

Prevent and fight against Money Laundering phenomenon

The role of Land Registries

ELRA Questionnaire

Purpose and structure of the questionnaire



Financial Action Task Force (FATF) Recommendations state that countries should adopt measures to:

- (4) enable competent authorities to freeze or seize and confiscate property laundered (in some systems these encumbrances enter land registry); and
- (22) apply customer due diligence and record-keeping requirements to non-financial professions such as lawyers, notaries, other independent legal professionals (...), when they prepare for or carry out transactions concerning buying and selling of real estate (...) who should be required to report suspicious transactions.

Nor the FATF Recommendations or the Directive (2015/849/EU) refer to Land Registrars as obliged entities to be. Notwithstanding, the information on real property ownership provided by public Land Registries ensures impartiality, accuracy, confidence and legal certainty, attributes that obliged entities and investigation authorities certainly value.

Therefore, MS shall arrange for access to this information, through the interconnection of those registers (article 32b of the Directive).

Furthermore, as an ACAMS' specialist notes, the Directive brings a new, enhanced, risk-based approach and, therefore, new methods, information sources and monitoring might be required.

Purpose and structure of the questionnaire

ELRA Board believes that European Land Registries might play a relevant role in the fight against money laundering (ML).

The results of this survey will help to understand the state of play of the Member States Land Registries' efforts at the moment and how they may increase into a more active or significant contribution.

The questionnaire was drawn up aiming answers to three main topics:

- Legal dispositions / Legal obligation to report suspicious transactions
- Access to data / Access from LR to official databases as an essential tool to detect dubious transactions
- The role of LR in the fight against ML / Specific tasks of LR and possibility of improvement

21 organizations (from 19 countries) answered the questionnaire (Austria, Belgium, Bulgaria, Croatia, Cyprus, Estonia, Finland, Greece, Italy (Libro Fondario), Italy (Agenzia delle Entrate), Latvia, Lithuania, Luxemburg, Malta, Netherlands, Portugal (ASCR and IRN,IP), Romania, Slovak Republic, Spain and Sweden)

Does the Land Registry in your country have legal obligations on reporting possibly by ML affected transactions? (Q1)

- The majority of countries answered NO, though some under specifications:
 - Austria - yes as a general obligation of reporting criminal activities;
 - Greece – There is a general obligation to report illegal or problematic transactions;
 - Estonia - Registrars may forward information to the Financial Intelligence Unit;
 - Italy – Deeds must contain information on payment means and if a real state agent has been used; if missing, LR must report to Revenue Agency (for fine are due).
 - Latvia - No because the Land Registry is included in the court system.
 - The Netherlands – Kadaster has appointed a counsellor for AML; it is in research the possibility of the Kadaster to report ML affected transactions.
- 3 countries answered YES:
 - Spain - Land Registrars have a legal obligation on reporting ML affected transactions
 - Portugal – Registrars have a legal obligation as “auxiliary entities” to report suspicious transactions
 - Luxembourg - the administration, to which the Land Registry is affected, is under a reporting obligation (but not common in practice for lack of information from the deeds)

Is this obligation a general obligation for every citizen, civil servant or is it specific for the Land Registrar?
(Q2, 3 and 4)

- 5 countries did not answer.
- All the other answers were equivalent in the sense that the obligation on reporting possibly by ML affected transactions, is established to certain institutions, civil servants and professionals, namely, legal professionals as notaries and attorneys, whose functions and activities are related to those which could involve ML.
- Even those countries where LR has reporting obligations, it is not specific for the Land Registrar.
- When reporting is due, it is made, mainly, to a special body, the Financial Intelligence Units or similar, only or alongside with State Attorney, Investigation or Police Departments; some directly to the court (Austria) or to the Revenue Agency (Italy) – answers to Q4.

Is there a special personal liability for the Land Registrar, to what extend?
(Q5)

- Nearly all countries answered NO
- Some refer to general provisions or State liability regulations (Austria, Finland and Malta)
- 2 countries answered YES:
 - Portugal: The violation of duties related to AML may lead to disciplinary consequences;
 - Spain: The ML Act establishes different administrative offences and their respective sanctions (applicable to obliged entities, including land registrars).

