RIGA GRADUATE SCHOOL OF LAW

Comparison of the national AML/CTF laws of the Republic of Latvia and the United Kingdom

BACHELOR THESIS

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DECLARATION OF HONOUR:

I declare that this thesis is my own work, and that all references to, or quotations from, the work of others are fully and correctly cited.

……/Konstantins Šubņikovs/

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ABSTRACT

The purpose of this thesis is to compare and find the core differences in the national anti-money laundering and counter terrorism financing legal frameworks of the Republic of Latvia and the United Kingdom using the qualitative comparative interdisciplinary analysis. In order to identify the differences, an analysis of the legislations of both countries has been conducted with the particular emphasis being made on the legal framework, as well as the national peculiarities of legal and political spirits of both states. Particular attention paid to the event of Brexit and its influence on the legal framework of anti-money laundering and counter terrorism financing laws of the United Kingdom. Furthermore, in order to examine the technical differences in the legislation – an in-depth comparison of the ultimate beneficial owner and politically exposed person concepts is conducted with the emphasis being made on the definitions and identification procedures provided in the anti-money laundering and counter terrorism financing laws of the Republic of Latvia and the United Kingdom. In the course of the study, author reaches the conclusion identifying the core differences between the national anti-money laundering and counter terrorism financing legal frameworks of the Republic of Latvia and the United Kingdom, as well as between the concepts of ultimate beneficial owner and politically exposed person under the national laws of the two countries.

Keywords: AML, Financial crime, United Kingdom, Latvia, Ultimate Beneficial Owner, Politically Exposed Person.

SUMMARY

Problems of money laundering and terrorism financing have been topical for many years, but now, with the rapid development of technologies - the new risks are appearing and the new opportunities for the criminals to conduct such a crimes are emerging. Therefore, more than ever at this time, international cooperation between countries is important in order to prevent crimes of money laundering and terrorism financing. European Union is an important pillar in the international fight against financial crime due to the powerful and diverse legislation, which allows members states to cooperate and successfully prevent those crimes. However, recently United Kingdom – which is one of the world financial centers, has left the European Union. This fact will change the legislative system of the Britain, with the legislation in relation to the prevention of money laundering and terrorism financing not being an exception. This, in turn, due to the important and powerful position of Britain in the financial world - would inevitably pose difficulties for this legal sphere not only in the European Union itself, but also on the international level.

Thesis under the name "Comparison of the national AML/CTF laws of the Republic of Latvia and the United Kingdom" consists of four chapters and examines the national anti-money laundering and counter terrorism financing legal framework of the European Union country – Latvia and the United Kingdom. Furthermore, differences of two utmost important aspects of any anti-money laundering and counter terrorism financing laws – ultimate beneficial owner and politically exposed person concepts, under the national laws of both countries are analyzed.

The first chapter is devoted to the description of the anti-money laundering and counter terrorism financing legal framework on both international and European Union level. The history of the development of anti-money laundering and counter terrorism financing legislation is described, as well as the most significant changes to the European Union legal framework – possible ban of the ultimate beneficial owners registers is analyzed, in order to provide the readers with understanding that the legal framework is the subject to the constant change.

The second chapter provides an overview of the anti-money laundering and counter terrorism financing legal framework in Latvia and the United Kingdom. Most crucial laws in relation to anti-money laundering and counter terrorism financing of both nations, as well as the historic background of those are described. Additionally, the influence of Brexit on the United Kingdom anti-money laundering and counter terrorism financing laws is described, as well as the impact of British political culture is analyzed and its relation to the possible changes of anti-money laundering and counter terrorism financing legal regime is described.

The third chapter analyzes the differences in the concept of ultimate beneficial owner under the national laws of both nations. The emphasis is made on the analysis of the distinctions of definition of ultimate beneficial owner and the process of identification of the ultimate beneficial owner under the national laws of the Republic of Latvian and the United Kingdom. In the chapter's conclusion – differences are listed and described in detail.

The fourth chapter analyses the distinctions of the politically exposed persons concept under the national laws of Latvia and the United Kingdom. Definitions and the identification processes provided in the national anti-money laundering and counter terrorism financing laws

of both countries are described and compared, with the chapter being concluded by listing differences of this concept in both countries.

In conclusion, research questions asked at the beginning of the thesis are assessed and answered. Detailed review of the core differences between the national anti-money laundering and counter terrorism financing laws of the United Kingdom and Republic of Latvia are presented, as well as the differences between the concepts of ultimate beneficial owner and politically exposed person under the national laws of the Republic of Latvia and the United Kingdom are presented. Thesis is finalized with the proposal for possible further research on this topic.

TABLE OF CONTENTS

INTRODUCTION

Money plays a key role in the existence of any state and the life of any person who is living in a capitalist society. Money is an integral part of any life aspect since its amount directly influences the quality of life of most individuals. Large quantities of money provide individuals with power and abilities not only to change their own lives, but also to influence the lives of others, directly or indirectly, by affecting the economy.

Due to money providing such great power, it becomes an utmost important task for most individuals to get as much money as possible, by the means available to them. This inevitably leads to the appearance of crimes, the perpetrators of which are aimed at obtaining or appropriating money by criminal means.

In the contemporary world, among others, one of the most harassing crimes related to money are the money laundering (hereinafter: ML) and terrorism financing (hereinafter: TF). These crimes are spreading on more and more wide scale over the course of the years and are constituting a great danger for the local economies of each particular state, as well as the global economy.

Due to the digitalization of the world, banks and other financial entities have become dependent on the internet and other technologies when providing their services to individuals and businesses. Moreover, new, appearing digital technologies such as cryptocurrencies and WEB3 are on their way to changing the way how money is stored and transferred. Even though innovation is a very important part of the development of humanity, it is bringing new “opportunities" for financial crimes to develop and criminals to conduct such crimes.

With the development of technologies and the spread of financial crimes, the problem clearly requires legal intervention in order to be solved. During the last decades, numerous states have made significant efforts to solve the problem, and in many of these states, it led to the reduction of financial crimes. However, it seems like in order to solve these problems on a broader scale, the anti-money laundering (hereinafter: AML) and counter-terrorism financing (hereinafter: CTF) legislation should improve along with the advancement of financial crimes. Thus, the problems of ML and TF, are requiring the continuous development of the AML/CTF laws.

ML crimes are often possessing an international nature, due to the relation of transferring money between countries with different jurisdictions and thresholds on what is considered to be a crime and what is not. Thus, in order to effectively counter those crimes, states should work in cooperation. European Union (hereinafter: EU), is a great example of the numerous countries working in cooperation in order to prevent financial crimes, including ML and TF. The integrity of the EU member states is achieved by the fact that EU AML/CTF legislation is constituting a significant part of each country's legislative framework in form of directives, minimum requirements and other regulations.

The withdrawal of the United Kingdom from the EU is a phenomenon and a great example of how the legal setting of the whole region can be changed in a short time period. This case is worthy of more research, and in order to better understand the changes that happened to UK AML/CTF legislation after Brexit, and how it currently varies from the EU member states' legislation, in this thesis, the comparison of the UK national AML/CTF laws and Latvian national AML/CTF laws is carried out.

Methodology

This paper consists of five chapters. In order to identify differences between the national AML/CTF laws of the Republic of Latvia and the United Kingdom, author uses qualitative comparative interdisciplinary analysis.

In the first chapter of the thesis, author uses doctrinal research method in order to describe and determine distinctions between AML/CTF legal framework on international and European Union level.

In the second and third chapters, author uses doctrinal legal research method in order to conduct the overview of the AML/CTF legal framework of the Republic of Latvia and the United Kingdom. Additionally, author uses doctrinal and comparative analysis research methods in order to conduct interdisciplinary research by identifying the influence of Brexit on the AML/CTF system of the United Kingdom, as well as to compare the core differences in the UK and Latvia AML/CTF legal frameworks.

In the fourth and fifth chapters author is using doctrinal research method and comparative analysis research method in order to compare the concepts of Ultimate Beneficial Owner (hereinafter: UBO) and Politically Exposed Person (hereinafter: PEP) in the light of legal frameworks of the Republic of Latvia and the United Kingdom.

In order to compare the national AML/CTF laws of the UK and the Republic of Latvia, in this bachelor thesis, the author uses sources such as legal documents, law reports, legal research, legal acts and their amendments, case law, as well as international reports and secondary sources such as journal articles and online sources.

Research Questions

In order to structure the work, the author of the bachelor thesis is putting forward two questions, which should be answered in this thesis.

1. What are the core differences between the national AML/CTF legal frameworks of the Republic of Latvia and the United Kingdom?

2. How concepts of UBO and PEP vary under the national AML/CTF laws of the Republic of Latvia and the United Kingdom?

1. AML/CTF LEGAL FRAMEWORK INTERNATIONALLY AND IN THE EU.

1.1 International AML/CTF legal framework

Even though the term "money laundering" is about 100 years old,[1] it has taken the attention of international legislators not so long ago. The first international steps towards developing the international legal framework for fighting ML and TF crimes have been taken during the G-7 Summit that was held in Paris in 1989.[2] Back then, the G-7 heads of state and president of the European Commission recognized the threat posed to the banking system as well as to the financial institutions and convened the Task Force from the G-7 member states, the European Commission and eight other countries.[3] That is how the Financial Action Task Force (hereinafter: FATF) has been established. According to the FATF itself, it is the global ML and TF watchdog, which sets international standards that aim to prevent these illegal activities and the harm they cause to society.[4] Moreover, FATF is a policy-making body that works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.[5] In turn, the United States Financial Crimes Enforcement Center defines FATF as an inter-governmental policymaking body, whose purpose is to establish international standards, and to develop and promote policies, both at national and international levels, to combat ML and the financing of terrorism.[6]

Initially, FATF was supposed to counter only ML crimes, but in 2001 the FATF expanded its mandate to incorporate efforts to combat TF, in addition to ML.[7] Finally, in April 2012, FATF added efforts to counter the financing of the proliferation of weapons of mass destruction.[8] Since its establishment, FATF has issued 40 recommendations assisting the countries in fighting the ML and 9 special recommendations to fight the TF.[9]

As of 2022, there are 39 members of FATF, including the United Kingdom, as well as the European Commission,[10] which represents the interests of Europe as a whole.[11]

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[1] Inter-American Observatory on Drugs. Changing Paradigms on Money Laundering, available on: http://www.cicad.oas.org/oid/new/information/observer/Observer2_2003/MLParadigms.pdf. Accessed November 28, 2022.
[2] FATF. History of the FATF, available on: https://www.fatf-gafi.org/about/historyofthefatf/. Accessed November 28, 2022.
[3] *Ibid.*
[4] FATF. Who we are, available on: https://www.fatf-gafi.org/about/whoweare/. Accessed November 28, 2022.
[5] *Ibid.*
[6] Financial Crimes Enforcement Network. The Financial Action Task Force, available on: https://www.fincen.gov/resources/international/financial-action-task-force#:~:text=It%20was%20formed%20in%201989,recommendations%20to%20fight%20terrorist%20financing. Accessed December 1, 2022.
[7] FATF. What do we do, available on: https://www.fatf-gafi.org/about/whatwedo/. Accessed December 2, 2022.
[8] *Ibid.*
[9] FATF. Topic: FATF Recommendations, available on: https://www.fatf-gafi.org/publications/fatfrecommendations/?hf=10&b=0&s=desc(fatf_releasedate)#:~:text=The%20FATF%20Recommendations%20are%20the,use%20of%20their%20financial%20system. Accessed December 2, 2022.
[10] FATF. FATF Members and Observers, available on: https://www.fatf-gafi.org/about/membersandobservers/. Accessed December 2, 2022.
[11] FATF. European Commission, available on: https://www.fatf-gafi.org/pages/europeancommission.html. Accessed December 2, 2022.

