International organized business fraud – the practice of money laundering

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Introduction

The organized business fraud is a real and extremely dangerous phenomenon in the contemporary world. The level of knowledge of business fraud is not adequate to the danger it poses. The public is still perceiving the business fraud in terms of stereotypes.

The purpose of this Paper is to show that the organized business fraud is an area of extremely complicated structure spreading to different categories of criminal acts. In the world, there are many forms of organized crime. Forms and types of a given crime involve a different historical background as well as social and economic conditions for springing up of criminal organizations. In individual countries, the organized crime has a diversified nature. These differences are primarily due to local factors which translate into the ways and areas of criminal activity.

Organized crime is currently common not only in countries like USA or Italy, but is present throughout the world. We meet with organized crime in both well developed countries (Western Europe, China, Japan) and developing countries (Latin America, Asia, Africa).

Increasingly often, organized crime has the international nature and groups active in different parts of the world are to a greater or lesser extent linked with each other and undertake joint criminal ventures.

It is important that while cross-border legal aid is provided by professional attorneys they are aware of the fact that the present stage of organization of criminal groups is showing by, inter alia, entering into criminal arrangements with representatives of public administration bodies of higher and higher level, politicians, involving high class specialists in criminal activities, e.g. tax and investment advisers, lawyers of reputable law offices, employees of IT companies, technically-oriented scientists, bankers.

Organized crime is striving to create mutual links between the legal and illegal sphere of the domestic economy. A peculiar security zone is created around criminal organizations being made up of various advisers, officials or financiers. The purpose of such security zone is to take advantage of legal loopholes, liberalism of legal decisions and economic rules.

The organized business fraud can entirely or partly coincide with legal economic or political structures of one or many countries.

The essence of money laundering consists in taking action aimed at putting into legal commercial or financial circulation of the money or other legal tender, securities or more generally property derived from criminal activity or other illegal sources.

Thus, professional attorneys may become a tool of uneven and merciless activities of criminal groups operating in the international arena and orientated to carrying out all activities related to money laundering.

This study points out to general threats ensuing from the extension of territorial range of activities of criminal organization members. In particular, areas will be shown where money laundering can be carried out as well as international legal regulations with respect to a definition of organized crime. In addition, in order to give a brief outline of the Polish legal system, the Polish legal regulations will be referred to providing penalties for activity within a criminal association.

By crossing the borders of one country, organized crime has become a part of globalization processes making it important for the awareness of money laundering practices among the public to be the greatest possible, particularly among those persons whose profession often requires them to take action of the cross-border nature.

I. Definition of organized crime

To include particular offences in the definition of organized crime is a very controversial and complicated problem on account of a diversity of crime forms.

All attempts to define organized crime cropping up in the international doctrine of law have taken two directions. The first one, supported by representatives of Interpol, is to define organized crime by pointing out to three elements: **corporate structure, activity aimed at making a profit** and **activity of an illegal nature**, involving intimidation and corruption. This approach to the definition of organized crime was based on the analysis of Sicilian criminal organizations and the American Cosa Nostra.

Another approach to the definition of organized crime is based on the **analysis of threats resulting from such crime**, therefore taking account of the significance of the problem and transnational nature of crimes committed by criminal organizations as well as pointing out to specific criminal acts – terrorism, drugs trafficking, arms trade and slave trade, crimes against the environment and cultural

legacy, computer crimes, corruption, legalization of proceeds derived from crimes.

The assumptions underlying the second approach to the definition of organized crime are based on the concept of *criminal enterprise* and predominantly borrow terms from economics to describe the conduct of members of a criminal association.

In my opinion, both approaches to an attempt to define organized crime taken individually do not produce an in-depth definition. At the same time, attention should also be given to the forms that the organized crime can take (the phenomenological element pointed to by, among others, H.J. Schneider).

Analysis of the forms of organized crime is based on presentation of criteria for determination of distinctive features of organized crime – the structure of needs of every society, selection of activity, unwritten code of criminal organization members.

In view of the foregoing, it has to be pointed out that only the compilation of features distinguishing organized crime considered as part of the above approaches can produce a consistent and complete range of behaviours involved in the concept of organized crime.

The United Nations Convention against Transnational Organized Crime of 15 November 2000 introduces a definition of a prescriptive nature.

Pursuant to Article 2a of the United Nations Convention against Transnational Organized Crime, "*an organized criminal group shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit*".

Among the main characteristics of this kind of crime, the European Commission rates: cooperation of at least three persons existing for a longer or unspecified period of time; perpetrators suspected or sentenced for committing serious criminal offences; activity aimed at obtaining a benefit or seizing power. In addition, the following is mentioned: performance of a specific task or a specific function by each of the members of a group, the use of various forms of internal discipline and control, the use of violence or other means, in order to intimidate, wield influence on politicians, administration of justice, economy, media by corruption or application of other means, the use of business structures, money laundering, the carrying out of activities on an international scale.

The above features of organized crime are also presented by the Council of Europe's Group of Specialist on Organized Crime.

Many forms of criminal activity can be singled out in the international operations of organized crime. Among these, the three are essential:

- money laundering
- corrupt practices
- drugs trafficking.

While estimating factors that determine organized crime, the main tendencies can be pointed out in activities of modern criminal groups. In particular, these are:

1. the merging of different categories of crime within one criminal group. The focus of interest of a criminal group is dependent on the market situation, contacts and personal, financial and marketing potential, technical equipment etc, thus making organized crime become a bridge between common crime and business fraud;

2. improvement in methods of operating in different sectors of economy and social life. This results in creation of new criminal mechanics repeatedly taking advantage of "loopholes in the law" and imperfections in the control system;

3. accumulation of illegal capital and practice of money laundering by means of the financial system;

4. internationalization of criminal groups and expansion of territories controlled by individual criminal groups;

5. entering into criminal arrangements with representatives of the public administration bodies of still higher level, politicians, involving the first-class specialists in criminal acts, e.g. tax and investment advisers, lawyers of reputable law offices, employees of IT companies, technically-oriented scientists, bankers;

6. corruption of government officials, Prison Service officers, prosecutors, employees of tax offices.

Thereby, it has to be noted that the catalogue of criminal acts does not have the character of a complete list especially as organized groups are often involved in a variety of crimes turning their interest to all activities bringing in a profit. The types of crimes mentioned above and backed up by statistical data are only examples serving as an illustration of the areas of activity of organized groups. It is still extremely difficult to compile the so called *dark list of crimes* per different type of crimes committed by organized groups but the extent of such crimes is extremely large.