Does the Land Registry have access to other registers, such as the UBO, the Business Register, that may be useful to this investigation? (Q1)

- Most countries have access to other registers, such as Business Register, though in almost all cases those accesses are not used by LR for AML purposes;
- 6 countries answered that they have no access to other registers (Austria, Croatia, Finland, Greece, Malta, Romania)
- A few others have access to some registers, but not to others, namely the UBO (The Netherlands) or the Real Estate Cadastre is not interconnected with any other register (Slovak Republic).

According to your opinion, which existing datasets could be interesting to mine with the traditional LR data in order to detect patterns of ML? (Q2)

- 11 countries did not answer or did not consider it necessary to access other datasets;
- Some answered that access to Business Register and UBO could help to detect patterns of ML;
- Some others referred to cadaster, notary data and bank data;
- Few others referred also to information on the date, data of owner, price and payments means, source and destination of the payment, when this information is not available in the transfer deed.

Together with multiple transactions, over and under valuation are signals that ML might be involved.

Are transaction prices archived at the Land Registration? (Q3)

- Most of the countries answered YES, though generally in the sense that transactions price or value is mentioned in the deed submitted to registration, therefore stored in LR archives (not as part of LR data).
- In some cases, however, it may happen that the notarized copy that enters LR may not contain the price (Estonia, in general; or The Netherlands, sometimes)
- Only 3 countries said NO or did not answer (Croatia, Luxembourg and Romania).
- For ML combat purposes, the information on the value or the price of the transaction is considered relevant. So, it is possible that, in the future, LR might deliver – even if under restricted access - that kind of information. The specifications of some of the answers may offer topics on how to implement solutions:
 - Spain: Transaction prices are included in the LR entries of transactions,
 - Slovak Republic: From 01.10.2018 real estate cadastre records real estate prices,
 - Malta: There is a record of the transfer valuation in many applications.

Is there an official estimation when a transaction or a succession occurs? If yes, who is responsible for this estimation? (Q4)
Are the results regularly updated? Are mass valuation systems used to update or control sales results? (Q5)
Does the Land Registry have access to data on official real estate estimations? (Q6)

- Some countries have real estate estimations, or submitted to valuation expertise, when a transaction and/or succession occurs, carried out by valuation authorities, notaries or cadaster, commonly for fees or taxes purposes (Austria, Croatia, Cyprus, Greece, Luxembourg in case of doubts, The Netherlands in specific situations and by a certified appraiser, the Slovak Republic for succession in case of disagreement, Romania in case of inferior price than the market study used by the chambers of notaries)
- Nearly all countries have official real estate estimations, for taxation purposes, which are updated regularly (once a year; in a few cases, twice a year; fewer not so regularly)
 - This information is kept by tax or similar authorities or departments (some of them being the Cadaster: Latvia, Lithuania, The Netherlands, Spain)
 - In some cases (frequently those where LR is carried out by or related to Cadaster) LR has access to these official real estate estimations.

Besides this, it may be of use to note some particular situations:

- Belgium: the price cannot be lower than the market value of the property (control carried out by the Administration of Measures and Valuations).
- Lithuania: Unreasonable difference between the contract price (agreed by the parties) and the average market value (mass valuation system updated annually) may raise suspicions to the institutions conducting an investigation.
- The Netherlands: Kadaster offers the possibility to calculate / estimate a (possible) value of a property by using a price index method, based on the registered purchase prices throughout the years, dividing properties per housing type and period in time and per region.
- Romania: There is a market study used by the chambers of notaries (updated once a year) which contains the minimum indicative values of the properties. The notary verifies that the declared value is not inferior to the minimum value established by the market study. The market study can be accessed by any person.

The role of LR in the fight against ML

Is the Land Registry in your country actively or rather passively fighting ML? Which actions illustrate the active attitude? (Q1)

- The largest part of the countries answered that national registry organizations have a rather passive role in fighting against ML.

Nevertheless, some of these countries do have some kind of significant task (Estonia, Slovak Republic, on forwarding information to the Financial Intelligence Unit in case of doubts or suspicion; or Italy on checking the deeds on legal references about terms of payment) Or are working on projects to develop ways of becoming more active (The Netherlands, Sweden).

