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LAWYER'S ROLE WITHIN AML LEGISLATIVE FRAMEWORK. LAWYER AS A GATEKEEPER

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Abstract. Advocate's professional identity is irrevocably linked with the ability to perform Advocate's duty, and the latter, in its turn, is subordinated to the requirements of legislative normative framework, including strict and sometimes contradictory requirements of anti-money laundering (further in the text – AML) regulation in force. By attributing advocates (further in the text – advocates) the AML "gatekeeper" role, these legal professionals are undirectly considered as facilitators of money laundering by the global institutional regulatory regime. The origins of advocate as a "gatekeeper" can be traced back to Financial action task force (further in the text – FATF) introduction of this connotation by indicating towards the link between the legal services and the money laundering trends, due to the complicated legal and financial character of money laundering operations. By attributing the advocate gatekeepers role and thus subjecting the legal professional to contradictory requirements of AML regulation (duty to disclose information entrusted to the advocate by his client to competent authorities in case suspicions about money laundering arouse, criminalization of advocate's intervention in money laundering activities, establishment of Authority for Anti-Money Laundering and Countering the Financing of Terrorism), the advocat has to conflict his professional duty requirements about duty of secrecy towards his client, thus endagering the client's democratic rights to fair trial and effective defense. The consequences of this conflict lead to endagering the advocats independence which is closely linked with its performance abilities. Article provides an insight about the development of advocate's new role as a gatekeeper throughout the formation of the anti - money laundering normative legislation, analyzing the origins where the concept of advocat as a gatekeeper was developed.The purpose of the article is to question the adequacy of the advocate's gatekeeper role and to understand whether the recent reform proposals simply address regulators' perceptions that advocates' own understanding and implementation of these functions has not been adequate in recent times. Nonobstant the overall and dominating need for maximum transparency in the anti-money laundering sector, it can not and must not be reached at all costs, ignoring the fundamental role of an Advocat to act as an instrument securing rights to defence and fair trial inthe democratic society. There is a need from Legislator's side to balance advocates' multiple roles with the AML normative requirements not overstepping the red lines of the legal profession.

Keywords: Advocat; gatekeeper; rights to defence; rights to fair trial

INTRODUCTION

According to the definition provided in Wikipedia a gatekeeper is a person who controls access to something, for example via a city gate or bouncer, or more abstractly, controls who is granted access to a category or status. Gatekeepers assess who is "in or out". Various figures in the religions and mythologies of the world serve as gatekeepers of paradisal or infernal realms, granting or denying access to these realms, depending on the credentials of those seeking entry. Figures acting in this capacity may also undertake the status of watchman, interrogator or judge.

Article provides an insight about the development of advocate's new role as a gatekeeper throughout the formation of the anti- money laundering (further in the text – AML) normative legislation, analyzing the origins where the concept of advocat as a gatekeeper was developed.

The purpose of the article is to question the adequacy of the advocate's gatekeeper role and to understand whether the recent AML reform proposals simply address regulators' perceptions that advocates' own understanding and implementation of these functions has not been adequate in recent times.

In order to analyze the adequacy of "gatekeepers" role attributed to advocats by the recent AML regulation, the author will take a brief overview of the formation of AML regulation which has led to the adoption of the so called 6th AML package, setting the recent AML standards member states have to follow.

It all started with establishment of Financial Action Task Force (further in the text – FATF) in 1989 by a Group of Seven (G7) Summit held in Paris. G7 (now G20) is a mechanism to work through intense policy disputes, for leaders to meet and agree on coordinated policies and to provide leadership on difficult global challenges. By the late 1990s, however, a series of financial crises centred largely in Latin America and Asia had convinced the G7 finance ministers that key emerging economies were insufficiently included in global economic management efforts. Finance ministers had been meeting together with their central bank governor counterparts in parallel to the G7 summits since 1986. Their mandate had been to focus on fairly technical matters related to economic and financial growth and stability, inflation and currency developments. FATF's aim was to develop and promote national and international policies, globally in order to eliminate these threats.

