New Hungarian Legislation on Money Laundering from 2021

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Abstract

In 2021, the Hungarian legislature completely rewrote the criminal law rules against money laundering. The new regulation also considers money laundering to be conduct that was not a crime at all in the past. The new regulation is unrealistic and antihuman in many respects, but we have to see that the latest Hungarian legislation is in line with international trends.

Keywords: *money laundering, reporting obligation, organized crime, Penal Code, AML, terrorist financing.*

I. The concept of money laundering and the economic impact of the nation

The criminological concept of money laundering is defined as illegal economic services under the guise of legal transactions, as a result of which the origin of the property acquired by the crime can be justified, freed from its recognizably illegal nature.

Any illegal activity involves a certain type of transactional cost, since the use of the proceeds of crime increases the risk of detection of the crime. These transaction costs can be reduced by a successful money laundering operation. The special economic importance of the activity is that it converts potential assets, which would be dangerous to spend without money laundering (thus being considered inactive capital in this respect), into actual purchasing power. In this sense, money laundering plays the role of an illegal monetary supply that meets the demand for money laundering services by individuals or groups committing income-generating crimes.

Money laundering returns criminal goods to the institutional system of the legal economy, fundamentally changes the functioning of the market in connection with organized crime, devalues the effectiveness and fairness of financial procedures, weakening the economy as a whole[2]. In addition, money laundering can be considered

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[2] *Recommendation No. 3/2002 of the President of the State Supervision of Financial Institutions to prevent terrorism and money laundering*, p. 1, available on www.pszaf.hu/ajanlasok/2002/3-2002.htm, accessed on 15 June 2003.

a necessary form of organized crime[3], which further increases its dangerousness. By carrying out various, often targetedly complex operations, persons and institutions involved in money laundering aim to ensure that money otherwise obtained illegally is earned as legal income for the outside world, in particular for public authorities, and can be used for further, whether legal or further illegal, activities. Money laundering as a phenomenon therefore presupposes at least one, but typically more, acts normally covered by organized crime, such as drug, prostitution, trafficking in human beings, illegal gambling, corruption or damage to public budgets, resulting in a significant amount of illegal income[4].

If we look at the macroeconomic effects, it should be noted that if the laundering of income from illegal sources begins to take on a significant scale in a national economy, it will become apparent even in the legal business sphere. This can have unforeseen consequences, since money laundering, as already mentioned, is not a for-profit activity and can therefore upset the balance in the legal sphere. While they are seemingly engaged in a legitimate economic activity, the money lathers are willing to offer the goods and services they sell at lower prices, but as buyers it is worth buying them at a higher price[5].

For those working legally, this process either leads to a deterioration in their standard of living, as they earn minimal income or try to compete with the commission of criminal offences (e.g. budget fraud)[6].

The potential social and political costs of money laundering, especially if left unexplored or not sufficiently serious, are very serious. Organized crime can infiltrate financial institutions; gain control over major economic sectors through investments, bribing senior officials and politicians; its acquired political and economic influence can weaken the social network, collective ethical norms and, ultimately, the democratic institutional system of society. In its most basic form, money laundering is inexpensively linked to the core activity that triggers it and ultimately stimulates the continuation of criminal activities as a 'positive feedback' mechanism.

If the underworld infiltments business, it will begin to impose its morals on its partners. The amount of money laundered may be as small as possible, which may already affect the national economy of each country. The greatest danger is the incorporation of offenders into economic, political power, businesses, financial services organizations[7].

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[3] Mayerhofe J., *Organized crime. Kriminalistik Verlag*, Heidelberg, 1996, p. 112.

[4] I. Ambrus, *Büntetőjog 2021 – a pénzmosás újrahangolt tényállása és a hálapénz kriminalizálása* [Criminal Law 2021 – Re-tuned facts of money laundering and criminalization of gratitude money], Büntetőjogi Szemle 2/2020, p. 4.