- Two countries answered as having an active role on the prevention and fight against ML:
 - Portugal - Registrars have a special duty to report to the Financial Intelligence Unit and the Attorney General's Office", whenever they know or suspect that certain funds or other assets arise from criminal activities or are related to terrorist financing. Whereas Portuguese registrars' tasks include drawing up transactional deeds, in parallel with notaries, they are likewise demanded to abstain in case of serious signs of ML.
 - Spain - Land Registry is very actively fighting ML. Land Registrars are entities obliged and, as so, they do have a legal obligation on reporting possibly by ML affected transactions. Spanish Land Registrars Association created a central service (CRAB) to help registrars with the analyzing and reporting duties.
- These two countries are also the only ones that answered "Yes" to the 3rd Q:

Does the registrar/or the land registry organization develop rules, patterns or alerts in the view of certain type of data or a combination of the data available in your data base in order to detect suspicious ML situations? (Q3)

Do you think LR might get a more important role in detecting transactions affected by ML? (Q2)

- Most countries (12) answered that LR should not necessarily improve on detecting ML indicators, once they consider, in general terms, that providing legally validated information to investigation authorities is a sufficiently important and supportive contribution to the prevention and fight against money laundering and criminal activities involving real estate.
- Some others, though, accept that LR might have a more important role, previously determined by law, on monitoring, sharing information or developing alerts.
 - Portugal, for example, believes that the use of AI would be of help within the interoperability of databases, identification of suspicious situations and then generate automatic alerts.

What actions might increase the role of LR in the AML fight? (Q4)

Several and pertinent suggestions were given (under the change of legal frameworks and procedures):

- To develop IT solutions between the LR system and investigative authorities;
- To use AI to create reliable databases that help LR to identify suspicious transactions, generate automatic alerts and avoid duplicated reports by different obliged entities;
- To encourage cooperation with Investigation Departments to allow more efficient detection and communication of possibly ML affected situations;
- To register more information and deliver proper data and access to investigating institutions;
- To be given the authority to conduct specific checks and report them to the competent authorities;
- To promote the integration with other registers (Business register, UBO);
- To include international sanctions lists in LR information to prevent people from buying properties if they are included in those lists;
- To increase the powers of LR with the possibility of recording, e.g. subsequent transfers of real estate in a short period; early repayment of the mortgage; payment of the price from funds originating from high-risk countries, or to implement rules, patterns or alerts about such kind of transactions.
- To offer continuous training on ML to Registrars and employees.

Conclusions

- Spain and Portugal are, apparently, the countries where Land Registrars are obliged entities (“auxiliary entities” in Portugal), on the terms of the Directive (EU) 2015/849.
- Being obliged entity results, therefore, into a more active role on preventing and fight against ML, though some other countries also play a part when they report doubts or certain type of transactions to FIUs, or criminal offences to public prosecutor (e.g, Estonia, Belgium, Slovak Republic).
- The quite passive role of a large number of EU LR does not minimize the significant contribution of the information delivered by LR to the investigation authorities, as some countries highlighted (e.g. Austria, Belgium, Sweden).
- Although the Directive does not include Land Registrars among the obliged entities it applies to, it stresses the need for information on ownership of real estate, accessible to Financial Intelligence Units and competent authorities in an efficient way, namely by the interconnection of the registers (article 32b).
- It is inevitable to acknowledge the role of LR in combating money laundering and terrorist financing.

Conclusions

- ▶ ELRA is already developing tools to increase the contribution of LR information for AML purposes - see the conclusions of IMOLA Questionnaire on new ALM pivot terms.

- ▶ In fact, EU LR should prepare for the future.
According to the EU Commission 2020 Action Plan, certain parts of the AMLD should be turned into directly applicable provisions set out in a Regulation; this should include:
 - i. the list of obliged entities,
 - ii. customer due diligence requirements,
 - iii. internal controls,
 - iv. reporting obligations,
 - v. beneficial ownership registers, and
 - vi. a more harmonized approach to the identification of politically exposed persons.

The result of this Action Plan will be announced in July 2021
(as said the European Commissioner Mairead McGuinness).





Thank you!

