JUDICIAL ASPECTS ON MONEY LAUNDERING

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Abstract:

"Dirty" money – a notion as innovating as it is unclear. Mainly, it is used by criminal organizations, or by other subjects, as a means of getting some income and not paying taxes. It is difficult to trace "dirty" money, because it takes different shapes, and the destructive force of the "dirty" money circuit is called money laundering.

The notion itself of "money laundering" is relatively recent in the judicial vocabulary, but the need of hiding the nature or the existence of criminal, or at least doubtful income, already appears in the 20th century.

"Dirty" money destroys the honest business, corrupt the state institutions, create a favorable environment to develop corruption and organized crime, thus endangering the entire economic system of the state.

The problem of money laundering has been approached, in an organized way, in the contents of the United Nations Convention against the illicit drugs traffic, which has been adopted on December 20th of 1988 in Vienna, in the context of raising the awareness of the international community for fighting the drugs traffic. The signing parties of this convention, being aware that the illicit traffic is a means of considerable financial earnings, which allow criminal organizations to penetrate and corrupt the state structures, the lawful commercial and financial activities, as well as the society at all its level, adopted the first measures of stopping the actions of recycling the funds that came from the drug trade.

Key words: juridical aspect, money laundering.

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traffic, which has been adopted on December 20th of 1988 in Vienna, in the context of raising the awareness of the international community for fighting the drugs traffic[209]. The signing parties of this convention, being aware that the illicit traffic is a means of considerable financial earnings, which allow criminal organizations to penetrate and corrupt the state structures, the lawful commercial and financial activities, as well as the society at all its level, adopted the first measures of stopping the actions of recycling the funds that came from the drug trade.

In a very short time, the sources of dirty money as well as the possibility if recycling it extended and thus important income coming mainly from activities of the subterranean economy are infiltrated in the real economy.

Both national and international normative acts kept the term of "money laundering", this being used more frequently than the expression "legal income obtained in an illegal way".

Thus "money laundering" is just a slang used not only in the common language, but also in the judicial one. So we mustn't give a direct interpretation of the term, in the way that only money can be legalized, and this made some states stipulate in their legislations the term "legalizing income obtained in an illegal way".

Of course, money laundering is not a new activity, the tendency of hiding the illicit origin of some money and of giving an apparent legality and implicitly honesty and respectability to its owners, has old origins. We can mention in this context the merchants and the moneylenders of the Middle Ages, which, in order to hide the interests gained for their loans, in a time when the Catholic church had forbidden the money lending, appealed to a various range of financial tricks which correspond greatly today to the funds recycling techniques. The term of money laundering began to be used in the 1920s, when in the USA some criminal groups (the very well known are Al Capone and Bugsy Moran) opened laundries and car wash shops with the role of washing "dirty money", in order to justify the money that came from different criminal activities. Probably, this is where the term of "money laundering" came from (washing the money) which in time gained a judicial consecration. Describing the danger of money laundering, some considered that this was the heart of the organized crime, this is what makes it exist.[210]

Nowadays, fast-food shops, casinos and trading companies that use cash are used to this purpose. Money laundering is a complicated process that takes several stages and implicates many people and institutions. Recycling the funds is a complicated process by which the income from a criminal activity is transported, transferred, transformed or mingled with legitimate funds, for the purpose of hiding the provenance or the right of ownership over those profits[211]. The necessity of recycling money comes from the urge of hiding a criminal activity. It is the most

[209] Dr. Florescu Viorel, Banking and Exchange Law.
[210] Rance Pierre, de Baynast Olivier, *L'Europe judiciaire. Enjeux et perspectives*, Paris, Dalloz, 2001, p.89.
[211] Nicolae Cristis, *Tax Dodging and Money Laundering,* Hamangiu Publishing House, Bucharest, 2006.

dangerous component of the underground economy and it contains: production activities, distribution and use of drugs, arms trafficking, nuclear material trafficking, auto theft, prostitution, human trafficking, corruption, blackmail, money forging, contraband etc.

Criminal activities such as the trafficking of drugs, arms, nuclear material are a reality we can notice quite often through sensational news bulletins, but behind these activities huge amounts circulate generating real financial economic flows.

