

MONEY LAUNDERING

Candidate to Ph.D Lecturer **Ramona-Mihaela Urziceanu**
AGORA University, Oradea
ramonaurziceanu@univagora.ro

Abstract:

“Money laundering” isn’t a new activity, the tendency of hiding the illegal origin of some sums and giving them a seeming legality and honesty and respect to these sums’ owners, has old origins. There can be mentioned the Middle Age merchants and usurers who, for hiding the received interests for the loans that they have been giving, under the circumstances in which the Catholic Church had forbidden the usury, they came to a vary number of financial tricks, that correspond, in many of the cases, to the nowadays funds recycling techniques.

Being a complex process, money laundering passes through a lot of levels and involves a lot of persons and institutions. Funds recycling is a complex process through which the incomes from a criminal activity are transported, transferred, changed or mixed up with legitimate funds, for hiding its basis or the property right on those profits. The need of money recycling comes out of the willing to hide a criminal activity. It is the most dangerous element of the underground Economy and consists of: the production, spreading and drugs using activities, weapons traffic, nuclear materials traffic, car steeling, prostitution, flesh traffic, corruption, blackmail, falsifying coins or other values, contraband, etc. The facts, themselves, ask for a juridical stipulation, but analyzing it as a phenomenon, comes out that the social danger known by the society is doubled by an Economic danger, equally bad, even if it is less obvious and studied.

Key words: money laundering, criminality phenomenon, underground economy, drugs traffic, criminal organizations.

Of course “money laundering” isn’t a new activity, the tendency of hiding the illegal origin of some sums and giving them a seeming legality and honesty and respect to these sums’ owners, has old origins. There can be mentioned the Middle Age merchants and usurers who, for hiding the received interests for the loans that they have been giving, under the circumstances in which the Catholic Church had forbidden the usury, they came to a vary number of financial tricks, that correspond, in many of the cases, to the nowadays funds recycling techniques.

The money laundering term has been used for the first time in the ‘20’s when in the USA some criminal groups (very well known are Al Capone and Bugsy Moran) had opened car or clothes laundries that were for laundering “dirty money”, in fact vindicating the money that came from different criminal activities. Maybe, from these activities the name of “money laundering” came out, that, as the time passed, got a juridical way.

Nowadays, the fast food restaurants, casinos and companies based on cash are used on this purpose. The transparency and the wealth situation of the financial markets are key elements for the well functioning of the Economies, but they can be put into danger throughout the money laundering phenomenon. Obtaining “dark money”, mainly from the underground Economy and corruption is, generally speaking, an condemned activity, in all the countries in the world, but the funds recycling process, through the harmless aspect that it gets, can get out of the attention, especially on the hard competition that exist on the international market of capitals.

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The criminal activities, such as the drugs, weapons, nuclear material traffic, are a reality that we often see throughout some breaking news, but behind those activities big sums are moved, that generate real financial Economical waves. An important characteristic of the criminal activity is the organized over frontiers character³⁸¹, so that we can conclude with the fact that the main links in the international domain of the underground Economy are those generated by the organized criminality. The aim of all these actions is, obviously, obtaining some important incomes and placing them in the official Economy.

The reasons that are at the basis of the organized criminality can be sometimes political, religious, but even in these cases; it is about an interface, the organized crime having in an obvious way overlapping tendencies with the underground Economy giving it an organized character, taking the financial reserves and the opportunities created by other component activities.

Analyzing the other components of the underground Economy, there were situations of which's frame in this structure is made on a limit that depends on a certain conjuncture, the dysfunctions that those activities can generate are minimal and the integration in the official Economy possibilities are real.

In contrast with these situations, the activities that are included in the criminality domain are obviously destructive. The contact with the displaying forms of the official Economy it is enough to amplify Economical lacks of balance³⁸² and for creating huge costs for fighting against the phenomenon itself or against its effects. Particularly, it is asked for mentioning the sums' transfer operation that are obtained as a result of the criminal activities in the official Economy, activity known as money laundering. The short history of this concept has as basis the growth of the international level drugs traffic and, as a consequence, the money laundering is the operation that follows the sums placing, obtained out of the legal Economic activities.³⁸³ Now, the products as results of crimes laundering need, for hiding their criminal basis, it is linked with a large type of criminal activities. This phenomenon of placing in the official Economy of the money that comes from the criminal activity has gathered in its game main segments of the international financial banking system danger generated by this situation is a major one, even if because of some close interests its minimizing is being tried. The great income of the black money in the official financial circuits can allow the organized criminality representatives to access the main decisions that point the global Economy's functioning.

