

ANALYSIS

of the Strategy for the recovery of the funds misappropriated from the banking system of the Republic of Moldova

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This analysis analyses the content of the Strategy for the recovery of funds misappropriated from the Moldovan banking system, which was made public by the authorities of the Republic of Moldova in July 2018. It was analysed both the manner how the information about the bank fraud and prosecutors' investigations, as well as the recovery plan. Taking into account the limited official information available on the bank fraud investigation, the analysis is largely based on the text of the Strategy, which has been analysed in the light of the text of the court judgements concerning the bank fraud. The analysis was prepared in September 2018 by Vladislav GRIBINCEA and Daniel GOINIC, Executive director and, respectively, legal officer at the Legal Resources Centre from Moldova.

DESCRIPTION OF THE BANK FRAUD

General information

Within the period of 2007-2014 over USD 800,000,000 disappeared from the banking system of the Republic of Moldova, which amounts to 13% of the 2014 Gross Domestic Product of the country. The money was misappropriated from three banks: Banca de Economii, Banca Socială and Unibank. These amounts were largely derived from the reserve assets of the National Bank, which were lent to those three banks. The largest part of this amount, according to [Kroll 2 Report](#), at least USD 600,000,000, disappeared in 2013-2014, when those three banks were de facto controlled by the businessman Ilan SHOR. Subsequently, these three banks were liquidated.

The Government of the Republic of Moldova contracted Kroll company to facilitate the recovery of the defrauded money. Both [the first](#) and [the second](#) Kroll reports mention Ilan SHOR as the main beneficiary of banking fraud. According to the Strategy made public by the authorities, the amount misappropriated from the banking system has not been precisely established yet, but the Strategy operates with the approximate amount of MDL 13.3 billion (equivalent to USD 891,000,000 on 30 November 2014), representing State aid offered to those three banks. [Several organizations assess](#) that the misappropriated funds exceed USD 1 billion. This amount was converted into the public debt and is repaid from the public budget.

The Strategy for the recovery of defrauded funds

On 13 June 2018, the Prosecutor General's Office (PGO), the Anti-corruption Prosecutor's Office (PA), the National Anti-Corruption Centre (CNA) and the Crime Assets Recovery Agency (ARBI) presented [the Strategy for the recovery of funds](#) misappropriated from the three banks (hereinafter the Strategy). The Strategy describes the measures undertaken so far by prosecutors to recover the misappropriated funds and measures to be taken further for this purpose. It is the first time that the authorities have provided to the public details of the investigation concerning the sums misappropriated from the banking system of the Republic of Moldova. The Strategy dates back to June 2018. It is not clear who and when exactly developed and approved the Strategy.

The stated purpose of this Strategy is to identify the beneficiaries of the funds defrauded from those three banks and recover them. The Strategy aims to recover MDL 10.7 billion and not MDL 13.3 billion that was defrauded according to the Strategy, since MDL 2.6 billion has already been recovered by selling the assets of the banks. Although the Strategy uses the sum of MDL 2.6 billion recovered from selling the bank assets, the [Ministry of Finances reported on 1 September 2018](#) that the recovered

amount from selling the assets did not exceed MDL 1.2 billion, less than half of the amount used in the Strategy. The Strategy does not explain where the sum of MDL 2.7 billion comes from.

According to the Strategy, judges have already issued final decisions to recover MDL 1.39 billion, cases for other MDL 5 billion are pending trial, while cases concerning other MDL 4 billion are investigated by prosecutors and will soon be sent to the court. Prosecutors consider that the beneficiaries of MDL 9.6 billion are identified, while the beneficiaries of MDL 1.1 billion are still not known. Out of MDL 9.6 billion, 3.2 billion were misappropriated in 2007-2012 by the former management of the Banca de Economii, and 6.5 billion by "Filat, Platon, Shor Group" in 2013-2014.