Lately people have become more and more aware that it is essential to fight organized crime, that criminals must be stopped, as often as possible, from making legitimate the results of their criminal activities by transforming their "dirty" fund into "clean" ones.

The ability of laundering the results of criminal activities through the banking-financial system is vital for the success of criminal operations. Those involved in such activities need to exploit the facilities offered by the world financial sector if they want to benefit from the results of their activities. To this purpose, using the financial-banking system leads to undermining the individual financial institutions and finally the entire financial-banking system. At the same time, the growing integration of the world financial systems and the elimination of the barriers in the capital free moving increased the ease of money laundering and complicate the tracking process.

"By money laundering one understands the masking of the illegal provenance of some sums of money and of other earnings through organized crime activities in the financial-economic circuit. The purpose of money laundering is to make secret the real source of earnings in the illegal trade so that the third beneficiary appears "clean", unaffected by his previous activities."

Money laundering is the process or the complex of actions by which criminals try and sometimes succeed in hiding the origin and the real possession of income that comes from their illegal activities[212].

According to Law nr.656/2002 of preventing and sanctioning money laundering, as well as of setting up measures for preventing and fighting the financing of terrorist acts[213], by money laundering one can understand:

"a) the exchange and transfer of goods, knowing that they come from committing crimes, in the purpose of hiding or dissimulating the illegal origin of these goods or in the purpose of helping the person that committed the offence from which goods come from to elude pursuit, judging and executing the punishment;

b) the hiding or the dissimulating of the real nature of provenance, location, disposition, circulation or property of the goods or the rights over these, knowing that the goods come from committing offences;

[212] Mihai Paraianu, *The Parallel Work Market*, Expert Publishing House, Bucharest, 2003, p.65.
[213] Published in the Official Gazette, Part 1 nr.904, 12th of December 2002.

c) getting, owning or use of goods, knowing that they come from committing offences" (art.23)

In order to enjoy the fruits of their offences, whether it is drug trafficking, arms trafficking, contraband, fraud in the financial-banking system, the criminals must find a way to dissimulate the illegal nature of their earnings and to get it into the flow of legitimate business.

If successfully, this activity allows the maintain of control over this income and eventually offers a legitimate cover-up for the source of income.

Money laundering is a process by which one can give an appearance of legality for some profits illegally obtained by some criminals which, without being compromised, benefit in the end from the obtained sums.

It is a dynamic process, in three steps, which need mainly the movement of funds directly obtained from offences; secondly, hiding the tracks to avoid pursuit; thirdly, to make the money useful to the criminals by hiding again the occupational and geographic origin of the funds.

There is not only one method of laundering money. Methods can vary from buying and selling a luxury object (for example a car or a piece of jewelry) until the passing of the money through a complicated international network of illegal businesses and "shell" companies (companies that exist mainly only as legal entities without having business or commercial activities). Initially, in the case of drug trafficking and other offences such as contraband, theft, blackmail etc, the funds obtained are usually cash that needs to enter somehow in the financial system[214].

The traditional banking operations of constituting deposits, as well as the money and crediting transfer systems offer a vital mechanism for the money laundering, especially in the initial phase of introduction of cash in the banking system.

The most conclusive presentation of the money laundering phenomenon is made with the help of a model in three stages. According to it, the money laundering is divided in placing, stratification (masking, wiping of the tracks) and integration.

Placing

-represents "getting rid", literally, of the cash physical removal of initial income derived from an illegal activity

Stratification

-is the process of moving the funds between different accounts to hide their origin separating the illicit income from its source by creating some complex layers of financial transactions meant to deceit the control organs and to ensure anonymity

[214] Guide of Suspicious Transactions, The national office for preventing and fighting money laundering p.7.

Integration

-moving the funds thud laundered through legal organizations supplying an apparent legality to the riches accumulated in a criminal manner.

If the process of stratification is successful, the schemes of integration will place the results of the laundering back in the economy so that they will reenter the financial system as normal and "clean" business funds.

The three steps can be constituted in separate and distinct stages. They can also appear simultaneously, or, more commonly, they can overlap. The way in which the basic steps are used depends on the laundering mechanisms that are at the disposal and on the requirements of the criminal organizations.

During the money process certain vulnerable aspects have been identified, aspects difficult to avoid by those who launder money, and thus easy to recognize, respectively:

-the entering of cash in the financial system

-crossing cash over state borders

-transfers in and from the financial system.

