

Chapter 2

Money Laundering in Regulatory and Legal Aspects – Challenges for European Union Member States

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2.1. Introduction

Money laundering is a crime categorised as an economic crime. It is a global phenomenon and its scale has not been yet thoroughly investigated. In the Polish language there is a colloquial term ‘washing dirty money’, which is an inaccurate translation of two English phrases – dirty money and money laundering. In view of this, the phrase itself contains a statement about the need to clean ‘dirty’ money, as ‘clean’ money does not need to be ‘laundered’ (Hryniewiecka, 2014, p. 317). In addition to the obvious destabilising effect on the economy, money laundering also negatively affects the stability of financial institutions. The aim of this chapter was to analyse the regulations related to money laundering at EU and national level and to try to identify the challenges faced by the EU and international institutions in order to curb money laundering. In order to achieve this objective, a classic literature analysis was applied, including traditional and online sources and a review of the legislation. A legal-dogmatic method was applied to systematise the law in force (Opałek & Wróblewski, 1991, p. 37), and to analyse the evolution of legal acts on the prevention of money laundering.

2.2. Money Laundering in Terms of National and EU Regulations

The phenomenon of money laundering emerged in connection with the activities of Al Capone – the head of the Chicago mafia. In the 1920s, during the prohibition era in the USA, the mafia, under the guise of legitimate activities, derived large revenues from the production and smuggling of alcoholic beverages. Significant sums of illicit income from tax evasion, horse racing, and alcohol sales were added to the daily commerce, and then deposited in banks to legalise it (Filipkowska, 2009, p. 59).

In legal terms, the term 'money laundering' was used in the USA in 1982 for the purpose of a public lawsuit, and was later permanently incorporated into the legal language. The 1990 Convention of the Race of Europe formally used the term for laundering the proceeds of crime, seizure and confiscation (Gilmore, 1999, p. 26).

Initially, the term 'dirty money' was used to describe income derived from drug trafficking, but nowadays its meaning is much broader and includes any funds derived from an illegal venture, as well as those from activities that are legally permitted but hidden from taxation (Buczowski, 2001, p. 22).

Money laundering is an organised activity, it is not exclusively domestic in nature and often takes the form of international cooperation. The terms 'money laundering' and 'dirty money' are used interchangeably and have come into common usage, and are applied in national, EU and international legislation.

In Poland, money laundering has been a criminal offence since 1995. The first Polish regulations relating to the fight against money laundering emerged at the beginning of the 1990s as the orders of the President of the National Bank of Poland. The first order of 1 October 1992 regulated the principles of banks' conduct in the event of disclosing circumstances indicating the placement of funds connected with crime and the later one of 1994 regarded counteracting the use of NBP organisational units' activities to perform actions aimed at concealing the origin of funds from crime. Table 2.1 presents the evolution of the term 'dirty money' and related offences in Polish legal regulations.

Table 2.1. Evolution of the term 'dirty money' in Polish legislation

Regulations	The term 'dirty money'
Act of 12.10.1994 on the protection of business transactions	<p>Dirty money concerned only the designated items:</p> <ul style="list-style-type: none"> ▪ means of payment ▪ securities ▪ foreign exchange <p>The offences concerned the legalisation only of the above-mentioned property obtained by organised crime groups from the title (closed catalogue):</p> <ul style="list-style-type: none"> ▪ forgery of money and securities ▪ drug trafficking ▪ kidnappings for ransom ▪ arms trade.
Criminal code of 06.06.1997	<p>The catalogue of items has been expanded to include:</p> <ul style="list-style-type: none"> ▪ property rights ▪ movable or immovable property. <p>The catalogue of offences has also been expanded.</p>
Criminal code of 16.11.2000	<p>The catalogue of items and offences involving money laundering has been expanded.</p>
Act of 5.03.2004 amending the Act on counteracting the introduction of property values from illegal sources into financial circulation and counteracting the financing of terrorism	<p>Property values are defined as:</p> <ul style="list-style-type: none"> ▪ means of payment ▪ securities or foreign exchange ▪ property rights ▪ movable and immovable property

Source: own elaboration based (Ustawa z dnia 12 października 1994...; Ustawa z dnia 6 czerwca 1997...; Ustawa z dnia 16 listopada 2000...; Ustawa z dnia 5 marca 2004...).

European law has also seen the development and specification of provisions aimed at criminalising and preventing money laundering. The first important directive was the Council Directive 91/308/EEC of 10 June 1991 on the prevention of the use of the financial system for the purpose of money laundering, and the next one, Directive 2005/60/EC of 26 October 2005 on the use of the financial system for the purpose of money laundering and terrorist financing. These directives represented the culmination of efforts within the Union to combat money laundering. The Directive 2005/60/EC was replaced by Directive (EU) 2015/849 on the prevention of the use of the financial system for money laundering and terrorist financing. At that time, ambiguities in certain provisions were eliminated and the consistency of anti-money laundering regulation across EU member states was enhanced (Directive (EU) 2015/849...).

