

# MONEY LAUNDERING INTERNATIONALLY

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## **Abstract**

*Being an organized crime activity, money laundering has become a major issue in recent decades. From the point of view of the general consideration of the notion of "money laundering", the context of this crime as a whole is to legalize an illegal income. Money laundering is and will remain a complex and dynamic phenomenon of great diversity, both in the public and private spheres, manifesting itself both actively and passively, being also a phenomenon unrecognizable to ordinary people. Regarding the content of the offense, it is presumed that it is a crime without victim, being considered without "emotional implications" in the offense category. The word best describing this type of offense is "discretion" because this kind of crime is one of the most difficult to identify, and one of the difficulties encountered by the investigators. Money laundering includes various methods and procedures that make it possible to obtain money or other assets from the illegal activity and conceal by disguising their origin or by giving a seemingly legal aspect of their source. Thus, it becomes one of the most widespread types of economic fraud, both nationally and internationally.*

**Keywords:** *crime, money laundering, international money laundering, criminal law, international law.*

**JEL Classification:** K14, K33

## **1. Considerations on money laundering**

One of the first uses in a public document of the term "money laundering" dates back to 1973 and is attributed to the Guardian newspaper, which used it during the "Watergate"<sup>2</sup> scandal.

In the specialized doctrine, it is mentioned that in China, about 2000 years ago, wealth traders hid their wealth from the rulers in order not to risk losing them on the basis of measures or provisions of the authorities.<sup>3</sup>

The phrase "money laundering" has been used since the twentieth century, being associated with the famous Al Capone, which in its full ban opened in Chicago, many laundry washes to disguise the illicit source of income from alcohol, from prostitution or from smuggling with weapons, wanting to create the impression that all the revenues that were recorded in the accounting were of legal origin.<sup>4</sup>

Also, the expression "money laundering" has also been associated with another gangster, Meyer Lanski<sup>5</sup>, who transferred to Switzerland by using a complex system of ghost companies, holdings and accounts on behalf of offshore companies, "dirty money" obtained from committing offenses in the USA.

Considering the term "money laundry" or "money laundering", some authors felt that this was the heart of organized crime, that is, what made it exist.<sup>6</sup>

## **2. The term of money laundering in Romanian legislation**

Money laundering means masking the illegal source of money or other gains through organized crime in the financial and economic circuit. The purpose of money laundering is to make

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<sup>2</sup> According to The Guardian, the Presidential Re-election Committee Richard Nixon ordered the transfer of certain funds to Mexican banks, and then these funds were transferred to a Miami company (see also J. Robinson, Washman, Ed. Pocket Books, 2nd edition, 1998).

<sup>3</sup> I. Melinescu, I. Italianu, *Financial Investigations in Money Laundering*, National Printing Publishing House, Bucharest, 2004, p. 7; C. Bogdan, *Money Laundering*, Universul Juridic Publishing House, Bucharest, 2010, p. 14; A. A. Dumitrache, *Money Laundering*, Universul Juridic Publishing House, Bucharest, 2013, p. 10.

<sup>4</sup> M. Mutu, *Money laundering - legal-criminal aspects*, PhD thesis, Chisinau, 2005, p. 19.

<sup>5</sup> [https://en.wikipedia.org/wiki/Meyer\\_Lansky](https://en.wikipedia.org/wiki/Meyer_Lansky), consulted on 1.04.2019.

<sup>6</sup> Rancé Pierre, de Baynast Olivier, *L'Europe judiciaire. Enjeux et perspectives*, Paris, Dalloz, 2001, p. 89.

secrete the source of the proceeds of the illicit trade, in such a way that the third party appears to be "clean", unaffected by previous activities.<sup>7</sup>

The criminalization of the "money laundering" act as an illicit act, was identified several centuries ago, either in the form of favoring the offender or in the form of concealment, in most states of the world.

In Romania, the first regulation that criminalized this crime was Law no. 21/1999, law repealed 3 years after its entry into force, by Law no. 656/2002, currently in force.

According to article 29 of Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for the introduction of measures to prevent and combat the financing of terrorism,<sup>8</sup> it constitutes the money laundering offense and is punished by imprisonment from 3 to 10 years:

a) the change or transfer of goods, knowing that they originate in committing offenses, in order to conceal or dissimulate the illicit origin of such goods or to help the person who committed the offense from which the goods originate to evade the pursuit, or execution of the penalty;

b) concealing or dissimulating the true nature of the origin, location, disposition, movement or property of the goods or their rights, knowing that the goods are derived from the commission of the offense;

c) the acquisition, possession or use of property, knowing that it is the cause of the offense.