Let us add that in accordance with the opinions widespread among the public, organized crime is associated with armed robbery, drugs trafficking or extortion of protection money. You couldn't be further from the truth. It is just organized business fraud (so called white-collar crimes) that poses a great threat to the interests of the State Treasury, jeopardizes interests of all participants in economic circulation (not only material interests), both entrepreneurs and consumers.

Moreover, such type of crime gives rise to the loss of confidence in the economic system, particular institutions and has a considerable influence on the international economic policy of the state. Obviously, the fact that pathological ties of corruption are created by members of business fraud organizations should not be passed over, which ties undisclosed and unpunished have become the disease of the globalized society of the 21st century.

II. The practice of money laundering

1. Business fraud, organized crime versus the practice of money laundering

Business fraud has been distinguished from the group of criminal acts particularly on a perpetrator's account. E.H. Suterland introduced the concept of white-collar crimes which crimes are characterized by the fact that the perpetrators have been well-respected persons in society enjoying high social status and simultaneously have been engaging in criminal acts as part of their business activity.

The subjective concept of business fraud has next been criticized by supporters of the objective concept, i.e. attempt at distinguishing business fraud on account of the acts committed by perpetrators. Thus, the definition has been conceptualized being orientated towards the act, and not the perpetrator.

The criminological concept of defining business fraud points to the features distinguishing organized crime:

- occurrence of substantial material and non-material losses;
- absence of the element of violence making it possible to conceal business fraud under the pretext of legal activities,
- the aggrieved parties are not only the undisclosed natural persons but also the whole branches or institutions of the economic and financial system (the consequence of which is the impression of there being no casualties);
- a significant number of perpetrators come from the upper middle class – the feature being manifested by a good professional background for the commission of crimes and deep awareness of perpetrators' rights in possible lawsuits.

Those from among business frauds should be distinguished which are linked to organized crime. The features linking both phenomena are:

- generation of high losses on a worldwide scale in connection with extremely high profits of criminal groups which are then invested in further criminal activity as well as legal investments;
- penetration of criminal group members into the state, administration, economic structures and international organizations;
- long period and recurrence of criminal acts,
- organized nature of operations – planning, preparation, completion;
- secret nature of criminal activities making both legal and illegal acts similar.

Organized business fraud is often closely linked with laundering of money derived from another type of criminal activity but in many cases the latter makes a separate field thereof.

Legalization of proceeds derived from criminal activity is the subject of EU legal regulations and international conventions and subject to penalization under provisions of the Polish law.

Money laundering is an extremely harmful phenomenon first of all threatening the freedom of economic circulation. This practice demonstrates great mobility on the international scene. The manner and scope of the organized crime activity is often comparable to the lawful activity of international concerns.

Organized crime is favoured by the freedom of migration of people, transfer of goods and services guaranteed by the Treaty on European Communities and progressive liberalization of capital movement all over Europe and worldwide.

The threat to the contemporary world economy is that after being "legalized" proceeds derived from crimes (e.g. by establishment of new business entities) are being invested both in entertainment, building services, casinos, professional sports as well as material goods, real estate, luxury goods. Such investment of proceeds derived from crime is a particular investment for the future.

In the European doctrine of criminal group behaviours, it is pointed out that diversification of the investment portfolio of criminal groups is a sign of protection against a situation where as a result of administration of justice members of criminal organizations would be deprived of a portion of proceeds derived from crime. Moreover, by spreading the risk of losing proceeds derived from crime among many entities criminal groups are investing in legal business.

The aforementioned activities are aimed at converting the capital accumulated by the commission of criminal acts into the legal forms of investment. Giving the proceeds derived from crime the appearance of legality criminal groups can register their "legal" activity with tax offices or other administrative bodies.

In view of the above, **by money laundering a succession of activities should be called being aimed at giving the capital derived from crime the appearance of legality**.

2. How money laundering is carried out

Money laundering is substantially facilitated, *inter alia,* by:

- imperfections and loopholes in the law;
- failure of the employees of the banking sector to do their duties;
- errors in combating the practice of money laundering;
- absence of an agreement between financial institutions;

Here, phases of the practice of money laundering will be outlined – initial phase, placement, camouflage, integration.

Initial phase is connected with the fact that most often the proceeds derived from crime are being laundered in a country other than the country where such proceeds funds have been generated. A high profit may become a subject of control proceedings conducted by tax authorities which in consequence may lead to the disclosure of proceeds derived from crime. And so, physical reallocation of the capital from the place where it has been received to another country may increase the probability that the source of income will not be disclosed. In the initial phase, the following forms of reallocation are singled out being connected with crossing borders:

- transport of cash;
- transfer in the form of consumer goods;
- direct electronic fund transfers;
- compensation;
- indirect banking.

The real first stage of money laundering is a **placement**. This stage consists in actually placing cash revenues from illegal sources in the financial system. The placement is favoured by the evasion of financial regulations relating to the registration of payments of a specified amount or suspicious transactions.

The most popular form of placement is to make a big number of deposits below the limit requiring a given transaction to be registered (smurfing). Shop smurfing consists in a purchase of consumer goods being made abroad by groups of a few persons; then the goods are being sent to the country of origin of the illegal capital and sold there while profits are paid into a bank account as an income from sales.

Therefore, placement will predominantly consist in *structuring* – breaking the whole big amount down into many smaller amounts which will not be subject to the registration procedure.

The laundering of dirty capital can also be carried out by establishment of a business entity for the sole purpose of legalization of the proceeds derived from crime (*shell accounts, shell corporations*) by outsiders, fictitious persons or members of criminal groups.

A frequent occurrence is also a hostile takeover of a given institution in order to cause it to become bankrupt and go into liquidation. Such takeover allows to misuse the list (limit) of the transactions that are exempted from registration which exemptions exist in the legislation of some countries and are reserved for a specified category of financial institutions (*exempt transactions*).

Another form of placement is blending – a mixing of the capital derived from crime with a legal source of income. This form is favoured by carrying out business activity in the form of a restaurant, hotels, cinemas, cosmetic and hairdressing services.

The next stage is a **camouflage (stratification)**. The purpose is to separate illegal funds from the source thereof by stratification of financial transactions oriented to cover the bookkeeping trail (*paper trail*) and guarantee anonymity of persons involved in this practice (*layering*).

An international transfer is aimed at camouflaging the illegal source of money without having to bring the money to the country of origin. At this stage, it is common to use electronic fund transfers (EFT).

