

Reporting Suspicious Financial Flows Between Legal Requirements and Banking Secrecy Constraints

الأخطار عن التدفقات المالية المشبوهة بين متطلبات

القانون وقيود السرية المصرفية

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Abstract:

The algerian legislator has established a mechanism for reporting suspected illegal financial transactions resulting from the proceeds and revenues of corruption crimes. This is in response to the new international criminal policy within the framework of what it is known as international cooperation to recover assets through a set of procedures and stages that countries must adhere to in order to do so. At the national level, we find that the algerian legislator has expanded the number of persons obligated to report suspicious financial transactions.

The aim of the study is to highlight the number of notifications announced is not reflects the true reality of the spread of the criminal phenomenon, so most of the announced notifications come from banks, both public and private, only. It raises the issue of the legal status of banks between the duty to report suspected illegal financial transactions and the duty to maintain banking secrecy.

Key words: Reporting system, Suspicious financial activity, Proceeds of corruption, Public and private banks, Asset recovery

Introduction:

The Algerian legislator realized that combating money laundering is a difficult matter, as it was not sufficient to criminalize it with penal texts, but rather it is necessary to resort to mechanisms, techniques and legal persons by forcing them to adhere to a set of obligations and preventive measures in order to achieve the desired goal and objective. In order for those measures to achieve the intended effectiveness of their use, the legislator obligated a group of persons, pursuant to Articles 19, 20 and 4 of Law 05-01 related to the prevention of money laundering and terrorist financing, to report financial suspicions about operations or funds suspected of being linked to suspicious operations related to money laundering or terrorist financing, or those that took place in complex circumstances such as banks, financial and banking institutions, etc., as the subject of reporting financial suspicions in general and banking notification in particular is of great importance as it is a mechanism for combating money laundering crimes in Algerian legislation, as it surrounded it with a set of procedures and controls that must be followed, including prior and subsequent ones, and not Professional secrecy is respected when dealing with the client, which places banks between the inevitability of facing criminal liability for breaching the duty of notification to the Financial Intelligence Processing Unit and the necessity of maintaining banking secrecy, which raises the following problem for study:

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How did the Algerian legislator balance the inevitability of banks’ obligation to report financial suspicions? And requirements Maintain confidentiality Banking?

We will address the subject of the study by following the descriptive and analytical Through our induction of the texts of the articles subject to the study that organized this mechanism, with the help of the comparative method whenever the study required addressing comparative legislative policy, especially in Combating corruption Financial, especially for the purpose of reference and benefit from studies and policies Comparison.

By dividing the topic of the research paper into two main points of the study And touching upon to me:

Firstly: The general framework for reporting suspected illicit financial transactions as an inevitable mechanism for combating financial corruption.(crimes whitening money)

secondly: Criminal liability provisions for banks and breach of duty Notification in Confronting secrecy Banking.

1. The general framework for reporting suspected illicit financial transactions as an inevitable mechanism for combating financial corruption (money laundering crimes)

Banks play an important role in the fight against money laundering crimes in particular, as they are the main channel for funds that criminals usually resort to, as a means of granting legitimacy to funds that are surrounded by financial suspicion or doubts about their illegal source. For this reason, the Algerian legislator, similar to other legislations, especially the French, has created an obligation related to the duty to notify the bank of financial suspicion or to notify the financial suspicion before the financial intelligence processing unit. Accordingly, the situation requires exposure to a mechanism danger financial suspicion 1: in terms of content and procedures and 2: in terms of the legal framework for reporting financial suspicion .

1.1. Notification content And its controls

The Algerian legislator, through Law No. 05_01 relating to the prevention and fight against money laundering and terrorist financing, as amended and supplemented by Order No. 12_02 ¹He touched upon what is known as the mechanism and duty of notification of suspicion without specifying its definition or...Its legal nature, Below we will discuss the content of the notification of suspected illegal financial activity as a mechanism, specifying (a) its forms and (b) its controls.

1.1.1. The content of the notification of suspected illegal financial activity as a mechanism and its forms :

The Algerian legislator did not provide a definition for notification of suspicion, which means the necessity of reporting every operation, regardless of its nature, that raises doubts about its source.², in front of the query processing cell Financial ,Notification is defined as the disclosure in good faith of information related to any transaction suspected of being related to money laundering.³.

Knows the language: It is the report or notification or notification, and its source is more informed, meaning it informs of the news

And in jurisprudence Jurists agree that it is the procedure taken by a person, regardless of his nature, before the competent authority to report or inform of the occurrence of a crime. ⁴The purpose of investigation and early detection of the crime is to inflict penalties prescribed by law. The concept of notification differs from the complaint, as the latter is a witness, but rather notifies the competent public authority about it to take what it deems appropriate regarding it, and that is,

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there is no requirement for a specific quality in the notifier, unlike the complaint, which is often submitted by the concerned victim..