1.2 EU AML/CTF legal framework.

In the European Union, the first AML directive has been published 2 years after the establishment of FATF, in 1991, being the "Directive on the prevention of the use of the financial system for the purpose of money laundering."[12] Further, in 1997, European Council established a Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (hereinafter: MONEYVAL), which is successfully functioning up to this day. MONEYVAL is a permanent monitoring mechanism of the Council of Europe, with 46 member states, reporting directly to its principal organ, the Committee of Ministers.[13] As to the functions, MONEYVAL assesses compliance with the principal international standards to counter ML and the TF, drafting recommendations to national authorities in respect of necessary improvements to their systems, as well as conducts thematic typologies research of ML and TF methods, trends and techniques.[14]

Since then, the European AML/CTF legal framework has undergone significant changes and improvements. The current EU AML/CTF system is multi-faceted, broad and sophisticated. Despite that being a complication at first glance, in reality it allows the EU AML/CTF system to function successfully. One of the factors which makes the EU AML/CTF legal framework unique is the cooperation between the many member states in fighting the ML and TF crimes.

In order to understand the problem and its possible solutions on the same level, countries have organized the Expert Group on Money Laundering and Terrorist Financing, which assists the commission in the preparation of AML/CTF legislative proposals, as well as provides its expertise to the Commission when preparing to implement measures.[15] Moreover, it is assisting the member states in coordination and exchange of views.[16] In turn, the European Supervisory Authorities on AML/CTF issues guidelines and opinions, is providing help for the national competent authorities with an understanding of the regulatory expectations.[17]

The pillars of the European Union's legislation to combat ML and TF are the Directives. For example, Directive (EU) 2019/1153 enhances the use of financial information by providing law-enforcement authorities access to information about the identity of bank-account holders contained in national centralized registries.[18] Moreover, Article 9 of the Directive (EU) 2015/849 mandates the Commission to identify high-risk third countries, which have strategic deficiencies in their AML/CTF regime, with the aim of protecting the integrity of the EU

[12] Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering. OJ L 166 , 28.06.1991 p. 0077 - 0083. Available on: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:31991L0308&from=FR. Accessed December 3, 2022.
[13] FATF. Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL), available on: https://www.fatf-gafi.org/pages/moneyval.html. Accessed December 3, 2022.
[14] *Ibid.*
[15] European Commission. Register of Commission Expert Groups and Other Similar Entities. Expert group on Money Laundering and Terrorist Financing (E02914), available on: https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&do=groupDetail.groupDetail&groupID=2914&Lang=EN. Accessed December 4, 2022.
[16] *Ibid.*
[17] European Commission. EU context of anti-money laundering and countering the financing of terrorism, available on: https://finance.ec.europa.eu/financial-crime/eu-context-anti-money-laundering-and-countering-financing-terrorism_en#eu-wide. Accessed December 4, 2022.
[18] *Ibid.*

financial system.[19] Further banks and other financial institutions - gatekeepers are required to apply extra control measures and checks in business relationships and transactions involving high-risk third countries.[20]

However, the most significant legal document in the EU AML/CTF framework is the 5th anti-money laundering Directive adopted on 19 June 2018. The 5th Directive introduced a significant improvement to better equip the EU to prevent the financial system from being used for ML and the TF.[21] Among other innovations, it introduced new requirements and innovations, such as beneficial owner registers, mitigation of anonymous parties in the payment chains, regulations concerning cryptocurrencies, as well as the new requirements concerning PEPs, high risk third countries and art dealers.[22]

It is also important to mention that all of the aforementioned regulations, including the 5th AML Directive have been applicable to the UIK and successfully integrated into the British AML/CTF legal system prior to Brexit.[23]

1.2.1 Changes to the UBO registers in the EU.

AML/CTF system of the European Union is very established and stable. It is one of the most comprehensive on the planet and tends to follow the best standards in order to ensure the financial stability and security of the citizens and businesses. One of the most essential aspects of it is the fact that it unites countries and allows them to cooperate in order to fight financial crime.

EU AML/CTF policy is relying on transparency, which allows AML/CTF law subjects to track the flow of money and ensure the detection and legality of the origin of the funds. In order to do so, AML/CTF law subjects gather information about the clients from various available sources, including national and international databases. One of the core elements for the AML/CTF law subjects is to identify, when conducting research of any legal entity - its UBO. According to FATF,

> Beneficial owner refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.[24]

Identification of the UBO of legal entities can be both a simple task that does not require much effort and research, and a rather complex analytical task, in case the company's UBO is exercising control over the entity through the sophisticated chain of ownership of the other legal entities, sometimes located in off-shore zones. In this case, databases may be useful for

[19] *Ibid.*
[20] *Ibid.*
[21] *Ibid.*
[22] Swift. Key takeaways from the 5th AML Directive, available on: https://www.swift.com/your-needs/financial-crime-cyber-security/anti-money-laundering-aml/5th-aml-directive-5amld. Accessed April 20, 2023.
[23] Electronic Identification. 5AMLD: A Unique Regulation for Europe's Digital Space, available on: https://www.electronicid.eu/en/blog/post/aml5-new-anti-money-laundering-directive/en. Accessed April 20, 2023.
[24] Financial Action Task Force Guidance. "Transparency and Beneficial Ownership". available on: http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf. Accessed 19 March 2023.

the identification of the beneficial owner. However, in order for these databases to provide such information for the users, it should be allowed by the law.

That is why, one of the key provisions presented in the Article 30, paragraphs 3 and 4 of the 5th AML directive is obliging EU member states to open central register storing information about the UBOs, which must be accessible to competent authorities and Financial Intelligence Units (hereinafter: FIU), obliged entities, as well as any member of the general public.[25] Moreover, EU member states have to "ensure that the information on the beneficial ownership is accessible in all cases".[26] This was marked as a huge breakthrough among anti-corruption activists in 2018, when the directive has been implemented.[27] In order to do so many international databases, such as such as Dow Jones, ORBIS, LexisNexis as well as numerous national databases in each particular country of the EU have been launched. Such a decision is allow to increase transparency and fast access to the crucial information for the AML/CTF law subjects. This, in turn, leads to the prevention of ML and TF by the means of identifying and preventing cooperation with fake or illicit legal entities. Moreover, public UBO registers are allowing to track the history of changes of the official representatives and UBOs, which, in turn is allowing to catch the criminals and track the criminal groups which also is leading towards the reduction of ML and TF crimes.

However, one of the recent court cases has stunned the financial crime prevention world in the European Union, since it has created a possibility for change in the EU transparency policies. The current ruling by the European Court of Justice (hereinafter: ECJ) has been widely criticized by the AML and anti-corruption community, as the "ECJ's gift to oligarchs under sanctions" and "opening the floodgates for dark money".[28]

ECJ in its judgement from 22 November 2022 stated that public access to the beneficial ownership registries across the EU is violating another important fundamental right - the right to privacy, as well as personal data protection under the EU Charter of Fundamental Rights.[29][30] Thus, it can be stated that the court considers personal freedom and privacy to be more important than the legitimate interest of society to fight ML and TF.

ECJ ruled that beneficial owners information should be available only to those persons and entities, which have a legitimate interest, thus, AML/CTF laws subjects will still be able to access the UBO registers.[31] Consequently, numerous businesses will have to prove their necessity to access the UBO registers which will lead to the new complications.

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[25] 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 (Text with EEA relevance) Text with EEA relevance, OJ L 141, 5.6.2015, p. 73–117. Available on: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02015L0849-20210630. Accessed May 4, 2023.

[26] *Ibid.*

[27] The World Bank. Who should have access to beneficial ownership registries? ECJ revokes public access in the EU but confirms access for journalists and civil society, available on: https://star.worldbank.org/blog/who-should-have-access-beneficial-ownership-registries-ecj-revokes-public-access-eu-confirms . Accessed March 19, 2022.

[28] *Ibid.*

[29] *Ibid.*

[30] Judgement of the Court (Grand Chamber) of 22 November 2022, *WM and Sovim SA v. Luxembourg Business Registers*.. C‑ 37/20 and C‑ 601/20, ECLI:EU:C:2022:912.

[31] The World Bank, *supra* note 27.

Despite the fact that this decision yet do not oblige the countries to shut down the UBO registers, some countries, such as Luxembourg, Austria, Germany, Netherlands and Ireland have made their registries unavailable to the general public, by putting those into the offline regime.[32]

[32] The World Bank, *supra* note 27.

2. COMPARISON OF THE AML/CTF LEGAL FRAMEWORK IN REPUBLIC OF LATVIA AND THE UNITED KINGDOM.

2.1 Overview of the AML/CTF legal framework in the Republic of Latvia

ML and TF present a significant challenge for the countries, with Latvia not being an exception. Right after gaining independence from the Soviet Union in 1991, Latvian legal system began its development from the scratch. Even though 30 years ago, the question of combatting ML and TF was not on the frontlines for the policymakers, Latvia used to undertake the first attempts at combatting it back in the 90s, with the first Latvian national AML/CTF law being adopted back in 2002.[33] It was an attempt to follow the international standards and establish AML/CTF principles. Later, Latvian national AML/CTF law has been amended several times to match always-changing EU and international regulatory frameworks.[34]

At the moment, the key legislation regarding AML/CTF in Latvia is the "Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing" (hereinafter: Latvian AML/CTF Law). It provides the comprehensive legal framework for the financial institutions and other subjects of this law to prevent the ML and TF. In order to do so, the law is listing strict requirements, which the subjects should follow, rules according to which the internal control systems must be built, reporting requirements and many other important aspects. This legislation is combining the Latvian national ideas regarding the prevention of ML and TF, as well as adapting the ideas from the EU and FATF regulations. Additionally, this law is supported by the Recommendations issued by the supervisory authority – Bank of Latvia. Those provide recommendations for the law subjects for the implementation of the legislation in practice, which in turn makes it easier for those to comply with the AML/CTF legislation.