The last stage (**integration**) consists in putting income derived from illegal sources into the legal economic circulation without arousing suspicion and on the pretext of legality (acquisition of real estate, donations into accounts of public utility organizations). The integration is aimed at providing a new legal origin for the capital derived from crime.

The most frequent method is to evaluate objects below or above their market prices (transfer prices). For example, a criminal officially acquires an asset at a price lower than the market price thereof and unofficially gives the seller the missing portion of the market price. Then, he sells the asset at a higher market price and the amount representing the difference in prices becomes legal.

Another method is to use shell companies or phoenix companies controlled by a criminal group. These companies render fictitious or actual services to each other inflating the value of a service or sell assets to each other at prices not reflected in the market prices. As part of these practices, double bookkeeping is created – official and actual.

At this stage, criminals most often use services or assistance of professionals. The parties to the practice of money laundering employ investment advisers, bankers, lawyers often unaware of the fact that the services are provided to criminals. The phases of the practice of money laundering as described above coincide with the triple phase model presented in the materials of the U.S. Customs Service, British Bankers Association, The While House, U.S. Office of the Controller of the Currency. The triple phase model provides for the existence of three phases – placement, layering and integration.

It should be remembered that due to the fact that the organized business fraud is of a dynamic nature, the process of the practice of money laundering is dependent on many factors – social, economic, national. That is why it is extremely difficult to point to the methods and manners of money laundering.

International organizations such as Financial Action Task Force on Money Laundering – FATF annually publish studies concerning the latest methods of money laundering.

The Financial Action Task Force (FATF) is an inter-governmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF is therefore a 'policy-making body' created in 1989 that works to generate the necessary political will to bring about legislative and regulatory reforms in these areas.

3. International problem

The practice of money laundering has a transnational character. Therefore, the necessity of preventing and combating this kind of crime results from the very nature of this practice.

For the practice of money laundering to be effectively combated, it should involve the cooperation among all countries, and not only those united in the European Union. Public officials of many countries should form associations for the fight against business fraud.

The system of countering money laundering currently consists in involvement of as big a number of institutions as possible that are in a position to identify the practice of money laundering. The present systems are indirectly directed at organized international criminal groups that pose a serious threat to the national and economic structures.

The international cooperation is not limited merely to the assistance in respect of the penal law procedure and provision of the information of a criminal nature and also covers skill-sharing or running training course and providing technical assistance.

The new methods used by members of criminal groups indicate that criminals increasingly often make use of activities of entities offering services involving establishment of trust funds or establishment of companies in "tax havens".

At present, there is no global strategy of combating organized crime, and a fragmentary nature of regulations is brought about under the influence of the current need for action.

From the point of view of effectiveness of the fight against organized crime, not only involved in the practice of money laundering, it is essential that a consistent system is created if only at the level of the European Union.

The process of European integration is a dynamic phenomenon. The European Union covers an increasingly big number of the member states' fields of life, it is long after it lost its exclusively economic character. The member states of the European Union more and more often submit to the shared regulations governing issues both in the field of foreign policy, social, economic affairs and security and justice. The shared regulations make the European Union a system of interrelations of a legal, procedural, legislative and institutional nature.

The national laws frequently incorporate the community law which spreads to wider and wider areas if only such as family, administrative, civil or penal law regulations.

The basis for activities of the Community is a budget sourced from taxes of citizens of the member states. Therefore, there is a need for special instruments to be introduced effectively protecting finances of the community. For over thirty years, the member states have been trying to cooperate in working out a consistent policy on the protection of economic interests.

By its own nature, the criminal law is a field of law that is the least readily subjected to the community regulations. The criminal law which is a manifestation of the sovereignty of the authority of the state in the member states over their citizens is with considerable opposition being deleted from the catalogue of instruments making up the national empire. On the other hand however, the number of crimes, and the extent thereof, which have affected and are still affecting the EU budget have forced the member states in recent years to cooperate more closely with each other to protect it.

The need to prepare a draft of a legal instrument such as **Corpus luris** has resulted from an in-depth analysis of the phenomenon of crime directed against economic interests of the European Communities. The absurdity of the situation has been discerned in which borders of the member states are open wide to criminals while being tightly closed to the institutions responsible for fighting them.

Corpus luris does not pretend to the title of the Pan-European penal code but is only a modest collection of penal rules intended to operate within the future unified jurisdictional area. As a result of the work done, a draft code has been prepared adopting with considerable freedom ideas, institutions and specific solutions from different legal systems.

Article 280 of the European Communities Treaty is an important community regulation that would make it possible to adopt Corpus luris as an instrument of combat against fraud that does harm to the financial interests of the Communities.

Article 280 § 1 of the European Communities Treaty provides for an obligation of the member states to take the same measures against perpetrators of fraud to the detriment of financial interests of the Communities as they take against perpetrators of fraud that does harm to their own internal financial interest. Most of the member countries have complied with this requirement. The extent of criminalization of such acts continues to be different in individual countries. The Article comprises a so called principle of assimilation of penal regulations. However, while being characterized by

considerable simplicity of formulation and application, this principle applied separately, in various areas, does not guarantee effectiveness of repressive measures. Because first of all the assimilation is to consist in coordination of activities of the member states, cooperation between their relevant administrative services.

The existing community regulations give a realistic chance to implement the draft of Corpus Iuris which in a uniform and consistent manner makes the fight against crimes directed at the finances of the European Union more real and effective. In view of the above, it seems to be legitimate to devise a legal instrument covering penal commercial law if only in the form proposed by the authors of the draft of Corpus Iuris.

III. International regulations

1. United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988 (Vienna Convention)

The fundamental provisions of the convention include an obligation imposed on the parties thereto to penalize acts related to illicit traffic in narcotic drugs covering also the laundering of money derived from such activities. The convention does not directly use the term "money laundering" but expressly describes this phenomenon in Article 3 section 1 b c.

Pursuant to Article 3 1 b and c of the Vienna Convention, the practice of money laundering shall be understood as:

- The conversion or transfer of property, knowing that such property is derived from any offence or offences or, or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence to evade the legal consequences of his actions;

- The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences, or from an act of participation in such an offence or offences;

- Subject to its constitutional principles and the basic concepts of its legal system:

a) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences , or from an act of participation in such offence or offences;

b) The possession of equipment or materials or substances listed in Table I and Table II annexed to the Vienna Convention, knowing that they are being or are to be used in or for the illicit cultivation, production or manufacture of narcotic drugs or psychotropic substances;

c) Publicly inciting or inducing others, by any means, to commit any of the offences established in accordance with this Article or to use narcotic drugs or psychotropic substances illicitly;

d) Participation in, association or conspiracy to commit, attempts to commit and aiding, facilitating and counselling the commission of any of the offences established in accordance with this Article.