These amounts have been defrauded from the banks by means of granting the fictitious credits. 47 companies participated in the fraud of those 6.5 billion stolen in 2013-2014, out of which 42 had persons from Mr. Shor entourage as final beneficiaries, and 5 companies were *de jure* owned by socially vulnerable persons. The latter did not even know about the operations of their companies. Finally, all the credits were transferred to the last 5 companies. The identification data of those 47 companies were provided in an annex to the Strategy, which was not published for the reason that the information is „confidential“. However, the published Strategy contains information on companies that benefited from bad loans in 2007-2012. Prosecutors have established that, for obtaining credits, some companies that have taken credits have submitted bank guarantees issued by three Russian banks, which later proved to be false.

The Strategy describes the measures to be taken by the authorities for the recovery of misappropriated assets in general terms, largely reproducing the provisions of the legislation. The Strategy mentions that assets worth MDL 4.1 billion have been seized. It does not provide details about the amounts actually recovered from the defrauded money. The Strategy seeks to recover the assets within three years.

The main criminal cases regarding the bank fraud

Funds misappropriated in 2007-2012

According to the Strategy, in 2007-2012, MDL 3.2 billion was defrauded from Banca de Economii. The former leadership of this bank, headed by Mr Gacikevici, is suspected of this fraud. Although the Strategy mentions that the sum of the fraud of this period is **MDL 3.2 billion**, the prosecutors found that bad loans or unsecured loans granted during that period were in the amount of only one billion lei. Criminal cases regarding the defrauded funds amounting to about **USD 6,000,000** were sent to the court. **Even though the first cases have been submitted to the court in April 2013, no person has yet been convicted in these cases.**

Funds misappropriated in 2013-2014

According to the Strategy, in 2012-2014, **MDL 6.5 billion** was misappropriated from the above three banks. Ilan SHOR declared to the prosecutors in 2015 that part of this amount was given to the former Prime Minister Vlad FILAT as money and favours. In 2016, Vlad FILAT was finally convicted for corruption to 9 years of imprisonment, because he received from Mr. Shor money and favours in the sum of about **MDL 472,000,000 (USD 25,000,000)**. It seems that some of the money defrauded from Banca de Economii has been also received by the businessman Veaceslav PLATON. In 2017 he was sentenced to 18 years imprisonment for misappropriation of **MDL 869,000,000 (USD 58,000,000)**.

Prosecutors also accused Ilan SHOR. He would have misappropriated from those three banks the largest amount, **MDL 5.2 billion (USD 350,000,000)**, which represents half of all the amounts that prosecutors seek to recover. In June 2017, Ilan SHOR was sentenced by the first instance court to seven years of imprisonment for embezzlement and money laundering, but the judges did not find that he had obtained any personal benefit. Ilan SHOR was left at large until the examination of the case by the court of appeal. The judges also found that only MDL 2.7 billion damage was established out of MDL 5.2 billion claimed by prosecutors. However, the judges dismissed the prosecutors' claim for damages recovery and recommended them to lodge a separate civil action. In September 2018, Mr. Shor's case was still pending appeal and, after his conviction, a massive campaign of undermining the pro-European opposition from the Republic of Moldova was triggered by him.