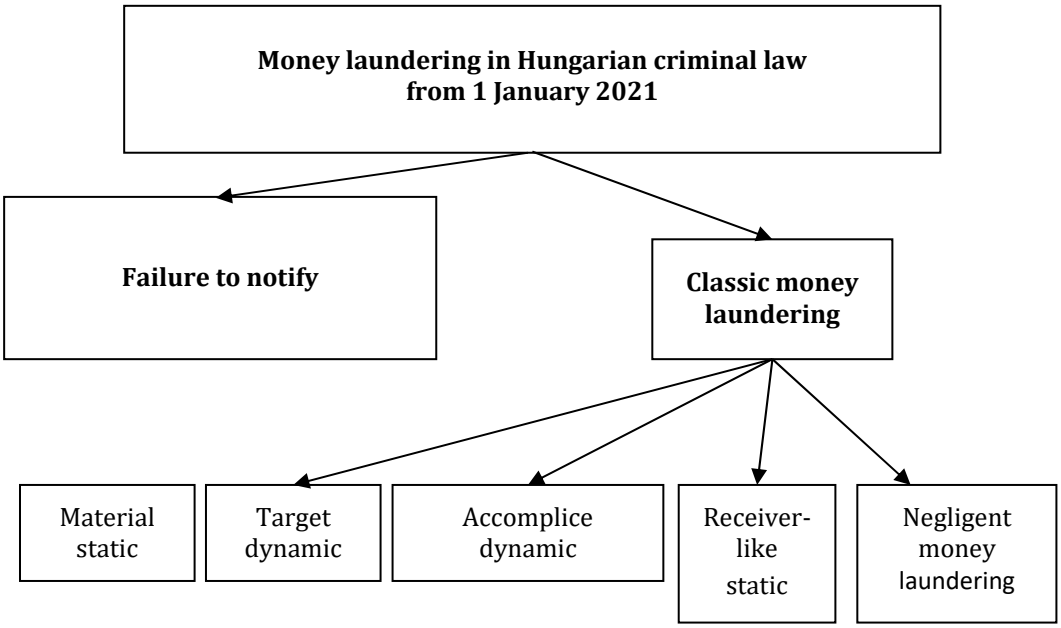
[5] If we walk around Lake Balaton with our eyes open and make a comparison with ourselves looking at the prices, we can conclude here and there that, taking into account the usual rents in the given area, it is unlikely that, for example, a particular business will be profitable. (Of course, this does not only lead to money laundering, it is also possible that the product was stolen or that the customs duty was „saved" on it...)

[6] J. Jacsó, *A pénzmosás elleni nemzetközi fellépés eszközei* [Instruments for international action against money laundering], Magyar Jog, no. 9/2000, p. 545.

[7] A. Farkas Ruralné, *A pénzmosásról* [On Money Laundering], Ügyészek Lapjai, Issue 21/1995.

We can therefore conclude that the increase in money laundering activities can also cause significant damage to the legal business sector of a region or country, disregarding the rules of fair market behavior, making economic competition impossible, and may also disrupt the monetary sphere and, in quite extreme cases, contribute to the decomposition of democratic institutions.

II. New rules on money laundering



According to the current criminal law definition, money laundering has five basic incidents. The five base case names can be indicated by the following names based on their main characteristics:

1) *material static money laundering*,
2) *targeted dynamic money laundering*,
3) *abetting dynamic money laundering,*
4) *static money laundering like receiver*.
5) *negligent money laundering*.

Furthermore, the criminological and criminal concepts of money laundering differ: the concept of criminology is defined as illegal economic services under the guise of legal transactions, which results in the origin of the property acquired by the crime becoming justified, freed from its recognizably illegal nature. The criminal

concept of money laundering is different. In the criminal sense, and it is appropriate to bear this in mind for the purposes of this professional opinion, any part of the economic concept of money laundering constitutes money laundering. In other words, the authority does not have to prove that the entire money laundering process has taken place, it is enough to implement any part of the economic concept of money laundering for an amount of illegal origin. Therefore, a single transfer to a bank account is enough, and this crime can be carried out in practice with a single economic event.

The distinction between static and dynamic money laundering was developed a decade ago and has been used by law enforcement practice ever since. In the case of static money laundering, the vast majority of the conduct committed does not involve a transformation of property, e.g. the property of criminal origin does not usually change shape during the commission. In the case of dynamic money laundering, on the other hand, the vast majority of the conduct committed also results directly or indirectly in the transformation of property, although this is not a criminal result of this crime, but only a distinctive feature in the criminological sense.

Negligent money laundering is, in my view, a separate case, e.g. the fifth type of money laundering, since it has its own facts and qualified cases, none of the first four intentional guilt shapes are negligent, although they are closest to the target dynamic.

Some of the figures under the money laundering regulations in force from 2021 can also be summarized in the upper diagram.

As of 1 January 2021, the current Hungarian legislation on money laundering provides as follows:

Section 399 (1) Any person who conceals or disguises the origin of assets derived from criminal activity, including any right on and the location of such assets, and any changes therein, is guilty of money laundering.

(2) Money laundering shall also include where a person is involved in receiving assets derived from criminal activity from others with intent to conceal or disguise the origin of the assets, including any right on and the location of such assets, and any changes therein, or in concealing, converting, transferring such assets, participates in the alienation of or uses such assets, performs any financial transaction or receives any financial service in connection with those assets, or makes the necessary arrangements to that effect.

(3) Money laundering shall also include where a person is involved in receiving assets derived from criminal activity from others, or in concealing, converting, transferring such assets, participates in the alienation of or uses such assets, performs any financial transaction or receives any financial service in connection with those assets, or makes the necessary arrangements to that effect:

a) with intent of aiding efforts to prevent the enforcement of confiscation and asset recovery ordered against others, or

b) with intent to prevent the enforcement of confiscation and asset recovery ordered against others.

