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Contents

Editorial Words

Dear Readers,

Welcome to the 27th volume, first issue of the ASEJ Scientific Journal of Bielsko-Biala School of Finance and Law. In this number, editorial board present a diverse range of articles that delve into pressing topics within the realms of economics, finance, law, and security. These articles shed light on various aspects of contemporary society and offer valuable insights into the challenges we face today.The first article by Medani P. Bhandari, titled "The Corruption: A Chronic Disease of Humanity: Causes, Effects, and Consequences," examines the pervasive issue of corruption and its profound impact on societies worldwide. Following that, Stanisław Ciupka explores the "Ethical Dilemmas of Contemporary Business," addressing the complex moral challenges faced by companies in the modern business landscape. Michał Comporek's article, "Levels of Reported Financial Result and the Scope of Accrual-Based Earnings Management," focuses on the practices of earnings management within public companies in the clothing industry, providing exemplification studies to illustrate the phenomena. Justyna Fibinger-Jasińska's contribution, "Judicial Review of Illegal Clauses in Consumer Loan Agreements," delves into the legal aspects of consumer protection and the role of the judiciary in scrutinizing loan agreements for potential unfair clauses. Wojciech Jakubiec examines the intricacies of money laundering and its selected security issues in "The Essence of Money Laundering – Selected Security Issues," shedding light on the challenges faced in combating this criminal activity. Radoslaw Koper explores the exclusion of freedom of expression during interrogations and the irregularly obtained evidence, focusing on Article 168a CCP, in "Irregularly Obtained Evidence (Article 168a CCP) in the Aspect of Exclusion of Freedom of Expression of Interrogated Individuals." "The Emotional Surge Impact on the Formation of a Personal Brand as an SMM Product" by Kateryna Kalynets, Yevhen Krykavskyy, Petecki Ignacy, Sylwia Nycz-Wojtan examines the influence of emotional surges on the formation of personal brands, specifically within the realm of social media marketing (SMM). Aleksander Sapiński's article, "The Importance and Challenges of Information Security in the Digital Age: Analysis of the Current Situation and Prospects for Development," analyzes the current state of information security in the digital age, highlighting its significance and outlining the challenges that lie ahead. Lastly, article by Mariola Adamiec-Witek, which sheds new light on the issue of the conduct of proceedings before common courts with the participation of jurors.

I hope that this issue of the ASEJ Scientific Journal of Bielsko-Biala School of Finance and Law provides valuable insights and stimulates further research in the fields of economics, finance, and law. I extend my gratitude to the authors for their contributions and commend the rigorous academic scholarship demonstrated in their work.

prof. dr Ihor Halystia
Editor of the ASEJ, Issue 1, Volume 27, 2032.

The essence of money laundering – selected security issues

Wojciech Jakubiec[1]

[1] Bielsko-Biala School of Finance and Law
Poland

Abstract— **Combating the crime of money laundering is of key importance for stabilizing the economy of every democratic state. Threats posed by the introduction of huge amounts of money from criminal activities into circulation are extremely high and pose a direct threat to the financial economy of the state, which in fact leads to its destabilization. The scale of undertakings undertaken on the international arena confirms the huge profits made by criminal groups from their illegal activities. In order to combat this practice properly, it is necessary to recognize this phenomenon at an early stage. For this purpose, specialized bodies have been established whose task is to identify threats related to money laundering and transfer this information to law enforcement authorities, which will take action to identify the criminal group. In accordance with international standards, the legislator has criminalized the phenomenon of money laundering, as only the involvement of law enforcement agencies ensures the proper fight against this practice. The mere penalization of criminal law provisions is not sufficient. Due to the fact that law enforcement authorities themselves do not have information about suspicious transactions that may bear the hallmarks of money laundering. It is reasonable to emphasize the importance of cooperation not only between the authorities within the state but also on the international arena. The article refers not only to the criminal policy in the field of money laundering, but also emphasizes the role of cooperation between the relevant institutions, which enables the effective fight against this practice. In connection with the above, the aim of the article is to analyze the phenomenon of money laundering from the perspective of the criminalization of provisions that are the basis for the effective fight of law enforcement agencies. To present the intended goal, methods of literature research were used with an emphasis on the Pro-Quest, Scopus and Science-Direct databases and public data provided by the Ministry of Finance, as well as applicable legal acts.**

Keywords— money laundering, criminalization of regulations, criminal policy, international cooperation.