Another Directive, 2018/1673, on combating money laundering through criminal law measures defines as money laundering the following offences:

- the conversion or transfer of property, in the knowledge that it is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of that property or of providing any assistance to a person who engages in such activity,
- concealing or disguising the true nature of property, its source, location, disposition, movement, rights with respect to or ownership of property, with knowledge that the property is derived from criminal activity,
- the acquisition, possession or use of property, knowing, at the time of receipt, that the property is derived from criminal activity,
- aiding, abetting and attempting in relation to these offences (Directive 2018/1673...).

On 30 May 2023, the EU Council adopted a new package of rules (currently in force) to protect citizens and the EU financial system from money laundering. The new package extends anti-money laundering rules to new obligated entities such as most of the cryptocurrency sector, luxury goods traders and football clubs and agents, establishing stricter due diligence requirements, regulating the so-called beneficial ownership and setting a cash transaction limit of EUR 10,000. A new European Anti-Money Laundering and Countering the Financing of Terrorism Authority (AMLA) has been established, with supervisory powers over high-risk obligated entities in the financial sector. In addition to their supervisory powers, the AMLA will be able to impose financial sanctions on selected obligated entities.

The regulatory package contains three main pieces of legislation.

1. European Union Regulation containing provisions directly applicable in all EU countries and does not require implementation. It includes, among other things, regulations on the reporting of suspicious transactions, regulations on the use of financial security measures and the use of anonymous instruments – cryptocurrencies.
2. The new AML (Anti-Money Laundering) Directive.
3. Regulation establishing a new EU anti-money laundering and anti-terrorist financing authority (AMLA).

It is possible to distinguish three basic cycles related to money laundering:

- placement,
- layering,
- integration.

The aim of the placement is to effectively introduce illicit money into legitimate financial transactions, thereby obscuring its illegal origin. Criminals use a variety of techniques for this purpose such as: smurfing, splitting deposits (structuring), exchanging currency, using fictitious

accounts, exchanging low-denomination notes for higher-denomination notes (refining), mixing legal and illegal money (blending) – entities with large and difficult to estimate cash flows, such as casinos, restaurants.

Masking – this process often starts when the illicit money is no longer in cash form, but not always. The process of masking involves concealing the source of the assets by carrying out multiple consecutive financial transactions. The purpose of cloaking is to separate the illicit money from its source, to provide anonymity to the owner of the assets and to incorporate the illicit assets into the legitimate economic flow. International transfers, trade in gold, precious stones or jewellery, and purchases of securities are all readily used in the masking process.

The final stage is integration, i.e. the return of laundered funds to the economic system, but with the appearance of being derived from legitimate activities. Funds from illegal sources already have documents issued by banks or financial institutions. Fictitious purchase-sale transactions, import and export transactions using transfer pricing, bank loans, purchases of bankrupt companies serve the purpose of integration.

Legitimate sources of cash that are then used for illegal activities can include:

- using money from legitimate collections run by charities, other third sector organisations and churches,
- the use of legitimate businesses and other economic organisations.

2.3. Money Laundering – Scale of the Problem in the EU and in Poland

The scale of money laundering in Poland is difficult to estimate. According to some authors (Zawłocki & Królikowski, 2011, p. 704), up to PLN 10 billion per year may be subject to this procedure in Poland. The International Monetary Fund estimates that the cost of money laundering is between 2 and 5% of global GDP. In Germany, experts estimate that in their country this costs as much as USD 60-80 billion a year, in the UK as much as GBP 15 billion. The number of reports received in relation to money laundering during the year is: in Switzerland – 1158, Turkey – 6500, in Ukraine – 778 907, while in the UK as much as 240 582 (Hryniewiecka, 2014, p. 8).

According to data from the Ministry of the Interior and the Ministry of Justice, there is a large discrepancy in the number of people suspected of committing an economic crime and those convicted. Thus, in 2012, out of about 44,000 suspects, there were only around 11,000 persons with a final conviction, which represents about 30%, which is still a better ratio than in 2009, when there were only about 10,000 sentenced out of 50,000 accused (Ministerstwo Spraw Wewnętrznych, 2013, pp. 174, 238). Such a discrepancy is indicative of the complexity of these cases, which in many cases are time-barred.

At the same time, data presented by the Polish police show that the number of initiated proceedings in connection with economic crimes is systematically increasing. In 2009, there were 72,735 proceedings and already in 2021 as many as 131,470, i.e. almost double (*Przestępstwa gospodarcze*, n.d.).

