

# Money Laundering

## - Legal and Economic Aspects



Wojciech Filipkowski

Money Laundering  
- Legal and Economic Aspects



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# 1. Criminological aspects of the money laundering phenomenon

## *BASIC DEFINITIONS:*

**Money laundering** - a set of activities aimed at concealing the true origin of illegal income acquired in the course of criminal activity and making them appear to be of legal origin in order to use them in the official financial system<sup>1</sup>.

## *INTRODUCTION:*

Although many years have passed since the first time money laundering was criminalized in Polish legal system, we are actually at the beginning of the road. On several occasions, this phenomenon was described as a Yeti - “Everyone talks about it, but nobody has seen it so far”. The first stage in combating money laundering is to understand its phenomenology.

### **1.1. Money laundering as the activity of organized crime**

This phenomenon is strictly connected to organized crime or economic crime issues. Activities such as illegal arms sales, smuggling, drug trafficking and prostitution rings, embezzlement, insider trading, bribery and computer fraud schemes generate substantial amounts of proceeds. The problem facing criminals is that they cannot use it openly without attracting the attention of the law enforcement or tax revenue services. Its overt use could lead to the unveiling of their illegal

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1 J. Sieńczyło-Chłabcz, W. Filipkowski, The Polish Financial Intelligence Unit: A New Institution in the Polish Legal System, Journal of Money Laundering Control, Vol. 5, No. 2, 2001, p. 150.

activities and reveal the identities of the people involved. Criminals employ many techniques or methods in order to disguise the source of illicit proceeds. They are two basic groups of activities: changing the form of funds, and moving them around from one person to another from one country to another repeatedly.

The phenomenon of money laundering has become an important issue in Poland. The fight against money laundering has emerged as a major pillar of the strategy against organized crime<sup>2</sup>; there are several reasons for this. Organized crime has been changing rapidly in Eastern Europe, since the “fall of the Iron Curtain”<sup>3</sup>. The money laundering process also legitimizes the wealth of criminals, which is unacceptable from both a legal as well as a moral standpoint.

## 1.2. Theoretical model of money laundering activities

There are several key publications concerned with money laundering in Polish literature<sup>4</sup>. They present a theoretical approach in order to describe the phenomenon more precisely. A model distinguishes three basic stages:

- **Placement** - the proceeds derived from criminal activity are introduced into various institutions of the financial markets for the first time,
- **Layering** - taking up numerous transactions in order to hide or disguise the illicit nature of the proceeds and the identity of those involved,
- **Integration** - disposing already “laundered” proceeds in order to assimilate them with legitimate income of a person or a legal entity.

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2 This was acknowledged by the Polish Government in “Safe Poland. The Improvement of Citizens' Security Program”, Warsaw, August 28th, 2002.

3 E. Plywaczewski, Organised Crime in Poland: Its Development from 'Real Socialism' to Present Times. In: C. Fijnaut and L. Paoli (eds.), Organised Crime in Europe. Concepts, Patterns and Control Policies in the European Union and Beyond, Dordrecht 2004, pp. 468 and ff.

4 See: E. Plywaczewski, Money Laundering. Possibilities of Counteracting Including the Role of the Banking System, Toruń 1993, p. 33 and W. Jasiński, Money Laundering, Warsaw 1998, pp. 12-13.

It is sometimes possible to observe a preliminary stage when criminals prepare the whole process, e.g. by transferring funds from the country of origin to another where the introduction of illicit gains is much safer, by changing the local currency into dollars or euros.

### **1.3. Methods of money laundering, e.g.:**

**Blending** - mixing legal and illegal income on a company's accounts feigning legitimate sources.

**Collecting accounts** - creating many bank accounts for a fee or using fake IDs and managing those accounts in order to deposit and transfer funds.

**Smurfing** - depositing cash or purchasing bank drafts in various institutions by many individuals (so called Smurfs).

**Structuring** - a large quantity of illicit gains is divided into small sums, or transactions below reporting thresholds are carried out.

**Front Companies** - companies which conduct their business where illegal profits can be co-mingled with revenues derived from legitimate undertakings.

**Shell Companies** - businesses without substance or a commercial purpose incorporated to conceal the true beneficial ownership of business accounts and assets owned.