In the Vienna Convention, the practice of money laundering is presented in a concise way. Because the provisions thereof focus on crimes related to drug trafficking. The Vienna Convention deals with crimes committed with direct intent, i.e. oriented at a specific aim, which is to conceal or disguise the true origin of funds or to aid a person who in any way cooperates in the commission of an offence and to evade criminal or financial liability. It is worth stressing that pursuant to the Vienna Convention aid of any kind alone in this practice, also in the form of counselling, constitutes an offence.

Article 5 of the Vienna Convention points out to the aggravating circumstances involved in the commission of an offence and the practice of money laundering such as participation in the commission of an offence by an organized criminal group of which a criminal is a member, the use of force or weapons by a criminal, the fact that a criminal holds a public office and the offence is connected with that office, participation of a criminal in the commission of other international organized criminal acts.

The Vienna Convention introduces a certain minimum with respect to penalization of the practice of money laundering.

2. Council of Europe Convention No. 141 on laundering, search, seizure and confiscation of the proceeds from crime (Strasbourg Convention)

The Strasbourg Convention is the first international legal instrument which officially uses the term "laundering".

Article 6 section 1 of the Strasbourg Convention obligates its signatories to provide for the internal law to penalize a certain category of acts which have been described as money laundering. A sine qua non is the intentional commission of a specified category of acts.

The aforementioned category of acts comprises:

- the conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds;

- the acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds;

- participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with Article 6 of the Strasbourg Convention.

The term "proceeds" used in the Strasbourg Convention shall be understood as any material benefit derived from criminal offences. The said term should be construed to include property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to, or interest in such property.

The regulations contained in the Strasbourg Convention are similar to the provisions of the Vienna Convention. Only the scope of primary offences is wider.

Pursuant to the Strasbourg Convention, the conduct that was not provided for in the Vienna Convention may by subject to penalization by decision of the parties, particularly in situations where a perpetrator should have expected that specific property represented a benefit derived from the commission of an offence, acted in order to obtain an economic advantage or to facilitate continuation of criminal activity.

3. Directive of the Council of the European Communities of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (91/3008/EEC)

The promotion of international cooperation between judicial and legislative bodies is recognized by the European Union as a basis for effective combating money laundering. The need to adopt specific coordinating measures at the level of the European Union market arises from the international nature of crime involved in the freedom of capital movement and of provision of financial services existing in the area of the European common market. In this context, effective combating the practice of concealing the criminal origin of financial resources, ignoring the coordination and cooperation on the international level can produce insignificant results.

The primary reason for the adoption of the Directive 91/308/EEC was to protect confidence in the financial and credit institutions.

Pursuant to Article 1 section 1 C of the Directive 91/308/EEC, money laundering means the following acts when committed intentionally:

- the conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;

- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity or from an act of participation in such activity;

- the acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity;

- participation in, association to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the actions mentioned above.

The criminal activity is any form (both gradual and phenomenal) of participation in the commission of a "serious offence".
The Directive 91/308/EEC expressly states that it is irrelevant where the primary offence has been committed.

Also other instruments of the community law contain the definition of money laundering referred to in the Directive 91/308/EEC. Article 1 section 1 of the Second Protocol to the Convention on protection of financial interests of the European Communities of 19 June 1997 where the definition of money laundering was used in respect of benefits derived from fraud as well as active and passive corruption.

After attempts on the WTC of 11 September 2001 as well as terrorist attacks in Madrid (2004) and London (2005), Germany proposed to adopt an international agreement allowing, inter alia, access to the police databases of the EU states.

The Prüm Treaty was signed on 27 May 2005 between Belgium, Germany, Spain, France, Luxembourg, Holland and Austria. Due to the fact that the Treaty is an international agreement concluded outside the EU legal system, Germany who in the first half of 2007 held the presidency of the EU initiated the implementation of the Prüm Treaty regulations within the EU legal framework.

On 12 June 2007, Ministers of the Interior of twenty five states of the European Union adopted most of the provisions of the so called Prüm Treaty on the stepping up of cross border cooperation in combating terrorism and organized crime. Basing on the agreement reached, the police of all EU countries will create a data exchange base on DNA and digital records of fingerprints simultaneously providing mutual access to information about vehicles, personal data of citizens etc.

At present, verification of identity of a suspected foreigner takes even as long as several days – after the system is implemented, the time will be shortened to several minutes.

Incorporation of the Prüm Treaty into the community law (acquis communautaire) has been one of priorities of the German leadership in the Union. The German Minister of Interior Wolfgang Schaueble assessed the result of negotiations as a "sensational turning point".

However, the critics maintain that the system will contribute to the limitation of the EU citizens' privacy. The European Data Protection Supervisor, Peter Hustinx, emphasizes that the criteria for personal data protection would have to be specified. At the same time, he does not negate the general idea of the system.

On 6 August 2008 in the Official Journal of the European Union, the two Prüm decisions were published: Council Decision 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime and Council Decision 2008/616/JHA of 23 June 2008 on the implementation of Decision 2008/615/JHA on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime (together with the "Enclosure").

Provisions of the aforementioned decisions permit the DNA, fingerprints and vehicle registration data to be exchanged among the EU member states. The new regulations, for example, will permit individual DNA profiles to be compared with those found in the databases of the other member states as part of the investigation conducted. The Council Decision does also provide for the personal data to be exchanged among the member states in order to prevent terrorist attacks and contains stipulations about the joint action of the police.

At present, work is under way to implement the Council Directive 2008/615/JHA of 23 June 2008 on the stepping up of cross-border cooperation, particularly in combating terrorism and cross-border crime.

4. Policy Statement of the Basel Committee on Banking Supervision of 12 December 1988

The Basel Committee on Banking Supervision was created in 1974 in connection with the turbulence of a financial nature involving the collapse of Bankhaus Herstatt in Germany.

The regulations contained in the Policy Statement represent a standard maintained by self-respecting banks, financial and regulatory institutions all over the world. They are aimed at preventing the confidence in individual banks to be undermined, and as a consequence in the whole banking system in a given country, by finding out their links or just a suspicion of their being linked with criminal activity.