Throughout the years the FATF has grown from a "soft-law" instrument into a powerful and authoritative standard setter in the domain. The transition is reflected by the scope and the tone it's Ministerial mandates contains. In order to better illustrate the major shift in the FATF mandate of action the author will make a reference to the initial Economic

Declaration of FATF of July 16, 1989, then to FATF Mandate of April 12, 2019 and finally to FATF Ministerial Mandate of April 21, 2022. In July 16, 1989 at the G7 summit in Paris FATF announced Economic Declaration stating that the respective year's world economic situation presents three main challenges, namely the choice and the implementation of measures needed to maintain balanced and sustained growth, counter inflation, create jobs and promote social justice, (b) the development and the further integration of developing countries into the world economy and (c) the urgent need to safeguard the environment for future generations.

In accordance with the Ministerial Economic Declaration from the G7 Summit Paris July 16, 1989 world's economic situation presented 3 main challenges:

- the choice and the implementation of measures needed to maintain balanced and sustained growth, counter inflation, create jobs and promote social justice
- the development and further integration of developing countries into the world economy
- the urgent need to safeguard the environement for further generations.

In 1990 FATF established its key documentary package - a series of money laundering recommendations (further in the text – 40 Recommendations). In 2001, a series of special recommendations on the prominent threat of terrorist financing were established, collectively known as the 40 + 9 Recommendations whose aim was to unite anti-money laundering and terrorist financing efforts into one universal instrument. FATF examines techniques and counter-measures and reviews whether existing national and international policies are sufficient to combat the developing threat. The FATF monitors compliance with the 40 + 9 recommendations through a two – pronged strategy.Member countries complete annual self assessment style questionnaire and secondly, the FATF conducts regularly conducts on-site Mutual Evulation Report examinations on individual jurisdictions, assessing the effectiveness of their national policies in dealing with money laundering and terrorist financing. In the Final Communiqué of their meeting in Moscow on 19-20 July, 2013 (further in the text – Communiqué) G20 Finance Ministers and Central Bank Governors once again reinforced FATF's work in combating money laundering and terrorist financing.

The Communiqué encourages all countries to meet the FATF's standards: the FATF Recommendations. The FATF strengthened corruption-related measures in its in response to a call by G20 leaders. This has resulted in tighter requirements on customer due diligence, beneficial ownership, politically exposed persons, and the transparency of cross-border wire transfers, and the requirement for countries to take immediate steps to become party to and implement fully the **United Nations Convention Against Corruption.**

In accordance with the Ministerial Mandate of April 12, 2019 (further in the text – Mandate), FATF was given responsibility to examine money laundering techniques and trends, review the action already taken at a national or internationl level, and to set out measures needed to combat money laundering, reaffirming the role of the FATF as the global standard setter for cobatting money laundering,terrorist financing and the financing of proliferation of weapons of mass destruction.

The revised Mandate was intended to serve as the framework for the activities of FATF and included changes to its governance processes.

The following tasks were identified:

- identification analysis of money laundering, terrorist financing and othet threats to the integrity of financial system;
- development of international standards;
- assessment and monitoring the members of FATF through peer-reviews, follow up processes;
- promotion of full and effective implementation of FATF Recommendations by all countries;

In June 19, 2019 FATF issues risk-based guidance for legal professionals and development of good practice. (further in the text – Guidance)

The guidance is based on the reference to the FATF report of July, 2010 on Global Money Laundering and Terrorist Financing Threat Assessment according to which the advocats are classified as gatekeepers according to the following typological characteristics:

- gatekeepers are individuals that "protect" the gates of the financial system through which potential users of the system, including launderers, must pass in in order to be successful. As a result of their status, they have the ability to furnish access to the various functions that might help criminals to move on to conceal their funds (Point 214.p. 45)
- gatekeepers will undertake either self -laundering or third party laundering. Of the various categories, professionals tend to launder for third parties, either knowingly or unwittingly (point 218., p. 45)
- lawyers offering financial advice are a common element seen in complex money laundering schemes (point 222., p.45)
- insiders are generally known members of a group of limited number who have access to private, secret, privileged or restricted information (point 224, p. 45)
- the main tool insiders have is their first-hand knowledge. They are source of direct and useful guidance to an outsider. Therefore, potential launderers may recruit or coerce an insider into providing such services (point 225, p. 45)

In 2001, the FATF expanded it's mandate to also combat terrorist financing. In accordance with the Ministerial Mandate of April 21, 2022, FATF reaffirmed that it is at the centre of the international effort to take decisive, co-ordinated and effective action against these threats of crime, terrorism, corruption and the destruction of environment and called upon all jurisdictions to remain vigilant of the threats to the integrity, safety and security of the international financial system

arising from the actions of the Russian Federation, commitment to effectively implement the United Nations Convention Against corruption by designing FATF Recommendations and pursue work on the misuse of citizenship by investment schemes and complicit financial and non-financial professional services providers by the corrupt to implement FATF standards, recovery of criminal proceeds remains unsufficient. Meaningful and effective asset recovery helps remove incentives for criminal activity, including corruption and tax crimes.

When analyzing the characteristics of a gatekeeper, FATF has attributed to this notion, it has to be concluded, that on EU supra - governmental level an advocat is no longer regarded as an instrument to secure the rule of law within the democratic society. Nor the advocat is being perceived as higly educated professional acting in accordance with the core ethical values the legal profession is based upon – trust and personal fairness, confidentiality and independence and as the representative of the judicial state power.. These ethical values are directly related to the provision of qualitative legal advice which lead to the special status and role of an advocat in the socity. The responsible action of an advocat towards its client create the basis for further trust from the indivudal to the the rule of law. It is a fundament to secure the fundamental rights of an individual and its protection by providing professional defence. The notions of justice and fairness being the prism through which the advocates professional activity is being valued and assessed ir closely connected with consideration of ethics.

It is clear that a person being convicted of the predicative offence can not defend itself as well as can do the advocat who has the necessary expertise, knowledge and qualification. Therefore it is important to look upon the activity of an advocat integrally, advocats legal professions can not be assessed by analogy with any other profession accoding to the NACE classificatory. This profession is integrally binded by three duties, established by the Code of Ethics of Advocats – independence, confidentiality and personal fairness. These duties can not be limited on the contrary case we have to speak about the limited legal certainty that itself is an absurd notion as it directly contradicts with human rights to fair trial and defense. Legal certainty either exists or does not. By limiting any of the principles supporting advocates legal profession the fundamental rights to defense, justice and presumption of innoncence are limited, and that is not acceptable.

DEVELOPMENT OF ANTI-MONEY LAUNDERING REGULATIVE FRAMEWORK

In Europe, anti-money laundering (further in the text – AML) rules are issued by the EU Parliament in the form of EU anti-money laundering directive (further in the text - AMLD). AMLD contains a set of provisions and rules directed to respond to the challenge of of money laundering and terrorist financing threats. The EU legislative acts are based closely on FATF Recommendations, guidances and interpretations. Each EU member state then implements this into their legal system, by making amendments to the already existing legislation in force or by issuing new laws in the domaine.

The EU AMLD is intended to prevent money laundering and terrorist financing. It establishes a regulatory environment for this that is consistent across all EU member countries.

June 10, 1991 - the first AMLD was Council Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering. (Further in the text – 1 AMLD). The initial concern of the 1AMLD was that credit and financial institutions could and would be used to launder the proceeds of criminal activities, jeopardizing the whole financial system. 1 AMLD established key preventative measures such as customer/client identification, record-keeping and central methods of reporting suspicious transactions. 1 AMLD was designated for financial sector stability.