As for its legal definition

Article 13 of the International Working Group’s recommendations stipulates the necessity of reporting financial transactions that raise suspicions of being linked to money laundering activities, and stresses the obligation of banks and financial institutions to immediately report to the Financial Information Unit as the competent authority, in addition to what is included in the model legislation issued by the United Nations regarding reporting suspicious financial transactions. As for the Algerian legislator, we find the text of the amended Article 20 of Order 12-02 amending the provisions of Law No. 05-01 relating to the prevention and fight against money laundering and terrorist financing, which states that “without prejudice to the provisions of Article 32 of the Code of Criminal Procedure, those subject to it must inform the specialized authority of any operation related to funds suspected of being obtained from a crime or appearing to be intended for money laundering and terrorist financing.”.

2.1.1. photodangers On f Financial suspicion:

1.2.1.1. Pre-notification of suspicion (in case of suspicion)

In accordance with the provisions of Article 20 of Order 12_02⁵ Regarding the prevention and combating of money laundering and terrorist financing, and without prejudice to the provisions of Article 32 of the Code of Criminal Procedure, it is the responsibility of those subject to the obligation to report financial suspicions to inform the specialized authority of all financial transactions suspected of being linked to any operation related to money laundering .funds Suspected to be of or appears to be intended for money laundering money and financing terrorism This is done as soon as there are doubts or suspicions of that, even if it is impossible to carry out those operations or after their completion, and this means that the process of notifying or reporting suspicious operations due to their connection to money laundering or terrorist financing operations is done as soon as there is suspicion of them, and this is after applying control procedures and inquiries about these operations because they are characterized by complexity and thus the difficulty of raising suspicions against them, and this does not happen except after studying a set of indicators that are used to indicate suspicion of money laundering operations of an illegal source..

2.2.1.1. Notification The distance from the financial suspicion (notification upon knowledge)

Pursuant to Article 20 of the above-mentioned amended and supplemented Law 05_11, it is incumbent upon the persons subject to the duty of notification to inform the cell (the Financial Intelligence Processing Cell) immediately upon learning of the illegal source of funds, under penalty of criminal and disciplinary sanctions. In this case, professional secrecy shall not be considered in the face of it, unless it is in bad faith.⁶

To be able to determine whether there is financial suspicion regarding a transaction related to money laundering or not, Given that What is the importance of this mechanism in combating corruption and recovering criminal proceeds? Derived from His crimes, many international bodies joined a set of indicators, some of which relate to the location of the suspicious operation, which is the money, and some of which relate to the client or beneficiary customer, we mention them below.:

3.1.1. Indicators of suspicion of a financial transaction:

1.3.1.1. Objectivity related to the location of suspicious operations:

This standard includes in its content many indicators related to the location of suspicious

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transactions (funds) known as the automatic standard, which can be adopted to determine whether there is a financial suspicion to report about, which we list in the following points::

- Financial amount

Many legislations specify a financial amount in advance, if the value of the transaction exceeds this amount, it is reported as a transaction similar to its connection to money laundering. The United States of America has adopted this approach, as it has set an amount of ten thousand US dollars as a standard for reporting and notifying suspicion.

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While this proposal was crowned with failure due to the large increase in the number of notifications, especially if the operation was not linked to a suspicious financial transaction or had a relationship with money laundering, which led many to refrain from depositing money and dealing with banks and banking institutions as negative repercussions of this standard due to its infringement on the rights of individuals and their private freedoms..

- Source of funds

Banks and financial institutions are required to carry out the task of searching and investigating the source of funds and to inform the competent authority of receiving the notification of suspicion, according to the provisions of Executive Decree No. 06_05, according to Article 6, 5, and 3, if the form and content of the notification, the form, and even the receipt are included, as Article 5 of Executive Decree 06_05 stipulates the information that banks, financial institutions, and those who are responsible for the notification must record according to the form. - Inquiry about the destination of funds (the destination of funds as an indicator of suspicion)

It is the responsibility of those subject to the obligation to report financial suspicions related to money laundering, in addition to inquiring about the source of those funds and investigating them, and the necessity of investigating and inquiring about their destination by paying special attention to that, in addition to the identity of the economic operators involved in that particular operation if the amount of the operation exceeds the limit specified by the application and the operation is completed in complex, unusual or unjustified circumstances without relying on a legitimate justification for that, and in accordance with the provisions of Article 10 of Order 12_02..

2.1.1.1 Personal Suspicion Indicators:

These are indications related to the person dealing with banks and financial institutions and subject to the duty of notification, such as the customer, his representative or the beneficiary.

2.1. Controls and procedures for reporting financial suspicion:

The financial suspicion notification mechanism is an obligation that falls on a group of people to uncover suspicious financial transactions. In order to achieve the desired goal, as a mechanism that helps in combating corruption crimes and recovering criminal proceeds, it is necessary to precede it with a set of preliminary procedures that banks and financial institutions must follow in the event of suspicions and doubts about certain transactions related to money laundering and terrorist financing before reporting to the Financial Intelligence Cell. The following is a presentation of it by addressing the Banking Committee as the body charged, as a preliminary procedure, with appointing inspectors at the level of financial institutions and their branches who are authorized to issue the notification, and then addressing the controls for reporting financial suspicion.