Basic rules for money laundering

a) **Anonymity**[215] – is one of the rules of money laundering by which the transaction with values obtained from offences must resemble other legal transactions from the environment or the place where they happen. Essentially, the cash must leave no trace to lead to its origin. In the economies where cash is often used for acquisitions of small or big value, disposing of it represents no risk to the criminal. Yet, in most countries, almost all transactions of big amounts are not made with cash, but by using other forms of payment (checks, bank note, credit cards), that is why spending or depositing large sums of money creates suspicions.

That is why criminals have created varied techniques and ways of inserting cash in the financial system, such as:

-structuring, which is the division of large sums into small sums and their depositing by several persons into different bank accounts or using the respective sums for acquiring other payment instruments, such as bearer bonds or payment order;

-contraband with cash, simply by illegally exiting the country with large cash amounts and entering another country with less strict rules, usually by couriers or by hiding the quantity on cargo boats;

-mixing illegal funds with those coming from a legal cash business, sums which are deposited together.

b) **Speed** – the rapid circulation of values, so that they can't be traced. Once the cash entered the financial system, whether it is in the country of origin or not, the launderer can use the advantages created by the IT progress, the modern

[215] Dr. Nicolae Lupulescu, *Money Laundering and Financing Terrorism*, p.9.

methods of transmitting money to put them rapidly in circulation. The electronic banking transfers can move large sums of money almost anywhere in the world in just a few minutes, without the need of its holder to go to the bank or to involve the bank's employees.

c) **Complexity** – By spreading his funds in more transactions and the speed of these operations, the launderer makes the work of the investigators difficult or even impossible to trace the money. The transfers from one account into several located in other countries and the ulterior redirecting from those countries create a complex electronic multinational circuit, which makes it difficult to trace by the investigating organs.

d) **The secret** – In spite of the fact that the banking secret has a legitimate purpose and a commercial justification, it can lead to the appearance of financial paradises, which offer protection to criminals, worldwide there are approximately a million anonymous corporations which impose strict financial secret and defend foreign investors from investigations and judicial enquiries.

Techniques of dissimulating the illegal origin of income

- **over evaluating the price of a good** through an invoice of greater value than its real one or through a partially or totally fake invoice;
- **fake commercial transactions** introduced into a legal business through: cash transactions from one currency into another repeatedly and fast, using multiple bank accounts, the repeated opening and shutting down of these accounts, electronic bank transfers from the account of a legal person into the account of a natural person, external transfers of big values using multiple monetary instruments, banking checks or travelers' checks, credit operations, investments, constituting fake guarantees etc;
- **the method of the returned loan.** Part of the funds transferred illegally abroad come back in the form of a loan to the criminal or to the company he controls. This operation is followed by the return of that loaned sum, to which you add the interests agreed by the parties and eventually penalties for being late, which lead to greater and greater sums, which thus enter the legal circuit;
- **insurance policies**, through frequent change of the beneficiary, paying bigger bonuses than the normal ones and later requiring its reimbursement towards a third person, receiving the insurance bonus through brokers or financial intermediaries from offshore centers which don't respect the advertising or evidence rules, because they are not obliged by contract.

Systems used in money laundering

a) **Off-shore destinations.** The off-shore destinations are countries or territories, often islands or a group of islands, which accept fictive (dummy) companies, used as simple postal boxes, areas with elastic regulations on control of currency exchange and great freedom about taxes, and which offer at the same

time, almost with no exception, an impenetrable banking secret and many freedoms to private companies.

The moment the money is transformed in a form that can be transferred or with which one can make contraband, they are often transferred to an off-shore center.

This system offers real practical advantages that criminals know. First, the funds are placed in geographic areas protected by jurisdictions that do not admit the influence of the jurisdictions where the profit was obtained. By the implication of another jurisdiction, there appear more legal and financial barriers in the way of the investigating organs, both under the aspect of obtaining and under that of using the evidence in court. Second, there are still many countries that facilitate getting money from the outside no matter of the source or of the transfer mode, money that can enter directly and discreetly in the conventional banking system, so that there is no obligation of paying taxes, no evidence of social capital, no agreement of double imposing, no obligation of book-keeping, no administrators or registered shareholders, the people who have the power in the company are not known, the identity of the real beneficiary is not known etc. Usually, the owners of the companies do not reside in the countries where they started their companies; these people are represented by commissioners who get their instructions by coded means established before.