I. ORIGINS OF MONEY LAUNDERING

The phenomenon of money laundering has been known for several decades. It is identified with the introduction into economic circulation of means of payment, financial instruments, securities, foreign exchange values, property rights or other rights, such as movable and immovable property. These values must come from the benefits associated with the commission of the prohibited act. There is no closed catalog as to which prohibited acts these benefits are supposed to come from. Undoubtedly, this is a new concept, and the practice is extremely harmful to the economy, not only for regions or countries, but also has an international dimension. In order to combat it effectively, it is necessary not only to identify the phenomenon, but also to disclose the underlying crime. Only complex, multifaceted activities allow to convict the real perpetrators of the crime.

Referring to the phenomenon of money laundering, it is easy to see that it exists in the supranational arena, where criminal groups invest capital from crime. With the increasing globalization of finance and technology, there has been an increase in transactions in international markets. Globalization of the financial system: Advances in communication and transportation have made hiding crime and the proceeds of crime a much easier task in today's world. Income can be instantly transferred from one financial institution to another, and cash flow has become not only easier, but also significantly faster. Which makes it much more difficult to identify the source of financial capital, due to the ease of its transfer not only between different economic entities but also between countries. The process of money laundering itself is extremely expensive and complicated with the right degree of risk, which in no way

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is an obstacle for this type of criminal groups. Despite the complexity of the procedure requiring the commission of a number of profit-generating crimes, criminal groups use the possible means available because an effective money laundering process provides them with a kind of impunity and puts them in the role of investors.

In the literature on the subject, there is no consistent position as to when exactly the phenomenon of "money laundering" appeared. The most likely period of its creation is the 1920s in the United States. Most likely, this term appeared thanks to the well-known gang boss from Chicago - Al Capone. Gangs as organized crime groups engaged in "money laundering", with the aim of legalizing the proceeds of crime. A Jew of Polish descent, Meyer Lansky, is also often mentioned as the originator. After the arrest of Al Capone, he put emphasis on legalizing his property, for which he used tax havens and the opportunities offered by some banking systems of some countries, a good example of which is the anonymity of bank accounts. Lansky developed the first method of legalizing the proceeds of crime, namely, the Swiss banks that cooperated with him seemingly granted him loans, instead of the funds coming from it, the money earned from the gangster's illegal activities was disclosed, thanks to which he could also benefit from tax exemptions (Kowalewska 2014).

The term money laundering came into common use during the Watergate investigation in the late 1970s. It was directly related to the activities of the Committee to Re-elect the President, which raised funds for the R. Nixon campaign and transferred dirty funds to Mexico and back. The Guardian, describing these activities, used the term "laundering" in relation to the activities undertaken by the committee related to the transfer of money and concealing its illegal origin.

It is not clear when the term "money laundering" first entered the legal language and the act of money laundering was covered by the law. The term appears in some cases in the mid-1970s. In the early to mid-1980s, courts used it without explanation as United States v. Williams, 809 F.2d 1072 (5th 1987); United States vs. Goldberg, 756 F.2d 949 (2d Cir. 1985); Massa, 740 F.2d 629, 637 (8th Cir. 1984); Browning, 723 F.2d 1544 (11th Cir. 1984); Tobon-Builes, 706 F.2d 1092, 1095 (11th Cir. 1983); Cauble, 706 F.2d 1322, 1337 (5th 1983); Halberstam v. Welch, 705 F.2d 472,487 (DC Cir. 1983), etc. In the US domestic law, the first regulations on money laundering were originally introduced in the Bank Secrecy Act of 1970, while the criminalization of this practice was made only in October 1986. under the Anti-Money Laundering Act. Other countries followed suit. Due to the fact that money laundering took on an international dimension, it was no longer enough for enforcement authorities to only be aware of what was happening within their own jurisdiction. As a consequence, the above phrase began to appear in the legislation of individual countries, also in acts of international law (conventions, declarations, recommendations, etc.).