1.2.1 The Banking Committee and its relationship with banks and the duty to report financial suspicion:

Algeria has assigned the monitoring and tracking stages of money laundering attempts of illegitimate origin to a specialized body whose mission is to prepare a detailed report based on the data contained in Executive Decree 05-06. However, this stage or this mission is preceded

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by a crucial stage known as the stage of appointing the body prepared to notify the suspicion authorized to the Banking Commission apparatus, in addition to being a disciplinary oversight body in the event of failure of the persons obligated to notify and submit it.

The Banking Committee was established pursuant to the Monetary and Credit Law No. 90/10 as a supervisory, disciplinary and penal body. Its duties fall within the core of the banking sector, embodying the principles and recommendations of the Basel Committee.⁸...which imposed the necessity of a radical change in banking institutions and rules in accordance with the requirements of the market economy. Law 05-01, which includes the prevention and fight against money laundering and financing of terrorism, has placed on banks and financial institutions the duty to investigate, by all legal means, the nature of the funds, their source, their destination, and the true identity of the person ordering the banking operation.⁹ A central committee affiliated with the Bank of Algeria was assigned powers, within the framework of its oversight mandate, to report complex and unusual banking operations linked to money laundering operations of illicit origin to the Financial Intelligence Unit.

1.1.2.1 Its formation and tasks :

The Banking Committee, as stated in Article 106 of the Monetary and Credit Law, is composed of the Governor of the Bank of Algeria as Chairman, three highly qualified members in the banking, financial and accounting fields, and two judges delegated by the Supreme Court, chosen by the First President after consulting the Supreme Judicial Council. The members of the Banking Committee are appointed by the President of the Republic for a period of five years. The members of the Banking Committee are subject to the duty of professional secrecy in accordance with the provisions of Article 25 of the same law, except in cases where they are summoned to testify in criminal proceedings. The Committee is provided with a General Secretariat whose tasks are determined in accordance with Article 106, Paragraph 3.

About its tasks:

The committee carries out a number of tasks, as stated in Article 105 of the Monetary and Credit Law, which vary between supervisory and punitive tasks.._ It monitors whether banks and financial institutions comply with legislative and regulatory provisions and ensures compliance with the rules of good conduct of the banking profession.

_ Examining the practices of individuals in the activities of banks and financial institutions that contain violations, monitoring the operating conditions of banks and financial institutions, and working to improve their financial status.

_ Conducting field visits to banks and financial institutions and reviewing the supporting documents.

In addition to its supervisory duties as an assistant to the Bank of Algeria, it assigns agents to organize monitoring on behalf of the Banking and Programs Committee.

Lined by her side.

In order to activate its tasks and embody its role to achieve the desired goal, penalties are imposed, such as punitive penalties for violating legislative and regulatory provisions, which vary between disciplinary, civil and criminal penalties.

2.2.1. The supervisory framework of the Banking Committee and its relationship to bank notification of financial suspicion:

In accordance with the provisions of Article 11 of Law 05_01, amended by Law 12_02 on the prevention and fight against money laundering and terrorist financing, the Banking Committee shall authorize inspectors at the level of financial institutions and their branches to submit a detailed confidential report urgently, within the framework of document control, to the party authorized to receive the report.¹⁰ In turn, the committee investigates the existence of the report in this regard and provides financial institutions and banks with appropriate

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programs in order to detect suspicious financial transactions. In order to achieve its tasks, the committee requests all necessary information, evidence and clarifications from banks and financial institutions. Its oversight extends to persons who have a financial relationship or contribution, direct or indirect control over financial institutions and banks, in exchange for penalties and disciplinary sanctions that vary in degree for each breach on the part of banks and financial institutions and the seriousness of the error or suspicious transaction against them.

1.2.2.1. Financial Suspicion Notification Controls :

The legislator, within the framework of combating corruption crimes and for this purpose, especially with regard to the problem of recovering the proceeds resulting from corruption crimes, and based on Executive Decree No. 02/127, which includes the establishment of the Financial Intelligence Processing Unit, its organization and its amended and supplemented work, so that the Authority undertakes the tasks of combating money laundering and terrorist financing and preventing them, as the legislative and regulatory texts granted it powers to suit the purpose for which it was established at the national and international levels. ¹¹ Among the tasks of the cell at the national and internal levels is what is known as receiving notifications of suspicion, to analyze and process the information contained therein indicating the existence of financial suspicion, and in turn sends a file to the competent judicial authority for follow-up..