Financial paradises are one of the most common and used procedures for fraud and tax avoidance at international level.

b) **The shell companies.** Essentially, the shell companies are those existing only on paper. The documents of setting up the company can contain a valid bank account and something more than the names or the address of the lawyer or agent that takes care of setting up the company, the commissioner and maybe a few shareholders.

These are the companies that have no independent assets or their own commercial operations and they are used by their owners to develop their business or to maintain control over other companies. A shell company is registered in the country where it is started, but it is not posted on the stock market and does not operate on its own. Since shell, companies are not illegal, the money launderers, the tax dodgers and those financing terrorism can relatively easily convert and use them in order to hide the source of the illegal income. These companies are easy to set up and can be connected to other shell companies in the world. If a shell company is set up in a jurisdiction with strict legislation on keeping the banking secret, it is almost impossible to identify the real owners or administrators of the company that is why it is impossible to follow the illegal funds that are returned to the real beneficiary.

A technique used successfully by criminals is the setting up of shell companies in order to sell their shares to “external investors”. These ‘external investors” are in fact middle men used by the money launderers. The acquiring of the shares is done with the necessary legal documentation and the money thus enters legally in the possession of the criminals.

Usually, setting up shell companies is done not by owners, but by agents which select the jurisdictions that offer the advantages of a quick set up, low registration costs, minimal clauses or which look for those geographic areas that facilitate the appearance of "tube" companies, locations where no information on the owner is needed or forbid the disclosure of such information.

c) **The using of free-lancers.** Lawyers, notaries, accountants and other free-lancers do a significant number of activities in the support of their clients, organizing and administrating their financial and commercial businesses. Before anything, they offer assistance to natural and legal persons in field such as investment, setting up companies, administration, management, optimizing their fiscal situation and other legal operations. Moreover, the legal consultants prepare, and if necessary, gather the documentation needed to set up commercial companies. In many situations, for substantial material benefits, such professionals can be directly implicated in developing specified financial transactions, like for example keeping funds or paying the acquisition price or selling real estate. Some of these professionals end up being specialized in identifying some commercial companies or off-shore locations for using them in money laundering schemes, producing the entire specialty documentation necessary, which offers an appearance of legality to the businesses.

Essentially, the free-lancers used as intermediaries have the knowledge and the competence that can be used by criminals in order to transform their illegal profits into legal income.

d) **The alternative systems of transmitting the money.** The alternative systems of transmitting money fast (SAT) allow the money to circulate around the world without using the conventional banking system. SAT can be used for legal and illegal purposes and can exist in different forms. Usually evidence of each transaction is kept, but these can be made in dialect, shortened or through a language unfamiliar to investigators and that's why it can be difficult or impossible to interpret.

Due to obvious reasons, SAT is an attractive system and it is used on a large scale by networks of organized crime and by dangerous criminals. SAT is used not only to launder income obtained from offences, but also to avoid taxes and custom obligations. There is also concern at an international level that SAT can be used easily for financing terrorism. It is estimated that in Europe there are thousands of SAT bankers, most belonging to Asian communities, and their clients are ordinary people and not criminals.

There are three characteristics of the Internet that together tend to aggravate certain conventional risks of money laundering:

- easy access through internet
- the contact between client and institution is depersonalized
- the rapidity of the electronic transactions.

f) **Companies with nominal deeds and bearer bonds.** The shareholder certificates are documents that prove the priority right over the company. In most

countries, the shareholder is registered and any share transfer towards another person must be registered in an official register. Yet, some jurisdictions offer the possibility of owning or transferring the shares in a form of "carrier "share.

These carrier shares give more rights of ownership of the company than the actual owning of the shares. With these carrier shares there is no registration on the shareholder and the person who physically has the shareholder certificate is the owner of a part of the company accordingly. That's why the real owner of the company may not appear in any evidence of the companies or in any government statistics. When the identity of the shareholders is not registered the emission and transfer of shares, the right of ownership is anonymous. Such companies represent excellent means for receiving, owning and transferring a fortune anonymously, without the interference of financial control or judicial organs.

g) **The use of non-profit organizations.** Non-profit organizations gather hundreds of billions of dollars annually from donors and distribute this money – after paying their administrative costs – towards beneficiaries. Both their administrative expenses, and the amount and necessity of the expenses of the beneficiaries can be exaggerated and difficult to appreciate their utility. The using with dishonesty of the non-profit organizations for money laundering and for financing terrorism is a frequent method used by the networks of the organized crime, many times these entities being especially created for this purpose. This problem drew the attention of GAFI[216], G8 and The United Nations, as well as that of the national authorities in several regions.