**Tax havens, offshore financial centers** - in certain countries and territories, institutions' strict secrecy laws concerning clients and their transactions are used in order to hide the identity of the individuals involved.

**Electronic Funds Transfer** - the use of wire transfer services to transfer funds to associates.

**Informal Money or Value Transfer Systems (IMTS or IVTS)** - funds transfer systems provided through such systems as *Hawala*, *Hundi*, *Fei-Chien* and the Black Market Peso Exchange.

**On-line financial services** - using financial services available on-line in order to disguise the illegal origin of funds, e.g. new payment technologies.

**Transfer pricing** - the under - or overestimation of the costs of goods or services in order to transfer illegal gains.

**Winning ticket** - a criminal buys a winning lottery ticket from a winner using dirty cash and then pretends that he is a winner in order to claim the prize.

#### 1.4. Case studies<sup>5</sup>

##### Example 1

*Individuals maintained two different sets of books. The official set of books for the tax authorities only indicated the batch transactions between the relevant bank accounts and foreign transfers. The second set of books indicated details of all the deposited money, including the names of the depositors, the names of beneficiaries, the countries of destination, informal IVTS partners in the country of destination and the transferred amounts. This second set of books was maintained in the native language of the representative and included bookkeeping records, receipts of deposited money, fax message lists to IVTS partners in the countries of destination with information about the people who deposited the money, who received money and the transferred amounts.*

##### Example 2

*A stockbroker in Country C continuously accepted cash deposits from a client in the range of US\$7,000 to US\$18,000. The funds were placed in the money market fund of the client's sister and withdrawn through the issuance of cheques. After the broker was arrested on unrelated embezzlement charges, the client's identity became known to law enforcement agencies. When the police conducted a background*

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5 Those cases come from different annual reports prepared by Financial Action Task Force on Money Laundering.

*check on the client, it was revealed that the stockbroker's client was a known drug dealer.*

### Example 3

*An asset management company was responsible for managing the bank portfolios of two individuals active in gold purchases in Africa. The purchased African gold was then sold to a gold working company in Country F, which in turn forwarded its payments to the accounts of the sellers.*

*Debits were regularly made from these accounts to accounts in another European country. Desiring to verify the use of the funds, the asset management company requested its clients to provide a description of the channels used for making the payments for the gold in Africa. The information received permitted the company to identify an intermediary residing in Europe who was responsible for paying the suppliers in Country F. The individual in question was described as being closely associated with a corrupt regime in Africa.*

*Based on this information, the asset management company reported the case to the FIU and proceeded to block the accounts. Information exchanged with foreign counterparts permitted the linking of this illegal trade with an ongoing foreign investigation, which targeted the same individual for arms trafficking. The case was transferred to the Office of the Public Prosecutor which is now working with the foreign authorities to dismantle these operations.*

#### **Useful links:**

FATF, Money Laundering FAQ

[http://www.fatf-gafi.org/document/29/0,3343,en\\_32250379\\_32235720\\_33659613\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1,00.html)

FATF, Methods & Trends

[http://www.fatf-gafi.org/pages/0,3417,en\\_32250379\\_32237277\\_1\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/pages/0,3417,en_32250379_32237277_1_1_1_1_1,00.html)

## 2. Economic aspects of money laundering

### *BASIC DEFINITIONS:*

**Financial market** - is a type of market within the free market economy where its participants sell or buy financial instruments and the prices are set by the force of demand and supply according to the principle of free competition.

**Financial institutions** - institutions operating in the financial market offering services. They usually act as intermediary between persons supplying and demanding financial instruments.

**Financial instrument** - is a subject of the stock market turnover. It includes stocks, securities, cash, derivatives (futures, swaps, and options), loans, credits, mortgage, etc.

### *INTRODUCTION:*

In Poland (as well in other former Eastern-Bloc countries) the privatization process of state owned enterprises has been an important factor<sup>6</sup>. A lack of inland capital forced governments to search abroad. In many cases no questions were asked about the legality of the capital's sources as long as it was invested in Poland<sup>7</sup>. Such an attitude exposed Polish enterprises to illegal capital coming from abroad. In addition, our own home-grown illicit fortunes had started to play a role in the

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6 See E. U. Savona, *European Money Trails*. Amsterdam 1999, p. 147 and V. Baloun and M. Scheinost, *Economy and Crime in the Society in Transition: The Czech Republic Case*. In: P. van Duyne, K. von Lampe and N. Passas (eds.), *Upperworld and Underworld in Cross-border Crime*, Nijmegen 2002, pp. 44-45.