In order to elaborate on this element, it is necessary to know the framework regulating the form and content of the notifications as follows:

2.2.2.1 Form and content of the notification:

By examining the text of Article 2 of Executive Decree No. 06-05, which includes the form, model, content, and receipt of notification of suspicion, we find that it stipulates that a single form for notification of suspicion and receipt of notification of suspicion shall be created, as the Algerian legislator has entrusted the task of preparing the form for notification of suspicion in accordance with the organizational model specified by Executive Decree No. 06-05, in accordance with what is stated in the text of Article 4 thereof.¹², for the persons obliged to carry out this task mentioned in the text of Article 19 of Law 05_01 relating to the prevention of money laundering and the financing of terrorism, and its form, model and content, it was only on January 2006, by virtue of this decree, and Article 05 thereof has specified the data that must be mentioned in the notification of suspicion, which must be in writing, in accordance with what is explicitly stated in the legal text, in exchange for a receipt that the notified requests from the cell, which is prepared by the members of the cell council by automatic digitization, specifying the date of receipt of the notification as a certificate of that, and here the oral notification is raised as a problem on the horizon, especially in light of the legislator's silence on its nature .

The legislator imposed on the subjects to write the notice clearly in writing by Automatically type Any electronic media without padding or to cross out, Regarding its content, the notification of suspicion, in accordance with the provisions of Article 5 of Executive Decree 06_05 mentioned above, includes a set of data that we list below::

- _ Information about the notified, such as his address, phone number, and fax number...
- _ Information related to the account in question, such as the account number, the date it was opened, and all related documents. used in That and the notes Introduction about that.
- _ Data and information about the suspected customer, whether a natural or legal person, provided that the full identity is determined for natural persons, the date and place of birth, with mention of the company's address, legal nature and activity, tax identification or statistical index number for a legal person, in addition to information about the identity of the managing partners. _ Information about suspicious transactions, such as the type of transaction, total

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value, period or date, details and nature of the suspicious funds, i.e., specifying whether it is a national or foreign currency, minerals or real estate values, etc. _ Mark the appropriate answer to determine the reasons for suspicion, the amount of the transaction or its unusual nature. _ Mention the suspect’s criminal record, if any.

_ The summary or opinion, and the notification is attached to all the necessary documents related to the subject of the operation, bearing the title and signature of the notified and the date of issuance of the notification of suspicion, to be presented to the Financial Inquiry Processing Unit, which has the right to request any additional information that helps it in carrying out its duties, to analyze it and use it to help it in advancing the investigations. ¹³In return for a receipt delivered to the notified by the cell, which is responsible for designing it, ¹⁴It is filled out and signed by a cell member, specifying the precautionary measures to be taken..¹⁵

3.2.2.1. Appointment Notification:

In the context of the contribution of the notification mechanism to uncover suspicion and achieve effectiveness in combating corruption crimes, especially financial corruption, and recovering the proceeds of corruption crimes, the notified must report the financial suspicion in a timely manner in the event of doubts about an operation related to money laundering. This is a confirmation of what is stated in the text of Article 20 of Law 15_06 amending and supplementing Law No. 05_01.¹⁶The law requires that notification of suspicion be made as soon as suspicion arises, even if it is impossible to postpone those operations or after their completion. The legislator, in his use of the term “as soon as suspicion arises,” makes it clear to us that notification should be made before the suspicious operation is carried out, in order to enable early detection of the money laundering crime. However, this does not mean that notification should not be accepted or rejected if this is impossible, and notification is made after the operation is carried out, even though the legislator did not specify a specific or precise time period..

To make the notification, he left out what indicates the necessity of expediting this through what was stated in the text of the aforementioned article, immediately upon the presence of suspicion, meaning that the personal standard of the bank (the notifier) is used in the absence of objective standards.

4.2.2.1. Who receives the notification:

In the framework of combating corruption, the Algerian legislator, by virtue of the aforementioned Executive Decree 02-127, created the Financial Intelligence Processing Cell as a new body charged with combating financial corruption crimes such as money laundering, within the framework of activating the role of banks and financial institutions in combating financial crimes. In this regard, countries differed among themselves. Some assigned this responsibility to the specialized police to analyze information and monitor suspicious banking operations, while others adopted the establishment of an independent investigation service that works to ensure communication between banks and institutions on the one hand and the judicial authorities on the other.¹⁷This body undertakes several tasks at the internal level, mainly represented by receiving notifications of suspicion, then analyzing and processing this information with the possibility of taking precautionary measures for follow-up, with the possibility of taking precautionary measures, and finally sending the file to the competent judicial authority for follow-up. The legislator, keen to activate a strategy to prevent money laundering, introduced the automated suspicion idea technology at its level.

3.2.1. Persons obligated to report the following suspicion:

Returning to what was stated in the text of Article 04, Paragraph 3 of Order 12-02, we find that the legislator has identified the persons subject to the obligation to report financial suspicion, and they are: banks, financial institutions, and non-financial institutions and professions obligated to report financial suspicion.