Measures of protection against the money laundering phenomenon at *an international level*

The most efficient solution in the matter of money laundering at an international level is, first, the international cooperation[217] and the control systems and uniform regulations inside each country. The international money laundering is based on the exploiting, through subtle financial operators, of the differences between financial and banking regulations of the countries in the entire world.

The international money laundering has considerable negative effects on the world economy through: the deterioration of the efficient national economies, the slow corruption of the financial market and the reduction of the public trust in the international financial system, increasing the risks and the stability of the system, which all lead to the reduction of the growth rate of the world economy.

To counteract the phenomenon, several **measures** have been taken:

The Convention of the United Nations against the traffic of drugs and other psychotropic substances, adopted on the 20th of December 1988 in Vienna. It stipulates: the seizing of goods obtained through offences, the

[216] The Group of International Financial Action.
[217] D. Daianu, R. Vranceanu, Romania and the European Union, Polirom Publishing House.

extradition of the authors of the offences linked to drug trafficking, mutual judicial assistance between countries involved, intensifying the cooperation between states;

The Convention of the European Council on the laundering, pursuit, retaining and seizing of products obtained through offences[218], opened for signing on the 8th of November 1990, in Strasbourg;

The Directive nr 91/308/EEC of the Council of the European Community on the using of the financial system for the purpose of money laundering, adopted in Luxemburg on the 10th of June 1991; this directive represents the source of inspiration for the laws of fighting money laundering, which have been adopted by almost all states, whether they are members of the European Community or they are in talks to become members;

The Group of Financial Action in the Field of Money Laundering (GAFI)[219] is an intergovernmental organism that develops and promotes policies of fighting money laundering; it is currently made up of 26 countries (financially strong countries from Europe, North America and Asia) and 2 international organisms;

The EGMOND Group (the first meeting of the group in1955 in the EGMOND Palace-Aremberg in Brussels, where 24 states and 8 international organizations took part); at present the group has 48 members and its purpose is the international cooperation between national agencies specialized in the international fight against money laundering (between the members of the group there is exchange of financial information about money laundering, based on agreement memoranda (bi or multilateral).

According to the International Monetary Fund published in 1996, the money laundered on the financial markets top 2% of the world raw internal produce. So, money laundering is an activity that is done for the purpose of giving an apparently legal statute to some illegal income. As a starting point in the regulating, on an international level, of the concept of "money laundering" one must take into account, before anything, the UN Convention adopted on the 20th of December 1988 in Vienna against the illegal trafficking of drugs and psychotropic substances. This qualified money laundering as an independent offence structure.

The deficiency of the 1988 Convention is that it incriminates only the legalization of the income obtained through one source – the drugs trafficking. This definition is thus restrictive, because money laundering can have as purpose the dissimulation or the putting in circulation of funds obtained through other illegal activities (forgery, corruption, organized crime etc), as against the illegal drugs trafficking.

Demanded by the exigency of time and in order to get rid of the deficiencies of the 1988 Convention, there has been elaborated the Convention on money laundering, the tracking, the sequester and the confiscation of the income obtained through criminal activities, signed in Strasbourg on the 8th of November 1990. The

[218] The White Book 2002, The Ministery of Public Finances (Exchequer).
[219] Dan Grosu-Saguna, *Treaty of Financial and Fiscal Law*, All Beck Publishing House .

latter was preceded by a conference (Oslo, 17th-19th of June 1986), where European Ministers of Justice examined the penal aspects on the drugs abuse and trafficking, including the need to fight against toxic mania by throwing out of balance the drugs market, often linked to organized crime in general and even to terrorism, through measures like freezing and confiscating the products of this traffic. As a consequence, there has been created a small Committee of experts which, during its mandate, had to examine the applicability of the European conventions on the tracking, holding and seizing the products of the crime and to elaborate a proper European judicial instrument in the matter. The Convention's project was elaborated during nine meetings of the small Committee during October 1987-April 1990.