MAIN FINDINGS

1. **The recovery Strategy is the first document made public by the Moldovan authorities which presents in a consolidated manner details on how the funds were defrauded from the banking system of the Republic of Moldova, as well as on the investigations launched by prosecutors.** This information is of public interest and of particular value given that, so far, such information has not been provided and the main legal proceedings regarding these frauds have been examined in camera;
2. **The Strategy was adopted in June 2018, more than 42 months after the fraud from the banking system.** It is not clear from the text of the published strategy who approved the document and what is the degree of commitment to its successful implementation;
3. **Even 42 months after the end of the fraud, the authorities of the Republic of Moldova could not say exactly what sum was misappropriated from the banking system.** The Strategy operates with an approximate amount. It is hard to explain convincingly why the exact amount of fraud is not known until now. Moreover, without knowing exactly the amount of the fraud it is impossible to investigate it efficiently;
4. **At least 20% of the sums misappropriated from the banking system are not investigated at all.** Although it was established that at least MDL 13.3 billion were defrauded from those three banks, prosecutors are seeking to recover only MDL 10.7 billion, because it is claimed that MDL 2.6 billion has already been recovered by selling the assets of the liquidated banks. This approach is illogical. Under the law, if MDL 13.3 billion were defrauded from banks, all these amounts have to be traced because they were obtained by criminal means. Otherwise, it is accepted by the authorities that the misappropriation of at least MDL 2.6 billion should not be investigated, and those who have stolen these amounts can keep them. Furthermore, although the Strategy reports that MDL 2.6 billion has already been recovered by selling the assets of the liquidated banks, according to the Ministry of Finances, this amount is at least to times lower (MDL 1.2 billion);
5. **Out of MDL 13.3 billion misappropriated from the banking system, at least MDL 6.5 billion were misappropriated in 2013-2014.** In that period, the three defrauded banks were directly or indirectly controlled by Ilan SHOR;
6. **Prosecutors report as identified amounts much higher than those actually identified.** Prosecutors claim they have filed to the court a criminal case regarding MDL 5.2 billion defrauded by Mr. Shor. Judges of the first instance found that there was evidence of defrauding of only MDL 2.7 billion, which is about half of the amount claimed by prosecutors. However, when referring to the amount

discovered, prosecutors use the sum of MDL 5.2 billion. It is true that the judgement concerning Mr. Shor is still not final yet. However, as long as the court decision is not quashed, making the assumption that Mr. Shor in that case has defrauded MDL 5.2 billion is at least speculative. This detail, although minor at first glance, is considerable in quantitative terms, making up MDL 2.5 billion (USD 167,000,000);

7. **The authorities have unjustly increased by USD 25,000,000 the amount of allegedly discovered damages.** The authorities declare that Mr. Filat would have received about USD 25,000,000 from the bank fraud, while Mr. Shor - about USD 350,000,000. Authorities sum up these amounts, despite the fact that Mr. Shor declared that those USD 25,000,000 were taken by him from bank fraud. Consequently, such summing up is unjustified and gives the impression that the authorities have discovered a higher amount than the one actually discovered;
8. **The authorities speculatively report about court orders for compensation of MDL 2.7 billion (USD 180,000,000).** The Strategy mentions that the judges ordered a total compensation of MDL 4.09 billion defrauded from the three banks, of which MDL 2.7 billion from Ilan SHOR. The reference to the court order against Mr Shor is false. There is no court order to collect this amount. It is true that the prosecutors have claimed the payment by Mr. Shor of the sum he defrauded. However, judges in the criminal proceedings refused to deal with this claim, recommending prosecutors to initiate a separate judicial proceeding. It is true that the judgement in Shor case is not final. However, if this solution is upheld, a separate civil action can only be initiated after criminal proceedings are completed, i.e. a few years later. It should be noted that the judges refused to examine the civil action without a convincing reasoning. The judges were obliged to take a decision on the damage claimed by prosecutors, but they did not do so. Unlike in the Shor case, in the cases of Filat and Platon, by conviction judgement, the judges ordered the compensation of the damage caused by the criminal offence;
9. **The Strategy contains evasive provisions regarding seizures applied for the recovery of missappropriated assets.** It is mentioned that prosecutors have seized movable and immovable assets in the amount of over one billion lei. However, the Strategy does not mention anything about the seizures applied to the property of the person who is suspected of having defrauded the most from those three banks - Ilan SHOR. It is generally known that Mr Shor's main business still continues working successfully. On the other hand, at the criminal prosecution stage, the prosecutors have seized all the assets of Mr. Filat and Mr. Platon, who were also involved in bank fraud. Such a difference in treatment applied to the main suspect of bank fraud is difficult to reconcile with the declared intention of the authorities to efficiently recover the amounts defrauded from the banking system;
10. **Nearly 4 years after the bank fraud ended, the theft of MDL 5.1 billion, accounting for 38% of the total defrauded sum, is still investigated by prosecutors.** Although this is a complex investigation, taking into account what is at stake in the case, such a lengthy investigation is hard to justify. It is mentioned in the Strategy that in June 2018, the criminal prosecution regarding 4 billion MDL was at the final stage and cases were soon to be submitted to the court. Three months have passed since the Strategy was published, but it seems that these cases still did not reach the court;
11. **Even if several decisions were taken to recover the amounts defrauded from those three banks, the Strategy does not mention a basic thing - not a single leu of the defrauded money has yet been returned.** Those over MDL 2 billion obtained by the Government are from the sale of the remaining assets of three banks, and not from the defrauded money;