Analyzing the two normative acts, namely Law no. 21/1999 and Law no. 656/2002, we note that there are no substantial changes, as it does not allow the foreseeable delimitation of offenses of concealment and favoring the perpetrator.<sup>9</sup>

### 3. Money laundering at European level

At European level, the concept of money laundering was enshrined in Council of Europe Directive 91/308/EEC of 1991.

Among the formal sources of European applicability, existing in the field of prevention and sanctioning of money laundering, we mention:

- The European Convention of November 8, 1990 on laundering, detection, seizure and confiscation of the proceeds of crime, concluded in Strasbourg in 1990, ratified by Romania through Law no. 263/2002<sup>10</sup>;

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<sup>7</sup> M. Pârâianu, *Parallel Labor Market*, Expert Publishing House, Bucharest, 2003, p. 65.

<sup>8</sup> Published in the Official Gazette no. 904, Part I, December 12, 2002.

<sup>9</sup> Article 23 of Law no. 21/1999 provided at least a limitation of the scope of this law, by mentioning the offenses from which the goods which were the subject of the money laundering offense could come from.

<sup>10</sup> Official Gazette no. 353 of May 28, 2002. According to art 6 of this Convention: "1. Each Party shall adopt such legislative measures and measures as may be necessary to give the offense under its domestic law the following acts when committed with intent:

(a) the transformation or transfer of the goods by a person who knows that such goods constitute products in order to conceal or conceal the illicit origin of such property or to assist any person involved in the commission of the principal offense from evading the consequences of its actions; the concealment or concealment of the property, the origin, the location, the arrangement, the movement or the real property of the goods or related rights, which the perpetrator knows are the goods;

b) and, subject to its constitutional principles and fundamental concepts of its legal system:

(c) the acquisition, possession or use of goods which the purchaser, owner or use of them knows, at the time of their acquisition, that they are products;

(d) participating in one of the offenses established in accordance with this Article or in any form of association, understanding, attempt or complicity by providing assistance, advice or advice to commit.

For the purpose of implementing or applying paragraph (1) of this Article:

(a) the fact that the primary offense falls within the jurisdiction of the State Party's criminal jurisdiction is irrelevant;

(b) it may be provided that the offenses set out in this paragraph do not apply to the perpetrators of the offense;

(c) the necessary knowledge, intent or motive as an element of one of the offenses referred to in this paragraph may be inferred from the objective circumstances of the offense. Each Party may adopt such measures as it deems necessary to confer, under its domestic law, the character of an offense to all or part of the facts referred to in paragraph (1) in one or all of the following cases where the author:

a) should have assumed that the good is a product of the offense;

b) acted for profit (profitable);

c) has acted to facilitate the continuation of criminal activity.

- Directive no. 91/308/EEC on the prevention of the use of the financial system for money laundering<sup>11</sup>;
- Directive no. 2001/97/EC of amending the Directive 91/308/EEC<sup>12</sup>;
- Directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing<sup>13</sup>;
- Directive 2006/70/EC laying down implementing measures for Directive 2005/60/EC as regards the definition of "politically exposed person" and the technical criteria for simplified customer knowledge procedures and for exceptions to financial activities occasionally or very limited<sup>14</sup>;
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, adopted in Warsaw on 16 May 2005, signed by Romania in Warsaw on 16 May 2005 (ratified by Law 420/2006)<sup>15</sup>.

According to the German authors X.X. Kerner and A.Dah, money laundering would be "any operation, carried out in order to conceal or disguise the existence, origin or the final purpose value of the property price resulting from the offense at the first stage, for at the second, to proceed to the acquisition of regular income".<sup>16</sup>

Costică Voicu defines money laundering as the offense containing "the money or any other property values acquired by one or more persons in pursuit intentionally or participating in committing an offense incriminated by penal law, having as purpose and result the obtaining of goods and licentious values"<sup>17</sup>, while some French authors define money laundering in a simplistic manner, considering it to be the result of multiple successive transfers of funds under banking secrecy.

Money laundering is the process of converting "dirty" money, profits from "clean" money laundering, money belonging to some of the legally bureaucrats. This latter term "legal" is established through power relations, through conditions in the economic and cultural limits of a society, and therefore money laundering methods are seamless to all law changes and any procedure developed by anti-money laundering justice.

The Romanian state has transposed into national law all the money laundering regulations that it has been bound by international documents, including the criminalization of money laundering.<sup>18</sup>

#### 4. The term of money laundering at global level and comprehensive right elements

Given that the acts of money laundering has become more and more diverse, the world states have considered it appropriate to join forces through multilateral cooperation in this area.

