

## *EU anti-money laundering laws from experience to proposal for action*

### Legal regulations in Slovenia on ML/TF and the tasks of notaries and lawyers

#### **ANDREJ PLAUSTEINER**

Office of the Republic of Slovenia for Money Laundering Prevention

The content of these slides is the sole responsibility of the authors  
and it is not necessarily shared by the European Commission



This project is co-funded  
by the European Commission  
D.G. Justice



A project implemented by  
Fondazione Italiana del Notariato

# Contents of the presentation

- Reasons for concerted international legal measures in the area of ML/TF
- Legal regulations in Slovenia on ML/TF and the tasks of notaries and lawyers

# Reasons for concerted international action

## Effective legal measures to fight money laundering

- Seizure of dirty money
- Financial legal measures for preventing and discovering the entry of dirty money into the financial system, which are carried out by persons under obligation, are the most effective measures
  - client due diligence (“KYC” principle)
  - reporting ST
  - suspension of transactions
  - data storage
  - internal control ...
- Discovering other criminal acts (fraud, money and securities forgery, fraud in obtaining loans ...), establishing unfavourable conditions for criminal societies

# Directive 2001/97/EC

## Directive 2005/60/EC (Third Directive)

- 2001 Directive: expanded the circle of persons obliged to carry out tasks in the area of ML to cover the following legal or natural persons when performing their professional activities:
  - auditors, external accountants and tax advisors
  - notaries and other independent legal professionals when participating in certain transactions...(buying/selling real property, managing client money, securities or other assets, etc.)
- Both directives are implemented in:
  - act Amending the Prevention of Money Laundering Act (Offic. Gaz. of the RS, no. 59/2002; ZPPDen-1A) - entry into force on 20 July 2002
  - prevention of Money Laundering and Terrorist Financing Act (Offic. Gaz. of the RS, no. 60/2007; ZPPDFT) - entry into force on 21 July 2007 (in full on 21 January 2008)

## ZPPDen-1A 2002

- If a lawyer or notary reports to the Office reasons for the suspicion of money laundering, they shall also inform their client thereof (this provision was included in the Act on the initiative of the Bar Association and the Chamber of Notaries because this option was made available by Directive 2001/97/EC)

## ZPPDFT 2007

- On 21 July 2007 the Prevention of Money Laundering and Terrorist Financing Act (ZPPDFT) entered into force, completely aligned with the Third Directive of the EU no. 2005/60/EC of 26 October 2005 on the prevention of using the financial system for the purpose of money laundering and terrorist financing

The ZPPDFT introduces in the Slovenian legal order:

- 49 FATF recommendations  
notaries: FATF recommendations R12 and R16 (new: R22 and R23)
- Third EU Directive
- Council of Europe Convention no. 198

# ZPPDFT 2007

## Article 4: Persons under obligation

- Organisations: banks, savings banks, post offices, brokerage companies, insurance companies, casinos, auditors, etc.)
- Measures for detecting and preventing ML/TF are in accordance with the provisions of Chapter III (Articles 47 to 50), also carried out by lawyers, law firms and notaries
- Person under obligation: a common term denoting organisations, lawyers, law firms and notaries

# ZPPDFT 2007

## Tasks and obligations of persons under obligation

- Applying measures to acquire knowledge about a client (client due diligence)
- Reporting prescribed and requisite data and submitting documentation to the Office
- Appointing an authorised person and authorised assistant and ensuring the conditions for their work
- Providing regular professional training and education for workers and ensuring regular internal control over the performance of duties under the Act