One of the Committee's tasks is to facilitate the international cooperation about mutual help for the purpose of investigating, tracking, holding and seizing the product of any type of crime, especially the serious crime, and mainly crime linked to drugs, arms traffic, terrorism, children and women traffic and other crimes that bring fabulous income. Another major objective of the Convention is the creation of an instrument that would force the states to introduce in their internal legislation efficient measures to fight serious crime and to deprive the criminals of the product of their illegal activities. The internal law differs greatly from one country to another and sometimes it does not give the crime related services the necessary authority to fulfill these objectives internally. That's why the small Committee considered it necessary for the member states to make similar their internal legislations and to adopt efficient measures in order to track crimes. This doesn't mean that the states' legislations must be harmonized, but that they should, at least, be able to find the most efficient means of cooperation.

Even more, during the preamble of the 1990 Convention, it was underlined that fight against criminality can have results only if the states that don't sanction the money laundering adopted legislative measures for punishing these crimes. the Convention demands that the parties adopt measures that might be necessary to consider crimes, in their internal law, the activities related to money laundering. Unlike most of the conventions related to the international cooperation on crime, elaborated in the European Council, this Convention Does not include the word "European" in its title. This omission expresses the point of view of its authors who considered that this instrument should be equally open for signing for the states that share the conceptions of the member states of the European Council, without being members of this Organization.

The Strasbourg Convention is a first international act that sketches the essence of money laundering by defining it in the 6th art.:

"a) the conversion or the transfer of goods, if the person delivering them knows the goods are an income obtained through criminal activity, for the purpose of hiding or concealing the illegal origin of the goods or of helping the people involved in committing the main offence to elude the judicial consequences of these acts;

b) hiding or concealing the nature, the origin, the place, the disposing, the movement or the real property of the goods, or of the relative rights about which the author knows they constitute income obtained through crime activity under the reserve of the Constitutional principles and of the fundamental concepts of his judicial system;

c) the acquisition, the holding or the use of goods about which the one that acquires, holds or uses them knows that, the moment he receives them, they constitute income obtained through crime activity;

d) the participation to one of the offences, established according to the present article, or any association, understanding, attempt or complicity by offering assistance, help or advice in view of committing them. "

From this point of view, the Strasbourg Convention widens considerably the sphere of sources of obtaining the illegal income, than that of drug trafficking stated by the Vienna Convention in 1988. In fact, the rest of the international acts, regional or internal, that appeared after the 1990 Convention on the matter of money laundering, reproduce, more or less, its stipulations. The material element of money laundering, understood in the sense of the 1990 Convention, has three forms or modalities mentioned at letters a), b), and c), and the provisions at letter d) are not, in fact, an independent form of the offence, but materializes the cases susceptible to responsibility, no matter the degree of participation or the criminal stage.

As far as the turning illegal of the actions indicated in the Convention doesn't contravene the principles and the fundamental concepts of the judicial system of the state ratifying this, it has to incriminate the indicated actions. Prescriptions about instituting penal responsibility for money laundering are stipulated also in the *Convention on Transnational Organized Criminality* in Palermo in December 2000.

Turning illegal the launder of income obtained through offences appears in art.6 of the Palermo Convention, according to which "it is considered penal condemnable the following acts when committed intentionally:

i) the conversion or transfer of goods, if it is known that they are income obtained from offences, for the purpose of accumulating or disguising the criminal source of these goods or for the purpose of offering help to any person who participated in committing the main act, so that he can elude responsibility for his action;

ii) the hiding or disguising the real character of the source, the location, the disposing, the movement, of the over the goods or of their belonging, if it is known that they are income from offences.

Provided the respect of the basic principles of the judicial system:

i) the acquisition, possession or use of the goods, if at the moment of obtaining them it was known they were income from offences;

ii) the participation, association or agreement for the purpose of committing any offence, recognized according to the present article, the attempt of committing, as well as the complicity, instigation, help or giving advice on committing them."

While making an analysis of the stipulations of the Palermo Convention, we will underline that by "initial act" we understand any law violation that results in obtaining profit, in comparison with which can be committed the acts mentioned in art.6 of the Convention.