The Policy Statement does not contain a definition of the practice of money laundering. In this respect, it refers to national and international regulations. However, it describes the general characteristics of the phenomenon involved in the operation of a bank. It points out to a number of principles aimed at countering the use of the banking sector by criminals. From among these, the following should be mentioned in the first place: the "get to know your client" principle, cooperation with government agencies, compliance with the law and professional ethics, adherence to the Policy Statement.

5. 40 recommendations of the Financial Action Task Force

FATF is a special working group that was formed in 1989 during the summit of 7 major industrial nations in Paris. The main objective motivating members of this organization was to set the standards that would next be approved by national authorities and consistently enforced in the international arena. The FAFT recommendations are continuously subject to enhancement basing on annual reports of individual countries.

The recommendations have been divided into 5 groups:

1. The first group covers the activities necessary to improve the national legal systems of combating the offence of money laundering. Each country should first penalize the laundering of proceeds derived from the traffic in drugs specified in the Vienna Convention and from other offences involved in this traffic and then consider penalizing proceeds from all serious offences, particularly those that yield substantial profits. The state is to adopt legal regulations making it possible to confiscate the property subjected to laundering, proceeds and tools used or intended to be used in the commission of an offence or an equivalent thereof.

2. The second group concerns banks and other non-bank financial institutions. Basing on the official credible documents, financial institutions should establish identity of a client but should not operate anonymous accounts. Identification data of regular clients should be recorded particularly in case of accounts being opened or bank books issued, safe-deposit box being rented or cash transactions of a substantial value being conclude.

3. The third group refers to the cooperation of entities operating in the area of financial transactions with authorities competent to combat money laundering. In case suspicious transactions are uncovered, the conduct should be based on the three principles:

- clients should not be warned that the transaction commissioned by them has been reported as being suspicious;

- the institution which reports a transaction as being suspicious should comply with recommendations of authorities who have received the report;

- a transaction should not be executed in spite of the fact that the suspicious transaction has not been reported.

4. The fourth group relates to the measures which the states should take in order to monitor financial transactions. The recommendations point out to the need for creation of a system where cash transactions worth in excess of a specified amount would be reported to the main government institution having a computerized database.

5. The fifth group relates to the international cooperation in combating money laundering. International organizations such as Interpol should, by cooperating with relevant national authorities, collect and distribute information about new techniques of money laundering. A crucial role should also be occupied by international cooperation in providing legal aid in matters involving the offence of money laundering.

Recent activities of FATH relate to the elaboration of the final draft of recommendations to the life assurance companies and intermediaries, using a risk-related approach, on the phenomenon of money laundering as well as financing of terrorism.

6. United Nations Convention of 15 November 2000 against international organized crime (Palermo Convention)

The Palermo Convention being one of the most important international legal instruments on combating organized crime is a Polish initiative.

On 31 May 1996, the then President of the Republic of Poland presented at the 5th session of the Commission for the Prevention of Crime and Administration of Justice in Vienna "The Draft of a UN Master Convention against Organized Crime".

The draft was then the subject of work of the ad hoc Committee formed under Resolution 53/11 of the General Assembly dated 9 December 1998.

On 15 November 2000, the Palermo Convention was adopted in the 55th Session of the United Nations General Assembly. The Palermo Convention became effective on 29 September 2003. The Republic of Poland signed the Palermo Convention on 12 December 2000 while the consent to ratify it was given by the act of 19 July 2001 on ratification of the United Nations Convention against international organized crime (Journal of Laws of 2000, No. 90, item 994).

The Palermo Convention repeats the regulations of the Vienna Convention relating to the definition o money laundering. However, the said practice is presented in the Palermo Convention by far more elaborately as compared to the Vienna Convention. For it is not limited exclusively to drugs offences.

Article 6 section 1 of the Palermo Convention provides that each Party State shall adopt, in accordance with the fundamental principles of its domestic law, legislative and other measures which may appear to be necessary to recognize as an offence the following acts when committed intentionally:

- the conversion or transfer of property, knowing that such property represents the proceeds from crime, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of a primary offence to evade the legal consequences of his actions;

- the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property represents the proceeds from crime;

- subject to the basic concepts of its legal system:

a) the acquisition, possession or use of property, knowing, at the time of receipt, that such property represent proceeds from crime;

b) participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the specified offences.

So a criminal benefit is any property derived or obtained, directly or indirectly, from the commission of an offence.

The aforementioned shows that the authors of the Convention intended to criminalize money laundering to an extremely large extent by creating a chance for the convention to be signed by a bigger number of states.

The issues of prevention as well as prosecution and penalization of organized crime is regulated in the Palermo Convention in a comprehensive way. The Palermo Convention imposes an obligation on the Party States to penalize participation in an organized criminal group, money laundering, corruption of public officials, offences against the administration of justice. The Party States are also obligated to provide for liability (this may be civil, criminal or administrative liability) of legal entities for the participation in offences which are subject to penalization under the Convention.

The Palermo Convention also contains regulations concerning measures to combat money laundering (Article 7), measures against the offence of bribery (Article 8, 9) and obligates the Party States to provide for an obligation to confiscate any property obtained from the commission of offences covered by the Palermo Convention.

In addition, the Palermo Convention identifies the basic forms of international cooperation. Here attention should be drawn, inter alia, to the extradition and mutual legal aid, formation of joint inquiry and investigation groups, utilization of special inquiry and investigation techniques, interrogation employing communication technologies.

The Palermo Convention does not pass over the need to provide witnesses with a means of protection and victims with protection and assistance.

IV. Polish legislation

1. Definition of organized crime and the practice of money laundering

Pursuant to Article 258 § 1 of the Polish Penal Code, the one who participates in an organized criminal group or association with the aim of committing a crime or a tax offence shall be liable to the penalty of imprisonment of from 3 months up to 5 years.

The offence provided for in Article 258 of the Polish Penal Code (of any type) **is of a general nature.** The law does not require a perpetrator to have any specific characteristics distinctive of him/her.