7 E. Plywaczewski and W. Filipkowski, *The Development of Organized Crime Policies in Poland: From Socialist Regime to 'Rechtsstaat'*. In: C. Fijnaut and L. Paoli (eds.) *Organised Crime in Europe. Concepts, Patterns and Control Policies in the European Union and Beyond*, Dordrecht 2004, pp. 490-491.

privatization process: organized economic crime has been presenting a serious threat for the state and the economy<sup>8</sup>.

## **2.1. The concept of illegal enterprise**

This theory was created by D. Smith. The main idea is that the activities of criminals and criminal groups should be seen as a type of economic enterprise (industry). The criminals offer illegal services or commodities because there is a demand for them in society. The forces of demand and supply and the principle of the free market economy are also applicable to criminal activities. The criminals commit crimes because it pays off.

In order to accumulate and make use of capital derived from illegal sources openly they need to launder it. This phenomenon helps the transfer of funds from the criminal “underworld” into the legitimate “upperworld”<sup>9</sup>.

## **2.2. Microeconomic aspects**

For any single legal entity, the consequences of involvement in money laundering are:

- The owner of such an entity cannot make decisions on his/her own since he or she has to follow the directions from an organized criminal group which supplies “dirty cash”.
- The owner may be forced to make decisions which are at odds with an economic standpoint: the forces of supply and demand.
- The entity’s involvement in money laundering schemes may lead to losses for its owners, employees, suppliers and clients.

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8 M. Levi, *Following the Criminals and terrorist Money Trails*. In: P. C. Van Duyne, K. von Lampe, J. L. Newell (eds.), *Criminal Finances and Organising Crime in Europe*, Nijmegen 2003, p. 107.

9 P. van Duyne, *Introduction* In: P. van Duyne, K. von and N. Passas (eds.), *Upperworld and Underworld in Cross-border Crime*, Nijmegen 2002, pp. 1 and ff.

- The entity usually loses the trusts of its clients and suppliers which is difficult to regain if they find out about its involvement in money laundering schemes. It is of vital importance for financial institutions.
- The court may impose upon the entity high financial penalties or an order preventing it from engaging in specific economic activities, which may lead to its bankruptcy.
- As a result using dirty money and the laundering process the criminals may take over a branch of the national economy. The best example is the fuel sector of Polish economy. Somehow, the sector has been almost completely corrupted by organized crime which has connections with political spheres in Poland. These fuel operations cause large losses in national revenue due to the fact that imported combustible oil (which is taxed at a lower rate and considerably cheaper) is being sold as propulsive one (which is taxed at a higher rate and is more expensive)<sup>10</sup>.

### 2.3. Microeconomic aspects

The consequences for the whole global and national economy where the money laundering exists are the following:

- National economies do not function in an effective way as the capital flows into countries which offer high bank secrecy laws, and not necessarily the best opportunities to invest it.
- Money derived from criminal activity is used to legitimize the wealth of criminals. It is invested into the legitimate economy.
- Money laundering corrupts weak national economies and makes them even more receptive to global crises.
- It fuels the so called “grey economy” (or the informal economy).

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<sup>10</sup> D. Potakowski, Korelacje między przestępczością skarbową a praniem pieniędzy i ich wpływ na jakość zwalczania zorganizowanych grup przestępczych w Polsce - raport z badań. In: Lelental, S. and Potakowski, D. (eds.), Pozbawianie sprawców korzyści uzyskanych w wyniku przestępstwa, Szczytno 2004, p. 132.



- It lowers the level of trust in financial markets by investors.
- It makes the investment risk even bigger.
- It makes the national and global economy unstable and even more unpredictable.
- The Global Economy does not develop as fast as it might otherwise.

**Useful links:**

Brent L. Bartlett, The negative effects of money laundering on economic development, Platypus Magazine, No. 77, 2002, pp. 18-23.