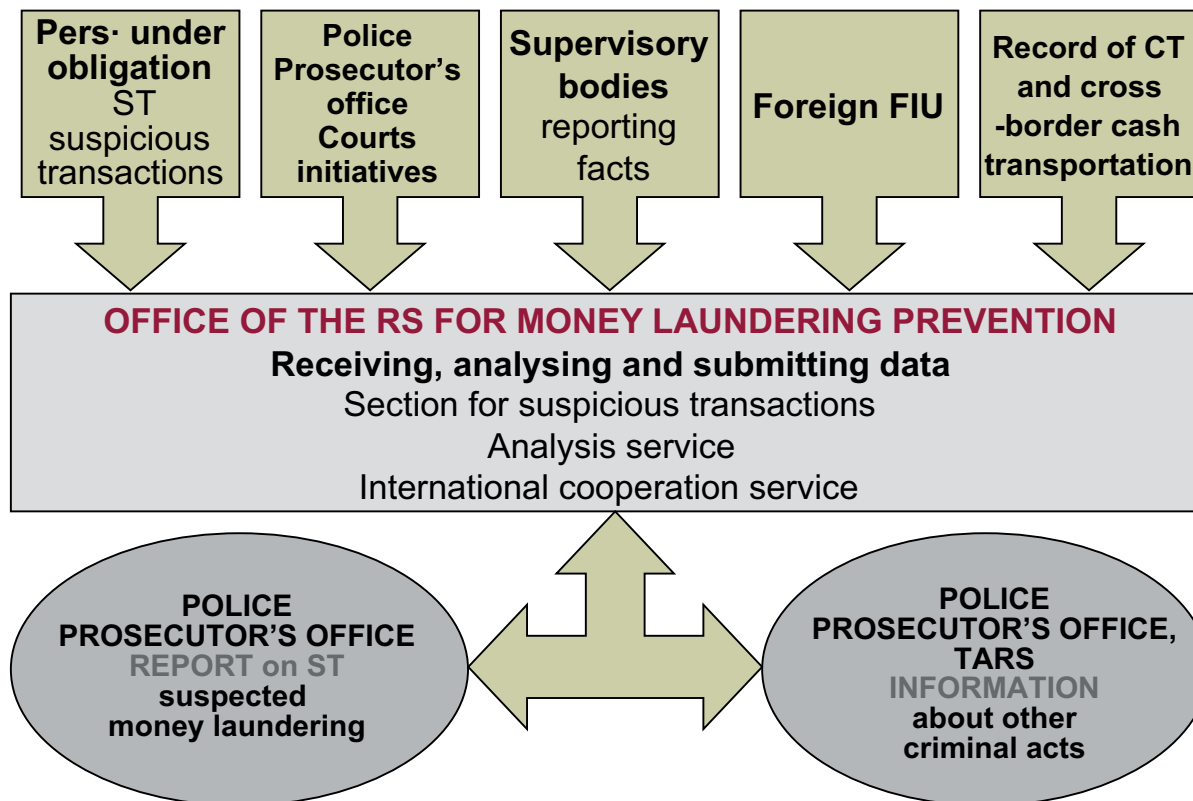


# ZPPDFT 2007

## The tasks and obligations of persons under obligation

- Preparing a list of indicators for the identification of clients and transactions for whom reasonable grounds exist to suspect ML or TF
- Ensuring protection, keeping data and managing the records required by the Act
- Preparing clients' risk analysis

# Participants in the process of reporting ST and discovering money laundering



# Article 47: The tasks and obligations of lawyers, law firms and notaries

A lawyer or notary shall act in accordance with the provisions of the ZPPDFT governing the tasks and obligations of organisations, when:

- Assisting in planning or executing transactions for a client concerning:
  - buying or selling real property
  - managing client money, securities or other assets
  - opening or managing bank, savings or securities accounts
  - raising the funds required to establish, operate or manage a company
  - establishing, operating or managing foundations, trusts, companies or similar legal organisational forms
- Or conducting a financial or real estate

Transaction on behalf of and on the account of the client

## Article 48: Client due diligence

- **Obtaining the data referred to in Article 8 of the ZPPDFT** (identity, beneficial owner, purpose of the business relationship, monitoring business activities) **in the following cases:**
  - when establishing a business relationship with a client
  - when carrying out a transaction amounting to EUR 15,000 or more
  - when there is doubt about the veracity and adequacy of previously obtained client or beneficial owner information
  - whenever there is suspicion of ML or TF, regardless of the transaction amount