December 4, 2001 - The second Council Directive 2001/97/EC of the European Parliament and of the Council of the European Union amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering. (further in the text – 2 AMLD)The 2 AMLD amended and updated the 1 AMLD on the prevention of the use of the financial system for the purpose of money laundering. The aim of the 2 AMLD was to refine the existing provisions created by the 1 AMLD and to plug the gaps in the legislation highlighted by the 40 Recommendations suggested by FATF.

The European Council felt this was necessary step to take as the 1 AMLD did not adequately establish which Member States authorities should receive details of suspicious transactions where the credit or financial institution had branches in various jurisdictions.

The 2AMLD adopted a broader definition of money laundering, taking into account underlying offences such as corruption and thus expanding the predicate offences. It also clarified that currency exchange offices money transmitters and investment firms were included within the scope of the directive as they were susceptible to money laundering transactions. In addition 2 AMLD directive added the authority to identify, trace, freeze, seize and confiscate any property and proceeds linked to criminal activities. Moving on from the 1 AMLD to the 2 AMLD touched upon the possibility of the Directive becoming applicable to lawyers participating in financial or corporate transactions. The proposition to extend the provisions of the Directive to the legal profession was met with fierce opposition by the European Parliament. It was due to fears that it would encroach on client confidentiality rules and could potentially violate the integrity of court proceedings. A compromise was reached and the scope of the 2 AMLD was not extended to cover professionals such as lawyers. Thus lawyers were exempt from reporting information received in the course of defending or representing a client. August 1, 2006 - Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis (further in the text - 3 AMLD).

The 3AMLD took into account the FATF's revised anti-money laundering and counter terrorist financing standards of 2003. Its introduction can be seen as a culmination of the sudden realization of the susceptibility of designated non-financial businesses and professions such as lawyers to the furtherance of money laundering transactions and the changing political and economic circumstances following the September 11th and the Madrid bombing terrorist acts. Professionals such as lawyers were finally included within the scope of the 3 AMLD. In fact, 3 AMLD makes the regime applicable to lawyers, notaries, accountants, real estate agents, casinos and encompassing trust and company services, exceeding EUR 15 000. It also included measures against the financing of terrorism. The 3 AMLD implements enhanced customer due diligence measures for politically exposed persons (further in text – PEP), simplified customer due diligence procedures for low-risk transactions (Member state assessed), transparent and certain and on-going monitoring of such transactions. 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 (further in the text - 4 AMLD) introduces Risk assessments prepared and drawn by member states and shared amongst them in order to manage the risks. Risk-based due diligence setting requirements for ducumented results. Obliged entities must also engage in adequate monitoring to enable the detection of suspicious transactions. Establishment of central registers on ultimate beneficial owners of corporate and other legal entities. Introduction of the definition of a politically important person (further in the text – PEP) requiring enhanced due dilligence measures to be applied towards PEPs. Setting requirements about record – keeping for 5-10 years. Increased range of sanctions for breaches of AML obligations. The increase of Financial Investigation Unit's (further in the text – FIU) role for sake of improvement of cross border cooperation. Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 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 (further in the text – 5 AMLD) imposes greater transparency on the financial sector regarding beneficial ownership with a focus on beneficial ownership of trusts. A firms data on beneficial owners will be made accessible to competent authorities and professional sector service providers, such as banks and others who can demonstrate a legitimate interest. The same information can be accessed by any member of the public without the need to demonstrate a legitimate interest. 5AMLD extends AML/CFT obligations to new assets being managed such as: increasing scrutiny over virtual currencies to prevent anonymity. Anonymous safe deposit boxes will also no longer be allowed. This includes Cryptoasset Exchance Providers; Cryptoasset Auomated Teller Machines (ATM); Custodian Wallet Providers; Peer to Peer Providers - businesses that provide an online marketplace to allow the exchange of cryptoassets and fiat currencies; Issuers of New cryptoassets,– businesses that sells a new cryptoasset in exchange for fiat curren; Custodian Wallet Providers and Art Traders: When dealing with high-value artwork that results in a transaction of €10,000 or more, art traders will have to report suspicious activity and perform checks on customers when necessary. It clarified notion of PEP and identified them for monitoring. Enhanced Due Diligence for High-Risk Third Countries. One of the new updates that the 5AMLD brings, is that any client that is based in a High-Risk country is now subject to compulsory enhanced due diligence measures, of which the 'relevant person' must undertake. These include obtaining information on the source of funds, background checks and beneficial ownership to name just a few. Member States may also prevent firms from opening branches or subsidiaries in high-risk third countries and prevent the opening of a branch or subsidiary of a firm based in a high-risk third country.