On the European continent, the country that initiated the process of penalizing money laundering was Italy. Subsequently, money laundering was penalized by: England, France and Spain (Mazur 2014)

The washing procedure, in common use, the so-called dirty money has been studied and defined many times. In Poland, one of the best-known definitions is the definition of Emil Pływaczewski, according to whom money laundering is: " hiding the benefits obtained by means of various activities of illegal origin, which determines the possibility of their safe (with impunity) inclusion in legal financial and economic circulation (Hryniewiecka 2014). Any type of money laundering aims to legalize criminal capital in the economy. So that its owners can use it in any way, whether by placing it on the stock exchange or investing in another way, in each case with impunity.

Currently, the best-known European legal definition is the entry in Directive (EU) 2015/849 of the European Parliament and of the Council of May 20, 2015, i.e.: For the purposes of this Directive, the following acts, when committed intentionally, shall be regarded as money laundering:

a) the conversion or transfer of property, knowing that it is derived from criminal activity or from participation in such activity, for the purpose of concealing or disguising the illicit origin of such property or assisting any person who is involved in such activity to enable that person to avoid legal consequences such action.
b) concealment or disguise of the true nature of property, its source, location, disposition, movement, rights with respect to property or ownership of property, knowing that such property is derived from criminal activity or from participation in such activity.
c) the acquisition, possession, or use of property, knowing at the time of receipt that such property is derived from criminal activity or from participation in such activity.
d) participation or cooperation in committing, attempting to commit and aiding, abetting, facilitating and advising in the commission of any of the acts referred to in point (a) a), b) and c).

Money laundering shall also occur where the activities which obtained the property to be laundered took place on the territory of another Member State or a third country (EU 2015/849).

The scope of the quoted definition proves the scale of the phenomenon of money laundering, thus emphasizing the influence gained by members of organized crime groups and how much resources should be involved in order to effectively combat this practice.

II. CRIMINALIZING MONEY LAUNDERING

Washing the so-called dirty money has been criminalized by the legislator, i.e., it has been recognized by the legislator as a crime, which results from international standards and is necessary to effectively combat this practice. At the same time, it is only one of the tools and in itself turns out to be insufficient. The mere criminalization of regulations allows for the

involvement in the fight against money laundering not only of the prosecutor's office but also of services such as: the Internal Security Agency, the Police, the Central Anti-Corruption Bureau, the Military Counterintelligence Service, the Intelligence Agency or tax authorities. Both the Police and other services have extensive powers to fight crime. As part of the internal structures of law enforcement agencies, specialized departments have been separated to combat, among others, with this type of economic crime. Most often, these are departments located at the voivodeship level, which conduct preparatory and operational-reconnaissance proceedings, with scope of such matter.

According to many lawyers, the previous penal provisions were not effective enough to protect economic transactions against the harmful effects of the described phenomenon. It is absolutely necessary to share the view that criminal law will not bear this burden alone. They cannot be required to reduce or even limit money laundering. This requires a whole range of measures (Mazur 2014).

In Poland, the term "money laundering" and its definition appeared for the first time in Regulation No. 16/92 of the President of the National Bank of Poland of 1 October 1992 on the rules of conduct for banks in the event of disclosure of circumstances indicating that cash or other assets derived from or related to a crime and when making cash payments exceeding a certain amount (Official Journal of the National Bank of Poland No. 9, item 20). In the first paragraph of this ordinance, money laundering was defined as "a situation which occurs when the disclosed circumstances indicate that the funds or other assets deposited in the bank originate from a crime or participation in its commission, or that their origin, condition or purpose are be hidden for reasons related to the crime (Jurgiewicz 1997).

Former criminal law provisions in force in Poland were insufficient to effectively prosecute the perpetrators of the crime in question. It was only after the period of political transformation that the penal provision on money laundering was properly penalised.

Currently, the criminalization of behavior commonly referred to as "money laundering" has found place in art. 299 of the Penal Code in Chapter XXXVI entitled Offenses against economic turnover.

In Art. 299 of the Penal Code, two basic types of crimes are included (§ 1 and 2) and two qualified types relating to each of them (§ 5 and 6). These provisions cover only a certain part of money laundering within the meaning of Art. 1 point 9 of the Act of November 16, 2000, on Counteracting Money Laundering and Terrorist Financing (Journal of Laws of 2010, No. 46, item 276, as amended), which also contains criminal provisions. To Art. 35 of the PrTerFinU, criminal bans were transferred from those repealed under Art. 299 § 3 and 4 of the Penal Code

The property values indicated above are to come from the benefits related to the commission of a prohibited act. The concept of a prohibited act should be understood as in the case of receiving receipts. The jurisprudence states that "the connection between property values and the original prohibited act may be necessary to talk about an offense under Art. 299 § 1 of the Penal Code, either direct (when property values were obtained by means of a prohibited act, e.g. directed against tax obligations), or indirect (when the relationship between the benefit and its source is looser). There are no important reasons for departing from the presented meaning of the phrase in question."