Aspect of the offence as to the doer involves both variants of intent. **The participation alone is not of an intentional nature. It then will be enough for a perpetrator when participating to anticipate and agree that an organized group or association is aiming at committing offences.** So a precondition for perpetrator's liability is action with culpable intent in the form of ***dolus directus*** **or** ***dolus quasi – eventualis.***

In accordance with one of the views presented in the doctrine, for an offence to exist under Article 258 of the Polish Penal Code "*it is necessary to participate in an organized group or criminal association. The participation shall consist in being a member of a group or association, accepting the principles governing them and carrying out orders and assignments given by persons being adequately higher in the hierarchy of the group or association. Identification of a member with the group or association is also essential here, while he does not remain there entirely passive*". Another view confirmed by the Polish judicature assumes that it is not necessary for a perpetrator to take any action aimed at committing the intended offence. It will be enough for him to remain within the organization structure of the group or association and to perform there some auxiliary duties or even not to perform any duties but only to be ready to perform them should the need arise.

Participation in an organized group or criminal association represents *delictum sui generis* and therefore the regulation in question penalizes only the very membership of an illegal organization and does not provide for liability for specific criminal acts committed by its members. A perpetrator – member of an association or organized group shall be liable irrespective of **whether or not he as a member of the association has committed the offence the association has been created to commit**. On the other hand, a member of the group should not be liable for all offences committed by means of such organization structures but only for those in which he participated.

The scope of a concept of "**participation**" in an organized group aiming at committing offences **covers not only the formal membership of such illegal structure but also participation in committing such offences as the group was formed to commit** (so ruled the Appellate Court in Lublin in the judgment of 23 July 2002, in the case, file ref II AKa 148/01).

The **"participation"** shall consist, inter alia, in the membership of a group or association, **acceptance of the rules governing them and carrying out orders and assignments** given by persons being adequately higher in the hierarchy of the group or association.

The **"participation"** may consist in joint criminal operations, **planning thereof, holding meetings, devising a structure**, seeking out hideouts, using pseudonyms, obtaining supplies required by a group or association to achieve the aims planned as well as **taking action to prevent perpetrators being detected**. Here the following should also be counted: sharing the loot or, in a case in point – sharing remuneration – derived from the commission of offences.

It should also be noted that the term **"participation" does not necessarily mean a formal entry to an association in the capacity of a member**. It should rather be based on participation in meetings of the association, providing it with financial help, for example by making an apartment, vehicle available to it, transferring money.

In view of the content of Article 258 § 1 of the Polish Penal Code, it is necessary to characterize the terms "organized group" or "association" aiming at committing offences.

In addition to criminal liability for participation in an association aiming at committing an offence Article 258 § 2 of the Polish Penal Code introduced also participation in an organized group having such aim. In the opinion of the legislator, the organized group aiming at committing an offence was to be characterized by a lower level of organization than the association aiming at committing an offence.

In order to determine the content of the term "organized criminal group" assessments may also be helpful being done from the psychological viewpoint (connections between members of the group, mutual assistance, protection, unifying aim of obtaining funds for a living, alcohol and entertainment as well as criminal activity) and sociological point of view (community holding common values, maintaining its identity separate from the society and its structures) – so ruled the Appellate Court in Lublin in the judgment of 23 July 2002 in the case, file ref II AKa 148/01.

The organized group is both a group of perpetrators organized for the purpose of committing offences in a continuous manner, that is of a similar kind, and a group formed to commit several offences, on the understanding that "the fruit thereof may be a source of income existing for some time". **Such group should be made up of at least three perpetrators. They should be united by their common willingness to commit offences as well as readiness to carry out such activities in favour of the group as may help them committing offences.**

An essential issue is the level of group organization. The condition must be met that there is a basic internal organization structure for an organized group is something more than a co-perpetration or a loose group of persons intending to commit an offence. First of all, the degree of group stability should be taken into account as well as organizational bonds under a mutual agreement, planning of offences, acceptance of aims, fulfilment of the needs of the group, accumulation of tools to commit offences, division of roles, modus operandi. So neither a group of acquaintances who renew contact in order to make a short-term criminal business transaction nor a circle of criminals carrying out the same activity unless they maintain organizational contact with each other, will be a criminal group. However, the opinion should be concurred with that since the level of group organization has not been determined by the legislator, a low level of the group organization will be enough, if it permits to commit offences and have a permanent source of income.

In the Polish literature, there is no unanimity as to whether it is necessary for an organized group to exist that such group has its leader. A proposition should be agreed with that such leader does not have to be a permanent leader; it is also not required for the leader to organize such group. On the other hand, it is rightly noted that not always a hierarchy and subordination exist within an organized group while stability of its structure is essential, whether vertical - with a leader, or horizontal – with a permanent circle of participants acting in accordance with the rules established.

An association aiming at committing an offence is unanimously recognized in the literature as a higher organization form as compared to a group.

The characteristics thereof, in addition to an agreement of perpetrators, are organization forms more stable than in case of a group, designated management and defined discipline of members which – it is important – provides for **consequences of the failure to carry out** orders of the management. And so, persons acting within the association are acting in order to implement certain ideas, guidelines and programmes recognizing the designated management and submitting to the discipline defined. "*To assume that a certain group of people forms an "association", it is not important whether a need existed therein to enforce organizational discipline but whether it was provided for at all. The equals sign may not be drawn between voluntary submission to the authority of another person and an obligation under the agreement to carry out orders of such person with the accepted consequences of the refusal to carry them out*" (cf. judgment of the bench of 7 judges of the Supreme Court of 23 March 1992 in the case , file ref II KRN 433/91).

A criminal group and an association aiming at committing offences demonstrate many similarities such as internal organization and willingness to jointly commit offences. However, substantial differences exist between a group and an association among which a more stable organization structure should be counted, recognition of the leadership based on hierarchy and the defined discipline of members in case of an association.

Pursuant to the judgment of the Appelate Court in Lublin, Poland in the case, file ref II AKa 146/02 "*the regulation of Article 258 § 1 of the Penal Code provides that the one shall be subject to criminal liability who participates in an organized group or association having the aim of committing offences. There is no doubt that seeing through the statutory features of an offence under Article 258 § 1 of the Penal Code may involve certain difficulties. After all it is not facilitated by the dynamics of a situation characteristic of informal structures aimed at achieving permanent or short-term objectives and camouflage, role and mutual relations between members of a group as well as the absence in the regulation in question of a definition of the level of group organization. Indeed, the regulation only distinguishes between a criminal group and a criminal association which shows that a criminal group is a form of organization more casual than a criminal association. Hence, the decision as to whether we deal with an organized criminal group or a criminal association should be based on examination of this question from the functional as well as structural point of view*".

All offences provided for in Article 258 of the Polish Penal Code are of a formal nature. For them to be committed, the causative act alone is sufficient. The commission by a group or an association of an offence for which to commit they were formed is not an effect of an offence under Article 258 of the Polish Penal Code but a separate offence.