Moreover, there are other laws, which are important components of the Latvian AML/CTF legal framework. Law on International Sanctions and National Sanctions of the Republic of Latvia (hereinafter: Sanction law) is providing rules for the enforcement and work with international and national sanctions, which are also linked to the AML. For example, Section 5 (1) of the Sanctions Law is providing the information on the freeze of assets due to the sanctions imposition.[35] Furthermore, Section 195 of the Criminal Law of the Republic of Latvia specifies punishment for those committing the ML crimes.[36]

One more factor which plays an important role in preventing ML and TF are the authorities responsible for the enforcement of AML/CTF legislation. In section 45 of Latvian AML/CTF Law many authorities are listed, which are supervising and controlling the

[33] RegtechTimes. Anti-money Laundering Regulations in Latvia: A Comprehensive Overview, available on: https://regtechtimes.com/aml-regulations-latvia-a-comprehensive-overview/ . Accessed March 20, 2023.
[34] *Ibid.*
[35] Starptautisko un Latvijas Republikas nacionālo sankciju likums (Law on International Sanctions and National Sanctions of the Republic of Latvia) (04 February 2016). Available on: https://likumi.lv/ta/en/en/id/280278-law-on-international-sanctions-and-national-sanctions-of-the-republic-of-latvia. Accessed April 20, 2023.
[36] Krimināllikums (Criminal Law) (17 June 1998). Available on: https://likumi.lv/ta/en/en/id/88966-criminal-law. Accessed April 20, 2023.

compliance of the law subjects with the requirements set by the law.[37] Therefore, The Bank of Latvia is supervising the financial institutions, and other law subjects, such as the sworn notaries, advocates, as well as lotteries and gambling organizers are supervised by the respective councils and inspections.[38] Finally, in the section 50, paragraph 2 of Latvian AML/CTF Law it is stated that FIU is the managing authority, which has a purpose of preventing ML and TF in Latvia.[39]

Thus, it can be stated that at the moment Latvia has comprehensive and advanced AML/CTF legal framework, however, it was not always the case. In 2018 Latvian AML/CTF legislators faced a significant challenge. On the 13th of February 2018, the Financial Crimes Enforcement Network (hereinafter: FinCEN) of the United States Treasury Department stated that it is:

> [I]ssuing a Section 311 finding and notice of proposed rulemaking identifying Latvia-based ABLV Bank as a foreign bank of primary money laundering concern for, among other things, having orchestrated money laundering schemes and obstructed regulatory enforcement of Latvia AML/CFT rules.[40]

FinCEN stated that ABLV bank (one of the major banks in the country) has institutionalized ML as a pillar of the bank's business practices.[41] According to the accusations, ABLV bank has been facilitating transactions for PEPs, funneled billions of dollars in corruption, allowed shell companies to provide their services, as well as assisted North Korea in financing its ballistic missiles.[42] Finally, FinCEN accused ABLV bank of large-scale illicit activity connected to Azerbaijan, Russia, and Ukraine.[43] In 11 days ABLV bank made an announcement of its voluntary liquidation.[44]

This case led to increased international, and especially western, attention towards the Latvian AML/CTF framework, since the major bank collapse due to ML reasons, has put Latvia in a bad light. That was the reason which prompted the Latvian government to strengthen the regulatory framework and improve its status in the world financial arena. It resulted in the adoption of the new national AML/CTF law in 2021, which implemented many aspects of the EU 5th AML Directive.[45] Those improvements included customer due diligence processes and the increased influence of FIUs on the financial sector.

Taking into consideration the abovementioned, it can be stated that even though during the last 3 decades Latvian regulators faced several significant challenges and problems, those have been successfully addressed and resolved. Latvia has made a significant progress in the field of AML policy improvement.

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[37] Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma un proliferācijas finansēšanas novēršanas likums (Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing) (13 August 2008). Available on: https://likumi.lv/ta/en/en/id/178987. Accessed March 20, 2023.
[38] *Ibid.*
[39] *Ibid.*
[40] U.S. Department of The Treasury, U.S. Department of the Treasury Under Secretary Sigal Mandelker Speech before the Securities Industry and Financial Markets Association Anti-Money Laundering & Financial Crimes Conference, available on: https://home.treasury.gov/news/press-release/sm0286. Accessed March 20, 2023.
[41] *Ibid.*
[42] *Ibid.*
[43] *Ibid.*
[44] Order of the General Court (Eight Chamber) of 6 May 2019, *ABLV Bank AS v European Central Bank*, T-281/18, ECLI:EU:T:2019:296.
[45] NILLTPFN, *supra* note 37.

Finally, Latvian authorities and regulators have ambitious goals for the development of the Latvian regulatory framework in the future. FIU website presents a strategy, which describes the goals for the Latvian AML/CTF regulators to achieve in the period from 2023 to 2027.[46] Those include: promotion of the efficient and effective use of financial intelligence to combat AML/CTF by regularly assessing domestic and foreign risks, prioritizing them and managing effective preventing and combating AML/CTF.[47] Additionally, to lead an innovative and proactive inter-institutional and private sector collaboration at national and at international level to more effectively detect, prevent and combat financial crime, as well as raising awareness of the AML/CTF and the importance of combating financial crime.[48]

Moreover, the Latvian FIU is aimed to ensure that Latvia maintains and improves its high level of compliance with international AML/CTF standards, strengthening the country's reputation and international competitiveness.[49]

Finally, Latvian FIU wants to ensure that it has is predictable workflows and high internal efficiency of processes, as well as to establish modern and safe workplace that values and respects the environment in its daily work, as well as the social and governance (ESG) issues.[50]

With such an approach towards the fighting the ML and TF crimes, FIU is ensuring constant development of the financial crime prevention unit and with the time will make it more comprehensive and sophisticated which will allow to prevent the financial crimes with higher effectivity.

[46] Finanšu Izlūkošanas Dienests (Financial Intelligence Unit of Latvia). About us, available on: https://fid.gov.lv/lv/par-mums. Accessed March 26, 2023.
[47] *Ibid.*
[48] *Ibid.*
[49] *Ibid.*
[50] *Ibid.*

2.2 Overview of the AML/CTF legal framework in the United Kingdom

Great Britain has an important role in the financial world, since it has a significant influence on the economies of the whole world. London is the financial hub of European region, and one of the most important financial centers on the planet. Thus, any change of the UK financial regulations could lead to the possible consequences for the international financial sector, including the AML/CTF legislation, which is taking a crucial role in the world of financial regulations, since it regulates the creation of financial crimes prevention mechanisms.

Unfortunately, in the recent decades several international financial scandals, such as 2008 financial crises, Libor scandal and Panama papers leaks originated in the UK. Those pointed out the shortcomings of the British financial regulatory framework, including the problems of AML/CTF legislation.

However, in recent years, European Union has significantly strengthened the AML/CTF laws by enforcing directives and strict rules for the countries to follow in order to ensure a reduction in the number of financial crimes. UK AML/CTF legal framework has been severely influenced by the EU legislative system, rules from which have been transposed to the UK legal system for years. While the UK has been a part of the EU, it was obliged to follow the European regulations, which mostly have been directed towards creating a safe regulatory and financial environment. That is why British AML/CTF legislation prior to Brexit, has been similar to the legislations existing in other EU member states, including Latvia.

However, now the situation is in the process of change, since due to the Brexit, UK could chose its own way of shaping legislation, including the AML/CTF rules. In order to better understand current state of the UK AML/CTF legislation, the analyses of the UK legal framework in regard to the AML/CTF is carried out.

The main legislation of the UK regarding the ML and TF is "The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017" (hereinafter: UK AML/CTF Law). This regulation provide detailed rules for the subjects of the law and lists the requirements, which those must strictly follow. For example, it lists the requirements for the risk assessment, customer due diligence, record-keeping, duties of the law subjects and many other important aspects.[51] All of these aspects provided in the UK AML/CTF Law are similar to the ones provided in the EU AML/CTF directives, since all of the European directives, starting from 1993 until 2019, have been implemented in the UK through the adoption of local laws, which included the crucial aspects of the European regulations.[52] According to the Mohammed K. Alshaleel article, mainly those "[d]irectives were transposed to the UK through successive money laundering regulations (1993, 2003, 2007, 2017 and 2020) and POCA 2002."[53]

Moreover, UK AML/CTF legal framework has numerous other laws which support the main UK AML/CTF Law. For example, Part 7 of the British Proceeds of Crime Act 2002

[51] United Kingdom. The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017. Available on: https://www.legislation.gov.uk/uksi/2017/692/contents/made. Accessed April 20, 2023.
[52] Mohammed K. Alshaleel, "The UK and the EU's Fifth Anti-Money Laundering Directive: Exceeding Expectations," *European Company Law Journal* 17 (2020).
[53] *Ibid*., p. 126.

(hereinafter: POCA), incriminates the ML activates, as well as lists the penalties for such activities.[54] Terrorism Act 2000, in turn, provides the definition of terrorism, its incrimination and general CTF legal framework.[55] These AML/CTF laws are supported by the Joint Money Laundering Steering Group (hereinafter: JMLSG), which is the private sector body made up of the leading UK Trade Associations in the financial services industry.[56] JMLSG issued the guidance, which assists the UK AML/CTF Law subjects by providing detailed instructions the application of the AML/CTF law in practice.[57]

Furthermore, UK legislation possesses numerous laws outlining the rules for countering ML and TF in very specific cases. For example, law under the name "Criminal Finances Act 2017", provides the rules for fighting the ML in regards of the corporate ML and TF cases. It provides rules on the freeze of assets, forfeiture of funds and other related offences and prosecution of those.[58] This legal act is complemented by the Serious Organised Crime and Police Act 2005, which lists the rules for fighting and prosecution of the ML and TF crimes conducted in criminal groups.[59]

Moreover, Regulation 7 of the UK AML/CTF Law presents authorities responsible for the enforcement of AML/CTF legislation.[60] According to it, Financial Conduct Authority (hereinafter: FCA) is responsible for the supervision of credit and financial institutions.[61] In turn, other law subjects, such as gambling companies, auditors and external accountants are supervised by the UK Commissioners.[62] Finally, part 7 of POCA states that UK FIU is responsible for receiving the reports from law subjects about the possible ML.[63] Finally, FIU in the UK is not a detached entity like in many European states, but part of the National Crime Agency (hereinafter: NCA), which makes it easier for the FIU to cooperate with other British crime prevention authorities.[64]

Despite the fact of Brexit, UK AML/CTF legal framework did not change much during the last 3 years, since the process of changing the laws is very lengthy and complicated. However, it can be assumed that with the time, UK will find its own way of regulating financial crimes, and ML/TF in particular. In order to understand the possible upcoming changes, further, the analyses of the current and ongoing changes to the UK AML/CTF system is conducted, as well as its connection with politics is analyzed.