Causative actions of the crime under Art. 299 § 2 of the Penal Code, consist in the provision of services intended to conceal the criminal origin of property values in the form of means of payment, financial instruments, securities and foreign exchange values or to protect against their seizure. They have a meaning similar to that provided for in Art. 299 § 1 of the Penal Code, preventing the determination of criminal origin, detection or seizure of assets. As an example of these services, the legislator mentioned the transfer or conversion of property values, as well as their acceptance either against the law (which should be referred to the provisions of the PrTerFinU and issued on its basis), or in other circumstances, raising a reasonable suspicion that they are the subject of an act specified in Art. 299 § 1 PC (Grześkowiak 2012).

Money laundering is prosecuted ex officio, in all its forms. Virtually anyone who has information about such a procedure is entitled to report this crime. However, the statutory responsibility rests with the institutions appointed for this purpose.

Other criminal provisions regulating the issue of money laundering are the provisions of the Act of March 1, 2018, on counteracting money laundering and financing of terrorism, contained in Chapter 14 entitled "Penal provisions". Their scope includes failure to comply with the obligation to notify the General Inspector of circumstances that may indicate money laundering or failure to comply with this obligation or providing false information.

The mere criminalization of regulations does not guarantee effectiveness in combating the described practice. However, penal provisions give the opportunity to act in the field of operational and reconnaissance, which in some cases may be of key importance.

III. COUNTERACTING MONEY LAUNDERING - INTERNATIONAL COOPERATION.

Money laundering issues should be dealt with on an international basis. The very nature of the phenomenon, which is becoming more and more global, speaks for this. Criminals are no longer willing to stay or limit their activities to one country. In fact, Lansky has proven that it is safer to move his wealth and business between countries to avoid detection by local authorities. As a result, international criminal organizations have acquired skills and experience in moving property from one country to another, taking advantage of some countries' notoriously lax laws that provide a safe haven for foreigners who wish to hide their wealth. Many of these countries provide "dead ends" for researchers trying to follow in the footsteps left by the profits. as it is a supranational dimension of money laundering, it has become a foundation and

at the same time a necessary requirement for the creation of international standards and guidelines unifying regulations in this area, thus increasing their effectiveness.

In the Polish system of combating money laundering, the Act of 1 March 2018 on counteracting money laundering and financing of terrorism (Journal of Laws of 2018, item 723, as amended) plays a key role. It indicates the authorities and entities operating within this system and defines their duties and powers. The central authority in this system is the General Inspector of Financial Information. In the performance of its statutory tasks, it is supported by the Financial Information Department of the Ministry of Finance, which performs the tasks of the Polish Financial Intelligence Unit (PFIU). The anti-money laundering system in Poland is created by: the General Inspector of Financial Information, obligated institutions (i.e. entities from both the financial and non-financial sectors that offer services or products that may be used against their intended purpose for money laundering or terrorist financing - list of categories of institutions obligated parties are included in Article 2(1) of the Act), cooperating entities (government administration authorities, bodies of local government units and other state organizational units, as well as the National Bank of Poland (NBP), the Polish Financial Supervision Authority (KNF) and the Supreme Audit Office (NIK) – Article 2(2)(8) of the Act).

The Act defines numerous obligations of the General Inspector of Financial Information (GIFI), obligated institutions and cooperating institutions, especially in the field of cooperation and information exchange. Some of them are listed below.

First of all, the obligated institutions recognize and assess the risk of money laundering and terrorist financing related to business relations concluded with customers or occasional transactions carried out by them. On the basis of this risk and its assessment, they apply financial security measures whose task is primarily to obtain information about their clients and the purpose for which they use the services and products offered by the obligated institutions.

The obligated institutions shall notify the GIFI of circumstances that may indicate a suspicion of money laundering or terrorist financing, as well as cases of reasonable suspicion that a specific transaction or specific asset values may be related to one or other of the above-mentioned crimes. crimes.