Thus, the first step was through the adoption of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, concluded in Vienna in 1988, to which Romania adhered by Law no. 118/1992.

The Vienna Convention defines money laundering as "the conversion or transfer of goods which the person in charge knows to derive from drug trafficking or the concealment or concealment of the nature, origin, movement, or real property of the property or related rights known to the perpetrator that they come from one of the drug trafficking offenses under the Convention".<sup>19</sup>

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Each Party may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by declaration addressed to the Secretary General of the Council of Europe, declare that paragraph (1) of this Article shall apply only to the principal offenses or categories of principal offenses specified in that statement. "

<sup>11</sup> Official Journal Law 166 of 28.06.1991.

<sup>12</sup> Official Journal Law 344/76 of 28.12.2001.

<sup>13</sup> Official Journal no Law 309 of 25.11.2005.

<sup>14</sup> Official Journal no Law 214 of 04.08.2006.

<sup>15</sup> For the presentation of the main international normative acts, see K. Guiu, *Money Laundering*, „Dreptul” no. 3/2006, p. 175.

<sup>16</sup> Cristof Rühl, Daniel Daianu, *Economic Transition in Romania - Past, Present and Future*, Bucharest 1999.

<sup>17</sup> C. Voicu, *Dirty money laundering*, Bucharest, Silvi Publishing House, 1999.

<sup>18</sup> C. Voicu, G.S. Ungureanu, A.C. Voicu, *Investigation of Financial and Banking Crime*, Polipress Publishing House, 2003.

<sup>19</sup> According to art. 3 of the Convention: "Each Party shall take the necessary measures to confer the character of criminal offenses in accordance with its domestic law when the act was committed intentionally:

(a) production, manufacture, extraction, preparation, supply, sale, distribution, sale, delivery in any condition, dispatch, transit, transport, import or export of any narcotic or psychotropic substance, 1961, the 1961 Convention as amended or the 1971 Convention;

It is worth mentioning that, the Vienna Convention of 1988, criminalizes only the legalization of incomes obtained from a single source, namely that of drug trafficking. Money laundering can be aimed at disseminating or putting into circulation funds that come from other activities such as forgery, crime, smuggling in concurrence with drug trafficking.

In order to overcome the shortcomings of the 1988 Convention, the Convention on Money Laundering, Detection, Seizure and Confiscation of the Proceeds from Criminal Activities, done at Strasbourg on November 8, 1990, and to facilitate international cooperation on mutual assistance for the purpose of investigation, detection, retention and confiscation of the product of any type of crime, specially serious crimes and, in particular, narcotics offenses, arms trafficking, terrorism, trafficking of children and women and other crimes that bring fabulous profits.

Considering the principle according to which, the laundering of capital from any serious crime must be considered a criminal offense and in the states members of the European Union, under the aegis of the European Economic Council of the European Union was elaborated the Directive no. 91/308 of June 10, 1991 on the prevention of the use of the financial system for the purpose of money laundering.

In the terms of the Directive, "money laundering" means the following behavior when committed intentionally: - "the transformation or transfer of property, knowing that this property is derived from a criminal activity or an act of participation in such a property activity in order to conceal or mask the illegal origin of that property; - hiding or masking the true nature, sources, locations, movements, property rights and possessions, knowing that the property is derived from a criminal activity or an act of participation in such an activity;

Purchase or use of property knowing that at the time of receipt, that property derives from criminal activity, participation or association in attempts to commit, as well as the act of helping, facilitating or advising someone for the purpose of committing any of the actions mentioned in previous paragraphs."

Directive 91/308/EEC was amended by Directive 2001/97/EC of the European Parliament and of the Council of December 4, 2001 to update certain provisions.

Referring to the above headlines, we mention that the first country to criminalize money laundering was the U.S.A in 1986, by amending the RICO Law (Racketeer Influenced and Corrupt Organization Act of 1970) in the same year, and the offense was also introduced in British law.