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As stated in Article 4 of Law 12-02, we mention them as follows:

- ✓ Banks and financial institutions
- ✓ Financial interests of Algeria Post
- ✓ Similar financial institutions
- ✓ Insurance companies
- ✓ Exchange offices
- ✓ Mutual funds, betting, gaming and casinos, lawyers, notaries, auctioneers, accountants, bookkeepers, brokers, exchange agents and customs agents, stock exchange brokers, real estate agents, billing institutions, dealers in precious stones, precious metals and works of art.

What is noted from what has been presented is that the Algerian legislator has expanded the scope of persons obligated to report financial suspicion and has obligated them to do so as soon as there is suspicion of the source of funds so that the competent authorities can investigate and uncover the suspicious financial transactions and achieve the desired goal of this mechanism, which is to combat corruption crimes, especially financial ones, and recover the proceeds resulting from them.

2. Banks between the inevitability of criminal liability in the event of failure to report suspicion and the duty of banking secrecy

Banks or financial institutions constitute a fertile field, as criminals resort to them in order to give a legal character to suspicious funds, such as merchants, businessmen, and even natural persons, which made the legislator emphasize the mandatory nature.

To report financial suspicion by it, and this is what was confirmed in accordance with the provisions of Article 3 of Order 12-02 relating to the prevention of money laundering and the financing of terrorism and the fight against them, as banks, financial institutions and financial services of Algeria Post must report any information that leads to confirming or denying suspicion, immediately and without delay to the Financial Intelligence Cell, especially what is related to organized crime and trafficking in prohibited substances and psychotropic substances or what appears to be directed to finance terrorism according to the data contained in Executive Decree No. 05-06

The duty to report suspicion is an immediate obligation that does not require a request, as this procedure is carried out as soon as there is suspicion of a banking operation that takes place in complex or suspicious circumstances without a legitimate basis or justification. Accordingly, the Algerian legislator has obligated banks and financial institutions to report suspicious operations to the information processing unit.

Financial, and this was stated and confirmed through the text of Article 3 of the law on the prevention of money laundering and the financing of terrorism and combating them from Order No. 12-02.

It should be noted that the obligations of banks and financial institutions through reporting financial suspicion are exempt from accountability for the crime of disclosing a professional secret in the presence of the client.¹⁸...as it depends on confronting the latter and holding her accountable for disclosing professional secrets according to Article 15 of Regulation 05-05 of any administrative matter, whether criminal or even civil, when she reports or reports suspicious operations,

Even if it later turns out that the notification has no legal basis.

This raised a wide jurisprudential debate regarding this wording contained in the text of Articles 23 and 24 of Law 05-01, which resulted in a difference in jurisprudential opinions. Some considered notification to be an impediment among the impediments in jurisprudential opinions, while others considered notification to be a reason for permission in the following:

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1.2.Reporting suspicious financial transactions is a deterrent to punishment and liability.:

1.1.2.Reporting suspicious financial transactions is an obstacle to punishment:

The proponents of this opinion considered that reporting suspicious transactions is an obstacle to punishment, due to the availability of a personal excuse related to the perpetrator, represented by reporting the financial suspicion in a suspicious transaction. However, this opinion was criticized because the obstacles to punishment are legal reasons that arise for the accused, despite the elements of the crime being established against him, but the punishment is not applied, i.e. after the crime is completed..¹⁹

1.1.1.2.Considering reporting financial suspicion as an impediment to Responsibility:

This opinion is based on the fact that when an employee performs his duty to report any suspicion of a financial transaction related to money laundering or financing terrorism with the aim of protecting the public interest, he is not criminally liable, due to the lack of criminal intent against him.²⁰ However, he criticized this approach in turn because the basis of liability is the person's will, not the criminal intent, and because the impediments to liability are limited in an exhaustive manner, without mentioning notification among them, and are based on objective personal reasons.²¹

2.1.1.2.Notification as a reason for permissibility:

According to the proponents of this view, notification is one of the reasons for Permissibility, It is considered a reason by which he can Obligated persons The duty to report is not to disclose this secret related to the client's private operations if there is suspicion surrounding them due to their connection to a financial operation related to money laundering or financing terrorism. Therefore, when the employee reports suspicious financial operations, he is not considered to have committed the crime of disclosing a professional secret, because the act is outside the scope of criminalization and into the scope of permission for objective, not personal, reasons.

3.1.1.2.Provisions on the criminal liability of banks and breach of the duty of notification in the face of banking secrecy:

The Algerian legislator has obligated persons subject to the obligation to report any financial suspicion to the Financial Intelligence Processing Unit, as its original and exclusive jurisdiction, regarding any transaction that resembles money laundering or terrorist financing. Any breach of this obligation is subject to strict penalties to ensure that perpetrators do not escape punishment.