Although the term "any law violation" is used in art.2 of the Convention, yet in the text the term "offence" is used. That is, initially the Palermo Convention widened considerably the source of illegal income, as against the Strasbourg Convention for which the initial act would be the offence. According to the Palermo Convention as well, the offences committed outside the jurisdiction of a certain state will constitute a primary act on condition it can be condemned penal also according to the internal legislation of the state where the respective article is done and applied if it had been committed there. So, with this stipulation, the principle of the double incrimination of the primary act is confirmed, out of which comes the criminal income that will afterwards be legalized.

At the same time, besides the mentioned conventions, given the recent development that contributes to the amelioration of the awareness and cooperation at international level in the fight against corruption, including through the actions of the United Nations, the World Bank, the International Monetary Fund, the World Trading Organization, the United States Organization and the European Union, in the European Council there has been adopted The Penal Convention on Corruption, which in art. 13 incriminate the money laundering obtained through corruption offences. According to it, "each part adopts legislative measures and other measures necessary to establish as penal offence, according to its internal law, the acts mentioned in the Convention on money laundering, tracking, seizing and confiscating of the goods obtained through criminal activity, art.6*1 and 2, in the conditions mentioned in it, when the main offence is one of the offences established in art.1-12 of the present Convention, as far as the Part did not formulate reserves or declarations regarding these offences or does not consider these offences as serious offences, in comparison to the legislation on money laundering."

Through primary offence, the Convention implied the corruption offences: active or passive corruption of the national public agents, corruption of the members of the national public assemblies, corruption of the foreign public agents, corruption of the members of the foreign publish assemblies, active and passive corruption in the private sector, corruption of the international officials, corruption of the members of the international parliamentary assemblies, traffic of influence. In fact, this doesn't mean that the range of primary offences is restrained, in comparison to the acts mentioned in the 1990 Strasbourg Convention, but it comes to materialize their sphere in the case of corruption offences. The authors of this Convention considered that, given the proven tight relations between corruption and money laundering, it is of utmost importance that this Convention includes as an offence the laundering of the product of corruption. Still, if a country considers that some of these offences are not "serious" according to its legislation on money laundering, it will not be forced to modify the definition of laundering, so that the

content itself of the notion "money laundering" is similar to that mentioned in the Strasbourg Convention.

Back to the definition of the notion, one can say that this handling of the money through different transactions, in order to erase their sources and origin, has been recognized almost unanimously also on a regional scale in the world or by the member states of some international organizations.

Under the principle stating that laundering capital obtained through any serious offence must be considered penal act in the member states of the European Union also, under the care of the European Economic Council of the European Union, there has been elaborated *The Directive 91/308 on the 10th of June 1991 on preventing the use of the financial system for the purpose of laundering money.* The reason for adopting this Directive is the fact that the using of the credit institutions and of the financial institutions to launder capital risks to gravely compromise the solidarity and the stability of these institutions, as well as the stability of the system in general, which would also lose the public trust.

In the terms of the Directive, laundering money means the following behavior, when committed on purpose:

-the transformation or the transfer of a property, knowing that the property is obtained through a criminal activity or through an act of taking part in such an activity, for the purpose of hiding or disguising the illegal origin of that property;

-the hiding or the masking of the real nature, source, placing, movement, rights or possession linked to the property, knowing that the property is obtained through a criminal activity or through an act of taking part in such an activity;

-the acquisition or use of a property knowing that, when receiving it, that property is obtained through a criminal act;

-the taking part, the association to committing or attempts to commit, as well as the act of helping, facilitating or giving advice to someone for the purpose of committing any of the actions mentioned in the in the above paragraphs.

As a consequence, the Directive took over the definition offered by the 1990 Convention. One difference would be that, in order to express the primary act, the Directive uses the expression "criminal activity". This shouldn't mislead and make us believe that the goods undergoing the legalization process can be obtained from a wider range of acts, than just from offences, like the 1990 Convention indicates. In art.1, the Directive defines through a criminal activity an offence defined in the sense of art.3 *1 letter a) of the Vienna Convention. According to the Directive's prescriptions, the money laundering exists as such even there, where activities that generated the property to be "laundered" have been committed on the territory of a member state or on that of a third country. The Directive 91/308 CEE has been modified through the Directive 2001/97/CE of the European Parliament and of the Council on the 4th of December 2001, which sought to bring up-to-date some stipulations. Thus, these amendments look to widen the ban on laundering not just the income obtained from drug trafficking, but equally from all serious offences (including fraud on the community budget), including those of the organized crime or of the international terrorism acts. Besides, some stipulations of

the Directive affect also the non-financial activities and professions (such as that of the notary, lawyer, on casinos etc).