[http://www.afp.gov.au/\\_\\_data/assets/pdf\\_file/3597/money\\_laundering.pdf](http://www.afp.gov.au/__data/assets/pdf_file/3597/money_laundering.pdf)

### 3. The crime of money laundering

#### *BASIC DEFINITIONS<sup>11</sup>:*

**Proceeds** - means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any property.

**Property** - includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property.

**Predicate offence** - means any criminal offence as a result of which proceeds were generated.

#### *INTRODUCTION:*

Money laundering has been recognized as a crime at an international level since the mid Eighties. Previously, some countries had regulations combating this already in place. In the case of Poland, the legitimization of illegal funds has been a crime since 1995, when the Protection of Economic Turnover Act of 1994 came into force. Describing such a crime effectively in the Criminal Code is extremely difficult.

#### **Polish Criminal Code of 1997**

##### ***Article 299***

*§ 1. Whoever receives, transfers or transports abroad, assists in its transfer of title or possession of legal tenders, securities or other foreign currency values, property rights or real or movable property obtained from the profits of an offence or takes other action which can*

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<sup>11</sup> Article 1 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism, Warsaw, 2005.

*prevent, or make significantly more difficult, determination of their criminal origin or place of deposition, detection or forfeiture, shall be subject to the penalty of deprivation of liberty for a term of between 6 months and 8 years.*

### **3.1. The evolution in the Polish system of criminal law**

The offence of money laundering was criminalized for the first time in 1994 (although this came into force at the beginning of 1995). It was characterized in Article 5 of the Protection of Economic Turnover Act of 1994<sup>12</sup> as an intentional act when someone has placed legal tenders, securities, or currency means that had been derived from organized criminal activity connected to drug trafficking, counterfeit money or securities, extortions or illegal arms trading into the legitimate economy. It encompassed such actions as: receiving, transferring possession or ownership, passing on or sending abroad property, or any other actions that may thwart the determination of its illegal source, the detection and forfeiture of such property. That regulation was considered ineffective by both the law enforcement agencies and by academia<sup>13</sup>. It was in force for only three years, and during that time there were only three cases which reached the court, and only one lawful conviction<sup>14</sup>.

The regulation concerning money laundering was changed once again in 1998 when a new Criminal Code came into force. A slightly improved version of the previous regulations was introduced in Article 299<sup>15</sup>. The basic type of that offence was defined as follows:

whoever receives, transfers, sends abroad or takes abroad with him/her, helps others to transfer possession or ownership, or takes other actions which may make impossible or very difficult to determine the criminal origins, the place of location,

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12 Dz.U. 1994, No 126, item 615.

13 E. Pływaczewski and W. Filipkowski, The Development of Organized Crime Policies in Poland: From Socialist Regime to 'Rechtsstaat'. In: C. Fijnaut and L. Paoli (eds.) Organised Crime in Europe. Concepts, Patterns and Control Policies in the European Union and Beyond, Dordrecht 2004, pp. 96-97.

14 K. Buczkowski and M. Wojtaszek, Pranie pieniędzy. Warszawa 2000, p. 206.

15 K. Buczkowski and M. Wojtaszek, Pranie pieniędzy. Warszawa 2000, pp. 164-176.

detection, seizure or forfeiture of the following: legal tender, securities, or other currency means, property rights, movable property, real property which derives from profit associated with commission of criminal acts by other people, in particular in the form of manufacturing or trafficking of drugs, smuggling, counterfeiting of money or of securities, robbery, or commission of other crimes against property of enormous value, extortion, trafficking in weapons, ammunition, explosives, or fissile materials, is subject to the punishment of imprisonment from 3 months up to 5 years<sup>16</sup>.

### 3.2. The Article 299 of Polish Criminal Code of 1997

The last change was made in 2000 when the Anti-Money Laundering Act of 2000<sup>17</sup> was enacted. There have been several improvements which have led to the criminalization of a wider range of activities and has also made the Act more efficient, which can be seen - inter alia - in the number of on-going criminal investigations conducted by the police<sup>18</sup>. There is no restriction to the type of crimes included as sources of profit as was the case in the previous regulations. It is also prohibited to launder ones own illicit gains, not only those which have come from the crimes of other people.