Each of the offences provided for in Article 258 of the Polish Penal Code is devoid of the subject of a direct act.

The aim of activity of an organized group or association has been defined by the legislator as "the commission of an offence or fiscal offence".

It should be assumed that it is not necessary for the aim of an organized group or association to be the commission of a substantial number of offences but the aim of committing one, though serious, offence will be sufficient to meet this prerequisite. Moreover, it is stressed that a prohibited act is being committed by merely joining a group or forming it while it is not required that the aim of "committing an offence or fiscal offence" be achieved.

First of all, it is noted that in the light of Article 258 § 1 of the Polish Penal Code liability of a perpetrator arises still before an offence is committed, it has only to be the aim of activity of a group or association. In addition to participation in committing an offence the participation alone in an association or organized group is punishable being understood as membership of an association or organized group and the commission of an offence being the aim of an association or group is not a prerequisite of the offence. On the other hand, it is emphasized that provision of money or making accommodation available for meeting of a group do not have to constitute perpetrator's participation but only aiding in committing an offence under Article 258 § 1 of the Polish Penal Code. However, the mere facilitation of an offence for which to commit a group or association has been founded should not be qualified as aiding in the participation in a group or association but aiding in the committed offence being the aim of the group or association.

It should be noted that an offence under Article 258 § 1 of the Polish Penal Code remains in real concurrence with an offence committed as part of activity of a group or association. And so, a perpetrator's conduct having the features of an act under Article 258 § 1 of the Polish Penal Code does not result in the absorption of crimes committed by an organized group or association as a form of accomplishment of its stated objective.

Offences committed as part of activity of a group or association should be qualified in accordance with the regulations that govern perpetrator's conduct and despite being engaged in as a form of accomplishment of its objective, without cumulative qualification under Article 258 of the Polish Penal Code. An offence under Article 258 § 1 of the Polish Penal Code is a formal offence, and in addition "the commission of an offence being a form of accomplishment of the aim of a group is not an effect thereof", and an offence of lasting nature because "unlawfulness of conduct continues as long as membership of a group does and shall not require other criminal acts to be committed" (cf judgment of the Supreme Court of 22 May 2007 in the case ref WA 15/07).

Since money laundering is a phenomenon accompanying organized crime, and even a basis thereof, it would be difficult to pass over a solution contained in the applicable penal code and relating to this subject. Article 299 of the Polish Penal Code the content of which has been amended by Article 43 of the act of 16 November 2000 on the countermeasures against putting into circulation of property derived from illegal or undisclosed sources, regulates the prosecution of the offence of money laundering in a multidimensional manner specifying six different forms of this offence.

Money laundering consists in acts aimed at concealing the true origin or real owner of funds and at allowing them to be safely put into legal economic and financial circulation.

Proceeds and other property mentioned in Article 299 of the Polish Penal Code (currencies, securities or other foreign exchange, property rights or movable or immovable property) which are the object of this practice are derived, as a rule, from crime, including especially organized crime, or from legal sources but with intent to avoid taxation.

The essence of money laundering consists in taking action aimed at putting into legal economic or financial circulation of money or other currencies, securities or more generally property derived from criminal activity or other illegal sources. So pursuant to the content of the regulation, the conduct of a perpetrator can take the form of any act on the understanding that such act can prevent or make it much more difficult to establish the criminal origin or location of objects of an executory act, to detect, attach them or adjudicate on forfeiture thereof. Aspect of the offence as to the doer includes both variants of intent.

The ascertainment of the criminal origin of object of the deed consists in establishing the fact that the benefits referred to in the regulation are derived, directly or indirectly, from offences by another person and is made in all phases of criminal proceedings apart from public criminal law also in petty offences law and penal revenue law. The source of origin must be a culpable prohibited act – an offence. It is sufficient for at least one person being a party to an act involving a given benefit to be proved guilty of culpable conduct.

Here, measures aimed at combating organized crime should but briefly be discussed as provided for in the Polish legislation.

The Penal Code of 1997 currently in force contains a lot of measures directed, directly or indirectly, at organized crime. Here, the following can be mentioned:

1) penalization of participation in an organized group or association aiming at committing an offence regardless of whether a perpetrator has committed any offence as a member of such group and association;

2) clause exempting a member of a criminal group or association from punishment if active repentance is shown;

3) obligatory extraordinary toughening of punishment meted out on a perpetrator who has made the commission of offences his permanent source of income or commits an offence acting in an organized group or association aiming at committing an offence as well as to a perpetrator of an offence of a terrorist nature;

4) extension of periods justifying conditional release from serving the full sentence of imprisonment up to the end of ¾ of the punishment adjudicated;

5) obligatory extraordinary mitigation of punishment or even conditional stay of the carrying out of a sentence with regard to a perpetrator cooperating with other persons in committing an offence, in case the perpetrator discloses information to the body entitled to prosecute relating to persons participating in the commission of such offence and essential circumstances thereof;

6) obligatory forfeiture of the material benefit derived from the commission of an offence or the equivalent thereof.

In addition to the measures pointed out above, classification is also worth mentioning of the offence of money laundering (Article 299 of the Polish Penal Code) accompanying, as already mentioned, organized crime and a possibility of a fine being adjudicated in addition to imprisonment being substantially heavier in case of a sentence, inter alia, for this offence – Article 309 of the Polish Penal Code.

An important element of the fight against crime, not only organized one, is to dispossess perpetrators of objects derived directly from an offence as well as benefits obtained from criminal activity. In the penal statute currently in force, two instruments have been provided for being aimed at dispossessing offenders of the benefits obtained illegally.

Apart from forfeiture of objects derived from crime, the Penal Code provides also for the forfeiture of material benefits derived, if only indirectly, from the commission of an offence. Such forfeiture is possible on the strength of Article 45 of the Polish Penal Code and applies to both benefits derived from an offence directly as well benefits derived from an offence indirectly, that is, obtained in exchange for benefits derived from an offence directly. Thus, a possibility has been provided for to decree the forfeiture of any type of fruits of an offence – those obtained in an indirect way as well. A total or partial forfeiture shall not be decreed, if a benefit or an equivalent thereof is subject to the return to the aggrieved party or another entity.

It should be noted that with regard to a perpetrator who has obtained, if only indirectly, a material benefit of a substantial value from the commission of an offence for which he has been sentenced the current Polish legislation makes a presumption that until the moment a sentence, if only not yet legally valid, is passed the property which the perpetrator entered into possession of or to which he gained any title at the time of committing an offence or after it has been committed, is a benefit obtained from the commission of an offence unless the perpetrator or another interested person provides evidence to the contrary.