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[54] United Kingdom. Proceeds of Crime Act 2002. Available on: https://www.legislation.gov.uk/ukpga/2002/29/contents. Accessed April 20, 2023.
[55] United Kingdom. Terrorism Act 2000. Available on: https://www.legislation.gov.uk/ukpga/2000/11/contents. Accessed April 20, 2023.
[56] JMLSG. Current Guidance, available on: https://www.jmlsg.org.uk/guidance/current-guidance/. Accessed April 24, 2023.
[57] *Ibid.*
[58] United Kingdom. Criminal Finances Act 2017. Available on: https://www.legislation.gov.uk/ukpga/2017/22/contents/enacted. Accessed April 20, 2023.
[59] United Kingdom. Serious Organised Crime and Police Act 2005. Available on: https://www.legislation.gov.uk/ukpga/2005/15/contents. Accessed April 20, 2023.
[60] Information on the Payer Regulations 2017, supra note 51.
[61] *Ibid.*
[62] *Ibid.*
[63] POCA, *supra* note 54.
[64] Government of the United Kingdom. Fact sheet: Overview of the Proceeds of Crime Act 2002, available on: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/317904/Fact_Sheet_-_Overview_of_POCA_2_.pdf. Accessed May 7, 2023.

2.2.1 Influence of Brexit on the UK AML/CTF system

Brexit has changed numerous processes in the UK, from sports and freedom of travel to political and regulatory changes, have become applicable in the UK from the moment it left the EU. AML/CTF laws are not an exception, since those have been forming an essential part of the financial regulatory framework of the EU, as well as the UK.

Even though the main legislative acts governing the ML and TF have not change yet, Brexit and its outcomes have already largely influenced the AML/CTF system of the UK and this trend will probably continue, and with time, the approach of the UK policymakers to the AML/CTF will most likely going to differ even more from the EU legislation. There are several reasons for that:

First of all, the UK does not, anymore, have an access to the EU databases which are essential for the AML/CTF regulatory system. These are databases, including, but not limited to the Europol and Schengen Information System, which provides real-time data on persons and objects of interest including wanted persons and missing persons.[65] This will make the tasks of the UK AML/CTF Law subjects involved in the analyses of financial crimes, far more challenging. Additionally, this is making cooperation between the EU and the UK in questions of the financial crimes investigation, far more difficult.

Another quite obvious change is - the difference in AML/CTF regulations. Even though the UK has transposed the 5th EU AML Directive into UK regulatory system, according to The Law Society of the UK, British policymakers decided to opt out of transposing the 6th EU AML Directive, since according to them, most of the requirements are already covered by the UK laws.[66] Only time will demonstrate whether or not this is true. Nevertheless, one thing is clear - UK regulators are choosing their own path in fighting financial crimes in general and ML and TF in particular.[67]

Due to the fact of separation from the EU AML/CTF legal framework, UK policymakers will have no other choice, but to cooperate with the international bodies in regard to the AML/CTF. The main regulatory organ with which the UK will cooperate is the FATF.[68] Thus, the UK could build its further legislation mainly by taking into account FATF and other international standards. This could lead to changes in the UK AML/CTF system and compliance in general, and will allow it to become more diverse and adapted to the international environment.

Moreover, due to the fact of separation from EU, the UK policymakers could begin deepening its relationships to fight ML and TF crimes, with other countries outside the EU. Possible ways of development could include the cooperation with Pacific and Asian regions, as well as improving and deepening current relationships with the USA in order to set and develop AML/CTF system together with these countries.

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[65] European Papers. The Changing Landscape of UK-EU Policing and Justice Cooperation, available on: https://www.europeanpapers.eu/en/europeanforum/changing-landscape-of-uk-eu-policing-and-justice-cooperation. Accessed February 23, 2022.

[66] The Law Society. Anti-money laundering after Brexit, available on: https://www.lawsociety.org.uk/topics/brexit/anti-money-laundering-after-brexit. Accessed February 23, 2022.

[67] *Ibid.*

[68] *Ibid.*

It can be stated that significant changes are expected in the AML/CTF system of the UK. Aforementioned differences between the approaches of fighting ML and TF in the EU and UK have already occurred and it can be assumed that the number of divergences will increase with the time. Finally, it is worth to mention once again that over the last decades, numerous financial scandals occurred in the European region and Britain used to take part in the most significant of those scandals. This leads us to the next chapter in which the analysis of the influence of British political culture on the UK AML/CTF system as a whole is conducted.

2.2.2 Analyses of British political culture and its influence on the financial crimes in the United Kingdom

Even though initially, it could seem that AML/CTF laws are not influenced by politics directly, in reality, these laws have a very close link with it, especially in the UK. AML/CTF laws serve as a barrier for hiding of illicit funds, briberies, corruption, ML and in general, helps exposing criminal activities in the financial field, which is not always a good thing for political elites.

There are several ways by which UK politicians are participating in the financial sector and as a consequence, have influence on UK AML/CTF laws. One of them is a revolving door phenomenon described during the 2018 OECD Global Anti-Corruption & Bribery forum as, "[…] the flow of personnel from government offices to financial entities and vice versa."[69] This allows politicians to influence the financial regulations and policies so they, as well as people and companies related to them, could benefit from their decisions. There are many examples of revolving doors; however, one of the most influential is the example of Mark Carney. He served as the governor of the Bank of England, as well as worked for major banks such as Goldman Sachs for 13 years.[70]

Moreover, some British politicians are directly involved in the financial sector, by being part of businesses, such as hedge funds and investment firms. For example, the former Chancellor of the Exchequer, MP and an influential figure in the David Cameron government - George Osborne. He left politics and has become an adviser to Black Rock, the biggest world investment company, as well as used to be an editor-in-chief of the Evening Standard and the chair of the Northern Powerhouse Partnership.[71] His most current job was at the bank of Robey Warshaw.[72] It is needless to say that persons who used to have an influence in politics could still use it to impact the current regulations through their ties which occurred after years of serving in politics.

Another way of influencing the political decisions used in the UK is lobbying, as well as campaign contributions. In general, lobbying plays a significant role in UK politics, since it allows lobbyists to influence political decisions and policies.[73] Moreover, UK political parties rely heavily on donations from companies and individuals. For example, in the period of the

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[69] OECD. 2018 OECD Global Anti-Corruption & Integrity Forum, available on: https://www.oecd.org/corruption/integrity-forum/academic-papers/Wirsching.pdf. Accessed February 25, 2022.
[70] Aspen Institute. Beyond the Revolving Door, available on: https://www.aspeninstitute.org/blog-posts/beyond-revolving-door/. Accessed February 24, 2022.
71 The Guardian. Former chancellor George Osborne to become full-time banker, available on: https://www.theguardian.com/politics/2021/feb/01/former-chancellor-george-osborne-to-become-full-time-banker. Accessed February 24, 2022.
[72] *Ibid.*
[73] BBC. Lobbying, available on: http://news.bbc.co.uk/2/hi/uk_news/politics/82529.stm. Accessed February 24, 2022.

last 3 years, the Conservatives political party received 48.7 million GBP and Labour party received 45.47 million GBP in donations.[74] Since political parties are relying on donations, they will tend to follow the instructions of those providing them with the funds, so they would not lose the financial support in the future. This leads to the influence of lobbyists in many fields, including the financial one. Even though lobbying and ML are not interconnected directly, decisions made under the pressure of lobbyists could lead to the weak AML/CTF regulations. The recent Greensill lobbying scandal refers to the controversy, which took place in 2021 and is concerning Greensill Capital, an Australian company providing financial services, as well as the government of the UK.[75] According to Guardian, David Cameron, after leaving the office, has become an advisor to Greensill Capital, and was lobbying politicians on behalf of the Greensill Capital, asking to acquire the largest possible allocation of government-backed loans under the Covid corporate financing facility.[76] Additionally, he took Greensill to a "private drink" with Matt Hancock, the health secretary.[77] Later, an investigation was launched into whether David Cameron breached lobbying laws through his work on behalf of Greensill Capital.[78] This provides an example, of how former politicians could use their remaining ties in order to influence the decisions of the current people in power.

Moreover, the politics of every country are tightly linked to the culture of each particular state. At the same time, culture is an aspect, which differs not only on the continental or regional level but also on the scale of each particular country. UK is not an exception, since the politics of Britain are inextricably linked to the history and culture of the country. It can be stated that for the UK, the aspect of culture is especially important since the country has a rich and long history of monarchy, colonialism, and world domination in multiple spheres of interest, which led Britain to become a superpower. Such as significant progress require very certain qualities of the political elites.

The commonality of these qualities can be called - political culture, and in this precise case - British political culture. According to the book "The Idea of Greater Britain: Empire and the Future of World Order, 1860-1900", written by Duncan Bell, British political culture is largely driven by the sense of cultural superiority, belief in the fact that Britain has a paramount role in the world.[79] This, in turn, leads to the feeling of national pride and egocentric economic interests, which were often achieved with the help of the colony countries.[80] Thus, it can be stated that the British elites were possessing interests and qualities which lean towards the individual interests of the British nation, not towards the general well-being of the whole world.

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[74] Statista. Value of donations donations accepted by political parties in the United Kingdom from 1st quarter 2020 to 3rd quarter 2022, by party, available on: https://www.statista.com/statistics/376936/donations-to-political-parties-uk-general-election-by-party/. Accessed February 24, 2022.

[75] The Guardian. What is the Greensill lobbying scandal and who is involved?, available on: https://www.theguardian.com/business/2021/apr/14/what-is-greensill-lobbying-scandal-who-involved. Accessed February 24, 2022.

[76] *Ibid.*

[77] *Ibid.*

[78] The Guardian. David Cameron faces investigation into possible lobbying law breach, available on: https://www.theguardian.com/politics/2021/mar/25/david-cameron-faces-investigation-into-possible-lobbying-law-breach. Accessed February 24, 2022.

[79] Duncan Bell, *The Idea of Greater Britain: Empire and the Future of World Order, 1860-1900* (Princeton: Princeton University Press, 2007), p. 264.

[80] *Ibid.*

Bell's book has been written about the 19th and 20th centuries. However, the aforementioned qualities of the British political culture, are shaping British political and economic interests up to this day, and the area of prevention of the financial crime - is not an exception. The UK financial scandals of the past two decades are serving as a proof of this.

The London Interbank Offered Rate (hereinafter: Libor) scandal occurred in 2012 and represented the illegal actions made by several banks, including Barclays, UBS and Royal Bank of Scotland to manipulate Libor interest rates for profit starting.[81] This scandal occurred, due to the deregulation of the sector, which led to the failure of the central banks to address this problem.[82] After the scandal became public, UK authorities started working on the regulations strengthening the financial sector.[83] This points out the greedy profit-oriented political culture of the UK, which is not adding to the financial stability of the financial sector as a whole.

Moreover, the historical peculiarities of Great Britain also appeared in the recent Panama papers scandal. Due to the historical past, Britain has been influencing the economic flows across the world through the financial means. The Panama papers leak demonstrated how English businessmen and the elites used former British colonies to store their money in off-shore zones, as well as to evade taxes.[84] This reveals how Britain uses its colonial past in making it easier for wealthy individuals and the elite to take advantage and hide their wealth in the financial heavens.