More generally, but expressing the essence of laundering illegal capital, it is formulated the definition in art.2 letter1) of the *Model-Law of CSI to combat the legalizing (laundering) of income obtained on illegal ways* from the 8th of December 1998, according to which the "legalizing" (laundering) of income, obtained on illegal ways comprises deliberate actions to give a legal character to the possession, use or disposal of income obtained knowingly on illegal ways. This definition doesn't have a casuistic character, so it remains valid for any case where an apparently legal character has been given to some goods. The model-law doesn't talk about legalizing the source of income, but about the legalizing of the rights over the goods; those of possession, use and disposal as elements of the right of property. In fact, the definition is correct, because by trying to justify the right to posses, use or dispose of a good, implicitly one must give an apparently legal character and the its provenance.

For these reasons, we believe that it is not possible to legalize only some patrimonial rights, without legalizing the source that lead to their appearance. What the stipulations of the model-law underline is the fact that the means through which the material element of money laundering would express itself would be the financial operations, as intended actions with its varied ethnic of operating presented in art.2 letter 3) of the model-law. We don't consider it to be a very successful formula of exhaustive presentation of the types of financial operations, because any such act that is not mentioned in the law, risks not to be considered a financial operation and not to be responsible for the money laundering. At the same time, as subject that commits the act of legalizing illegal capital appear the organizations that perform financial operations (the crediting organizations, the investment funds, the insurance companies, the organizations registering the right over goods, the stock markets and other institutions that undertake the activity of receiving, alienating, acquitting, transferring, transporting, delivery, exchange and safe keeping of the goods), and there are also the institutions that practice gambling. What is welcome in the defining of the model-law resides in the express enunciation of the intentional character of the committed acts, and this eliminates any doubt on the form of the guilt with which the act is committed, unlike the legislations of other countries, where even imprudence is accepted.

At the same time, inside the CSI, *the model-Penal Code* has been elaborated and recommended, adopted in the 7th session of the Interparliamentary Assembly of the Member-States of the CSI on the 17th of February 1996. Already in the nominated project, the money laundering has been given a concept, in art.258, not as type of criminality, but as offence, which is an act of penal responsibility that has the casuistic character of legalizing illegal income, being formulated based on its forms of manifestation. We must notice that the project doesn't actually use the term "money laundering", but the expression "legalizing income obtained on illegal ways", that is the authors of the project considered it unjustified to use a jargon in the text of a normative act (fact presented at the beginning of this paragraph). So,

the dispositions of this article project incriminates “the concealing or the disguising of the illegal sources and of the nature, provenance, location, dislocation, movement or of the real belonging of the money or goods or rights over goods, obtained knowingly on illegal ways, just like the use of this money or of other goods while performing entrepreneurial activities or other economic activities. This has been considered in the project as an offence of medium gravity. In the present notion there is also another new form which has been considered as a manifestation of the money laundering - that of “using money or other goods in performing entrepreneurial activities or other economic activities”. This modality raises multiple questions. What if, for example, some income obtained knowingly from evasion, is invested later in a business for the purpose of getting benefits, will it thus come to giving a legal statute to it? How is justified, in this case, the illegal provenance of the goods? We consider that in such a case, indeed, the purpose of disguising the movement or the belonging of the money can be reached, on one condition: that this economic activity itself is legal; contrary to that, its investment in an illegal activity wouldn’t lead to legalizing illegal means, so it wouldn’t constitute the act of laundering money.

As far as establishing the frame of the primary offences from which results the illegal income that can later be subject to laundering, an important role had the *regulations of the Group of International Financial Action*. In the 40 recommendations on capital laundering, elaborated under the care of GAFI, it was mentioned that “each country must be preoccupied with incriminating the act of funds laundering, but not only the funds coming from drug traffic, but also those from committing all the other serious offences that generate important income.’.

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