In accordance with Article 14 of Bank of Algeria Regulation No. 12-03, notification of suspicion and what is related to it is within the framework of professional secrecy, and the customer or beneficiary of the operations cannot be informed of it..²²

Whereas the information subject to the notification is covered by professional secrecy, informing the cell of any suspicious financial transaction does not strip it of this status, as confirmed by Article 15, Paragraph 3 of Law 05-01 relating to the prevention of money laundering and terrorist financing, in addition to what is stated in the text of Article 7 of Executive Decree 02-127, with the possibility of sending information to the competent public prosecutor in accordance with the law and similar specialized international bodies, bound by reciprocity.

Although the Algerian legislator has set the number of persons obligated to report suspicious financial transactions, the number of announced reports does not reflect the actual reality, due to the spread of the phenomenon in Algeria, as most of the recorded statements are from banks only, whether public or private, while other sectors still take a negative stance towards this, with regard to operations related to money that could be as dangerous as those recorded in the banking sector, if not more dangerous, awaiting the adoption of strict measures in this regard, including the cell's

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immediate intervention to change the procedures related to the obligation to report regarding these sectors so that they include all sectors obligated to do so. We will address the study of the provisions of criminal liability for banks in the inevitable face of the dangers of the duty of banking secrecy by exposing the forms of breach of the duty of notification by them, and the penalties stipulated in that.

1.2.2.Criminal liability of banks for failing to report suspicious transactions Finance:

The Algerian legislator made the duty of reporting financial suspicion a legal obligation and considered any breach of it a punishable crime, to achieve the desired goal of its creation, which is to combat corruption crimes, especially financial ones, and recover criminal proceeds, and thus protect the public interest, and ensure that perpetrators do not escape criminal accountability for any breach. Below we will address the crimes resulting from banks' failure to comply with the obligation to report financial suspicion by being exposed to: a breach of the confidentiality of notification by banks for the benefit of the customer or client (a), banks' failure to comply with the duty of reporting financial suspicion (b).

1.1.2.2.Breach of confidentiality of notification by banks in favor of the customer or client

Returning to the text of Article 33 of Law 05-01, as amended and supplemented, we find that the Algerian legislator has allocated strict penalties as a punishment for the managers and employees of financial institutions subject to the obligation to report financial suspicions who deliberately disclose Reporting the subject of the notification of suspicion to the owners of funds and financial operations suspected of being related to money laundering or financing terrorism or access to any information about the results that concern them, under penalty of a fine of 2,000,000 DZD to 20,000,000 DZD, without prejudice to more severe penalties and any disciplinary penalties. The following are the elements of this crime.

1.1.1.2.2.The material element of the crime of breaching the confidentiality of the notification to the owners of suspicious funds and transactions

By examining the text of Article 33 of the amended and supplemented Law 05-01, we find that the material element of this crime is represented by the positive behavior translated into the manager of banks or financial institutions informing the owner of the funds or the suspicious financial transaction or the person notifying the suspicion of the existence of a notification regarding those transactions or informing him of any information related to results concerning him, and the reporting behavior is achieved in any form that conveys the information of the existence of the notification and suggests it, such as through advice or in the form of speech or writing or any activity that allows the client to be informed of the existence of a suspicion or suspicions surrounding his activity..²³

The prohibition on reporting the transaction to the owner of the funds or the customer applies to all employees of the bank, even if the reporting is from someone who is not specialized in the transaction that is the subject of the notification..²⁴

2.1.1.2.The moral element of the crime of breaching the confidentiality of the notification to the owners of suspicious funds and transactions

This crime is considered an intentional crime par excellence, as it requires the presence of general criminal intent, which is the knowledge of the manager or assistant in the banking or financial institution of the existence of the notification and his duty to maintain the confidentiality of this notification..²⁵However, he deliberately intended to disrupt this by informing the owner of the money or suspicious transaction of the existence of the notification regarding his activity, and His

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knowledge On information about him, and in return it is denied The crime if reported in a way that does not affect the will of the person facilitating or assisting the bank or the bank.

2.1.2. The crime of banks failing to report financial suspicion:

The Algerian legislator has addressed the failure of a bank to report financial suspicions as a punishable crime in Article 32 of Law 05-01 on money laundering and terrorist financing and combating them, as amended and supplemented, under penalty of penalties such as a fine ranging from 1,000,000 DZD to 10,000,000 DZD, without prejudice to more severe penalties and disciplinary sanctions.

From the induction of the text of Article 32 of the above law, we can extract the elements of this crime, which are mainly represented by the condition of the capacity represented by the subject, the repeated abstention (behavior in the material element), and the moral element in the following.

1.2.1.2. Condition of the attribute:

If the above-mentioned article stipulates that every person subject to it shall be punished, and this is the formal description of the perpetrator of the crime, and it is that he is one of those subject to the obligation to report financial suspicion.²⁶ What is stated in the text of Article 19 of Law 05-01, namely financial institutions and non-financial institutions and professions, any obligation falls exclusively on those mentioned in Article 19, and accordingly, no one else is required and the law does not prosecute anyone else for this crime.

2.2.1.2. material element

The behavior in the material element of this crime is represented by negative behavior represented by: He shall refrain from writing or sending the notice.