The obligated institutions also provide the GIFI with information on the so-called above-threshold transactions, i.e., those whose value exceeds PLN 15,000 EUR and which are:

- payment or withdrawal of cash (i.e., a cash transaction),
- transfer of funds (including an incoming transfer from outside the territory of the Republic of Poland to the recipient whose payment service provider is the obligated institution), excluding certain exceptions indicated in the Act,
- a transaction of purchase or sale of foreign exchange values,
- notarial act specified in the act.

At the request of the GIFI, the obligated institutions shall block accounts and suspend transactions as well as transfer or make available to it information and documents. They also suspend transactions or block the account on the basis of a relevant decision of the prosecutor (Ryżkowski 2019).

An obligation has been imposed on the General Inspector of Financial Information an obligation has been imposed on the annual report on its activities within 3 months from the end of the year for which the report is submitted. The report shall include in particular the number of transactions reported by the obligated institution, a description of actions taken in response to these notifications and the number of cases in which proceedings were conducted, the number of persons accused of committing offenses under Art. 165a of the Penal Code (the crime of financing terrorism) or Art. 299 of the Penal Code (money laundering crime), the number of persons not legally and legally convicted for these crimes and the specification of property values in relation to which transactions were frozen, blocked and suspended or seized, property secured or forfeited(Perkowska et all. 2015).

The only international organization established solely to combat the practice is the repeatedly mentioned Financial Action Task Force (FATF). The group currently consists of 34 permanent members, excluding Poland, 8 associate members, as well as a large group of observers, including Europol and Eurojust. There are three working teams within the organization: the first deals with solving legal problems, the second - with financial matters, the third - with contacts and foreign disputes. The FATF meets every five years to consider its continued existence. The activities of the organization, operating since 1989, consist in organizing and providing the necessary support for all manifestations of the fight against the legalization of dirty money and the financing of terrorism. The research conducted by the FATF, aimed at understanding the practice and developing effective methods of combating it, will help in this. In addition, the group prepares reports to identify current and projected threats to financial systems, and issues so-called recommendations. An important step of the organization aimed at counteracting money laundering was the creation of the discussed blacklist of countries and territories not cooperating in the implementation of the statutory tasks of the FATF. The basic tasks of this organization also include disseminating knowledge on money laundering, as well as supporting and monitoring its members in the implementation of these recommendations. From the perspective of international law, the work of the FATF does not constitute legally binding agreements, and the group itself cannot enforce its recommendations. The organization is politically independent, and the effectiveness of its operation results from its substantive authority and exerting appropriate pressure on individual countries.

The group's key achievements in combating international money laundering include a report created in 1990, known as the 40 FATF Recommendations. Its content is strongly influenced by the 1988 Vienna Convention and the recommendations of the Basel Committee on Banking Supervision. In general, the recommendations are aimed at

strengthening the legal systems of individual countries, increasing the role of the financial system in combating the practice, as well as intensifying international cooperation in this area (Smolak, 2013).

IV. Conclusion

In order to effectively fight against money laundering, it is undoubtedly necessary to criminalize the conduct in question. However, when taking action, solutions in this area should also be sought outside the law enforcement authorities. The crime of money laundering itself can be located in virtually every area of the economy. Not only in the financial area, such as currency exchange or brokerage activities, but also in any other area, such as electronic money or art trade. As long as criminal groups profit from illegal activities, anti-money laundering measures will be carried out. It is a process that is constantly evolving. It uses the latest technological achievements and often anticipates the actions taken by the law enforcement authorities, which are designed to organically this practice. It is easy to notice that the establishment of specialized institutions can significantly reduce money laundering. This requires not only the establishment of appropriate institutions, but also reliable training for employees in this area so that they can disclose criminal activities on an ongoing basis. Undoubtedly, the establishment of specialized institutions will strengthen the detection process and facilitate the seizure of proceeds of crime.

Combating money laundering can only be seen on an international basis, where an effective anti-money laundering system should be built. The actions taken should be coordinated and implemented by individual countries on an ongoing basis. All the more so because the lower standards and lax regulations introduced by many countries provide the necessary flexibility and freedom to allow criminals to use both the legal and financial system to launder the proceeds of crime.

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