## Article 49: Reporting to the Office

- If a lawyer or a notary, when carrying out business referred to in Article 47, establishes that there exist reasons for suspicion of ML or TF in connection with a client or a transaction, they shall report this suspicion to the Office prior to effecting the transaction
- Whenever a client seeks advice on ML or TF from a notary or a lawyer
- The data referred to in Article 83, paragraph 3 shall be reported as prescribed by the Minister of Finance in the rules

Cash transactions need not be reported!

## Article 50: Exceptions in reporting

- The obligation to report ST (Article 49, paragraphs 1 and 2 of the ZPPDFT) shall not apply to data obtained from or about a client in the course of establishing the client's legal position or when acting as the client's legal representative in judicial proceedings, including advice on instituting or avoiding such proceedings (Article 21 of the Third Directive)
- Under the above conditions, it is not necessary to submit data to the Office on its request under Article 55 of the ZPPDFT (but it is prescribed that the Office be immediately and not later than within 15 days informed in writing about the reasons for non-compliance with the Office's request)
- It is not necessary to report CT referred to in Article 38, paragraph 1 of the ZPPDFT, unless reasons for the suspicion of ML or TF exist in connection with a transaction or client

## Article 76: Prohibition of disclosure

- Persons under obligation and their staff shall not disclose to a client or third party:
  - that the Office has been reported a ST (Article 49, paragraph 1 of the ZPPDFT)
  - that the Office requested data from a notary or lawyer (Article 55, paragraphs 1 and 2 of the ZPPDFT)
  - that the Office temporarily suspended a transaction (Article 57 of the ZPPDFT)
  - that the Office required the on-going monitoring of the client's business operations (Article 59 of the ZPPDFT)
  - that an investigation has been or is likely to be launched against a client or third person on the grounds of ML/TF
- When a lawyer or notary attempts to dissuade a client from engaging in illegal activity, this shall not constitute disclosure

# Article 76: Exemptions from the principle of classification

- When forwarding data to the Office, the persons under obligation shall not be under obligation to protect classified data, business and bank secrecy and professional secrecy
- Persons under obligation shall not be held liable for damage caused to clients or to third parties
- The staff of organisations, lawyers and notaries shall not be held criminally or disciplinarily liable for the breach of the obligation to protect classified data, business and bank secrecy and professional secrecy:
  - if they submit data to the Office
  - if they are processing data for the purpose of verifying clients and transactions for whom there are grounds to suspect ML/TF