Notification without sending it, as the behavior is achieved if the notification of suspicion is too late, i.e. at a time when the intended effect does not achieve the goal

What is expected of him is to discover the crime and punish the perpetrators, as this laxity in submitting the notification represents collusion with the owner of the suspected operation..

3.2.1.2. Moral corner:

In order for the crime of failure to report to be established, it is necessary that the perpetrator has criminal intent, represented by his knowledge of the obligation to report the financial suspicion, and that the suspect subject to it, such as the director of the financial institution and the employee assigned to do so, have knowledge of a certain operation, due to its connection to the process of money laundering or financing terrorism. It is not necessary that money laundering actually takes place, rather suspicion is sufficient. However, it is directed, under the pretext of his will, to not report, despite his knowledge of the inevitability of the obligation to report.

It should be noted that the punishment and criminalization of failure to notify conflicts with the principle of banking confidentiality, as the work of banking and financial institutions requires the necessity of concealing the financial information provided by the client, based on the assumed trust between the client and the banking financial institution, and that this information is among the clients' private secrets..²⁷

It should not be revealed or disclosed to others.²⁸ In support of protecting the client's interest on the one hand, the public interest on the other hand, and the bank on the other hand, the Algerian legislator has been guided to give priority to reporting financial suspicion over the principle of banking secrecy, and this is what Article 15 of the Bank of Algeria System 12-03 addressed, as it stated that banking secrecy is not invoked.

In the event of a notification of financial suspicion, the risk is exempted from any liability related to the disclosure of professional secrets, even if the notification is found to be false, in accordance with the provisions of Articles 23 and 24 of Law 05-01, as amended and supplemented.

2.2. Penalties imposed for failure to report financial suspicion:

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The Algerian legislator has approved various criminal penalties for failure to report financial suspicion, contrary to what the French legislator has addressed. With his sufficiency Disciplinary sanctions²⁹ and By our extrapolation According to the texts of Articles 32 and 33 of Law 05-01 as amended and supplemented, it is clear that the Algerian legislator has allocated to the crime of intentional and repeated failure to write or send a notification of suspicion, a financial penalty consisting of a fine ranging from 1,000,000 DZD to 10,000,000 DZD without prejudice to more severe penalties or other disciplinary penalties ranging from 2,000,000 DZD to 20,000,000 DZD without prejudice to more severe penalties and other disciplinary penalties as a penalty for every manager and employee of financial institutions and those subject to the obligation to report suspicion, on the occasion of their commission of the crime of informing the owner of suspicious money or the operation suspected of being linked to a money laundering or terrorist financing operation, of the existence of the notification regarding their activity or any information related to that.

It is noted that the Algerian legislator was satisfied with fines as criminal penalties, with the provision of more severe penalties in the event of the commission and proven participation in money laundering operations, as Article 114 of the Monetary and Credit Law 03-11 dated August 26, 2003 stipulated a warning and reprimand, as disciplinary penalties, in addition to a ban on practicing some operations, and limiting the practice of other activities stipulated by the Banking Commission in the event of failure to report the financial charge.

Conclusion:

Given the importance of the role played by financial and banking institutions in general in conferring legitimacy and legality on funds through the services they provide, they are legally obligated to adhere to the duty of reporting incumbent upon them whenever financial doubts or suspicions arise regarding a particular operation or funds suspected of being related or connected to a money laundering operation of illicit origin. This is what the Algerian legislator has gone for by allocating a national body operating at the international and national levels as a cell whose tasks include receiving notifications related to financial suspicion, called the Financial Intelligence Processing Cell, in order to achieve the desired goal of combating suspicious operations, combating financial corruption crimes, and prosecuting their perpetrators.

Through our study, we reached a number of results, which we present below:

- ✓ Financial suspicion indicators were mentioned, for example and exclusively:

Mere suspicion is sufficient for financial and banking institutions to be obligated to report financial suspicion, and the issue of assessing this is up to the discretionary authority to consider.

- ✓ Professional secrecy and the principle of banking confidentiality are not considered in reporting financial suspicion regarding a particular transaction or money to a client.
- ✓ The duty to report financial suspicion must be kept completely confidential by all those who are responsible for reporting, under penalty of criminal penalties.
- ✓ Exempting those who are obligated to report financial suspicion from criminal accountability for the crime of disclosing a professional secret, even if the notification is not proven, as a new criminal policy to ensure that perpetrators do not escape and to eliminate financial corruption crimes in general and money laundering in particular.

Based on the results presented, we provide some recommendations:

- ✓ Working to activate the supervisory role, especially internal control in banking institutions, and the necessity of the new criminal policy to eliminate and deter financial crimes.
- ✓ The necessity of establishing a practical framework and management and administration teams in banking institutions, and the necessity of raising awareness of the risks of failing to comply with the obligation to report financial suspicions, while

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strengthening criminal penalties by adding custodial penalties in addition to fines to ensure effectiveness and deterrence.