As far as the comparative right is concerned, some states criminalize only the laundering of proceeds from crimes and crimes<sup>20</sup>, other states criminalize money laundering resulting from crimes and certain offenses<sup>21</sup>, but also states that sanction any money laundering, irrespective of whether the

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II. (opium), hake or cannabis plants for the purpose of producing narcotics, in violation of the provisions of the 1961 Convention and the 1961 Convention as it appears amended; III. possession or purchase of any narcotic or psychotropic substance for the purpose of one of the activities listed in paragraph I above; IV. manufacturing or transporting or distributing equipment, materials or substances listed in Table I and II, which the person who deals with these activities knows to be used in or for the illicit crop, production or manufacture of narcotic drugs or psychotropic substances; organizing, conducting or financing one of the offenses listed in paragraph I, II, III or IV above.

b) I. Conversion or transfer of goods which the person who knows that they come from one of the offenses established according to paragraph (a) of this paragraph or participation in its commission in order to disguise or disguise the illicit origin of such property or to assist any person involved in committing one of these offenses to escape the legal consequences of his or her acts. II. The dissimulation or concealment of the nature, origin, arrangement of the movement or real property of the property or the related rights which the author knows to derive from one of the offenses established in accordance with paragraph (a) to this paragraph or to participation in one of these offenses.

c) Subject to the constitutional principles and fundamental concepts of its legal system: I. Acquisition, possession or use of goods which the person acquiring, possessing and using, knows when they receive them from one of the offenses established according to par. a) of this paragraph or following participation in one of these offenses. II. The possession of the equipment, materials or substances listed in Table I or Table II of which the owner owns know that they are or must be used in or for the illicit manufacture, manufacture or manufacture of narcotic drugs or psychotropic substances. "

<sup>20</sup> According to article 324-1 of the French Penal Code: "Money laundering is the act by which, by any means, it is facilitated by the false justification of the origin of the property or the income of the perpetrator of a crime or offense which has made him a direct or indirect profit. It is also a money laundering that provides support for a placement, concealment or conversion of a direct or indirect product of a crime or a crime. Money laundering is punished by five years' imprisonment and a fine of 375,000 Euros."

<sup>21</sup> According to §261 of the German Penal Code: "which, in relation to the patrimonial object, the source of which is: 1. the offense (crime) committed by another person, 2. the offense committed by another person and described in article 29 paragraph 1 point 1 of the Law on narcotic substances, or 3. the offenses (according to paragraph (1) article 246, article 263, art 264, article 266, article 267,

premise is offense or not. According to §1956 of Money Laundering Control Act (1986), constitute money-laundering acts: the pursuit or attempt to pursue a financial transaction undertaken with income from illegal activity; transport, transfer or transmission of funds or funds from a point located on US territory to another point or other location outside of the U.S. territory, or vice versa, from or out of the U.S. territory at the point located on the territory of the U.S. By the Money Laundering Prosecution Improvement Act (1988), money laundering operations were excluded from the receipt of money by a lawyer for judicial services.

As regards "money laundering", Germany has taken over the German Penal Code, the recommendations of the 1990 Strasbourg Convention, on the main facts of which illegal proceeds are derived.

It is worth mentioning that Germany is part of those states that have limited the scope of illegal income to crime.

In France, Law no. 627/1987 of the Public Health Code provided for money laundering (*blanchiment d'argent*) only to launder money from trafficking. The material object of this composition was only money, not other goods. By Law no. 96-392 of May 13, 1996, the Warranty was criminalized for the laundering of criminals or offenses with a wide scope.<sup>22</sup>

Taking into account the above-mentioned normative act, we consider that the text allows the prosecution of all forms of organized crime or violations of it, such as pimping, drug trafficking, cars, works of art, and so on.

## 5. Conclusions

In view of what I have described in this paper, I believe that the field of "money laundering" is and will be a challenge both at national and international level, which will remain the focus of domestic and international bodies specialized in preventing and combating "money laundering" and terrorist financing, because organized crime networks and financial interest groups in the gray areas of commercial and financial markets, are not willing to accept the enclosing of use of the proceeds of crime and criminals are not in danger of losing licit revenues.

Incriminating and penalizing money laundering is a useful tool for bringing to account those who, through their acts, jeopardize the stability and balance of the global financial system, not just the national one.

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article 332, and paragraph (3) article 334] committed by a member of the criminal group as an occupation, committing the act of concealing the object or concealing its origin, detecting, confiscating, arresting, taking over or retaining after that takeover of this object. "It is noted that only a small part of the offenses can constitute sources of money laundering.

<sup>22</sup> Arvay I., Vertes A., *The share of the private sector and the hidden economy in Hungary (1980-1992)*, Budapest, 234 pages; Dallago B., *Measurement and Monitoring of the Informal Sector: Content of the Lectures Venue*, 1993, p. 20; Dilnot A., Morris C., *What do we now about the Black Economy?*, „Fiscal studies”, 1981, no. 2; Guidebook on Statistics on the Hidden Economy, New York, 1992, p. 378.