In general, it can be stated that the history of Great Britain is still influencing current decision-making processes, as well as the current political culture in the UK. Possession of the qualities such as individualism and profit-oriented tendencies can be seen on the political arena. This, unfortunately, leads to the fact that decisions are made to maximize the gains for wealthy minority or political elites, not to improve the general financial safety of the society. That is a very controversial fact since on the one hand, it can be considered to be selfish, but on the other, that is something which allowed Britain to develop its economy and become a superpower.

[81] Council on Foreign Relations. Understanding the Libor Scandal, available on: https://www.cfr.org/backgrounder/understanding-libor-scandal. Accessed February 24, 2022.
[82] *Ibid.*
[83] *Ibid.*
[84] Mashable. Britain and the Panama Papers: What you need to know, available on: https://mashable.com/article/panama-papers-british-politicians. Accessed February 24, 2022.

2.3 Comparison of the AML/CTF legal framework of Republic of Latvia and the United Kingdom

Based on the abovementioned research and findings, it can be stated that AML/CTF legal frameworks of both countries, despite having different legal systems – common and civil law layouts, are fairly similar. Reason of the similarities of the legal frameworks is the fact that EU AML/CTF directives severely influenced both legal systems. Even though after February 1, 2020, UK has left the EU, European directives have been transposed to the UK AML regulation for the last 17 years and left serious legal footprint in the British AML/CTF legislation making it similar to the legal framework of any other country of the EU – including Latvia.

Both nations have the main AML/CTF legal provision, which provides the subjects of the laws with comprehensive legal framework which lists the rules for the prevention of ML and TF. Additionally, both countries have laws which supplement the main provisions, such as sanctions laws listing requirements for the freeze of assets and criminal laws criminalizing the ML and TF. Furthermore, in both countries there are assisting bodies such as JMLSG in the UK and Bank of Latvia in Latvia, providing recommendations for the practical application of the AML/CTF laws and describing possible ambiguities. Thus, it can be stated that as of now, structures and main motives of the AML/CTF legal frameworks in Latvia and the UK are very similar, owing to the EU AML/CTF directives that have been severely influencing both legal systems.

However, there are some differences in the legal frameworks of both countries. The core difference discovered during the study is that in Latvian, rules regarding the AML/CTF are mostly contained in the Latvian AML/CTF Law, but in the UK, besides the main – UK AML/CTF Law, there are many other complementary laws criminalizing and describing the prevention of the ML and TF in the specific circumstances, such as separate laws describing the prosecution of those crimes being conducted in criminal groups and the prevention of corporate ML and TF cases. Moreover, the structure of FIUs also differs in these two countries. In Latvia FIU is an independent managing authority preventing ML and TF. In the UK, FIU also has a goal of ML/TF prevention, but it is a part of NCA, which makes it easier for the FIU to cooperate with other British crime prevention authorities.

As to the influence of Brexit on the UK AML/CTF legal framework , it can be stated that Brexit will be playing a significant role in changing the AML/CTF system of the UK in the future. Irreversible changes to the British AML/CTF system are already starting to take place. For example, in accordance with The Law Society of the UK, British legislators decided to opt out from the 6th EU AML Directive.[85]

While the UK used to be a part of the EU, it had to follow the rules set by the European policymakers, and those rules have been mostly aimed towards creating a safe financial environment, not the fast development and profitability of businesses. It is still not know whether the new AML/CTF system of the UK will be faced towards international development or will partly try to comply with EU regulations to preserve good business relationships with existing partners. However, based on the research of the British political culture conducted above, it can be assumed that Britain will weaken it's AML/CTF regulatory framework in order

[85] The Law Society, *supra* note 66.

to cooperate with sanctioned or high-risk persons and businesses for the monetary profit and will continue to be the “butler to the world”.

3. COMPARISON OF THE UBO CONCEPTS UNDER NATIONAL LAWS OF THE REPUBLIC OF LATVIA AND THE UNITED KINGDOM

Problems of ML and TF are progressing and becoming a serious concern for governments. ML is possessing a threat to each country's economy, government, and social well-being.[86] ML is not only bringing economic challenges such as undermining the integrity of financial markets, leading to the loss of control of economic policy, as well as possessing social risks, such as allowing drug traffickers and other criminals to expand their operations by transferring economic power from the market, government, and citizens to criminals.[87] Moreover, according to the US Department of Justice, in extreme cases, ML and TF can lead to a complete takeover of a legitimate government![88]

ML is taking a significant percentage of the world economy. Even though the nature of ML is clandestine and it is difficult to estimate the real total amount of money that goes through the laundering cycle [89], according to the United Nations:

> The estimated amount of money laundered globally in one year is 2 - 5% of global GDP, or $800 billion - $2 trillion in current US dollars.[90]

That is a very significant number, which allows criminals to transfer their illicit funds on an international scale creating networks allowing them to expand their international influence.

That is why governments are concerned about such activities and are taking steps in order to prevent those. One of the ways to prevent the ML and TF used by the lawmakers of the most developed countries is to identify common typologies which are used for the ML, and then to establish the concepts which would allow to counter ML and TF.

Among many such typologies, there are two, which are crucial, since those allow policymakers and authorities to detect and possibly prevent ML and TF. Those are the concepts of the UBO, as well as the PEP. That is why, further, a comparison of the concepts of PEP and UBO under the national laws of the Republic of Latvia and the United Kingdom is conducted.

3.1 Definition of the UBO under national laws of the Republic of Latvian and the United Kingdom

3.1.1 Definition of UBO under Latvian national law

The main regulation regarding the AML and CTF in the Republic of Latvia is the "Law on the Prevention of Money Laundering and Terrorism and Proliferation Financing". It is providing instruments, allowing the financial system of Latvia to identify and prevent the ML and TF within the country and on an international scale. The law establishes the requirements for

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[86] U.S. Department of Justice Office of Justice Programs. Consequences of Money Laundering and Financial Crime, available on: https://www.ojp.gov/ncjrs/virtual-library/abstracts/consequences-money-laundering-and-financial-crime#:~:text=The%20social%20costs%20of%20money,complete%20takeover%20of%20legitimate%20government. Accessed April 3, 2023.
[87] *Ibid.*
[88] *Ibid.*
[89] United Nations. Office on Drugs and Crime. Money laundering, available on: https://www.unodc.org/unodc/en/money-laundering/overview.html. Accessed April 3, 2023.
[90] *Ibid.*

financial institutions to follow and lists the penalties applied for non-compliance with the law. Additionally, the law is also establishing the definitions for the concepts, UBO being among those. According to the Point 5 of Section 1 of Latvian AML/CTF Law, the beneficial owner is:

> the natural person who is the owner of the customer which is a legal person or legal arrangement or who controls the customer, or on whose behalf, for whose benefit or in whose interests a business relationship is being established or an individual transaction is being executed, and it is at least:
>
> a) as regards legal persons - a natural person who owns, in the form of direct or indirect shareholding, more than 25 per cent of the capital shares or voting stock of the legal person or who directly or indirectly controls it;
>
> b) as regards legal arrangements - a natural person who owns or in whose interests a legal arrangement has been established or operates, or who directly or indirectly exercises control over it, including who is the settlor, the trustee or the protector (manager) of such legal arrangement;[91]

Latvian AML/CTF Law is defining UBO in great detail. The emphasis is made on the control function which UBO is exercising and the power which it provides to this person. Latvian AML/CTF Law is also providing a detailed description of the requirement which should be observed for the person to be considered UBO. Moreover, it is providing the details on the arrangements in which a person must hold control in order to be considered a UBO.

Moreover, the "Recommendations for the establishment of an internal control framework and customer due diligence for the prevention of money laundering and the financing of terrorism and proliferation and sanctions risk management" published by the Bank of Latvia (hereinafter: Bank of Latvia Recommendations) are pointing out the fact that:

> The UBO is always the **natural person** who owns or for whose benefit the legal person in question is formed or operates, or who exercises control, directly or indirectly over the legal person.[92]

Thus, according to the definition, under the Latvian AML/CTF Law, only the natural person could be considered a UBO. Consequently, it is important to identify this person even in cases he or she is benefitting indirectly through other companies. Moreover, Bank of Latvia Recommendations provides an important addition stating that:

> Essential feature of the definition of UBO is that it applies to actual control - it can go beyond legal ownership and control, depending on the factual situation.[93]

This provides Latvian AML/CTF law subjects with more flexibility when trying to identify UBO of the entity, which does not have a clear ownership structure, or in the cases when the owner of the company is legal entity, such as the government.

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[91] NILLTPFN, *supra* note 37.

[92] Ieteikumi noziedzīgi iegūtu līdzekļu legalizācijas un terorisma un proliferācijas finansēšanas novēršanas un sankciju riska pārvaldīšanas iekšējās kontroles sistēmas izveidei un klientu izpētei (Recommendations for the establishment of an internal control framework and customer due diligence for the prevention of money laundering and the financing of terrorism and proliferation and sanctions risk management) (21 December 2021). Available on: https://likumi.lv/ta/id/328819-ieteikumi-noziedzigi-iegutu-lidzeklu-legalizacijas-un-terorisma-un-proliferacijas-finansesanas-noversanas-un-sankciju-riska-parvaldisanas-ieksejas-kontroles-sistemas-izveidei-un-klientu-izpetei . Accessed April 4, 2023.

[93] *Ibid.*

3.1.2 Definition of UBO under UK national law

In the UK, UBO is defined under "The Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017" Part 1, Regulations 5 and 6. In the 5th regulation, the UBO definition in relation to body corporate and partnership are provided. According to the 5th regulation,

> "beneficial owner", in relation to a body corporate which is not a company whose securities are listed on a regulated market, means —
>
> (a) any individual who exercises ultimate control over the management of the body corporate;
>
> (b) any individual who ultimately owns or controls (in each case whether directly or indirectly), including through bearer share holdings or by other means, more than 25% of the shares or voting rights in the body corporate; or
>
> (c) an individual who controls the body corporate.[94]

Main idea which is tracked here is that UBO is an individual – consequently – a natural person. On the one hand, definition is providing strict requirements for a person to be considered a UBO, such as control over 25% of the voting shares. But on the other hand, point (c) of the definition provides a very broad requirement for the person to be considered a UBO. Even though mostly the control function is exercised through the amount of owned equity in the company by each particular individual, in some cases this way of identification of the UBO could not work, since the control could be exercised through the chain of offshores or through the government owned institution.

Additionally, in the 5th regulation of UK AML/CTF Law, UBO definition in relation to a partnership, other than a limited liability partnership, is provided. According to it, such a UBO is a person who:

> any individual who:
>
> (a) ultimately is entitled to or controls (in each case whether directly or indirectly) more than 25% share of the capital or profits of the partnership or more than 25% of the voting rights in the partnership;
>
> (b) satisfies one or more the conditions set out in Part 1 of Schedule 1 to the Scottish Partnerships (Register of People with Significant Control) Regulations 2017 (references to people with significant control over an eligible Scottish partnership) F2; or
>
> (c) otherwise exercises ultimate control over the management of the partnership.[95]

This definition is similar to the one of a body corporate, since the emphasis on an individual owning the equity is being made, as well as the broad definition of the control or management over the partnership in the point (c) is also present, which could provide a certain degree of openness for the AML professionals identifying the UBO of a British partnership.