The consequences of this income of the capital obtained from criminal activities in the real Economy are similar to the pollution's devastating effects for the nature and can have an irreversible effect. Inside the crime activities, the cash is the main trade way. The money

³⁸⁰ Cristis Nicolae, *The tax dodging and money laundering*, Hamangiu Publishing House, 2006.

³⁸¹ Enescu Constantin, *Analysis methods of the external commerce*, Bucharest, 1993.

³⁸² Drosu-Saguna Dan, *Treatis on financial and fiscal law* All Beck Publishing House SA, 2001.

³⁸³ Hoanta Nicolae, *The tax dodging*, Tribuna Economica Publishing House, Bucharest, 1997.

laundering strategies involve transactions that through the volume are very profitable and attractive for the legal financial institutions.

The money laundering leads money from an illegal Economy and places them in investments that are well received in the legal Economy. Those two major elements of the recycling funds process are: hiding illegal incomes and converting them in money, for hiding their origin. The end of the millennium shows us the special growth of the economical activities that take place in the strong developed countries in Europe, America and Asia. The international economic relations meet an unknown vitality, new countries and economical systems being integrated.³⁸⁴ There is no doubt the fact that in this unlimited territory of the Economy, an impressive number of illegal activities that get together the thing that is, very often, known as the affairs' criminality phenomenon are being initiated, developed and finished.

The fraud hurts the Economy in its whole, causing huge financial losses; the social stability gets weak, threatens the democratic structures, determines the loss of faith in the economical system, corrupts and compromises the economical and social institutions. Concerned about the affairs criminality problem, the International Community has analyzed the causality and its effects, given as recommendation to the member states to adopt certain measures for limiting it. The diversity of the legislations, linked with the economical-social particularities coming out of the development levels of the European countries and from the other countries, had made it impossible to write a precise definition of the affairs criminality.³⁸⁵

Those two dimensions of the affairs criminality are: 1. the national dimension, meaning the sum of the crimes stipulated in the penal or special laws in each country, that are being produced inside the economic and financial system and does not have or involve the foreigner element; 2. the international dimension, meaning the sum of the crimes that are being committed and are being finished with the participation of the foreign element (persons, companies, corporations, banks, etc.). Those two dimensions³⁸⁶ haven't got and won't have a static character.

Today it is obvious the internationalization of the criminal type affairs, in the most powerful networks of trade, tax dodging, drugs traffic, importing-exporting illegal operations, the partnership for crime has been realized and continuously specialized. The alcohol or cigarettes trade, drugs and weapons traffic can not exist without the participation of the businessmen across the world. In this kind of concept it is relevant the list of crimes registered to the affairs criminality phenomenon, written by the European Committee on Criminal Problems: crimes regarding the coalitions' form; fraud practices and abuses committed by the multinational enterprises; illegal obtaining or defalcating the financial funds allocated by the state or by international organizations; informatics crimes (Informatics criminality); creating fictitious companies; falsifying the enterprise's balance sheet and defying the account keeping obligation; frauds that come upon the commercial situation and the social capital; frauds in prejudice of the creditors (bankruptcy, violating the intellectual and industrial property rights); crimes against the consumers (falsifying the merchandises, lying advertising); false competition; fiscal crimes; corruption; money market and bank crimes; exchange currency crimes; crimes against the environment.

Once the real offensive against some elements or segments of the affairs criminality has been launched (tax dodging, trade, corruption, drugs traffic, etc.), special aspects are

³⁸⁴ Sitaru A. Dragos, *International commerce law*-, Bucharest, 1996.

³⁸⁵ Cristis Nicolae, *The tax dodging and the money laundering*, Hamangiu Publishing House, 2006.