In Poland, according to a report by the General Inspector of Financial Information, the main risk areas for money laundering included: fuel trading, trading in scrap metal, alcohol and tobacco, carousel transactions, drug trafficking and gambling and betting cases (Siejczuk, 2012, p. 205).

Naturally, it is difficult to estimate the exact scale of money laundering offences, as statistics presenting economic crimes include not only money laundering, but also corruption, bribery or accounting fraud, which are not always linked to money laundering. By its very nature, this is an illegal activity, outside of official statistics. The leading institution, the Financial Action Task Force, does not publish any data in this regard, or alternatively refers to a 1998 calculation by the International Monetary Fund, which estimated the total cumulative size of money laundering worldwide at 2-5% of global GDP, i.e. between USD 590 billion and USD 1.5 trillion (Siejczuk, 2012, p. 203).

Other studies (Reuter & Truman, 2004, p. 11) attempted to estimate the scale of the problem, using various macroeconomic models, and showed that the amount of money being laundered was steadily increasing. In the countries of the European Community (later the European Union), the level reached 14.1% of GDP (over USD 1 trillion) in 1989 and 18.6% of GDP (USD 1.73 trillion) in 2001. Obviously, the data presented, as the researchers pointed out, may be subject to considerable error.

In terms of countries particularly predisposed to be used for money laundering, organised crime has traditionally been strong in Italy. According to a report (Grzywacz, 2010, p. 13), the mafia profits from, among other things, racketeering – about 60% of companies in large cities pay the so-called protection money and organised crime is present in all areas of the economy, from manufacturing, real estate to tourism and finance. The situation is also difficult in Russia, China (Chinese triads), Japan (Japanese yakuza) and Colombia (drug cartels).

The negative effects of money laundering can include:

- 1) decrease in global economic growth – misallocation of resources by organised crime groups, causal relationship between money laundering and economic growth rate (Quirk proved that a 10% increase in the value of laundered money, expressed by the number of registered crimes, causes a decrease in the GDP growth rate by 0.1% (Lewandowski, 2003, p. 617));
- 2) weakening of the stability of the international economic system;
- 3) a negative impact on the exchange rate, interest rates, appreciation of the national currency or the prices of real estate and land in a country – can be caused by a sudden influx of capital;
- 4) unfavourable investment, business climate;
- 5) lack of trust in the authorities;
- 6) violation of the principles of the free market economy – illegal practices are harmful for free competition.

The Council and Parliament of the European Union established the EU Anti-Money Laundering and Countering the Financing of Terrorism Authority (AMLA), as already mentioned. This is a central body that supports and coordinates national supervisors to apply EU anti-money laundering rules consistently. The Authority is also meant to directly supervise financial institutions exposed to the greatest risks of money laundering and terrorist financing. The AMLA also coordinates and supports the Financial Intelligence Units (FIUs), by supplying the joint analysis of cross-border cases and providing analytical solutions for information sharing. It is also obliged to complement EU regulations in this area.

In Poland, the anti-money laundering system is made up of such institutions as the General Inspector of Financial Information (among others, it may stop transactions or block accounts, request the transfer of information on transactions, and issue decisions on entry to the list of

persons and entities against whom specific restrictive measures are applied), obligated institutions (such as banks, investment firms, companies operating a regulated market, insurance companies, notaries, attorneys, tax advisors, domestic financial institutions, and exchange offices) and cooperating Entities (e.g. government authorities, local government units, the NBP, the FSA). These institutions cooperate and interact with each other.

2.4. Challenges Facing European Union Countries on Money Laundering

The fight against money laundering is a priority for many EU and international institutions. Many regulations have been introduced to curb this phenomenon. Banks and financial institutions have been included in this fight to monitor and report suspicious transactions. At a global level, the United Nations, the Egmont Group and the Financial Action Task Force (FATF), which monitors and evaluates state activities to combat money laundering, have joined these efforts. Unfortunately, criminals are often ahead of those in control, developing their operations using advanced technology.

Money laundering is not only a threat to the economy and stability of individual economies, but also to international security. The funds acquired and used in money laundering operations are very often linked to the financing of terrorism, drug trafficking or human trafficking.

A real problem facing EU institutions is identifying the beneficiary of the real criminal assets. This is difficult thanks to the practice of creating 'front companies' to hide the financial trail.