(4) Any person who, in connection with assets derived from a criminal activity committed by others:
a) acquires, obtains the right of disposition over such assets, or
b) safeguards, conceals, handles, uses, consumes, converts, transfers, or participates in the alienation of such assets is also guilty of money laundering.
(5) The punishment shall be imprisonment for up to five years for a felony if the value involved in money laundering is below substantial value.
(6) The penalty shall be imprisonment between two to eight years if money laundering is committed:
a) in respect of a particularly considerable value; or
b) in respect of a substantial value
ba) in a pattern of business operation,
bb) by a service provider defined in the Act on the Prevention and Combating of Money Laundering and Terrorist Financing, by an officer or employee of such service provider in connection with the service provider's activities, or
bc) by a public official.
(7) The punishment shall be imprisonment between five to ten years if money laundering is committed:
a) in respect of particularly substantial value; or
b) in respect of particularly considerable value
ba) in a pattern of business operation,
bb) by a service provider defined in the Act on the Prevention and Combating of Money Laundering and Terrorist Financing, by an officer or employee of such service provider in connection with the service provider's activities, or
bc) by a public official.
(8) Any person who engages in preparations for money laundering is guilty of a misdemeanor punishable by imprisonment not exceeding one year.
(9) The abettor or aider shall not be prosecuted if he or she commits the criminal offense defined in Subsection (3) or (4) in respect of assets derived from a criminal activity he or she has committed.

Section 400 (1) Any person who is involved in concealing, converting, transferring assets derived from criminal activity committed by others, or participates in the alienation of or uses such assets, performs any financial transaction or receives any financial service in connection with those assets, or makes the necessary arrangements to that effect, and is negligently unaware of the true origin of the asset is guilty of misdemeanor punishable by imprisonment not exceeding two years.
(2) The punishment shall be imprisonment for misdemeanor for up to three years if the criminal offense defined in Subsection (1):
a) involves a particularly considerable or greater value;
b) is committed by a service provider defined in the Act on the Prevention and Combating of Money Laundering and Terrorist Financing, by an officer or

employee of such service provider in connection with the service provider's activities; 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) and (2), provided that the act has not yet been revealed, or it has been revealed only partially.

Interpretative Provisions

Section 402 (1)

(2) In the application of Sections 399-400, financial activities and financial services shall mean financial services and activities auxiliary to financial services, investment services and activities auxiliary to investment services, commodity exchange services, investment fund management services, venture capital management services, exchange services, central depository services, the activities of bodies acting as central counterparties, insurance services, reinsurance services, and the activities of independent insurance intermediaries, voluntary mutual insurance funds, private pension funds and institutions for occupational retirement provision.

The legal subject of money laundering is the public interest in the effectiveness of the fight against crime, in particular organized crime. In addition, trust in the state's financial institution system can also be considered a legal object in the alternative[8]. The object of the crime is property. Criminal material law has traditionally identified the scope of things as the object of money laundering, which has been extended by interpretative provision to a dematerialized instrument of pecuniary entitlement and dematerialized securities behaving in the manner of such a thing. These frameworks have become scarce in view of the new types of assets that have recently appeared, and new types of property (e.g. various forms of electronic data used for payment) have emerged not only in criminal law, but also in other branches of law as a disputed and under-regulated area of law. However, a common feature of such new assets is that the provision of them can still be regarded as a pecuniary advantage, including the pecuniary benefit of crime, and it is therefore absolutely necessary that criminal law should have an adequate set of instruments against them. With regard to the inclusion of new types of assets in criminal law, it should be pointed out, first of all, that, overall, those assets are not outside the scope of criminal law, since they may be the subject of confiscation under the general rules and may be the subject of a specific seizure in Be. (Criminal Proceeding). However, there is a contradiction between the fact that certain types of assets may be confiscated but not the subject of money laundering. In order to resolve this, it is appropriate to establish in the Special Section of the Hungarian

[8]T. Horvát, B. Kereszty, V. Maráz, F. Nagy, M. Vida, *A magyar büntetőjog Különös része*, [A Special Part of Hungarian Criminal Law], Korona Kiadó, Budapest, 1999, p. 670.

Penal Code flexible regulations capable of managing new types of assets in the context of money laundering. Since there is no general definition of property in the Hungarian Penal Code, only Article 76 of the Hungarian Penal Code defines certain assets subject to confiscation by means of a non-exhaustive list, the modification of the object of money laundering to property provides sufficiently flexible conditions for combating crime by new types of assets. The use of this concept also ensures compliance with international and European Union requirements[9].

In relation to the subject matter of the crime, we need to talk about one more issue, the problem of pre-acts. The thing referred to in the facts must result from the committing of a criminal act. Although the law no longer states that it must be a criminal act „according to this law", in my view it should at least mean acts ordered to be punished by the Hungarian Civil Code, it is not enough to be punished by the law of the place where the crime was committed. The law does not use the term 'crime', but the term 'criminal act', which implies that *money laundering can be established even if the perpetrator of the pre-act cannot be punished for any reason* (e.g. because of childhood or if the perpetrator has a pathological state of mind).

It is also irrelevant whether or not the basic offence falls under the jurisdiction of the State acting on the grounds of money laundering (as set out in Article 6 of the Strasbourg Convention also fixes.). Nowadays, it is more typical that the concealment of origin cannot happen on a different scale than on an international scale without the hope of success. It is therefore almost necessary that the country in which the main proceedings were committed and the place of origin concealment (partially) was different. The only important criterion is that the suspected pre-act should be an act threatened with deprivation of liberty in the country of committing and money laundering. (This may be particularly questionable in the case of offences detrimental to financial and foreign interests)[10].