³⁸⁶ Hoanta Nicolae, *The tax dodging*, Tribuna Economica Publishing House, Bucharest, 1997.

being discovered, some of them, through their dimension, being outstanding. It was enough, for example, to discover, more or less accidentally, important frauds regarding using the given subventions, inside the Commune Market, to the producers and the exporters of agriculture and food products, for starting a serious analysis which has shown huge frauds committed in this domain, in Italy, between 1985-1996, after complex investigations and inquests the real dimensions and the real face of the mob organizations has been being framed, about which the authorities haven't said a word 30-40 years.

In Germany and the other states of Western Europe, only now it is spoken about the role of the organized crime in the clandestinely migration of the Turks, Arabs, Romanians, Serbs citizens, etc., after more than 20 years, in the name of the free passing citizens right, the authorities have stimulated this phenomenon. So, it can be affirmed the fact that this criminal edifice are being built and developed in their huge majority from the interest and with the support of the state's authorities. Their genesis has to be searched in the interests of power perimeters. This situation makes the authorities not to reveal the real dimensions of the criminality only in crucial moments.

Every new Government is preoccupied to tell and demonstrate how corrupt was the previous Government, refusing to accept that the aspects of the affairs criminality and of the organized crimes will be extended and will be intensified, sometimes at higher quotes. Giving the activities of fight against the criminality a political characteristic is the main cause of the weak reaction regarding its danger, the element that determines the powerful consolidation of it in the today's society in such a climate, on a favorable field, the structures that make some action in the affairs criminality domain have built, developed and specialized a performing management, characterized by: maximum efficiency, rigorous specialization, ultramodern logistics, that is more superior than the ones owned by the law institutions. There are relevant in this way the affirmations made by Giovanni Falcone, the well known Italian judge, killed by the Mafia at 23rd of May 1992: "Mafia is a logic world, more rational and more implacable than the STATE. Mafia is an articulation of the power, a metaphor of the power, but even the pathology of the power. Mafia is an economical system, an obligatory element of the global economical system. Mafia is developing because of the state and it is adapting its behavior on it".

The financial product that came out of the illegal affairs that are being done by the organized crime groups has impressive dimensions. Dirty money that goes around, at sight, is the oxygen that gives power to the criminals that are very close or even inside the power structures that guarantee and cover their criminal activities. The analysts of the affairs criminality phenomenon warns about the fact that important funds from the illegal affairs are being injected in political and administrative bodies and structures, for those to maintain in power and to guarantee the criminal groups the success in the multitude of the dirty affairs that are initiated by them.

The aim, the main target of these groups is the one to make inoperative, inefficient and to paralyze the structures that are meant to fight against them. Even in Romania, for a long time, the fusion of the elite has been made: the interlope world's elite and the public life's elite. These fight against the order and law, inside the lowering perimeter of the immorality, bubble affairs, luxury and dissoluteness. The exponents of these elites have in their property restaurants, casinos, profitable enterprises, fashion houses, hotels, luxury cars, buildings that compete with the princely properties, press trusts and TV channels, holiday houses, and, not the least, substantial accounts in foreign countries. It is, so, clear for the ordinary man that watches helpless to this show that in the territory that is taken by the organized crime, professionals from the world of commerce, investments, finances and banks action in a perfect articulation together with power's exponent. High illegal affairs – trade, tax dodging,

drugs traffic, money laundering³⁸⁷, illegal practices in creating some companies etc. – there can not be initiated, put into work and finished without having a partnership between the local groups and their correspondents that are making their moves on other countries' territory.

The international co-operation in the fight against funds recycling

The money laundering crime³⁸⁸ it is being developed more often in many of the world's countries and geographical regions. That is the reason why the international cooperation through the extradition juridical institutions, executing the final orders made by other states, the sequester and the seizer of the goods that are the result of some crimes done abroad, as well as new co-operation methods between the national agencies of the different states. Only the existence of a commune legislative rules system can help the institutions from different countries to co-operate in an efficient way in this domain. Also, the international co-operation through the international institutions with prerogatives in this domain (Interpol, Europol, Eurojust, etc.).

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³⁸⁷ Florescu Viorel, Banking and currency law, Bucharest, 2006.

³⁸⁸ Mrejeru Theodor, Andreiu Dumitru, Florescu Petre, Safta Dan, Safta Marieta, The tax dodging, Tribuna Economică Publishing House, 2000.