

# Criminal regulations on money laundering in Hungary

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## Abstract

*This study shall introduce combating money laundering from the aspects of criminal law and shall analyse the statutory provisions on money laundering. Effective criminal law regulations are indispensable, with special regards to the applicable Directives of the European Union.*

**Keywords:** *money laundering, organised crime, illicit income*

## I. Introduction

Organised crime is the greatest threat to society, since it is mostly manifested in the commission of major criminal offences and effects the financial interests of the European Union as well. Its severity is also well reflected in its impulse of legislative deficits, in the use of coded languages and rare dialects, alike to the invasion to otherwise legitimate enterprises, politics and economy<sup>1</sup>. Ill-gotten gains are being legalized by money laundering, in certain enterprises or through financial transactions, often using pseudo-corporations or banks to assimilate the assets<sup>2</sup>. Furthermore, through corruption and the conduct of economic offences, networks of organised criminal groups might weaken political, social, and financial institutions, and undermine economic development and accession, sustainability and, last but not least, they imperil the rule of law as well<sup>3</sup>. Such economic offences, for example, fraudulent bankruptcy, capital investment fraud, fraud related to crediting, and insider dealing<sup>4</sup>. Corruption is much like a business agreement, and regrettably, passive corruption is well known to everyday life in Hungary<sup>5</sup>.

Corruption is the most expansive criminal offence these days<sup>6</sup>. The danger of money laundering to society is allowing criminal organisations to invade legitimate economy, so they can allocate and actually practice economic power<sup>7</sup>. Money laundering is a method, when the profits of the crime are made whiter through the business sector

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<sup>1</sup> Ürmösné, Simon Gabriella (2018), *Organised crime* in Technical English for Officers. Dialóg Campus Kiadó, Budapest, pp. 89.

<sup>2</sup> Ürmösné Simon, Gabriella, *Organised crime*, RTF Publishing, 2002, Budapest, pp. 39.

<sup>3</sup> G. Rankin, N. Kinsella, *Intelligence Management, Knowledge Driven Frameworks for Combating Terrorism and Organised Crime*, Editors: Babak Akhgar, Simeon Yates, Springer, 2018, London, pp. 171–172.

<sup>4</sup> Ürmösné Simon, Gabriella, *White collar crime*, RTF publishing, 2002, Budapest, p. 28

<sup>5</sup> Gál, István László, *Economic Bribery as a Part of Economic Criminal Law and a Concomitant of Political Corruption*, Journal of Eastern European Criminal Law No. 1/2014., p. 23

<sup>6</sup> B. Unger, G. Rawlings, *Competing for Criminal Money*, Global Business and Economics Review 10, No.3. 3–6, 2008.

<sup>7</sup> D. Lamberto, *General Introductory Report*. International Conference on Preventing and Controlling Money Laundering and the Use of Proceeds of Crime: a Global Approach. Courmayeur Mont Blanc, Aosta Valley (Italy) 18-20 June 1994. Official United Nations document (E/Conf.88/7), ISPAC, 2.

tesznek<sup>8</sup>. The target of the operation is to make the origin of the illegal money unrecognizable, which causes some loss<sup>9</sup>. In addition, money laundering also jeopardizes the legitimate financial balance of the competitive markets, as the underworld infiltrates and streams its illicit incomes to economic procedures, gathering ill-gotten gains<sup>10</sup>. The amount of money laundered may affect the national economy of each country<sup>11</sup>. Globalisation of the markets and the opening of borders, moreover, technological innovations created new possibilities of profiting for the present and shaping criminal organisations, who quickly adopt to exploit legal loopholes of different geographic areas<sup>12</sup>. Paying tax after the income is one of the tools to disguise the origin the guilty kind<sup>13</sup>. Typically, unlawful income appears in cash, whereas most of the dirty money is related to trade of drugs<sup>14</sup>.

## II. Criminal regulations on money laundering in Hungary

We refer to money laundering when the perpetrator conceals the existence, source or illicit use of money obtained by criminal activity, for the purpose of making the illegally gained proceeds clean, layering and integrating seemingly legal assets to the financial world<sup>15</sup>. The objective of Act XXIV of 1994 on the prevention and impeding of money laundering is to seize the flows and laundering of illicit money through the misuse of financial and investment systems. In accordance with the provisions of the First Council Directive on money laundering, the Act has implemented several new statutory obligations, for example, on customer identification, reporting and data keeping rules. The most important provisions of the Directive protecting the safety of the financial system refer to customer due diligence and reporting suspicious activity<sup>16</sup>. Implementing Act CXXI of 2001 'on the failure of reporting money laundering related activity', legislators ordered criminalization of the person who fails to report suspected money laundering. Act CXXXVI of 2007 on the prevention and combating money laundering and terrorist financing has implemented the provisions of the Third Council

<sup>8</sup> I.L. Gál, *A pénzmosás szabályozásának régi és új irányai a nemzetközi jogban és az Eu-jogban* (The old and new laws on money laundering in international and EU law), Európai Jog, 2007/7., Budapest, pp. 12.