- 12. The list of companies and suspects that have been involved in bank fraud has not been published, which is affecting the credibility of the document.** The strategy was made public at a press conference. Most of the information regarding the bank fraud was already widely known. Considering the scale of fraud and its impact on the Republic of Moldova, the subject continues to be of particular public interest, especially the details of this fraud. The non-disclosure of such data could be justified solely by the need to carry out confidential evidence-gathering activities. Fraud investigation began a few years ago and these procedures have been publicly announced, making it impossible for those involved in bank fraud not to know about investigations and be surprised now by possible investigation measures. However, the authorities refuse to publish data on companies and persons suspected of involvement in bank fraud. Hiding this information only fuels the mistrust that this investigation is thorough. This mistrust is also fuelled by the fact that the Strategy contains data on companies suspected of defrauding money from Banca de Economii until 2012, but does not publish the data of companies suspected of bank frauds that took place in 2013-2014;
- 13. The measures provided by the Strategy are very general and mostly reproduce the provisions of the current legislation. The proposed measures refer rather to the empowerment of the institutions responsible for asset recovery and the improvement of the legislation, than to the effective recovery of the money defrauded from the banking system of the Republic of Moldova.** The Strategy is rather designed for the general public. Given that the Strategy refers to activities that already result from legislation, the added value of this Strategy for investigating bank fraud is questionable.

CONCLUSIONS

It is the first time when the authorities provide consolidated details regarding the bank fraud investigations and future plans for recovering of defrauded money. Until now, the Prosecutor's Office has refused to communicate information about the investigations carried out, arguing that they do not want to affect the effectiveness of investigations, while the main court proceedings have taken place in camera. Although the document appeared with a long delay, the adoption in June 2018 of the Strategy for the recovery of funds defrauded from the banking system could be a step forward. However, it is not clear who and when adopted this Strategy and what is the degree of commitment of the authorities to its successful implementation.

The Strategy describes the actions to be taken to recover the assets defrauded from the banking system in general terms. Given that the Strategy refers to activities that already result from legislation, the added value of this Strategy for investigating bank fraud is questionable.

Although the investigation started several years ago, the prosecutors do not know exactly the amount of the bank fraud. Without knowing this, it is impossible to investigate effectively the bank fraud. At the same time, the Strategy presents the results of the investigation carried out so far in a tendentious way. It distorts the results of the court proceedings, showing the investigating bodies in a favourable light. Misappropriation of over MDL 2.6 billion is not investigated at all. Only half of the amount allegedly defrauded by Mr. Shor could be proved in the court, the unconfirmed amount representing MDL 2.5 billion (USD 167,000,000). Even if the Strategy mentioned that, in the near future, criminal cases regarding defrauded MDL 4 billion will be sent to the court, three months after the publication of the Strategy, they have not yet reached the court. Several court judgements have been adopted to recover

the amounts defrauded from those three banks. However, the Strategy does not mention that not a single leu of the defrauded money has yet been returned effectively.

Generally, to ensure the effectiveness of investigations, such strategies are not public. The Strategy was made public at a press conference held on 13 June 2018 by the Prosecutor General's Office. It was also published on the Prosecutor General's Office website. The press conference took place on the eve of the visit of the Republic of Moldova leadership to Brussels. The country's leadership has used the document as an advocacy tool. These issues raise suspicions about the independence of the institutions that made the Strategy public, but also about their involvement in political games. The events that took place this summer in the Republic of Moldova support these suspicions. It appears that the Strategy was designed as an advocacy tool rather than an instrument to help authorities investigate the bank fraud.

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