Table 1. **Number of lawful convictions of money laundering in Poland**

Type of crime:	Year									
	1998 from 1-09 until 31-12	1999	2000	2001	2002	2003	2004	2005	2006	2007
Article 299 §1	3	8	4	1	9	3	10	10	11	13

16 E. Pływaczewski, Poland: Counteracting Money Laundering in Central Europe. *Journal of Money Laundering Control*, Vol. 4, No. 1, 2000, pp. 74-75.

17 Dz.U. 2000, No 116, item 1216.

18 J. Gołębiewski, *Przestępczość zorganizowana w Polsce z perspektywy Centralnego Biura Śledczego*. In: E. Pływaczewski (ed.), *Przestępczość zorganizowana, Świadek koronny, Terroryzm w ujęciu praktycznym*, Kraków 2005, pp. 200-201.

Article 299 §2		-	5		1		1	3	1	
Article 299 § 3	1		3	4	1		6	1	4	8
Article 299 § 5 and § 1							6	26	108	52
Article 299 § 5 and § 2							1	2		1
Article 299 § 6 and § 1								3	2	1

Source: The data was acquired from The Ministry of Justice.

### 3.3. International regulation regarding money laundering

At the international level money laundering has become a crime since 1988 when countries signed the so called Vienna Convention of 1988 which concerned the drug trafficking. It was prohibited to launder money deriving from that type of criminal activity:

*“Each Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally<sup>19</sup>: (...)*

*b) i) The conversion or transfer of property, knowing that such property is derived from any offence or offences established in accordance with subparagraph a) of this paragraph, 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 or offences to evade the legal consequences of his actions.*

*ii) 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 established in accordance with subpa-*

19 Article 3 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna, 1988.

*ragraph a) of this paragraph or from an act of participation in such an offence or offences.*

*c) Subject to its constitutional principles and the basic concepts of its legal system:*

*i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences established in accordance with subparagraph a) of this paragraph or from an act of participation in such offence or offences.*

*iv) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.”*

That definition was repeated in the United Nations Convention against Transnational Organized Crime, signed in Palermo in 2000. However, money laundering has not been restricted only to the proceeds of drug trafficking.

The next important step and the newest one is another international treaty. In 2005 the Council of Europe has adopted the Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism during its meeting in Warsaw.

*“Each Party shall adopt such legislative and other measures as may be necessary to establish as offences under its domestic law, when committed intentionally<sup>20</sup>:*

*a. 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;*

*b. 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;*

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20 Article 9 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism, Warsaw, 2005.

*and, subject to its constitutional principles and the basic concepts of its legal system;*

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

*d. participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counseling the commission of any of the offences established in accordance with this article.”*

That definition is similar to the one which is present in so called the Third European Union Directive on Money Laundering of 2005.

**Useful links:**

The United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Vienna 1988

[http://www.unodc.org/pdf/convention\\_1988\\_en.pdf](http://www.unodc.org/pdf/convention_1988_en.pdf)

United Nations Convention Against Transnational Organized Crime, Palermo 2000.

[www.uncjin.org/Documents/Conventions/dcatoc/final\\_documents\\_2/convention\\_eng.pdf](http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_eng.pdf)

Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, Warsaw 2005.

<http://conventions.coe.int/Treaty/EN/Treaties/HTML/198.htm>

Directive of The European Parliament and of The Council on the prevention of the use of the financial system for the purpose of money laundering, and terrorist financing of 2005.

[http://ec.europa.eu/internal\\_market/company/docs/financial-crime/unofficial3dir\\_en.pdf](http://ec.europa.eu/internal_market/company/docs/financial-crime/unofficial3dir_en.pdf)

3<sup>rd</sup> Round Detailed Assessment Report on Poland.

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2006\)24ERep-POL3.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2006)24ERep-POL3.pdf)

## **4. The anti-money laundering regime in Poland**

### *INTRODUCTION:*

Since the beginning of the Nineties, Poland has been building a system to counteract and fight the money laundering phenomenon. Such actions were started due to the need to protect the Polish legal system and the Polish economy against the threat coming from organized criminal groups that want to invest proceeds derived from illicit activities in Poland.