<sup>9</sup> I.L. Gál, *Bejelentés vagy feljelentés? A pénzmosás és a terrorizmus finanszírozása elleni küzdelemmel kapcsolatos feladatok és kötelezettségek az Új Büntető Törvénykönyv alapján* (Tasks and responsibilities for combatting money laundering and terrorist financing under the New Criminal Code), Reproflex Kiadó és Nyomda kft., 2013., Pécs, pp. 5.

<sup>10</sup> I.Carr, M.Goldby, *Recovering the Proceeds of Corruption: UNCAC And Anti-Money Laundering Standards*, Journal of Business Law, Issue 2, 2011, p. 175

<sup>11</sup> I.L. Gál, O. Sinku, *Dinamikus és statikus pénzmosás- egy tényállás kritikai elemzése* (Dynamic and static money laundering- a critical analysis of the bearings of a case), Magyar Jog, 2008/55., Budapest, 130. o.

<sup>12</sup> S.Adamoli, A.Di Nicola, E. U. Savona, P.Zoffi, *Organised Crime around the world*. Helsinki, No. 31., 1998, pp. 23-26

<sup>13</sup> I.L. Gál, *Régi és új kísérletek a gazdasági bűnözés fogalmának meghatározására* (Old and new attempts to define the concept of economic crime), Rendészeti Szemle, 2009/7-8., Budapest, pp. 25.

<sup>14</sup> I.L. Gál, *Új Btk. kommentár 8. kötet* (Commentaries on the New Criminal Code Volume 8), 2013., pp. 45

<sup>15</sup> J. Jacsó, *Money laundering*, in F. Kondorosi, K.Ligeti, (Ed.), *Handbook of European Criminal Law*, Official Gazette Publishing, 2008, Budapest, pp. 508.

<sup>16</sup> Jacsó, *Bekämpfung der Geldwäscherei in Europa, unter besonderer Berücksichtigung des Geldwäschestrafrechts von Österreich, der Schweiz und Ungarn*, Schriftenreihe Sanktionenrecht in Europa 5. Band (Hrsg.: Dannecker, G., Höpfel, F., Schwarzenegger, Ch.). Neuer Wissenschaftlicher Verlag, Berlin-Wien-Zürich, 2007, pp. 98-113.

Directive, while Act LIII of 2007 has incorporated the Fourth Council Directive to Hungarian law<sup>17</sup>. The Fourth money laundering Directive has included tax offences related to direct and indirect taxation by the national laws of the member states into the definition of the predicate offence, however, the Directive has missed to define tax offence, stating only one requirement, namely, that such offences must be punishable by more than the minimum – one year of – imprisonment<sup>18</sup>.

In December 2016, the Council has implemented a proposal of a Directive on countering money laundering. The European Parliament and the Council have not passed the proposal (COM (2016) 826) yet. In accordance with the proposed Directive, it shall improve transnational cooperation and information exchange between the authorities, furthermore, it shall help to prevent criminals to take advantage of the differences in the national legal regulations of the member states. These objectives shall strengthen the legal frames of the European Union responsible for countering money laundering, therefore, combating organised crime and financing terrorism shall become more effective, making EU's inner security, therefore, the security of the EU citizens a growing reality. (COM (2016) 826).

Section 23 of Act IX of 1994 has implemented the statutory provision of money laundering into the previously effective Act IV of 1978 (former Criminal Code or Btk.), into the chapter on economic crimes, under the main title Crimes Violating Economic Obligations and the Order of Economy.

Money laundering has been granted an individual chapter in Act C. of 2012 on the Criminal Code.

According to Section 399:

(1) Any person who, in connection with an asset obtained from any punishable criminal offence committed by others:

a) converts or transfers the asset in question, or performs any financial transaction or receives any financial service in connection with the thing in order to:

aa) conceal or disguise the origin of the asset, or

ab) frustrate the criminal proceedings conducted against the perpetrator of a punishable criminal offence committed by others;

b) conceals or disguises the origin of the asset and any right attached to the asset or any changes in this right, or conceals or suppresses the place where the asset can be found; is guilty of a felony punishable by imprisonment between one to five years.

(2) The penalty under Subsection (1) shall also be imposed upon any person who, in connection with an asset obtained from a punishable criminal offence committed by others:

a) obtains the asset for himself or for a third person;

b) safeguards, handles, uses or consumes the asset, or obtains other financial assets by way of or in exchange for the asset, or by using the consideration received for the asset; if being aware of the true origin of the asset at the time of commission.

(3) The penalty under Subsection (1) shall also be imposed upon any person who, in order to conceal the true origin of an asset that was obtained from a punishable criminal offence committed by others:

a) uses the asset in his business activities;

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<sup>17</sup> J. Jacsó, *Money laundering*, in Ákos Farkas, (Ed.) *Chapters on the European Criminal Law*, Bíbor Publishing, 2017, Miskolc pp. 132-133.