On July, 20, 2021, the European Commission presented package of legislation to strengthen the EU's AML rules (further in the text -AML Package).AML package comprises 4 legislative acts:

1. The EU "single rulebook" regulation provides guidelines for completing customer due diligence, disclosing the identities of beneficial owners, using anonymous instruments like crypto-assets, and introducing new entities such as crowdfunding platforms. It also includes clauses on "golden" passports and visas.
2. The 6th Anti-Money Laundering directive (further in the text – 6th AMLD) includes national provisions on oversight, FIU, and information sharing requirements which will provide competent authorities with access to reliable information, such as beneficial ownership registrations and assets kept in free zones.
3. The regulation establishing the European Anti-Money Laundering Authority (further in the text - AMLA) invested with supervisory and investigative powers, to ensure compliance with AML/CFT requirements.
4. Amendment of the EU Transfer of Funds regulation on the information accompanying the transfers of funds and certain crypto-assets, in order to make it possible to trace respective transfers.
5. For the purposes of this article, author will focus attention towards two legislation documents it comprises - The 6th AMLD" aimed at improving processes for detecting suspicious transactions & suspicious activity and the European Commission's proposal for a regulation establishing the Authority for Anti-Money Laundering and Countering the Financing of Terrorism (further in the text – AMLA) ("Regulation regarding AMLA) ".
6. These two documents are particularly important when analysing the advocats independence and it's duty of confidentiality issues that emerge within the establishment of the connotation of advocat's as " gatekeepers" new role.
7. The term "gatekeeper" atttributed on the grounds as laid down in guidance based on the reference to the FATF report of July, 2010 on Global Money Laundering and Terrorist Financing Threat Assessment in principle fundamentally contradicts the idea of advocats professional obligations. The Article 2.2. of the Charter of Core Principles of the European Legal Profession says "relationships of trust can only exist if a lawyers personal

honour, honesty and integrity are neyonf doubt. For the lawyer these traditional virtues are professional obligations". Therefore, the author concludes that the responsibilities of a gatekeeper conflict with the traditional obligations of advocats towards their clients. (see point 214., 218., 224., 225 of the FATF Guidance for a Risk-Based Approach for Legal Professionals and development of Good Practice)

8. According to the Charter of Core Principles of the European Legal Profession the many duties to which a lawyer is subject require the lawyer's absolute independence, free from all other influence, especially such as may arise from his or her personal interests or external pressure [..] A lawyer must therefore avoid any impairment of his or her independence and be careful not to compromise his or her professional standards in order to please the client, the court or third parties. [..] Advice given by a lawyer to the client has no value if the lawyer gives it only to ingratiate him or herself, to serve his or her personal interests or in response to outside pressure.