The court gives its opinion on whether it is a criminal act. However, there is no need for the main proceedings to end with a final judgment, because if we had to wait for this in all cases, the evidence of money laundering would also be lost in the meantime. This line of thought is also supported by the fact that the Hungarian Penal Code does not refer to a criminal act as a pre-act, still refers to it as a criminal act.

The basic act must be a criminal act which must be proved in a regular manner. Evidence in a court system cannot be missed in criminal proceedings. In my view, the mere fact that a criminal offence has been reported in that country does not mean that it was actually a criminal offence, since there may be cases where proceedings are terminated in the absence of a criminal offence. The fact of the complaint does not in itself prove not only that the offence was committed, but also that a criminal offence with a much lower requirement was committed, as confirmed by the fact that the Criminal Procedure Act also speaks of suspicion or well-founded suspicion at the

[9] Explanatory memorandum to Bill T/9918.

[10] M. Tóth, *Gazdasági bűnözés és bűncselekmények* [Economic Crime and Crime], KJK-Kerszöv Jogi és Üzleti Kiadó Kft., Budapest, 2002, p. 358.

beginning of the criminal proceedings, at a time when a certain amount of data is already available. The basic act must therefore be demonstrated 'at some level' in the money laundering proceedings. It is not enough to assume, to think based on denunciations, but to prove that the money actually comes from a criminal act. Although Hungarian judicial practice has produced different, schematic decisions in the last few years, which are not compatible with the provisions of criminal material and procedural law, the practice of the Curia and the international treaties in force; in the view of the defense, in the present case we should return to the 'right track' even if this could mean additional work for the investigating authority in the future and even worse prosecution results for the public prosecutor's office.

A distinction should also be made between the completion and the finish of the offence, which may also be relevant for the basic or pre-act. For example, in the case of several crimes against property (fraud, theft), completion can only arise if the victim is permanently out of reach, as a result of which he has no chance of recovering or retaining it. As long as you have such an opportunity, we can only talk about an experimental course, even if the perpetrator has already completed his conduct, that is, the crime is finished.

In a decision of the Curia in a review procedure, the Curia stated that in the case of basic offences and money laundering, a real heterogeneous set of forms cannot be established, i.e. a criminal conduct cannot simultaneously exhaust the legal facts of the basic offence and money laundering (Kúria Bfv.I.830/2017/16.) In other words, money laundering with the basic crime should never, under any circumstances, be formal, but only in a material set: for this reason, the basic crime and money laundering must be isolated in space and time. After the end of the basic crime, it is possible to enter the money laundering course only in a separable way, first in the pilot course, and then in the stage of completion. Contrary to the legal regulations of some other states, Hungarian criminal law is currently not familiar with the category of autonomous money laundering, e.g. when unusual transactions without a basic act can also constitute money laundering. According to the Hungarian Penal Code, the basic crime must be based on the interpretation of the Curia, and this must be separate in time and space with money laundering[11]. In other words, the apparent set of forms will never be resolved by establishing money laundering.

The presentation of money laundering behavior is carried out by discussing the five basic types of facts in force from 1 January 2021 separately. After hearing the conduct of each type, the subjective side of the crime, as well as the qualified cases and the set-demarcation issues are presented in a consolidated way.

The first version is material static money laundering. Here, the vast majority of the committal behaviors do not result in a transformation of property in economic

[11] The same is confirmed by the Circular of the Deputy Attorney General for Criminal Law on money laundering: *„The object of money laundering is something arising from the basic act and therefore the commission of the ancillary deliberation is conceptually excluded until the commission of the basic act or of the sub-act constituting the basic act, which is suitable for independent criminal assessment, has been completed."* (Deputy Attorney General for Criminal Law No 1/2017 (VII. 31.) LÜ h. circular on the criminal aspects of prosecutorial practice in money laundering cases, par. 8).

terms (therefore static), and also a result position (e.g. a material offence in criminal terms), since the result of the crime is the permanent separation of the property of criminal origin from the origin of the culprit. The result is therefore that the origin of the property becomes covered and disguised. This shape is new in Hungarian criminal law and, in my view, will not have any significant practice. If the perpetrator successfully conceals the origin of the criminal property, he will avoid detection because of the result of the money laundering, e.g. the suspicion on which the criminal proceedings are based. And if the cover-up is not „effective," this shape cannot be determined because of the lack of results.

The conduct committed is as follows:

a) concealment of the origin of property means that sinful property becomes secret to the outside world,
b) the concealment of property contains an additional element compared to the previous one: it requires a concealing title by which the origin of the property appears to be legal.