2. Bodies competent in cases involving prevention of money laundering

Pursuant to the Constitution of the Republic of Poland, the Republic of Poland guarantees safety of its citizens. The objective of public authorities then is to guarantee safety to the citizens, including protection of such interests as life, health, property etc involving also the fight against crime threatening these interests.

The bodies competent in cases involving prevention of money laundering are the Finance Minister and the General Inspector of Financial Information holding the rank of an undersecretary of state appointed at the Finance Minister's request by the President of the Council of Ministers.

The Inspector General is performing his duties with the help of the organizational unit sectioned off within the structure of the Finance Ministry. Employees or functionaries subordinate to the minister of interior and minister of defence may be delegated by relevant ministers to perform tasks in this organizational unit. The duties of the Inspector General include obtaining, gathering, processing and analysing the information that he has gained, and on the basis thereof taking action preventing money laundering, in particular examination of the progress of transactions, taking action in order to stop a transaction where there is a justified suspicion that it is aimed at money laundering, informing competent bodies about such transactions having been made or likely to be made (prosecutor, police) and providing these bodies with duly prepared and substantiated notices of the suspected commission of an offence.

The prosecutor's office, despite its indisputable significance in the system of legal protection bodies, is not established according to the constitution and consequently the duties and powers of one of the most important state bodies are not determined by the legal norm highest in the hierarchy but by a statutory

regulation only. The objective of prosecutor's office is to maintain law and order as well as to prosecute crimes. The Public Prosecutor General and his subordinate prosecutors are performing their duties by, inter alia, cooperation with state agencies, state organizational units and voluntary organizations in preventing crime and other violations of law.

Prevention of organized crime is being dealt with by the National Office for Organized Crime operating within the structure of the National Public Prosecutor's Office.

The units subordinate to the National Office for Organized Crime are Departments II in Appellate Public Prosecutor's Offices and Departments VI for Combating Organized Crime in District Public Prosecutor's Offices.

The duties of the Internal Safety Agency [ABW] include:

- identifying, preventing and countering threats damaging internal security of the state and its constitutional order and in particular sovereignty and international position, independence and inviolability of its territory as well as defences of the state;

- identifying, preventing and detecting crimes such as, inter alia, espionage, terrorism, breach of state secret, offences damaging the economic basis of the state or corruption of persons performing public functions if this can damage security of the state.

3. Suspicious business transactions

The Polish act on countermeasures against putting into financial circulation of property derived from illegal or undisclosed sources and against financing of terrorism defines money laundering as (putting into financial circulation of property derived from illegal or undisclosed sources) – it is a deliberate conduct consisting in:

- an exchange or transfer of property derived from activity of a criminal nature or from participation in such activity in order to disguise or conceal the illegal origin of such property or providing assistance to a person who takes part in such activity in avoiding legal consequences of such acts;

- disguise or concealment of the true nature, source, location, movement or rights attached to the property derived from activity of a criminal nature or participation in such activity;

- acquisition, entering into possession of or use of property derived from activity of a criminal nature or participation in such activity;

- complicity, attempt to commit, aiding or abetting in cases of conduct mentioned in the above sections, also if the acts involved in obtaining property derived from illegal or undisclosed sources being put into financial circulation have been committed in the territory of another state.

It is worth pointing out that Article 2 point 9 of the act on countermeasures against putting into financial circulation of property derived from illegal or undisclosed sources and against financing of terrorism contains, for the purposes of that act, a definition of the concept of putting into financial circulation of property derived from illegal or undisclosed sources which is a translation of Article 1 section C of the Directive 91/308/EEC.

A suspicious transaction is an untypical, extraordinary transaction the circumstances of which indicate that funds may originate from illegal or undisclosed sources, irrespective of the value of such transaction and its nature, e.g. value of real estate being the object of the transaction differs from the market price, transactions are carried out despite unfavourable conditions (costs), transaction are carried out despite the absence of an obvious economic objective, a client does not want to disclose information required for identification, transaction is inconsistent the nature of activity carried out by the client (in case of a legal entity).

An obliged institution (inter alia, banks, branches of foreign banks, electronic funds transfer institutions, branches of foreign electronic funds transfer institutions and clearing agents, investment companies and fiduciary banks, foreign legal entities carrying out brokerage activities in the territory of the Republic of Poland, investment funds, **notaries with respect to notarial deeds involving transactions in property, advocates practising their profession, legal advisers practising their profession on a freelance basis, foreign lawyers providing legal aid on a freelance basis**, auditors practising their profession, **tax advisers practising their profession**) receiving client's instruction or order to carry out a transaction the equivalent of which exceeds EUR 15,000 is obligated to register such transaction also when it is being carried out by means of more than one operation the circumstances of which indicate that they are interrelated.

If an act has been performed constituting a transaction the circumstances of which indicate that funds may originate from illegal or undisclosed sources the said institution is obligated to record such transaction in the transaction register.

Data to be recorded in the transaction register shall be entered therein immediately, not later however that on the day following the day when a transaction is carried out.

In case the obliged institution receives an instruction or order to carry out a transaction in respect of which there is a justified suspicion that it may involve committing the offence of money laundering, it is obligated to notify the General Inspector of Financial Information immediately in writing.

It is an obligation of the obliged institution to qualify a given transaction as being the one in respect of which there is a justified suspicion that it may involve committing an offence due to the absence of a definition of such transaction in the act and of an indication of how it should be identified.

The General Inspector of Financial Information may pass a written request on to the obliged institution to stop a transaction or block an account if the information in his possession gives evidence of activities being aimed at putting property derived from illegal or undisclosed sources into financial circulation.

Simultaneously, the General Inspector of Financial Information notifies a relevant prosecutor of the suspected commission of an offence and provides him with information and documentation relating to the transaction being stopped or the account being blocked.

The obliged institution is obligated to inform the General Inspector of Financial Information immediately about an account being maintained in favour of persons justifiably suspected of involvement in committing acts of terrorism as well as about the transaction to which such persons are a party.

Moreover, it is an obligation of the obliged institution to properly protect and keep the transaction register, documents relating to the transactions registered and the information required for identification.

The transaction register, documents relating to the transactions registered as well as the information required for identification shall be kept for a period of five years counting from the first day of the year following the year in which the last entry connected with a transaction was made.

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