

Money Laundering and Organised Crime

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Abstract

The study shall introduce the organisations participating in the combat against money laundering, the connections between money laundering and organised crime, furthermore, the elements of money laundering. It also introduces the activities of law enforcement authorities and particular measures of protection of key importance. It further states that appropriate legislative backgrounds are not efficient measures, but sufficient experience and professional conduct is required.

Keywords: *money laundering, organised crime, terrorism, international organisations, secret data collection*

1. Introduction

As for structuring and building-up frames, structure of organised crime is similar to the structure of any other enterprise. The most significant difference is that organised crime is an illegal form of structure, hence its activities and movements of labour inevitably run into illegality.

Participants of organised crime are directly or indirectly connected to society on every levels. Being motivated by money, knowingly or not, even intellectuals assist to illegal actions with their expertise, counselling and advisory activities.

In order to be prosperous, groups of crime need some sort of assistance, it is often corrupting respectable law enforcement and police officers. "The bribed person accepts this advantage and usually decides according to the expectations of the active briber. This process is like a business agreement, and unfortunately is almost as usual in the everyday life of Hungary, Europe and China as well".¹

Appearance of the black market, severity of jurisdiction and, in addition, the past few years of economic crisis are origins of organised crime as well.

Pursuant to recent scientific and technological developments new groups of crime are being shaped, such as actors of the on-line organised crime scene. Due to technological inventions a greater profit can be achieved.

2. Anti-money laundering organisations

Joining the European Union and the Schengen area domestic crime organisations have managed to gain ground, borders have crashed down, foreign crime groups have appeared, same as Hungarian groups have crossed international borders. Nowadays, essentially organised crime groups involve professional forces of labour, and establish diversified connection systems.

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¹ István László Gál: *Economic Bribery as a Part of Economic Criminal Law and a Concomitant of Political Corruption*, Journal of Eastern-European Criminal Law no. 1/2014, Page 23.

It ransomly appears that the illicit profit gained in another country is being smurfed through a 'phantom' company of a neighbouring country. Due to globalisation issues, money laundering has become an international system of activities without boundaries, a circulation, whereas recently domestic groups appear abroad and foreign criminals become active in Hungary.

FATF, Moneyval and Egmont Group are international organisations co-operating in combat against money laundering.

FATF (Financial Action Task Force – intergovernmental body set up to combat money laundering, working alongside OECD) has been established at the meeting of the most developed countries held in 1989. FATF has developed strategies and established grounds of international combat against money laundering and terrorism. Its main prerogative is combat against money laundering and terrorism, monitoring and evaluating anti-money laundering jurisdiction, practice and regulations of member states. Hungary has not joined FATF yet.

Moneyval is an independent monitoring mechanism the Council of Europe representing the members states which are not the members of FATF. As a regional organisation of FATF, Moneyval aims to monitor and evaluate anti-money laundering jurisdiction, practice and regulations of its member states (in accordance with FATF standards and recommendations of Moneyval), and further development and harmonisation of implementations. Hungary is a member the international organisation of Moneyval.²

Egmont Group (of Financial Intelligence Units; henceforth FIUs) has been established in 1995. The Hungarian anti-money laundering unit is the member of Egmont Group. Egmont Group co-operates with FATF, organising a correspondence network of FIUs, collecting and processing information suspicious on money laundering or terrorism financing, enacting a quick and reliable system of data processing.

The Group took its name from the Egmont-Arenberg Palace in Brussels, where its first meeting was held.

3. Connections between organised crime and money laundering

As for money laundering, we refer to processes of criminals and their assistance transforming the proceeds of crime into ostensibly legitimate money or assets via financial institutions.

Besides Russian and Ukrainian crime organisations many other criminal groups are present in our country, such as Chinese, Arabic, Turkish and Albanian organisations.

Driving force of organised crime is gaining money, therefore, the essential question is to find measures to legalize the profit aggregated. Members of the crime organisations have managed to pursue policies in order to find ways to fit into legal means of economics.

