knowledge of the preventative measures and AML/CFT obligations. Individual notaries were interviewed.

The Council pointed out problems in the immovable property market and in cases of transfer of capital shares, where notaries are not involved.

Latvian National money laundering/terrorism financing risk assessment report says, that there is a risk that sworn notaries could be involved (even unwillingly) in property fraud schemes, as they do not always possess all the information on a transaction. Sworn notaries may be involved in ML when the real estate is settled in cash by funds of unknown origin. Criminals use sworn notaries as well as other legal professionals to secure real estate with criminal proceeds.

Sworn notaries may be used to certify agreements with no clear economical purpose (for instance, transactions concluded below or above the market price) which afterward could be utilized as the ML tool, including the recovery of fictitious agreements or non-existing debts.

2. Second, The Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC is implemented.

On the 9th of November, 2017 amendments to the Law on the Prevention of Money Laundering and Terrorism Financing came into force.

These amendments concern the Notariate in two ways.

First, the introduction of an internal control system in the notarys' offices (in written form).

Second, the Council of Sworn Notaries of Latvia in disciplinary proceedings will apply penalties, including fines, as foreseen in the fourth directive and included in national legislation.

3. Third, taking into account the amendments of the law, as well as knowledge, acquired in the training organized by the Ministry of Finance with the support of the European Commission's Structural Reforms Support Program and the World Bank Group - Awareness training on AML/CFT and information received during Moneyval visit, the Council has drafted an internal control sheet, which will be used for supervisions of notary's offices. The Council also works on internal standard system, which will make it easier to implement the new requirements of the law. The system will have a form of internal regulations or guidelines.

II Practical case studies

Case 1

Two **citizens of Latvia, natural persons** (buyer A and seller B) appear before a notary. Buyer A indicates that he wishes to purchase a **flat** in Riga for **personal use**, the purchase price amounting to **EUR 30,000**. Buyer A indicates that he has savings - his wages and money given by his mother. The customers have accounts in Swedbank, and they wish to use the notary's bailment account in the **same bank**.

The notary performs the following:

1. Identifies customers.
2. Due diligence:
 - ✓ Determines that the customers **are not PEPs** (conversation, personal confirmation, Google).
 - ✓ Fills in and keeps the customer questionnaire (**low risk**).

Low risk: customers identified and the objective and nature of the transaction established.

Case 2

Individual A, who represents commercial undertaking B registered in Latvia on **22.03.2018**, appears before a notary. The only member of undertaking B is individual C, a citizen of Latvia. Individual A wishes to purchase immovable property for EUR 300,000 **for the company**. The **money is deposited in bank accounts** in Latvia. Seller B is a citizen of Latvia, a **PEP** (mayor of a local government, who sells inherited property.) The customers wish to use the notary's bailment account.

The notary performs the following:

1. Identifies customers.
2. Due diligence:
 - ✓ Obtains information about BO (procurator's statement that individual C is BO, information from the Commercial Register).
 - ✓ The procurator confirms that money was received on the basis of two private loan agreements. The procurator produces a loan agreement executed in **Ukraine (cash EUR 250,000)**, the second loan agreement does not entail cash.
 - ✓ Fills in and keeps the customer questionnaire (**average risk**).

Average risk:

1. High risk customer - seller B is a **PEP**;
2. High risk transaction - loan agreement executed in Ukraine, cash transaction;
3. Red flag - type of commercial activity, company registered on 22.03.2018.

Questions:

- 1) Attempt to bribe?
- 2) Do not certify the transaction?
- 3) Will the bank have sufficient due diligence data to make a transfer to seller B?