Moreover, in the 6th regulation of the UK AML/CTF Law, detailed UBO definitions for other legal forms are provided. Those include UBOs in relation to trusts, foundations or other legal arrangements similar to a trust, estate of a deceased person in the course of

[94] Information on the Payer Regulations 2017, *supra* note 51.
[95] *Ibid.*

administration, legal entity or legal arrangement which does not fall within the regulation 5.[96] All of these definitions are lengthy and very detailed, providing specific information for each type of legal arrangement, as well as referring to the other UK national laws. However, in each of them the emphasis is made on the fact that only an individual can be considered a UBO, as well as the control function which an individual must posses.[97]

Finally, under regulation 6 of the UK AML/CTF Law, the UBO definition for any other cases not included in the UK AML/CTF Law is provided:

> [UBO] means the individual who ultimately owns or controls the entity or arrangement or on whose behalf a transaction is being conducted.[98]

Thus, in case the UK AML/CTF Law is not providing a definition for the UBO of the specific legal arrangement, UK AML/CTF Law subjects could use this broad definition in order to decide whether or not the specific person controls the entity.

3.1.3 Comparison of UBO definition under Latvian and UK national laws

Taking into consideration all of the abovementioned, it can be stated that policymakers of both countries provide a comprehensive definitions of the UBOs. In the legislations of both countries an emphasis is made on the control functions of the UBO, as well as the importance of a person owning 25% of capital shares to be consider a UBO. Moreover, in Latvian and the UK legislations it is clearly stated that mostly UBO is a natural person, or in other words – an individual. However, both legislations provide the rules for the exceptional situations, when the business could be owned by another company, which is hiding behind the complex ownership structures or is simply owned by the governmental institution. However, although legislations of both countries possess similar definition, there still are some differences between them.

Even though Latvian legislators provided a definition, which is detailed enough, it is common to all kinds of legal entities. This sometimes could lead to difficulties in the identification of the UBOs, since those could wear different hats depending on the type of legal entity. For example, it is sometimes very hard to distinguish between the legal representative and the real beneficial owner of the trust fund. This, in turn, could lead to the misidentification of the UBO and consequently to possible ML and TF.

British legislators, in turn, addressed this problem by providing numerous definitions of UBOs for each of the most common types of legal entities, such as to trusts, foundations, as well as other legal arrangements. Providing an individual definition for each particular type of legal entity increases the likelihood of identifying the actual UBO by the law subjects. Moreover, UK AML/CTF Law provides a definition of the UBO for the cases not described in the law, which allows the law subjects to independently identify the UBO basing findings on the broad definition provided by the legislators.

Thus, it can be concluded that both nations have definitions of the UBOs containing the similar criteria for the UBO definitions. However, when talking about providing UBO

[96] *Ibid.*
[97] *Ibid.*
[98] *Ibid.*

definitions for each legal entity's type - UK legislators chose a more detailed approach, by providing numerous UBOs definitions for many particular legal entities and situations.

3.2 Identification of the UBO under national laws of the Republic of Latvian and the United Kingdom

3.2.1 Identification of the UBO under Latvian national law

One of the most important aspects of mitigating risks associated with the UBOs is to effectively identify the UBOs of each particular entity. Sometimes it could be a hard task considering the fact that UBOs could be hiding behind complex and intricate structures of companies, some of which may be offshore or trust funds, making it more difficult to identify the true beneficial owner.

That is why, the Latvian AML/CTF Law outlines the UBO identification process that businesses should follow in order to effectively identify the true owners of the legal entities. The main reason why UBO identification is so important is due to its control function of UBO . That is why, according to the Bank of Latvia Recommendations,

> The purpose of the UBO disclosure is to identify the natural person who beneficially owns or has the real power to control the legal person, whether or not that person is the owner of the legal person or holds an official position in the legal person.[99]

In addition to that, in the Bank of Latvia Recommendations, it is stated that:

> An essential feature of the definition of PLG is that it refers to effective control - it may go beyond legal ownership and control, depending on the factual situation.[100]

Now, when the reason for the identification of the UBO is figured out, it is important to understand how the identification process is working on practice.

According to the Latvian AML/CTF Law, as well as the Bank of Latvia Recommendations, the subject of the law, must, in all cases ascertain the UBO of the client when carrying out customer due diligence.[101] Moreover, in case the client is of a high risk, the institution shall also ensure that the identified UBO is the true UBO.[102] In order to do it, the law subject must set out in its policies and procedures the detailed requirements for identifying the UBO and verifying compliance.[103] Thus, the Latvian AML/CTF Law is leaving the law subjects with a free choice of setting up their own procedure to identify the UBO.

However, based on the Latvian AML/CTF Law and Bank of Latvia Recommendations are providing the core rules that law subjects are obliged to follow. For example, those are obliged to identify the client's UBO using information or documents from the Register of Companies.[104] When a client is of low risk, it is sufficient to justify the identity of the UBO by using data from the Companies Register.[105] However, based on the risk assessment, the institution should take further measures to verify the UBO in case of higher risk (e.g. a self-declaration validated by the client would be acceptable in lower-risk cases, but would not be sufficient in higher-risk cases if self-declaration is used as the only measure to verify the

[99] Bank of Latvia Recommendations, *supra* note 92.
[100] *Ibid.*
[101] *Ibid.*
[102] *Ibid.*
[103] *Ibid.*
[104] *Ibid.*
[105] *Ibid.*

UBO).[106] Thus, the lower the risk of a client, the simpler the way of UBO identification is allowed for the law subjects in Latvia.

Moreover, Bank of Latvia Recommendations provide the option for law subject. According to those, one of the following steps must be taken to identify the UBO 1) by receiving a confirmation of the UBO identity directly from the client. 2) by identifying UBO using information or documents from information systems of the Republic of Latvia or abroad; 3) finally, in case details cannot be obtained otherwise, by independently identifying UBO.[107] This provides the law subjects with the flexibility in terms of choosing the option which suits them for the identification of the particular UBO.

Additionally, Bank of Latvia Recommendations provide information on the identification of a high risk UBO's. In the case of a higher risk of ML, (for example when the company is registered abroad and its business activities are of a high risk, or client's behavior raises doubts about the validity of the information provided) it is not sufficient to identify the percentage of the client's ownership in the company, since the fact that the person is owning at least 25% of the company is its UBO.[108] The UBO may also be another - third - party.[109]

Thus, the law subjects shall identify, whether the UBO indicated is formal and whether the company is otherwise controlled by another person. In order to do that, the law subject shall take reasonable steps, consistent with the risk of an AML/CTF, to identify the person who controls the company, such as obtaining additional information from the client, checking information in publicly available sources.[110] Moreover, when one natural person owns the majority of the shares (more than 50%), it may be necessary to identify other natural persons who own shares of the client. In case the law subject has doubts in this regard, it has to identify and assess other persons who hold shares in the client in order to identify the person who actually controls the company (for example, to assess whether there are any family or personal ties between these persons that could be used to identify the true UBO).[111]

Thus, Latvian AML/CTF Law provide detailed instruction for the identification of the UBO, as well as divides the rules for the identification by the risk level of client, which allow to spend more time for the in-depth investigation and identification of the high-risk clients.

3.2.2 Identification of the UBO under UK national law

UK AML/CTF Law also provides information on the identification of the UBOs for law subjects. This information is provided in the 5th part of the UK AML/CTF Law. There it is stated that it applies to the UK bodies corporate and relevant trusts, and for both of those different requirements for the identification of the UBOs are listed. [112]

According to the Part 5, Regulation 43 of the UK AML/CTF Law, when a UK body corporate is entering into a transaction with a person, or forms a business relationship with a relevant person, it must on request from the person provide this person with — information,

[106] *Ibid.*
[107] *Ibid.*
[108] *Ibid.*
[109] *Ibid.*
[110] *Ibid.*
[111] *Ibid.*
[112] Information on the Payer Regulations 2017, *supra* note 51.

which among other things is information on identifying its legal owners and UBOs.[113] According to the act, those are legal owners and UBOs of any body corporate or trust which is directly or indirectly a legal owner or beneficial owner of that body corporate.[114] Moreover, based on the UK AML/CTF Law Part 5, Regulation 43 (4),

> If during the course of a business relationship, there is any change in the identity of the individuals or information [...], the UK body corporate [...] must notify the relevant person of the change and the date on which it occurred within fourteen days from the date on which the body corporate becomes aware of the change.[115]

Thus, the legal entity providing data about its UBO is obliged to inform authorities about its change on its own, without the request from the law subject. Moreover, the UK body corporate must, on request provide, among other things - information about the legal owners and UBOs to the law enforcement authority.[116]

As to the trustee obligations, under the Part 5, Regulation 44 (1) of the UK AML/CTF Law, trustees of a trust have a legal obligation to maintain accurate and up-to-date records in writing of all the beneficial owners of the trust.[117] Moreover, according to the Part 5, Regulation 44 (2) when a trustee enters into a transaction with a person or forms a business relationship with the person, the trustee must, among other things, on request of this person, provide him/her with information identifying all the UBOs of the trust.[118] The situation in regard to the changes of UBOs in the trust is the same as with body corporates. According to the UK AML Law regulation 44 (3),

> If, during the course of a business relationship, there is any change in the information [...], the trustees must notify the relevant person of the change and the date on which it occurred within fourteen days from the date on which any one of the trustees became aware of the change.[119]

Thus, the trustees must provide the information on the change of the legal structure, without this information being requested.

Finally, Part 5, Regulation 45 of the UK AML/CTF Law - provides information about the register of beneficial ownership, which should be maintained by commissionaires and must contain information about beneficial owners of taxable relevant trusts, potential beneficiaries and taxable trusts.[120]

Thus, it can be stated that UK AML/CTF Law is emphasizing that when the legal entity is entering into business relationship as a client with other person or legal entity, it should provide extensive information on its UBO on its own, without being requested such an information, as well as to provide information on any changes, in case those appeared to the UBO of the company.

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[113] *Ibid.*
[114] *Ibid.*
[115] *Ibid.*
[116] *Ibid.*
[117] *Ibid.*
[118] *Ibid.*
[119] *Ibid.*
[120] *Ibid.*

3.2.3 Comparison of UBO identification under Latvian and UK national laws

Taking all of the aforementioned into consideration, it can be stated that Latvian and UK AML/CTF laws are accessing the process of UBO identification in different ways. The main difference is in the role of the law subject and the client.

Latvian AML/CTF Law is providing detailed instructions on the identification of the UBO for the law subjects, which are obliged to take multiple steps, such as request information or to identify it on its own by the means of the verified UBO databases. Moreover, Latvian AML/CTF Law is doing so by providing different requirements for the UBO identification for clients with different risk levels. Such and amount of information on the topic, provides Latvian AML/CTF Law subjects with certain degree of flexibility when identifying the UBO, since it is possible to apply different identification methods based on the client risk level.