### **4.1. The scope of the system - obligations of the relevant institutions**

The Anti-Money Laundering Act of 2000 in Article 2 (1) lists all institutions involved in combating money laundering. They include banks, the National Bank of Poland and branches of foreign banks, electronic transfer agents, branches of foreign institutions and clearing agents, investment companies and trust banks, companies dealing with financial instruments, foreign companies conducting brokerage activity, National Securities Deposit S.A., casinos, subjects conducting activities in the scope of gambling and mutual bets, insurance companies, insurance agents and main branches of foreign insurance companies, investment funds, associations of investment funds, credit unions, the Polish Post Office, legal professionals - notaries, solicitors, tax advisers and accountants, residents running exchange offices who, in connection with their activities, participate in trade of values (currency exchange offices), enterprises running activities in the form of auctions, antiques shops, leasing and factoring, pawn shops, as well as trade in precious metals, stones and real estate business, and foundations.



The main obligations of relevant institutions resulting from the provisions of the Act of 2000 include:

- 1) registration of transactions,
- 2) creation of transactions' registers,
- 3) clients' identification according to the principle: "Know your customer",
- 4) creation of internal procedures counteracting money laundering and conducting staff's trainings.

## **4.2. The Know Your Customer principle**

In order to exercise the above mentioned duty the relevant institutions identify their customers every time they make a written or oral order. The identification also concerns beneficiaries of transactions and includes disclosure of their identity and addresses. Such data will be kept for 5 years from the first day of the year following the year with the last recorded transaction.

This obligation is of vital importance because it helps to disclose the identity of people involved in process of money laundering and the place where the funds are being deposited. It is also important from the point of view of law enforcement and the judiciary for the sake of on-going investigations.

## **4.3. Other statutory obligations**

The provision of Article 8 of the Anti-Money Laundering Act determines a duty to register any orders from a client to exercise a transaction<sup>21</sup> of values equal to or exceeding €15,000. This duty is also mandatory no matter whether it is a transaction performed as a single operation or as several operations if circumstances indicate that they are

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21 The "transaction" is cash payment and payout, transfer of property or possession of values, exchange of liabilities for shares, including dealing in the above listed activities. The "assets" cover any means of payment, securities, foreign exchange income and property rights. (Article 2 (1) of the Anti-Money Laundering Act).

somehow connected. Secondly, this duty concerns those transactions regarded as “suspicious”. This term encompasses all transactions where their circumstances indicate that assets may be derived from illegal or hidden sources. This obligation remains in force regardless of their value and character.

The institutions’ obligation is to provide Polish Financial Intelligence Unit (FIU) with information about transactions that are „suspicious” or of a value above €15,000.

The relevant institutions will have to create a register of transactions which includes the following information: the type of the document kept together with the register as well as the course and the terms of sending copies of register to FIU. The institutions are obliged to keep registration forms along with other documents that confirm transactions. These documents may be used as evidence in money laundering investigations.

Another duty imposed on the relevant institutions is for them to create internal regulations which deter the introduction of assets derived from illegal or hidden sources to the financial system. Moreover, the institution is obliged to ensure continuous training of its employees in regard to the detection of suspicious transactions, and should appoint people who are responsible for exercising the duties specified in the Act.

#### **4.4. The role of the financial market’s supervising institutions**

The Polish FIU is the main institution to supervise the relevant institutions’ compliance with the Anti-Money Laundering Act. However, a substantial portion of that duty is undertaken by institutions supervising the financial market such as: the Banking Supervision Commission, the Financial Supervision Commission, the Minister of Finance, Presidents of Courts of Appeal, and the National Credit Union Commission. The employees of those institutions conduct on-the-spot investigations. The results are presented in audit reports sent to FIU. It appears to be an appropriate solution to grant the institutions listed above

with the right to audit as a part of their standard responsibilities. Those institutions are familiar with the specific character of the financial and its other activities; therefore, they will be able to apply an appropriate means of influence.