Furthermore this independence is strengthened by the surveillance of the independent bar associations on a national level who elaborate further advocates activity in line with the principles, traditions, ethics and law. By investing unlimited powers of investigation and decision making of the posible breach of Union law to AMLA, the EU governor considers the competence of national supervisory authority as insufficient although there are no facts that could prove the assumprion. According to the opinion of the Council of Bars and Law Societies of Europe (further in the text –CCBE) " a necessary and essential corollary to the independence of lawyers i san independent Bar. And no AML measure should interfere with the independence of the legal profession. The independence of lawyers is an integral component of the right to a fair trial as enshrined in of the Article 6 of the European Convention on Human Rights and Article 47 of the Charter of Fundamental Rights of European Union. As the Charter of core principles of the European legal profession sets out, "a lawyer needs to be free – politically, economically and intellectually – in pursuing his or her activities of advising and representing the client. This means that the lawyer must be indeoendent of the state and other powerful interests [..]. The lawyer's membership of liberal profession and the authority deriving from that membership helps to maintain independence, and bar associations must play an important role in helping to guarantee lawyer's independence. Self regulation of the profession is seen as vital in butressing the independence of the individual lawyer."

By attributing the connotation of a gatekeeper to advocats, EU governor creates concerns for public image and self regulation of the legal profession. Advocats role as the guardian of justice is being transposed to that of a mere subject of law and equalled with a list of ther professions which do not belong to the third state power – system of justice. Moreover, the " gatekeeper" characteristics provided in the guidance based on the reference to the FATF report of July, 2010 on Global Money Laundering and Terrorist Financing Threat Assessment could be true if they were based in empirical data. Unfortunately, there is no empirical evidence on the AML/CFT vulnerability of lawyers that could justify the need for such AML regulation. " The fact is, according to lawyers, that there is no empirical evidence seriously or systematically implicating legal professionals in financial crimes." Moreover the fact about lack of empirical evidence has been stressed by the Council of CCBE in its positions paper on the European Commission's 2021 AML package in saying that " in the absence of a full ex-post evaluation of the current AML legislation the assumption [of advocats as gatekeepers] is not based on factual data and it does not acknowledge at all the efforts of the CCBE member Bars and Law Societies in detecting and preventing money laundering".

According to the author's view the above said substantiates the answer to the question of whether an advocat can be a good gatekeeper. Advocat can not be a gatekeeper because the gatekeeper's functions and obligations are in clear contradiction with his duty of independence thus undermining the rule of law.When looking upon the the nature of relationships between the lawyers and the clients, from the angle " lawyer as client's agent" - lawyer's traditional role is to help clients pursue lawful goals through available lawful means, but this is quite different from saying that lawyers should do whatever clients want, or assist clients in archieving illegal pursuits. In accordance with the Charter of Core Principles of the European Legal Profession "subject to due observance of all rules of law and professional conduct, a lawer must always act in best interests of the client and must put those interests before the lawyer's own interests or those of fellow members of the legal profession."

PROS AND CONS FOR LAWYER AS A GATEKEEPER

In attempt to define the positive sides for complying with AML requirements in terms of clients due dilligence procedures, here are the main reasons why it is a good thing for lawyers to screen clients misconduct. It keeps lawyers themselves honest. It serves societal interests in preventing harm and thus enhances sound judicial administration. Alongside it raises lawyer's awareness and makes them think about the morality and legality of client's conduct as well as their own.

Although the author identified several pros for lawyer regarding the AML requirements about the due diligence duty in assessment of its client before the start of transaction, below are the arguments against them.

All of the above mentioned due diligence measures that an advocat must do in order to ascertain if the client's conduct is compatible with AML rationale, are already valid and existing functions of his or hers daily work.

These functions have been stipulated in the normative acts binding for lawyer sector and surveilled by local independent surveillance regulatory body (further in the text – SRB) on a national level.The These regulatory bodies serve as glossary for advocats for relevant knowledge and understanding of the rationale of the functions.