<sup>18</sup> J. Jacsó, B. Udvarhelyi, *Actual tendencies of countering money laundering in the European Union*, Prosecutors' Journal, 2017/1, pp. 13-14.

b) performs any financial transaction or receives any financial service in connection with the asset.

(4) The penalty shall be imprisonment between two to eight years if the money laundering specified under Subsections (1)-(3):

a) is committed on a commercial scale;

b) involves a particularly considerable or greater amount of money;

c) is committed by an officer or employee of a financial institution, investment firm, commodities broker, investment fund manager, venture capital fund manager, exchange market, clearing house, central depository, body acting as a central counterparty, insurance company, reinsurance company or independent insurance intermediary, voluntary mutual insurance fund, private pension fund or an institution for occupational retirement provision, an organization engaged in the operation of gambling activities or a regulated real estate investment company;

d) is committed by a public official;

e) is committed by an attorney-at-law.

(5) Any person who collaborates in the commission of money laundering as specified under Subsections (1)-(4) is guilty of misdemeanor punishable by imprisonment not exceeding two years.

#### Section 400

(1) Any person who, in connection with an asset obtained from a punishable criminal offence committed by others:

a) uses the asset in his business activities;

b) performs any financial transaction or receives any financial service in connection with the asset, and is negligently unaware of the true origin of the asset is guilty of misdemeanor punishable by imprisonment not exceeding two years.

(2) The penalty shall be imprisonment not exceeding three years if the criminal act described in Subsection (1):

a) involves a particularly considerable or greater value;

b) is committed by an officer or employee of a financial institution, investment firm, commodities broker, investment fund manager, venture capital fund manager, exchange market, clearing house, central depository, body acting as a central counterparty, insurance company, reinsurance company or independent insurance intermediary, voluntary mutual insurance fund, private pension fund or an institution for occupational retirement provision, an organization engaged in the operation of gambling activities or a regulated real estate investment company; or

c) is committed by a public official.

(3) Any person who voluntarily reports to the authorities and unveils the circumstances of commission shall not be prosecuted for money laundering as specified under Subsections (1)-(2), provided that the act has not yet been revealed, or it has been revealed only partially.

Protected legal object of the statutory definition of money laundering are society's and community's interests in combating organised crime, furthermore, the public interests related to lawful and prudent operation of financial institutions and other actors of the economy<sup>19</sup>.

The statutory definition of the offence is completed upon the execution of any of its elements thereto, whereas successful conduct of money laundering is no further

<sup>19</sup> E. Nyitrai, *Criminal and criminalistics measures of combating organized crime*, PhD study, 2018, Pécs, pp. 71.

requirement. Except for the perpetrator of the predicate offence, any capable person over the age of 14 may be chargeable for money laundering, who did not actually participate in the commission of the predicate offence<sup>20</sup>. Section 399 (3) of the Btk. defines the provisions of laundering own money, whereas any person who, in order to conceal the true origin of an asset that was obtained from a punishable criminal offence committed by others, uses the asset in its business activities, or performs any financial transaction or receives any financial service in connection with the asset.

### III. Conclusions

Legalizing illicit money often gives assistance to further criminal acts, nevertheless, the person who, in connection with an asset obtained from criminal activity committed by others, uses the asset for business activities, performs any financial transaction or receives any financial services in connection with the asset, and is negligently unaware of the true origins of the asset, and voluntarily reports to the authorities or initiates such report shall not be liable for prosecution for money laundering, provided that the act has not yet been revealed, or it has only been partially revealed. However, the interest to eliminate money laundering is relevantly stronger than the interest in the accusation of the perpetrator<sup>21</sup>.

Regrettably, most criminal acts stay in latency, thus eventual success of fighting money laundering remains one of the most sufficient measures to confine crime<sup>22</sup>.

To sum it all up, we may state, that criminal organisations can be fought from different directions, but the most effective measure in this combat is still defecating financial assets, paralysing the organisation and making it non-functional. Laundered money can be safely used in economy, it can easily be transferred into legal businesses. By these means, as a final product, it shall become clean and legitimate money.

The most indispensable measure of effective countering of money laundering is coherent criminal regulation of money laundering, that is able to keep illicit incomes from being channelled into legitimate economy.

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<sup>20</sup> I.L. Gál, *Money Laundering*, in M.Tóth, Z. Nagy, (Ed.), *Special Provisions, Hungarian Criminal Law*. Osiris Publishing, 2014, Budapest, pp. 524.

<sup>21</sup> E.Nyitrai, *Money Laundering and Organised Crime*, in Journal of Eastern European Criminal Law No.2/2015., pp. 94-100.

<sup>22</sup> In the course of investigating organised crime – therefore, when countering money laundering as well – numerous new investigating possibilities are available, that were limitedly exploited by the investigating authorities. For example, criminal geography is one of these fields. Regarding the new investigative possibilities offered by criminal geography see more in the studies of Mátyás, Szabolcs, titled *Criminal geographic survey of organised crime* (2018) and in Mátyás, Szabolcs, *The interconnection of traveller crime and organised crime* (2018).

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