The version in the second paragraph can also be called dynamic money laundering, since the vast majority of the behaviors committed result in a transformation of wealth in economic terms. The conducts committed are as follows (all conduct is related to the purpose, i.e. only for the purpose of concealing or concealing the origin of the property resulting from the criminal act, the right to property, the place of the property, their change may be factual):

- taking over of property of criminal origin from another means that the offender is placed in possession, i.e. he or she takes the property within his own disposal;
- concealment of property of criminal origin constitutes an act by which the property becomes physically inaccessible;
- in the context of the transformation of property of criminal origin, property is transformed, for example, one painting becomes cash or, for example, stolen parts are incorporated into another thing;
- in the case of the transfer of property of criminal origin, the property is removed from the possession of the offender and another person acquires the right of possession by contract or real act;
- assisting in the disposal of property of criminal origin means any assistance in the transfer by active conduct;
- the use of property of criminal origin means that the offender, for his or her own or other purposes, carries out a transformation of property on property of criminal origin, for example, the stolen money is used in whole or in part to purchase real estate;
- the content of financial activities, the use of financial services or the provision the thereon in connection with property of criminal origin is determined by the interpretative provision of the Hungarian Penal Code in Section 402(2). According to this, for the purposes of Articles 399 to 400 of the Hungarian Penal Code, in financial activities or the use of financial services, services,

commodity exchange services, investment fund management, venture capital fund management, stock exchange, CSD or CCP, or insurance, reinsurance or independent insurance intermediaries, or voluntary mutual fund, private pension fund or occupational pension service activity or its use shall be understood.

The perpetrator of the basic crime, or a third party, can commit this form. The principle basis for criminalizing dynamic money laundering is that the inclusion of something resulting from a criminal offence in a separate society, either from or per legal source, through operations carried out in the financial-economic sphere, is beyond what has already been assessed in the context of the basic act. This risk, which goes beyond the infringement of the legal object caused by the basic act, justifies the sanctioning of post-acts for the purpose of concealing origin by the perpetrator of the basic act, albeit narrowly. However, in the context of that fact, as a result of the prohibition of double assessment, only conduct for the purpose of concealing origin which is not necessarily inherent in the commission of the basic act may be awarded an independent criminal assessment[12]. In the opinion of some authors, the punishment of the perpetrator of a basic crime for money laundering is of concern in many respects. The dogmatics of Hungarian criminal law consider the category of *„unpunished after-actions"* to be one of the cases of the apparent material set. It should be acknowledged, however, that, in addition to the current legislation, this can also happen as a result of our international obligations, so the task of the practice is to narrow the scope of the facts by all means with regard to the perpetrators of the basic offences.

The version in the third paragraph can also be called abetting dynamic money laundering. Material abetting, e.g. the form of aiding and abetting in which the perpetrator contributes to the provision of the advantage of the crime, is related to the specialty, and cannot be established in a formal set. If both facts are carried out, money laundering shall be established, except in the case justified by law where the offender's sole purpose is to avoid criminal liability by destroying property resulting from the crime, which is also a means of physical proof. In such cases, aiding and abetting should also be established where the penalty for money laundering would be higher in the specific case. And if the perpetrator of the basic crime commits the destruction of the property (material means of proof) for that purpose, it shall be considered a criminal after-act.

This form is carried out by an offender who, by taking over, concealing, converting, transferring, assisting in the disposal, use, financial activity, use of, or disposal of property resulting from a criminal act, or who is involved in the confiscation or recovery of property against another person, or the confiscation of property against another person, or on-recovery. The success of the confiscation or

[12] Deputy Attorney General for Criminal Law 1/2017 (VII. 31.) LÜ h. circular on criminal aspects of prosecutorial practice in money laundering cases, par. 6.

recovery of property does not affect the determination of the completion of the offence.

The version in the fourth paragraph can also be called static money laundering of a receiver. As of 1 January 2021, the has disappeared from Hungarian criminal law, and this form of money laundering has taken over its role. Static money laundering of a receiver is committed by a person who acquires, acquires or retains, hides, manages, uses, converts, transfers or participates in the disposal of property arising from a criminal act committed by another person. The vast majority of the behaviors committed are static, e.g. they do not result in a wealth transformation.

It has been a contentious issue in the literature[13] so far whether the lawyer's fee, which the defense lawyer receives from the offender, where appropriate, from money obtained in connection with the commission of the offence, can be the subject of money laundering. If the lawyer knows that he is taking money from a criminal offence, he can launder money under Hungarian regulations in force from 2021. Similarly, a lawyer who accepts money as a lawyer's deposit that he knows is the result of a criminal offence should be held liable for money laundering. Another issue, of course, is that proving the consciousness of the perpetrator, the lawyer, will be extremely difficult.

In my view, the acceptance of an unfathomable amount of lawyer's fees, which is customary for a particular lawyer in a particular case, does not constitute money laundering, even if the lawyer could have foreseen that it was the result of a criminal offence (but he was lightly confident that it would not).

Section 400 (1) of the Hungarian Penal Code contains negligent money laundering, which is the fifth, independent type, since none of the previous four are negligent figures. It's got his own classified cases. The conduct of the perpetrators includes the behavior of static and targeted dynamic money laundering, but a very important element of the facts is that the offender is not aware of the origin of the property through negligence. Negligence can be negligent, but it can also be knowing negligence. In other words, it is not intentional money laundering, but the perpetrator, who suspects that property from a criminal act is behind it, could be investigated with due care, but fails to do so („he foresees the possible consequences of his conduct, but he is lightly confident that they will not be done"). This is typically the case if the suspected property is believed by the perpetrator to be money from tax evasion, which is not necessarily a criminal offence, or if the holder of the property only wants to hide his actual ownership quality, but later it turns out that the property comes from a crime.