They establish more and more 'phantom' companies and entities in order to 'clean dirty money'.

Washed clean, illicit money shall stream into financial systems, so banks have essential roles in tracing of proceeds and gathering evidence of transactions and transferring assets. Due to latency, accurate estimation of the amounts washed clean is

² <http://ngmszakmaiteruletek.kormany.hu/a-penzmosas-es-a-terrorizmus-finanszirozasa-elleni-fellepes-nemzetkozi-hattere> (*international-background-of-the-fight-against-money-laundering-and-terrorism*).

almost impossible. Money laundering shall never refer to a singular transaction, but to chains of transfers, therefore, the role of banks in tracing illicit transfers of money is indispensable.

Criminalisation of money laundering also protects the customers' trust in legitimate and prudent practice of banks.

Most commonly, process of money laundering shall result in waste of profits of some sorts, nevertheless, incomes of the illicit money provide sufficient compensation.

Acknowledgeably, groups of organised crime seem to conflict and interfere with each-other, however, their co-operative attempts to mislead and smack-up law enforcement bodies pursuant to gain maximum illicit income is rather noticeable.

Crime organisations establish pseudo-enterprises that aim to turn 'dirty money' back into the stream of the economy rather than effectuate legal activities. '... especially the following enterprises are sufficient for money laundering:

- restaurants,
- counselling companies,
- retail shops,
- hotels,
- bars (pubs),
- night clubs, discotechs,
- casinos,
- international financial intermediaries,
- laundry (stain remover) saloons,
- sport enterprises,
- videotechs (DVD/VCR centers) ,
- enterprises maintaining vending machines,
- amusement parks,
- enterprises maintaining parking facilities.'³

Key issue is always the significant cash-flow, securing that illicit money is being mixed and shall finally appear as legal, after tax income.⁴

In order to weaken each other, the organisations do co-operate with authorities, provide information and assist to investigations, so hidden interests of co-operating parties must always be taken into consideration by the proceeding law enforcement bodies, hence putting the members of crime organisations under procedure often results in strengthening and benefiting another framework taking over the territories of the organisation investigated.

Typically, unlawful income appears in cash, whereas most of the dirty money is related to trade of drugs.⁵

Since most crime cases may stay in latency, eventual success of the combat against money laundering remains one of the most sufficient measures to confine crime. Criminal organisations can be faced from several angles, yet, extracting financial means

³ István László Gál: *A pénzmosással és a terrorizmus finanszírozásával kapcsolatos jogszabályok magyarázata* (Interpretation of Statutory Regulations on Money Laundering and Financing Terrorism), 2012., Pages 29-30.

⁴ István László Gál: *A pénzmosással és a terrorizmus finanszírozásával kapcsolatos jogszabályok magyarázata* (Interpretation of Statutory Regulations on Money Laundering and Financing Terrorism), 2012., Page 30.

⁵ István László Gál: *Új Btk. kommentár 8. kötet* (Commentaries on the New Criminal Code Volume 8), 2013., Page 45.

that would leave the organisation numb and ineffective seem to be the most appropriate solutions.

4. Criminal Law background of money laundering

Provisions of money laundering has been incorporated into the provisions on economic crimes, and economic obligations and economic administration thereto of Act IV of 1978 on the Criminal Code of the Hungarian Republic (hereinafter referred to as Btk.) by Section 24 of Act IX of 1994.

Provisions on money laundering are stipulated in an individual chapter (No XL.) in Act C of 2012 on the Criminal Code of the Hungarian Republic.

Protected object of the statutory definition on money laundering are society and community interests of the combat against crime, furthermore, the public interests related to lawful and prudent conduct of financial institutions and other actors of economy.

Statutory definition of this crime is completed upon the execution of any of its elements thereto, whereas successful conduct of money laundering is no further requirement. Except for the perpetrator of the predicate offence, any capable person over the age of 14 can be chargeable for money laundering who did not participate in the predicate offence.⁶

Legalization of dirty money often assists to further crime, nevertheless, the person who, in connection with an asset obtained from criminal activity committed by others, uses the asset for its business activities, performs any financial transaction or receives any financial service 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 been revealed only partially. However, the interest to eliminate money laundering is much greater than the actual prosecution of the person accusable.