UK AML/CTF Law is posing the contrary requirements and methods of the UBO identification. It is making emphasis on the obligation of the client of the law subject to provide information about its UBO to the law subject when establishing the business relationships, as well as at the moment when the changes to the UBO are happening. This approach imposes much greater responsibility on the client, since the client is obliged to provide all of the information for the identification of its UBO to the law subject.

Both of these approaches could be effective when trying to identify the UBO, however, the concept provided by the UK regulators seems to be very demanding for the clients of the law subjects. Sometimes it could be easier for the law subject to identify the UBO on its own using the official databases and request documents in case when information cannot be received otherwise. Thus, it can be concluded, that method of UBO identification offered by the Latvian AML/CTF Law is providing more effective rules for the identification of the UBO.

4. COMPARISON OF THE PEP CONCEPTS UNDER NATIONAL LAWS OF THE REPUBLIC OF LATVIA AND THE UNITED KINGDOM

As it has been mentioned previously, the concept of PEP is also crucial in allowing policymakers to prevent the ML and TF. Person who qualify as PEP often holds an important position in public offices or in some different way has a direct influence on the politics, which leads to the increased risk of corruption, ML or other financial crimes. That is why it is important to identify PEPs and conduct the enhanced due diligence of these people, as well as to take other action in order to monitor their actions and as a result – to identify the ML and TF in case it appears.

4.1 Definition of PEP under national laws of the Republic of Latvia and the United Kingdom

4.1.1 Definition of PEP under Latvian national law

In order to conduct effective supervision of PEPs, there should be a definition, which precisely combines all of the signs of such a person. Section 1, Clause 18 of Latvian AML/CTF Law provides comprehensive and lengthy definition of the PEP:

> politically exposed person - a person who in the Republic of Latvia, other Member State or third country holds or has held a significant public office, including a higher official of the public authority, a head of the State administrative unit (local government), the Prime Minister, the Minister (the Deputy Minister or the Deputy of the Deputy Minister if there is such an office in the relevant country), the State Secretary or another official of high level in the government or State administrative unit (local government), a Member of Parliament or a member of similar legislation entity, a member of the management entity (board) of the political party, a Judge of the Constitutional Court, a Judge of the Supreme Court or of the court of other level (a member of the court authority), a council or board member of the Court of Auditors, a council or board member of the Central Bank, an ambassador, a chargé d'affaires, a high-ranking officer of the armed forces, a council or board member of a State capital company, a head (a director, a deputy director) and a board member of an international organisation, or a person who holds equal position in such organisation;[121]

Thus, Latvian AML/CTF Law is not only defining the PEP as a Latvian public person but also as one of the Member States' public persons, which indicate that Latvian policymakers are thinking not only about the national financial security, but also adopting the rules which allow to law subjects to prevent ML and TF on the EU level. Moreover, it is important to mention that it is impossible to list all of the public service positions which would be classified as PEPs and that is why the aforementioned list provided in the Latvian AML/CTF Law is rather descriptive.

Besides the PEP itself, Section 1, Clause 18^1 of the Latvian AML/CTF Law provide definition of the family member of a PEP. According to this clause, PEPs family members are:

> a) a spouse or a person equivalent to a spouse. A person shall be considered a person equivalent to a spouse only if he or she is given such a status in accordance with the legislation of the relevant country;

[121] NILLTPFN, *supra* note 37.

b) a child or a child of a spouse or a person equivalent to a spouse of a politically exposed person, his or her spouse or a person equivalent to a spouse;

c) a parent, grandparent, or grandchildren;

d) a brother or a sister;[122]

Moreover, Section 1, Clause 19 of the Latvian AML/CTF Law is providing definition of person closely related to a politically exposed person. According to this clause, PEPs closely related persons is:

> […] a natural person regarding whom it is known that he or she has business or other close relations with any of the persons referred to in Clause 18 of this Section or he or she is a stockholder or shareholder in the same commercial company with any of the persons referred to in Clause 18 of this Section, and also a natural person who is the only owner of a legal arrangement regarding whom it is known that it has been actually established in the favour of the person referred to in Clause 18 of this Section;[123]

These two clauses provide the information, which allow to identify individuals who can affect the PEP and his or her decisions. Thus, these people also have to be identified and monitored to the same or similar extent as the PEP himself, which would allow to reduce the risks of ML and TF.

4.1.2 Definition of PEP under UK national law

In the UK, PEPs definition is provided in the Part 3, Chapter 2, Regulation 35 of the UK AML/CTF Law. According to the UK AML/CTF Law,

> "politically exposed person" or "PEP" means an individual who is entrusted with prominent public functions, other than as a middle-ranking or more junior official;[124]

Under the same Regulation of the UK AML/CTF Law, definitions of the PEPs "family member", is provided. According to the UK AML/CTF Law,

> "family member" of a politically exposed person includes—
>
> (i) a spouse or civil partner of the PEP;
>
> (ii) children of the PEP and the spouses or civil partners of the PEP's children;
>
> (iii) parents of the PEP;[125]

Thus, UK AML/CTF Law states that PEPs family members are only the first-degree relatives. However, in addition to that Regulation 35 of the UK AML/CTF Law provides the definition of the "known close associate" of a PEP, which is an analogue of the person closely related to a PEP under Latvian AML/CTF Law. UK AML/CTF Law provides the following definition:

> "known close associate" of a PEP means—
>
> (i)an individual known to have joint beneficial ownership of a legal entity or a legal arrangement or any other close business relations with a PEP;
>
> (ii)an individual who has sole beneficial ownership of a legal entity or a legal arrangement which is known to have been set up for the benefit of a PEP.[126]

[122] *Ibid.*
[123] *Ibid.*
[124] Information on the Payer Regulations 2017, *supra* note 51.
[125] *Ibid.*
[126] *Ibid.*

This definition states that the only way how the person can be closely associated with the PEP is through the joint business, which of course is one possible way how person could be associated with a PEP, but that is not the only possible circumstances which lead to the person being closely associated with PEP.

4.1.3 Comparison of PEP definition under Latvian and UK national laws

Legislation of both countries provide a comprehensive definition of the PEPs, PEPs family members, as well as the persons closely related to PEPs. However it can be stated that Latvian policymakers provided much more diverse definition of the of all the abovementioned concepts.

Latvian AML/CTF Law provides detailed and versatile definition of the PEP, listing many roles that PEP could occupy, as well as making an emphasis on the fact that PEP could occupy such positions in other countries beyond Latvia. Even though it is impossible to list all of the public positions PEP could occupy, Latvian AML/CTF Law subjects could make their own decisions based on the detailed provided definition.

UK AML/CTF Law, in turn, provides a very short definition of PEP, stating that this is an individual having prominent public functions except the middle-ranking or more junior official. Definition provided by the UK AML/CTF Law does not make it clear whether only person entrusted with public functions in the UK is PEP, or person occupying such function in the third countries could qualify too. Such unanswered questions under UK AML/CTF Law could lead to the inability to understand whether person is a PEP and to further ML and TF risks.

As to the definition of PEPs family members, those in the UK and Latvia are very similar and both state that such a person is the first-degree relative. The only difference is that Latvian AML/CTF Law is making an emphasis on the international setting stating that in order to qualify as PEPs spouse he or she should be given such a status in accordance with the legislation of the relevant country, when UK law is not providing such an information.

Finally, definition of "person closely related to a PEP" under Latvian AML/CTF Law and "known close associate of PEP" under UK AML/CTF Law vary a lot. In the Latvian AML/CTF Law the closely related person is defined as the one with whom PEP is known to have business or other close relations, thus, the definition is very broad and is not limited only with the business partners. UK AML/CTF Law, on the contrary, is providing definition which is making emphasis only on the business relationships between the PEP and his or her close associate.

4.2 Identification of the PEP under national laws of the Republic of Latvian and the United Kingdom

4.2.1 Identification of PEP under Latvian Law

Even though Latvian AML/CTF Law provides comprehensive definition of the PEPs and persons related to them, it is not clear how to identify these types of people, since, as it already has been mentioned, it is impossible to list all of the public service positions, which would classify as PEPs. That is why, Bank of Latvia Recommendations are providing detailed instruction for the identification of the PEPs and people related to PEP.

In accordance with the Bank of Latvia Recommendations, when identifying PEP, law subjects have to access the significance of the particular person's position. According to the point 279 of the Bank of Latvia Recommendations, law subjects must understand whether or not such a position is providing person with the ability to influence the process of decision-making in the public sector, which in turn, could lead to the possible corruption, bribery, or other ways of using person's status in order to receive the private gains.[127] Moreover, according to the point 280 of the Bank of Latvia Recommendations, even if persons decisions are not final, and can be challenged by the some other higher-status public persons, such a person still have to be considered a PEP.[128] Thus, when identifying PEPs status it is important to analyze the ability of such a person to influence decisions, not person's status or rank in the particular organization.

Additionally, Bank of Latvia Recommendations provide guidance for the identification of the persons closely related to the PEPs. Even though the Latvian AML/CTF Law is providing the list of people who can be considered closely related to the PEPs, such as family members, Point 281 of the Bank of Latvia Recommendations reminds that people not included in the list also could be considered closely related to PEP, for example – unregistered marriage partner.[129] That is why "[t]he concept of 'other close relationship' is applied by the institution on a case-by-case basis, based on the information at its disposal and its risk assessment."[130] Point 281 of the Bank of Latvia Recommendations also provide an advice for the identification of closely related person, which is to assess the existing trust and confidence between the PEP and the person, since such a person is more likely to assist PEP in the ML and TF crimes.[131] In order to identify the close relationships between the persons, Bank of Latvia Recommendations advice to assess the transactions which are occurring between the PEP and assumed closely related person in the light of ML and TF risks.[132] This advice is rather technical, since sometimes it could be difficult to identify real relationships between people by seeing only the transactions between them, therefore, law subjects must assess all of the information available to them in order to identify the closely related person to the PEP.

Furthermore, Point 282 of the Bank of Latvia Recommendations is providing an advice stating "Measures to clarify the status of a PEP must be proportionate to the risk of AML/CTF

[127] Bank of Latvia Recommendations, *supra* note 92.
[128] *Ibid.*
[129] *Ibid.*
[130] *Ibid.*
[131] *Ibid.*
[132] *Ibid.*

of the particular client and the financial services provided to this client."[133] Moreover, Point 282 of the Bank of Latvia Recommendations also specifies that it is not necessary to conduct the identification of the PEP status for the clients with very low risk of AML/CTF. Low risk clients PEP status can be identified via the clients questionnaire and by checking the PEP status in the State Revenue Service database.[134] In case law subject possesses information that particular client is PEP, it has to conduct the enhanced due diligence of such a customer.[135] Finally, in case PEP is also a high-risk client, additional measures must be applied, those being:

> the assessment of publicly available information, the assessment of information obtained as part of the regular customer due diligence, the use of commercial databases to verify that the client is not a family member of the PEP or a person closely related to the PEP.[136]

Thus, Bank of Latvia Recommendations are providing excessive and comprehensive advice for the identification of PEP, which acts as a template that law subjects have to use in order to make their own decision when identifying the PEPs.