On the other hand when speaking about the cons for lawyer as a gatekeeper, the considerations are much more fundamental and serious than the pros. By implementing AML regulation the measures of which contradict with the advocates independence, the fundamental rights to fair trial, justice and defense are endagered and so is the democracy in that it exists in sound division of state powers. Therefore the author concludes, that the by attributing the connotation "gatekeepers" the EU legislator and policy maker – FATF – has not considered these fundamental obstacles. As well as the author thinks that attribuation of gatekeepers towards legal professionals without empirical data of committed crimes or offenses, not responding to the written concerns of the international organisations created for the defence of the lawyers throughout the world like CCBE, International Bar Association (further in the text – IBA) etc. Is not an example of good governance. Gatekeepers role conflicts with the traditional responsibilities of loyalty that the lawyer has towards his clients. Second important aspect that concerns the application of AML regulation towards advocats as gatekeepers is that it distorts the relationship between advocat and his client. And this aspect would manifest themselves in the limited or no efectiveness in of counseling and defence. The legitimate expectation that all the information disclosed to the advocat will remain confidential is the core elemnet that forms the trust and loyalty relationships between the advocat and the client. This trust and loyalty is mutually created and these two elemenets are dependant on each other. Without lawyers loyalty towards his duties as a professional towards client, trust from clients side can not be absolute. However without these elemenets, advocats can not exercise the effective defence of the client.

The sanctions and punitive measures by regulators enforced by the AML regulation towards advocats for their clients cases will trigger more tension in those relationships from advocates side as well by making enhanced inquiries in order to not commit a mistake, or refuse from the client's case in order to not damage the reputation, or to report STR under the smallest suspicions of client's misconduct arise.

CONCLUSIONS

FATF as the EU AML standard setter has introduced the connotation "lawyers as gatekeepers" regarding the representatives of the legal profession as facilitators of AML explaining the link between the legal services and the money laundering trends, due to the complicated legal and financial character of money laundering operations.

The terminology of a "gatekeeper" is to say the least unfortunate. Gatekeepers close the gate, gatekeepers need to form judgements on those they exclude. This inevitably leads to the conflict with the basic principle of lawyer's duty to represent the interests of their clients. "Whilst admitting the principal duty of lawyers to prevent crime and to convince clients to act legally, it is unacceptable to be forced to turn from the defendant into the accuser of the client."

The recent reform proposals simply address EU regulators' perceptions that lawyers' and SRBs' supervisory activities about understanding and implementation of professional functions has not been adequate in recent times. It is important to note that these perceptions are not grounded by empirical data. There is no statistics that could serve as a proof to the above mentioned. The CCBE in its position paper on the European Commissions 2021 AML package, dated December 10, 2021, have said that "the fact that the new AML package aiming at strengthening AML rules and overcoming existing loopholes is not based on a full ex-post evaluation of the current AML regime is problematic."

Gatekeeping is only one part, and a relatively small part, of the lawyer's role. If lawyers are to put the role of gatekeeper into effect—maybe at the cost of their economic benefits—regulation must balance lawyers' mutiple roles. In fact this is professionally done by national SRBs', the competent and self-regulatory body acting as a surveillance and monitoring mechanism on a daily basis for advocats. The advocat not only has a duty to provide professional services to the client it also must respect the law and act lawfully. These are values enshrined in the national legislation binding for the legal profession, arouses from the old traditions. Therefore no AML measure should interfere with the independence of the lawyers. In fact, the importance of independent lawyers and an independent SRB has been recognised by the European Commission in its Rule of Law report: legal professions play a fundamental role in ensuring the protection of fundamental rights and the strengthening of the rule of law. An effective justice system requires that lawyers be free to pursue their activities of advising and representing their clients, and bar associations play an important role in helping to guarantee lawyer's independence and professional integrity." However, nonobstant the above mentioned the Commission has not had evaluated the already established regulatory enactments set by the SRB's in member states.

It goes without saying that lawyers should take reasonable measures and provide their input to combat money laundering, but these measures must be in line with state bar standards and ethical rules and democratic values and fundamental freedoms.

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