- ✓ Updating the procedures related to reporting suspicions in terms of form by activating digital platforms for this purpose, while taking into account exceptional and urgent cases by providing verbal notification as a technique that is compatible with the urgent situation.

✓

Footnotes:

¹ Law 01-05 of February 6, 2005, relating to the prevention and combating of money laundering and terrorist financing, J.R., No. 11, issued on February 9, 2005, amended and supplemented by Order 12-02, dated February 13, 2012, Official Gazette No. 8, issued on February 15, 2012.

² Fadhila Melhaq, Protecting the Algerian Banking System from Money Laundering, Dar Houma, Algeria, 2013, p. 143

³ Leila Ben Qala, Financial Intelligence Units and Their Role in Combating Money Laundering, PhD Thesis, Abu Bakr Belkaid University, Tlemcen, 2015, 2016, p. 210.

⁴ Hassan Abdel Salam: The Legal Confrontation of Money Laundering Through Banks in AlgeriaR, Journal of Arts and Social Sciences, Volume 12, Issue 21, 2015, p. 265.

⁵ Article 20 of Order 12-02 on the prevention and fight against money laundering and terrorist financing.

⁶ For the grass on me, Legal framework for combating money laundering, Second Edition, University Publications Office, Algeria, 2009, p. 81

⁷ Damoush Hakima, Banks' Obligations to Report Suspicious Transactions, Academic Journal of Legal Research, Issue 2, 2013, pp. 285, 288, 299

⁸ Fadhila Melhaq, Protecting the Algerian Banking System from Money Laundering, The previous reference, p. 60

⁹ Lasheb Ali, The Legal Framework for Combating Money Laundering, Office of University Publications, Algeria, 2007, p. 73

¹⁰ Article 11 of Law 05-01, relating to the prevention and fight against money laundering and the financing of terrorism, as amended and supplemented by Law 12-02.

¹¹ Amhamdi Bouzina Amna, Combating Corruption Crimes in Algerian Law, 1st ed., Legal Book Foundation, 2021, p. 292

¹² Text of Article 4 of Executive Decree No. 06-05 of January 9, 2006, including the form, model, content and receipt of notification of suspicion, Official Gazette No. 02, issued on January 15, 2006

¹³ Article 15 of Law No. 05-01 on the prevention and fight against money laundering and terrorist financing, mentioned above.

¹⁴ According to Article 4 of the aforementioned Executive Decree 06-05

¹⁵ According to Appendix No. 2 Listed in Executive Decree No. 06-05 mentioned above

¹⁶ Article 20 of Law 15-06, dated February 15, 2015, amending and supplementing Law 05-01 relating to the prevention and fight against money laundering and terrorist financing.

¹⁷ Fadhila Melhaq, Protecting the Algerian Banking System from Money Laundering, previous reference, pp. 131, 132

¹⁸ Wise Damoush, Bank Obligations By notification On Suspicious Operations, Academic Journal of Legal Research, Issue 2, 2013, pp. 285-288

¹⁹ Khaled Mohammed The honorable Money laundering and related crimes Economic Law Library, Riyadh, 1st edition, 2012 p. 145

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²⁰ Abdel Fattah Bayoumi Hegazy, The crime of money laundering between electronic media and legislative texts, University Thought House, Egypt, 1st edition, 2005 p. 240.

²¹ Laila Ben Qala, Jeddah Financial Intelligence and its role in combating money laundering, PhD thesis, op. cit., p. 214

²² Text of Article 14 of the Bank of Algeria Regulation No. 12-03 of November 28, 2012, relating to the prevention and fight against money laundering and terrorist financing, Official Gazette, No. 12, issued on February 27, 2013, quoted from: Amhamdi Bouzina Amna, the previous reference, p. 293.

²³ Ghazali Naziha, Criminal Liability of Bankers in Algerian Law, a thesis submitted for a Master's degree, University of Mentouri Constantine, 2009-2010, p. 113.

²⁴ My fair gazelle, The same reference, p. 113.

²⁵ Dahmani Farida, “The obligation to report suspicion plays an important role in combating money laundering,” Al-Naqdiya Magazine, Volume 2, Issue 2, p. 12.

²⁶ Artbas Nazir, The Relationship between Banking Secrecy and Money Laundering Operations, PhD Thesis, Mouloud Mammeri University, Tizi Ouzou p. 215

²⁷ Muhammad Ali Al-Sarheed, Legal Aspects of Banking Secrecy, Dar Jalis Al-Zaman, Amman, 1st ed., 2010, p. 14.

²⁸ Zainab Salem, Criminal Responsibility for Banking Business, Dar Al-Jamia Al-Jadida, Egypt, 2015, p. 223.

²⁹ Mohamed Khalil, The Role of Banks in Combating Money Laundering in Algerian Legislation, Journal of Economics and Development, Laboratory of Sustainable Local Development, Yahya Fares University, Medea, Issue 7, January 2017, p. 69.