4.2.2 Identification of PEP under UK national law

UK AML/CTF Law provides comprehensive definition of the PEPs and people related to those, as well as the technical rules for the cooperation with those, such as the risk-based approach, as well as the enhanced due diligence conduction. However, as it has been mentioned before, besides the legislation, in the UK there is organization under the name - JMLSG, which is issuing guidance for the UK AML/CTF Law subjects by providing detailed instructions the application of the AML/CTF laws in practice, and among other things, also provides the guidance for the identification of the PEPs. [137]

According to the Part 1, point 5.5.26 of the JMLSG guidance, identification of PEPs and their family members is not a straightforward task. Main difficulty is that PEPs could vary from the ones who qualify as those only technically under the UK AML/CTF Law definition, but in reality are middle-ranking or more junior official, to those possessing significant control over other people and resources.[138] Moreover, when identifying the family members of PEPs, it could be challenging, since PEPs could be distant or estranged from their parents, spouses and other relatives.[139] Based on the Part 1, point 5.5.27 of the JMLSG guidance, in order to overcome these complications, law subjects must conduct the EDD of PEPs, their family members and close associates, in accordance with the appropriate risk based approach which would vary on the case-by-case basis.[140]

Moreover, Part 1, point 5.5.28 of the JMLSG guidance provide recommendations for the identification of PEPs. It is stated that when identifying PEPs, law subject may rely on the internet search engines, relevant reports, as well as national and international databases which

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[133] *Ibid.*
[134] *Ibid.*
[135] *Ibid.*
[136] *Ibid.*
[137] JMLSG, supra note 56.
[138] JMLSG. Prevention of money laundering/combating terrorist financing - 2020 REVISED VERSION (amended July 2022) - GUIDANCE FOR THE UK FINANCIAL SECTOR, available on: https://www.jmlsg.org.uk/guidance/current-guidance/. Accessed April 24, 2023.
[139] *Ibid.*
[140] *Ibid.*

collect and store the data on corruption risks.[141] JMLSG guidance suggests to address reports by the International Monetary Fund and World Bank, as well as resources as Transparency International Corruption Perception Index in order to identify PEPs.[142] Finally, JMLSG guidance recommends to subscribe to the PEP databases, which could be an adequate risk mitigation tool.[143]

As to the identification of the known close associates of PEPs, according to the Part 1, point 5.5.22 of the JMLSG guidance,

> For the purpose of deciding whether a person is known to be a close associate of a PEP, the firm need only have regard to any information which is in its possession, or which is publicly known. Having to obtain knowledge of such a relationship does not presuppose an active research by the firm.[144]

Therefore, law subjects do not have to investigate the PEPs close associates, making the decision about whether the person is a close associate of PEP based only on the available information in its disposal.

Finally, Part 1, part 5.5.35 of the JMLSG guidance is making an emphasis on the fact that law subject's clients could obtain the PEPs status during the business relationship and that is why the law subjects should always have an on-going monitoring practice which would allow to alert to information regarding the change of customer's status and conduct EDD when needed.[145]

4.2.3 Comparison of PEP identification under Latvian and UK national laws

Both, Latvian and UK national legislations and recommendations provided by the national authorities are providing a comprehensive guidance for the identification of PEPs, their family members and persons who qualify as PEP's close associates. However, after analyzing both legislations it can be stated that the approaches to the identification vary significantly.

In Latvia, the emphasis is made on identification of the real power and influence which each particular PEP possesses, and which make him or her capable of possible corruption, TF and other financial crimes. In order to do it, Bank of Latvia Recommendations provide advice on how to identify the control which PEP possesses. In the UK, policymakers also are focusing on the control inherent to the PEP, but do not provide guidelines for distinguishing such a control but focus on the fact that EDD should be applied and that control should be identified on the case-by-case basis.

Both countries have recommendation regarding the identification of family members and close associates. Moreover, the advice provided by the policymakers is also similar – not to forget that at first sight close relatives could be estranged from the PEP, as well as on the contrary - people such as unregistered marriage partner could have a great influence on PEP, but not have any official links. That is why policymakers of both countries call for identification of PEPs family members based on the risk based approach.

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[141] *Ibid.*
[142] *Ibid.*
[143] *Ibid.*
[144] *Ibid.*
[145] *Ibid.*

Finally, the advice for the identification of the person closely related to a PEP under Latvian AML/CTF Law and known close associate under UK AML/CTF Law also are similar. Policymakers of both countries suggest to analyze the information which the law subjects already have in possession, as well as the publicly available information. The only difference is that Latvian law-makers additionally suggest a rather technical decision of assessing the transactions which are occurring between the PEP and assumed closely related person. However, such an advice was not found under the UK AML/CTF Law.

CONCLUSION

After careful consideration of the research, questions asked at the beginning of the thesis now can be answered. Answer to the first research question – "What are the core differences between the national AML/CTF legal frameworks of the Republic of Latvia and the United Kingdom?" is as follows.

The findings of this research suggest, that despite having differences in legal systems, both countries' AML/CTF legal frameworks appear to be fairly similar. Both, Latvia and the UK have the primary AML/CTF legal provisions that lays out guidelines for the prevention of ML and TF for the law subject. Additionally, both nations have supporting organizations that offer recommendations for the effective implementation of the AML/CTF laws - JMLSG in the UK and Bank of Latvia in Latvia. Similarity between the legal frameworks can be explained with the fact that EU AML/CTF directives severely influenced both legal systems. Despite UK leaving the EU at the beginning of 2020, its legal system has been influenced by the EU directives for more than 10 years.

The core difference discovered during the study is that in Latvian rules regarding the AML/CTF are mostly contained in the Latvian AML/CTF Law, but UK AML/CTF legal framework consists of numerous regulations outlining the scenarios in which the ML and TF can be prevented. Those include the law describing ML and TF conducted in criminal groups, as well as law describing the prevention of corporate ML and TF cases. As a result, it can be concluded that the UK's AML/CTF legal framework is more versatile than that of Latvia. Furthermore, both nations have different approaches to FIUs. In Republic of Latvia, FIU is an independent authority preventing ML and TF. On the contrary, in the UK, FIU is a part of NCA, which makes it easier for the British FIU to cooperate with other UK crime prevention authorities.

As to the future of the UK AML/CTF framework in the light of Brexit, after conducting the research, it can be suggested that it is going to change over time. Brexit will be playing a significant role in changing the AML/CTF system of the UK in the future and some changes to the British AML/CTF system are already starting to take place. For example, in accordance with The Law Society of the UK, British legislators decided to opt out from the 6th EU AML Directive.

Finally, after researching British political culture, the assumption can be made that UK government will weaken its AML/CTF regulatory framework in the future with the aim to cooperate with sanctioned and very high-risk individuals and entities for the monetary profits and will continue to be the "butler for the world".

In regard to the second, more technical, research question – "How concepts of Ultimate Beneficial Owner and Politically Exposed Person vary under the national AML/CTF laws of the Republic of Latvia and the United Kingdom" the answer is following.

Latvian and UK AML/CTF legislations both are providing comprehensive definitions of the UBOs. However, Latvian legislators provide a definition, which is common to all forms of legal entities. This, in turn, could lead to difficulties in the identification of the UBOs, since those could wear different hats depending on the type of legal entity those are controlling. British legislators, in turn, addressed this problem by providing numerous definitions of UBOs for each of the most common types of legal entities, which increases the likelihood of finding

the precise UBO definition by the law subjects. Furthermore, UK policymakers provide a definition of the UBO for the cases not described in the UK AML/CTF Law, which allows the law subjects to independently identify the UBO basing findings on the broad definition provided by the legislators. Thus, UK legislators chose a more detailed approach, by providing numerous UBOs definitions for many particular legal entities and situations.

As to the process of identification of the UBO, Latvian and UK AML/CTF Laws are also accessing the process of UBO identification in different ways. Core difference is in the roles of the clients and the law subjects. Latvian AML/CTF Law is listing instructions on the identification of the UBO for the law subjects and providing requirements for the UBO identification for clients with different risk levels, which should be conducted by the law subjects. British policymakers are posing the contrary requirements and are obliging the clients of the law subjects to provide information about its UBO to the law subject on their own. Moreover, client should provide the information on its UBO when establishing the business relationships, and in case of the UBO change. Methods provided by the legislators of both countries could be effective, however, Latvian methods seems to be more effective for the identification of the UBO and convenient for the clients.

Legislation of both countries provide a comprehensive definition of the PEPs, PEPs family members, as well as the persons closely related to PEPs. However Latvian legislation provide much more diverse definition of those concepts making emphasis on the fact that PEP could occupy his or her positions not only in Latvia. UK AML/CTF Law, in turn, provides a very short definition of PEP and does not make it clear whether only person entrusted with public functions in the UK is PEP, or person with public influence from the abroad could qualify too.

As to the definition of PEPs family members, in the UK and Latvia those are very similar and both state that such persons are the first-degree relatives. The only difference is that Latvian AML/CTF Law is also making an emphasis on the international setting stating that in order to qualify as PEPs spouse, he or she should be given such a status in accordance with the legislation of the relevant country, when UK AML/CTF Law is not providing such an information.

Finally, definition of "person closely related to a PEP" under Latvian AML/CTF Law and "known close associate of PEP" under UK AML/CTF Law vary a lot. In the Latvian AML/CTF Law the closely related person is defined as the one with whom PEP is known to have business or other close relations, thus, the definition is very broad and is not limited only with the business partners. UK AML/CTF Law, on the contrary, is providing definition which is making emphasis only on the business relationships, which could make someone a close associate of the PEP.

As to the process of identification of PEPs, Latvian and UK national legislations and recommendations provided by the national authorities are providing a comprehensive guidance for the identification of PEPs, their family members and persons who qualify as PEP's close associates. In Latvia, the emphasis is made on identification of the real power and influence which each particular PEP possesses and advices for the identification of such a power are provided. In the UK, policymakers also are focusing on the control inherent to the PEP, however, do not provide rules for the identification of such a control, but advise to identify it on the case-by-case basis by conducting the due diligence procedures.

For the identification of family members and close associates, policymakers of both countries provide similar advice – to conduct the identification of such people based on the factual information, not on the seemingly logical conclusions, since situation could vary on case-by-case basis and people such as unregistered marriage partner could have a great influence on PEP, but not have any official links with him or her.

The study could be continued and improved in case this work could be more lengthy, which would allow to conduct the more in-depth analyses of the UBO and PEP concepts, as well as to examine more closely the political peculiarities related to the AML/CTF laws of both countries. Moreover, after some time it would be advisable to re-examine the influence of Brexit on the UK AML/CTF legal system, since with the time the broader picture will appear and it will be possible to either confirm or deny assumptions put forward in this research.

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