All basic cases of money laundering in the case of both intentional and negligent versions are criminal offences for crimes exceeding HUF 50,000, and offences up to

[13] See more: L. Hombrecher, *Money laundering (§ 261 StGB) by criminal defense lawyers?* Aachen, 2001; W. Wohlers, *Geldwäschrei durch die Annahme von Verteidigerhonoraren – Art. 305. StGB als Gefahr für das Institutder Wahlverteidigung*, Schweizerische Zeitschrift für Strafrecht no. 2/2002, pp. 197-219.

HUF 50,000 (pursuant to Section 462 (1) g) of the Hungarian Penal Code); according to Section 177(1a) of Act I of 2012 on Offences:

> *Anyone who acquires, conceals or disposes of property resulting from theft, embezzlement, fraud, misappropriation, robbery, plundering, extortion or unlawful acquisition for the purposes of pecuniary gain of not more than HUF 50,000 shall commit an offence.*

It can be seen from the facts of the infringement that not all the shapes of money laundering, but only the static money laundering of the host nature have a form of misconduct, narrowing the scope of the pre-acts on the material side in a way reminiscent of the previous facts of the Hungarian Penal Code regulated as an economic activity, and also narrowing the scope of the subject's side with the aim.

The first two shapes of money laundering can be committed by anyone, including the perpetrator of the basic crime. The perpetrators of the abetting dynamic, the receiver-like static money laundering and negligent money laundering, e.g. the perpetrators of the other three basic cases, can only be other than the perpetrator of the basic crime. As an instigator and accomplice, the perpetrator of the basic crime cannot be punished in the case of dynamic, receiver-like static money laundering of an accomplice nature, and the last, e.g. negligent, formation cannot, by definition, be linked to either instigator or accomplice. To sum up the above, the perpetrator of material static and targeted dynamic money laundering can be either the perpetrator of the basic crime as a culprit, an instigator or an accomplice, but he cannot be punished in any way for the other three formations. In my view, even this regulation interferes with the humanism principle of Hungarian criminal law, since we refer to the apparent material set as one of the cases where we leave with impunity the after-act committed by the perpetrator in order not to expose his previous crime. Thus, traditionally, those who do not declare the undue benefit of bribery as income in their annual tax return are not penalized for budget fraud. If the perpetrator could avoid the realization of a crime only by exposing his previous crime, the latter offence should be left unpunished[14].

In the view of some authors, money laundering should also be treated as such a criminal after-action when it comes to laundering money from its own crime. The perpetrator, if he has made a greater profit from committing a crime, has two options. You can spend the money on your personal needs, but you'll have to take into account the risk of immediate busting (which is why perpetrators usually wait a few months before using the profits from the crime and don't even start spending suspiciously). The alternative is to try to launder the money, but you will also have to take into account that you will be held liable for at least two offences in the event of being caught. The current nature of money laundering fully complies with the requirements of EU Directive 2018/1673, still is not compatible with the traditional principles of

[14] J. Földvári, *Magyar büntetőjog Általános rész.* [Hungarian Criminal Law General Part], Osiris Kiadó, Budapest, 1997, p. 227.

Hungarian criminal law. The latter, on the other hand, is no longer a primary consideration in the domestic legislation of the 21st century, as we are forced to adapt to the EU's expectations.

The first four shapes of money laundering can only be committed intentionally, of which dynamic money laundering is targeted only with direct intent because of the purpose in the facts. The other three intentional shapes can be committed with possible intent. In addition, there is a separate negligent case of money laundering, which can only be committed by an outsider, not by the perpetrator of the basic crime.

The legislator lists in sections 399 (6) and (7) of the Hungarian Penal Code the circumstances in which the danger to society of the first four intentional cases of money laundering increases to such an extent that the prospect of a more severe penalty (imprisonment ranging from two to eight years and imprisonment of five years to ten years) is justified. Qualified cases are as follows:

The penalty shall be imprisonment between two to eight years if money laundering is committed:

a) in respect of a particularly considerable value; or

b) in respect of a substantial value

ba) in a pattern of business operation,

bb) by a service provider defined in the Act on the Prevention and Combating of Money Laundering and Terrorist Financing, by an officer or employee of such service provider in connection with the service provider's activities, or

bc) by a public official.

That is, in the case of a crime over HUF 50 million, and in the case of a crime over HUF 5 million, this increased penalty applies if:

1. the committing is commercial[15]
2. committed by any service provider, its official or employee within the meaning of the AML Act The previous legislation only included the commission as a lawyer in the qualifying circumstances, but from 2021 the 18 different financial service providers listed in the AML Act, including the lawyer, are liable for a qualified case, but only if committed for a value above HUF 5 million.
3. commits money laundering by an official. The concept of official is defined in Section 459 (1) 11 of the Hungarian Penal Code

The penalty shall be imprisonment between two to eight years if money laundering is committed:

a) in respect of a particularly considerable value; or

b) in respect of a substantial value

ba) in a pattern of business operation,

[15] According to Section 28 of Section 459(1) of the Btk., a person who seeks regular profit by committing the same or similar offences is committing a commercial act.

bb) by a service provider defined in the Act on the Prevention and Combating of Money Laundering and Terrorist Financing, by an officer or employee of such service provider in connection with the service provider's activities, or

bc) by a public official.