Cryptocurrencies are a growing problem, often used to launder illicit profits. The anonymous and decentralised form of money transfer and limited regulatory control means that cryptocurrencies can be used for this purpose. Indeed, in Poland, as well as in most EU countries, there is a lack of regulation of virtual currency exchange providers. Cryptocurrencies themselves are digital records that reach the wallet of another user via a computer algorithm (peer-to-peer model), without the intermediation of any central centre (e.g. a bank). The immediacy of the transactions carried out with cryptocurrencies makes a tool in the placement phase, as well as in the masking phase based on the creation of a network of transfers to conceal their original origin. The most common method used for this purpose is cryptocurrency tumbling, which involves accumulating a number of cryptocurrency transactions, splitting them up several times and mixing them together to make it difficult to trace the sequence of transactions carried out using them. Another method is to deposit money in bank accounts through fake representatives and then acquire crypto-assets through fictitious cryptocurrency accounts, using tools that mask the identity of the senders and recipients and their IP addresses (TOR network, Darknet).

On 30 December 2024, the regulation introduced on 9 June 2023 on Market in Crypto-Asset (MiCA) came into effect (Regulation (EU) 2023/1113...). The aim of this regulation is to increase consumer protection against the risks associated with investing in cryptocurrencies. However, increasing the transparency associated with cryptocurrency trading may be difficult, as the next regulation must reconcile the specifics of cryptocurrencies with the protection of investor data and the further development of digital technology.

In order to counter money laundering, special attention should be paid to the following activities.

1. **Use of artificial intelligence.** It can analyse large volumes of financial data in search of suspicious patterns and anomalies, while the development of blockchain technology also increases transparency and the impossibility of changing the information stored in it. Investment should be made in new technologies and tools such as big data, machine learning, blockchain and artificial intelligence in general.
2. Another aspect that needs support is **state regulation** to improve the rules and standards to counter this practice. At EU level, this role is to be fulfilled in part by the AMLA, through the development of regulatory and implementing technical standards and the issuing of guidelines. Moreover, efforts should be united at international level, as only then can criminals be effectively prosecuted. Bilateral and multilateral agreements between countries are needed to exchange information and facilitate the tracking of money flows. Strengthening the legal framework should include stricter requirements for customer identification, reporting of suspicious transactions and inter-industry cooperation. Individual countries should seek to harmonise their laws to standardise their operations and prevent loopholes that can be exploited by criminals.
3. **Education and awareness-raising** is another important point to be pursued by international and national and regional institutions. Society should be aware of the damage that can be caused by money laundering. Educational campaigns, workshops, seminars are essential to raise public awareness to encourage reporting of suspicious activities. Transparency and accountability should also be taught and promoted at a lower level by institutions, which through the implementation of due diligence and internal audits should help to identify risks.
4. **Cross-sectoral cooperation** is needed between the financial sector, the state sector, international institutions and NGOs, which should exchange information and best practices, in effectively countering money laundering.
5. **Clarification of regulations related to payment accounts** maintained by institutions other than banks and loans granted by other entities¹.

Unfortunately, the fight against money laundering is an ongoing process, as the methods used by criminals are constantly evolving. Efforts must continue and adapt to new challenges. Mitchell (2002) indicated in his study that it is easier to legalise mafia funds in more economically developed countries than in poor countries with a small financial market.

2.5. Conclusions

Money laundering is a practice that has been put into use for many years. It generates high costs and has a negative impact on the economy and society, including financing terrorist activities and affecting the stability of financial markets. The methods used are numerous and constantly evolving. The aim of this article was to analyse the regulation of money laundering at EU and national level and to try to identify the challenges faced by EU and international institutions to reduce money laundering. Major regulatory efforts have been made by EU institutions. The successive directives issued have attempted to better define money laundering

¹ A survey conducted in 2021 by the GIFI as part of the verification of the National Assessment of Money Laundering Risk, addressed to Obligated Institutions. 821 entities took part in the survey, mainly exchange offices, banks, notaries and investment funds. When asked which products and services offered on the financial market can be most often used for money laundering, bank accounts and loans granted by entities other than banks were indicated. Virtual currencies and cash currency exchange were also indicated (Ministerstwo Finansów, 2023).

in order to be able to enforce the law more effectively. In addition, banks and financial institutions have been included in the fight against this practice to monitor cash flows.

As money laundering methods continue to evolve, the chapter also identified challenges facing international, EU and national institutions, namely: increasing the emphasis on the use of artificial intelligence in the fight against money laundering, raising awareness and educating the public about the effects of money laundering, and the continuous improvement of regulation and cross-sectoral cooperation. An important aspect is the monitoring of money laundering, as well as the collection and analysis of the data in order to be able to select effective solutions to emerging threats.

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Ustawa z dnia 5 marca 2004 o zmianie ustawy o przeciwdziałaniu wprowadzeniu do obrotu finansowego wartości majątkowych pochodzących z nielegalnych lub nieujawnionych źródeł oraz o przeciwdziałaniu finansowaniu terroryzmu oraz o zmianie niektórych ustaw (Dz.U. 2004 nr 62 poz. 577).

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