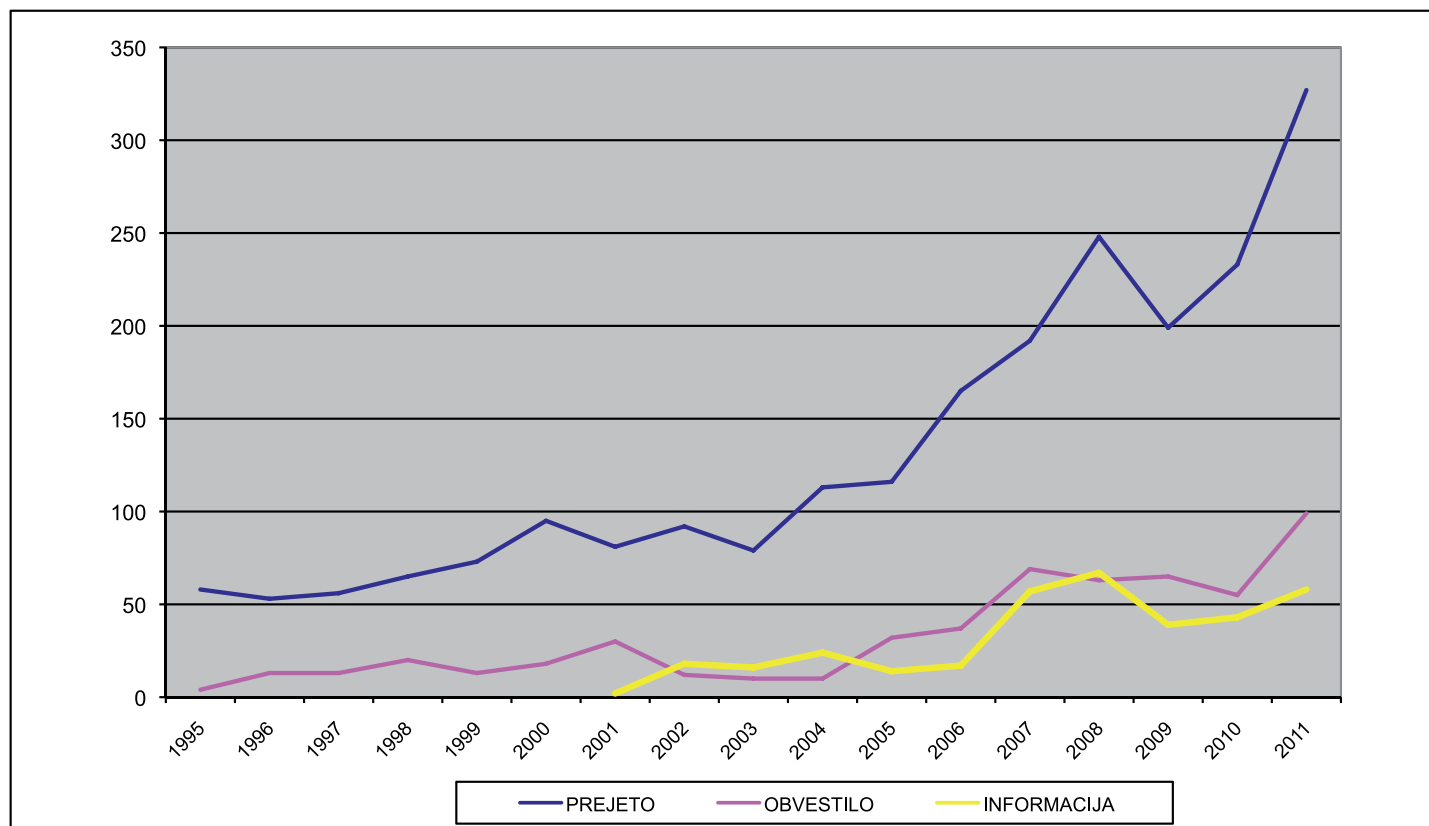
# Article 58: Supervisory bodies

- The Office
- Bank of Slovenia
- Securities Market Agency
- Insurance Supervision Agency
- Office of the Republic of Slovenia for Gaming Supervision
- Tax Administration of the RS
- Slovenian Institute of Auditors
- Market Inspectorate of the RS
- Bar Association of Slovenia
- Chamber of Notaries of Slovenia

## Article 98: Infringements

- A fine from EUR 12,000 to 120,000 shall be imposed in the following cases:
  - failure to obtain all the prescribed data during the client due diligence
  - failure to report the reasons for suspecting ML/TF
- A fine from EUR 6,000 to 60,000 shall be imposed in the following cases:
  - failure to appoint an authorised person
  - failure to determine the beneficial owner of a client
  - failure to draw up a list of indicators
- A fine from EUR 3,000 to 30,000 shall be imposed in the following cases:
  - failure to provide the conditions for work for the authorised person
  - failure to provide regular professional training and education
  - failure to ensure regular internal control

# Number of cases



## Moneyval findings

- Deficient supervision over the implementation of regulations on money laundering in non-financial organisations and the deficient reporting of suspicious transactions by these persons under obligation