In other words, the logic of qualified cases is the same here as in the previous case, only HUF 500 million and HUF 50 million are the two thresholds. In the case of a crime exceeding HUF 500 million, the penalty is imprisonment ranging from five years to ten years without further circumstances, while in order to commit a crime of more than HUF 50 million, it is necessary to have at least one of the additional conditions listed in points (a) to (c) in order for the maximum penalty for money laundering to apply to the offender.

Qualified cases of the fifth case, e.g. negligent money laundering:

a) committing a particularly high or higher value (e.g. over HUF 50 million),

b) as a service provider, official or employee of the service provider as defined in the Law on the Prevention and Prevention of Money Laundering and Terrorist Financing in connection with the activities of the service provider (e.g. one of the 18 service providers under the AML Act, including the lawyer, in accordance with previous regulations), or

c) committing acts as an official (pursuant to Section 459 (1) 11 of the Hungarian Penal Code).

Among the preparatory behaviors, the law previously only punished the agreement to commit money laundering, but from 1 January 2021 it will penalize all preparatory behavior. (Note that the person who agrees with the culprit on money laundering before committing the basic crime is responsible for providing psychological assistance to the basic crime instead of preparing.)

The law also defines a reason for eliminating criminality, only in relation to negligent money laundering (even in a case of default, even qualified case). This provision has been brought to life by promoting more effective anti-money laundering and the criminal policy objective of having a greater interest in exposing an unexplored or only partially detected act than in punishing the perpetrator. Therefore, if the perpetrator of negligent money laundering voluntarily reports or initiates such a complaint, he or she cannot be punished for money laundering. The court has no discretion: if the act has not yet been fully discovered, the complainant is exempted from liability.

III. Failure to report money laundering

The detailed rules concerning the obligation to notify are set out in the background standard to be presented later, Act LIII of 2017 (AML Act). This is Hungary fourth anti-money laundering law. In the event of non-compliance with other obligations under this Act, in severe cases, the supervising body may impose a fine on

the service provider, but failure to notify is a criminal offence, for which the manager, employee or family member of the service provider is *personally liable*, in the context of criminal proceedings.

In order to make criminal prosecution of money laundering and terrorist financing more effective, the legislator assigns the failure to report as a separate offence. In the course of their daily activities, financial service providers may obtain information which cannot be obtained from elsewhere, which is essential in the fight against the most serious crimes[16].

The regulation therefore assumes that bodies and entities investigating the large amounts of movement, mobility, investment and composition of material goods are able to filter out data indicating the commission of the underlying crimes by operating an appropriate system and reporting them is more important than the right or obligation to confidentiality[17].

In order to enforce the requirement of uniform interpretation of the law and of unambiguousness, which is certainly approachable in criminal law, the legislature states in the Hungarian Penal Code the offence of breaching economic secrecy:

Section 413 (2) Breach of trade secrecy shall not apply to any person:
b) who conveys information subject to the statutory reporting obligation prescribed by law in connection with the prevention and combating of money laundering and terrorist financing, insider dealing, market manipulation and the fight against terrorism, or who initiates such action, even if the report he filed in good faith has proved to be unfounded.

The point is therefore that anyone who reports money laundering or terrorist financing in good faith on the basis of a suspicion which he or she has subjectively expressed in the course of his work shall not be criminally liable even if the person notified by him has not committed any infringement and the reporting person has infringed his economic secret by making the notification. This provision was necessary in order to relieve persons subject to the background standard (Pmt) from the burden of 'double squeeze' (if it does not report, commits a criminal offence, even if it makes an unfounded report, this would be unacceptable). The imposition of the obligation to identify and notify does not limit the fundamental right of informational self-determination beyond the unavoidable and proportionate extent, and for years the Hungarian Penal Code has also stated that it does not prejudice the interests of protecting economic secrets (securities, banking, business etc.).

It is a centuries-old legal obligation for doctors in Europe, but it is also the case in the current Hungarian health law that a doctor, if the patient is found to have an injury

[16] K. Auer, P. Osváth, *Törvény a pénzmosás megelőzéséről és megakadályozásáró* [Law on the Prevention and Prevention of Money Laundering], Pénzügyi Szemle, 1994.

[17] M. Tóth, *Gazdasági bűnözés és bűncselekmények* [Economic crime and crime], KJK-Kerszöv Jogi és Üzleti Kiadó Kft., Budapest, 2002, pp. 364-365.

obviously resulting from a crime (such as a gunshot wound), is legally obliged to report it to the police forces without delay. Over the centuries, society has become accustomed to this provision and takes it for granted, with which a fair majority is protected against criminals. The doctor is the first person to encounter such an injury, so his report may be invaluable to law enforcement[18]. Financial services organizations are, by definition, the front line of the fight against money laundering, the signals from them can assist the investigative authority, and the related criminal law situation seeks to increase the 'willingness to report' as an external 'incentive'.