Failure of the obligation of notification related to money laundering is a criminal offence, whereas personal objects of the prohibition are expressly specified in Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing thereto.

5. Measures of combat against money laundering

Money laundering is commonly defined to be happening in several steps, whereas each elements and phases are connected to each other. The first step is the actual appearance of illicit cash and shaping the intention to legalize the nature of the assets.

The second step involves placement of cash by some means. Illicit money is usually being introduced into the financial system through intermediaries unknown and/or outside the perspective of the authorities, further eliminating successful law enforcement. Placement is the most problematic stage of money laundering, hence it occurs at the early stage of the business, whereas transactions are not yet confused or tangled. Black money is often mixed with the profits of high revenue enterprises (i.e. cash-intensive businesses as shopping malls, casinos etc.).

⁶ István László Gál: *Magyar Büntetőjog Különös rész* (Special Provisions of the Hungarian Criminal Law), 2014., Page 524.

The third step is referred to as layering that involves carrying out complex financial transactions to camouflage the illegal source or origins of the money. Most often, this stage has cross-border nature making the detection of origins rather complicated. Having to procure different permits in one or more countries, proceeding authorities are often facing preliminary and time consuming difficulties and hindrances that finally slow down the inspection.

Authorities often have to re-start tracing proceeds and evidence, since actors of money laundering frequently use homeless persons, therefore without registered residence their approach is nearly impossible. Should they be found, they are unable to provide any relevant information, or actually, they do not seem to know what they've signed.

The fourth phase entails acquiring legitimate, after tax wealth generated from the transaction of illicit funds.

Money washed clean in accordance with the above can be safely used and transferred into other businesses of the economy as clean money. Final product of this procedure is legalized money.

After such manoeuvres of turning back financial assets (money) into the stream of economy, it's almost impossible to detect or differentiate between the origins of legitimate and illicit money.

Nowadays, combat against money laundering is closely related to the fight against organised crime and terrorism. Thus globally, the greatest incomes some try to legalize derive from the trade of arms and weapons, drugs and smuggling.

Partially, criminals are able to spend their illicit money earned by illegal actions without money laundering. For criminal offences, whereas perpetrators manage to gain a great amount at once or gain regular access to illicit incomes without having any legal earnings, there is a relatively high risk of being unveiled, so the principal either keeps his money at home without actually being able to spend it, or in cases of extravagances he may draw undesired attention of the tax authorities or the police.⁷

On domestic levels we may find different trends, since crony deals originate in shadow economy. Most of the illicit money derives from tax fraud, fraudulent misuse of funds, receiving, larceny, fraud and malfeasance. Tracking down the revenues of constructions has been a problem for years. The so called 'scaling system' whereas one entrepreneur has processed the job to another constructor has destroyed many families and employees, meaning that by the time the last participant was to be paid sources have ran out, wages have disappeared and the parties accused each-other at the end.

Domestic drug trade raises urging issues, since according to my point of view, from a transit country Hungary has become a target country for drugs that is one of easiest ways to gather illicit money. Nowadays, domestic demand for drugs is quite huge, certainly, they are just as popular as alcohol or cigarettes.

The money after washed clean is the driving force of organised crime, since legitimate sources may further strengthen the organisation. In case of lack of money parties of the circle might as well 'eat each other'.

Besides the efforts taken on detecting, preventing and intersecting offenses, further actions of tracing illicit incomes must be enhanced during the combat against organised crime.

⁷ István László Gál: *A pénzmosás és a terrorizmus finanszírozása az új magyar büntetőjogban*, Belügyi szemle 2013/6., (Financing Money Laundering and Terrorism in New Hungarian Criminal Law Review on Internal Affairs Pages 2013/6), 2013., Pages 27-28.