Nevertheless, we note that some business service providers who live on the market still feel that the obligation to identify and report them puts them in an unfair position by having to choose between either fulfilling their statutory obligations and thus jeopardizing their own existence (for example, who would later hire an accountant who turns out to have already „spat" on someone) or break the law, and they may face up to three years imprisonment.

The new Hungarian Penal Code defines the non-notification obligation in the same way as the previous regulation:

Section 401 Any person who fails to comply with the reporting obligation prescribed by law in connection with the prevention and combating of money laundering and terrorist financing is guilty of misdemeanor punishable by imprisonment not exceeding two years.

It is advisable to state right at the beginning of our analysis of the facts that the obligation to report does not constitute an obligation to report. Although the two concepts are often blurred in the public consciousness, many of the representatives of the professions concerned also misunderstand the relevant provisions of the regulation. In the event of a complaint, the complainant intends to initiate criminal proceedings against the person who has been reported in the event of a suspicion of a criminal offence. In our current law, as a general rule, the right to report is widely enforced, but the obligation to report is very limited. The narrowness of the obligation to report is characterized by the fact that either only very few cases are required by everyone to report (obligation to report citizens), or only the authorities and officials are obliged to report any crime that has come to their attention[19]. The current legislation does not impose any obligation on citizens or financial service providers to report!

The obligation imposed is notification, which means recording and transmitting unusual and unusual data, facts, persons and circumstances in an appropriate form to the investigating authority. From the point of view of the persons required to report, the following findings can be made:

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[18] L. Balogh, *A pénzmosás elleni fellépés nemzetközi összefüggései* [International context of anti-money laundering action], Számvitel, Adó, Könyvvizsgálat, 211, May 2003.

[19] F. Tremmel, *Büntető eljárásjog, különös és Kiegészítő rész* [Criminal Procedure Law, Special and Supplementary Section], Janus Pannonius University, Faculty of State and Law, Pécs, 1999, p. 7.

1. The obligation to notify is almost identical to the reporting obligation if the service provider becomes aware of money laundering in connection with its operation. In such cases, the notification made by it differs from the complaint in that the authority does not necessarily have an obligation to take action on this basis. On the other hand, if the service provider not only suspects, but also knows that a money laundering transaction is being carried out through him, he will be liable as a psychological accomplice for money laundering and not for failure to report (simply put, the service provider is also considered a money launderer).
2. The reporting obligation is broader than the obligation to report in that not only money laundering, but also suspicious circumstances suggesting it must be reported, regardless of whether money laundering is involved at all (this will then be investigated by the investigating authority).

The legal subject matter of the offence is the same as that of money laundering: the public interest in the effectiveness of the fight against crime, in particular organized crime. In addition, trust in the state's financial institution system can also be considered a legal object in the alternative[20]. There is no object of action, as this is a so-called pure default offence.

Committal behavior is a failure to report as required by law (the AML Act), which, by its very essence, can only be carried out by passive conduct. Notifications shall only be made in the event of data, facts or circumstances suggesting money laundering or terrorist financing. The AML Act tell us specifically in what cases.

All employees, managers or family members of the service provider who suspect money laundering are required to report. The subjects of the crime can only be them as perpetrators, so we can speak of a strange subject, the crime called delictum proprium.

The notification shall include:

a) a customer identification data collected by the service provider, and
b) a description of the data, facts or circumstances suggesting money laundering or terrorist financing[21] (details of the data, facts or circumstances on which the report is based) and
c) documents supporting the data, facts and circumstances on which the application is based, if available.

The crime can only be committed intentionally. In order to establish intentionality, it is necessary to prove that the perpetrator was aware that the

[20]Horváth Tibor, Béla Kereszty, Vilmosné Maráz, Ferenc Nagy, Mihály Vida, *A magyar büntetőjog Különös része.* [A Special Part of Hungarian Criminal Law], Korona Kiadó, Budapest, 1999, p. 670.

[21] Suspicious circumstances suggesting terrorist financing should be reported as well as suspicions of money laundering. The notification is mandatory for all service providers which are obliged to report money laundering even in circumstances involving money laundering. In essence, the system works in such a way that financial service providers continuously monitor transactions, and if the names of specific persons (on the prohibition lists) appear, they immediately report them to the NAV. The number of such announcements in Hungary is still very low.

transaction was unusual and, with this in mind, did not make a report. Note that in practice, proving intentionality is very difficult, almost impossible. It would have to be demonstrated that the perpetrator had a subjective suspicion, but he did not make a report.

Failure to notify shall not be subject to money laundering if the person who fails to report is involved in the money laundering itself, is punishable only for money laundering and failure to notify will be either a pre- or unpunished after-act. Note that failure to report is only possible as long as the service provider's employee, manager or family member suspects that money laundering is behind the transaction. Even if you know with certainty, you may already be an accomplice to money laundering by deliberately failing to report it.

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