Actions of law enforcement bodies must be harmonized even more thoughtfully, and also, further training and continuous education programmes must be held. In most cases even the acknowledgement of money laundering seems to cause a problem. Therefore I must emphasise the importance of organised professional control of the authorities participating in the combat against money laundering and law enforcement bodies (police forces) pursuing the fight against organised crime.

Since some participants of the organised crime scene are already known to authorities, in fortunate cases, as focus or subject of criminal procedures, compartmentalizing and transformation of law enforcement bodies might have a crucial influence on the combat.

According to my observations, groups of organised crime do pay attention to eventual transformations of the organisations of police forces, often taking advantages of the elimination or transformation of a special unit, hence it takes time to re-organise flexible and sufficient operation of a new unit. Most probably, lack of time due to such transformations is beneficial to criminals.

I do hope that the attempts of the recent re-organisations will assist appropriate actions and combat against money laundering. "The organized crime perpetration is much more serious threat to the society than an individual crime. More offenders on one hand means more concentration of power which from an objective view increases the chance of the successful crime perpetration and on the other hand the presence of accomplices and the knowledge of their possible intervention when needed increases the offender's determination."⁸

Role of reconnoissant tasks is essential in this combat, for it may prevent criminal procedures in the form of intelligence services, or it may assist prevailing criminal procedures in the form of secret data collection.

Forces and measures of intelligence units assisting secret information collecting (informants, confidentiality contacts, other persons co-operating in the intelligence activities of police forces, tentative methods, undercover investigations, observations, traps, sample buying, simulated and confidential buying) may assist to investigation of criminal organisations and of money laundering.

Special measures and data used or obtained during undercover investigations assist police forces in the combat against money laundering. In the course of undercover investigations subject to court permit police forces are entitled to

- search private homes secretly, and take records on the data collected using technical means,
- open, check the mail or closed parcel connected to an identifiable person, and take records on the data collected using technical means,
- know contents of communication forwarded via electronic telecommunication, and take records on the data collected using technical means,
- access data forwarded or saved through IT systems, get familiar with, take records on and further use such data.⁹

Reconnaissance service and investigation is a long and exhausting workflow, resulting in initiating criminal procedures and impeachment of the perpetrators.

By now, criminal groups have adopted to the rapidly developing technical measures, so using the statutory means of instruments (secret/intelligence forces) is

⁸ Dávid Tóth, István László Gál, László Kóhalmi: Organized Crime in Hungary, Journal of Eastern-European Criminal Law no. 1/2015. Page 23.

⁹ 1994. évi XXXIV. törvény a Rendőrségről 69. §. (1) bekezdés (Section 69 (1) of Act XXXIV of 1994 on Police Forces).

indispensable during the inspection of criminal cases consisting of multiple moments or of continuous activities.

6. Final remarks

Combat against money laundering must be an indispensable and crucial element of the fight against organised crime. Clearly, criminals are motivated by money acquired from the offences committed and as well as money legalized thereof, both serve to strengthen these highly centralised organisations. Since money laundering is faltering the fundamentals of the efficient economy, appropriate approach against money laundering is simply a social (public) interest. Due to its circulation, the money cleaned during money laundering may effect the safety of the state, infiltrating and corrupting all levels of governmental offices, therefore financial basis of organised crime must be extracted.

Statutory provisions of ant-money laundering are well grounded. Since tracing money laundering is rather difficult, reconnaissance services, secret (undercover) investigations and data collection are the greatest 'assistance' to law enforcement units. In order to pursue legitimate forces, well organised and highly trained law enforcement officers are needed, furthermore, the eventual structural transformations within police forces should enhance combat and investigation of organised crime.

Most importantly, a strong and comprehensive financial intelligence unit of law enforcement officers experienced in this specific field must be set up. Moreover, because of the high latency factors related to these criminal offenses, continuous education of officers and even closer co-operation of law enforcement authorities (exchanging information and experience, conferences, etc.) is required.

Notes

István László Gál: *Economic Bribery as a Part of Economic Criminal Law and a Concomitant of Political Corruption*, Journal of Eastern-European Criminal Law no. 1/2014. Page 23;

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