**Useful links:**

Ministry of Finance, General Inspector for Financial Information,  
Legislation

<http://www.mf.gov.pl/index.php?const=7&dzial=1306&wysw=85&sub=sub1>

3<sup>rd</sup> Round Detailed Assessment Report on Poland

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2006\)24ERep-POL3.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2006)24ERep-POL3.pdf)

FATF, 40 Recommendations

[http://www.fatf-gafi.org/document/28/0,3343,en\\_32250379\\_32236930\\_33658140\\_1\\_1\\_1\\_1,00.html](http://www.fatf-gafi.org/document/28/0,3343,en_32250379_32236930_33658140_1_1_1_1,00.html)

Basel Committee on Banking Supervision

<http://www.bis.org/publ/bcbasc137.htm>

## 5. Polish Financial Intelligence Unit

### *BASIC DEFINITIONS:*

The **Financial Intelligence Unit/Financial Analysis Unit (FIU/FAU)** - is a central, national agency responsible for receiving (and, when permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information:

(i) concerning suspected proceeds of crime and potential financing of terrorism, or

(ii) that required by national legislation or regulation,

...in order to deter money laundering and the financing of terrorism.<sup>22</sup>

### *INTRODUCTION:*

**The General Inspector for Financial Information (GIFI)** constitutes a Polish FIU. It was established in 2001. At that time it was a completely new type of government agency<sup>23</sup>. It represents a typical administrative model of FIU which deals not only with money laundering but the financing of terrorism as well. Some regulations concerning its functioning have resulted in controversy.

### 5.1. The basic models of FIUs

According to the research done by the FATF and other international organizations there are four basic models of FIU<sup>24</sup>:

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22 Statement of Purposes, Egmont Group of the Egmont Group of Financial Intelligence Units, Guernsey, June 23, 2004, p. 2.

23 E. Pływaczewski, Poland: Counteracting Money Laundering in Central Europe, Journal of Money Laundering Control, Vol. 4, No. 1, 2000, p. 73.

24 Review of FATF Anti-Money Laundering Systems and Mutual Evaluation Procedures 1992-1999, FATF-XII, February 16, 2001, pp. 29 and ff.

- **The Judicial Model** is established within the judicial branch of government. It supports judiciary powers applicable during investigations such as the seizure of funds, freezing of accounts, interrogation, detention of people, searches, etc.
- **The Law Enforcement Model** supports the efforts of different law enforcement or judicial authorities to investigate money laundering.
- **The Administrative Model** is a centralized, independent agency which receives and analyzes information from the private sector and then transfers only potentially suspicious details to the judiciary or law enforcement authorities for further investigation. It functions as an intermediary between those two groups.
- **The Hybrid Model** is a mixture of the last two types.

There are different types of FIU in selected Eastern European countries. They can be<sup>25</sup>:

- a part of police or prosecutor's offices structure (Estonia, Hungary, Latvia),
- a central organ of the state administration (Romania),
- a part (department) of the Ministry of Finance (Slovenia, Bulgaria, Czech Republic).

## **5.2. The role of FIU within the anti-money laundering regime**

FIU's competences can be divided into two basic categories. The primary group includes tasks concerned with the collection and processing of information. They include:

- examining the way the specified transaction was performed,
- starting a procedure of holding up a transaction or blocking an account,

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25 W. Jasiński, System of Counteracting Money Laundering in Countries Adapting Their Law to Legislature of European Union, Prokuratura i Prawo, No. 4, 2000, pp. 52-53.

- informing authorized organizations about an execution of, or an attempt to perform, such transactions,
- preparation and transfer of documents justifying the suspicion of criminal money laundering to authorized organizations.

The secondary group of FIU's duties involves:

- undertaking other activities which prevent the use of the Polish financial system to legalize incomes derived from illegal or hidden sources, including the training of employees of relevant institutions,
- supervising the compliance with the provisions specified by this Act,
- co-operation with foreign institutions which curb the introduction of assets derived from illegal or hidden sources into the financial system.

### **5.3. The role in combating the financing of terrorism**

The following activities can be described as a crime of terrorist financing<sup>26</sup>:

*“Any person commits an offence within the meaning of this Convention if that person by any means, directly or indirectly, unlawfully and willfully, provides or collects funds with the intention that they should be used or in the knowledge that they are to be used, in full or in part, in order to carry out:*

*(a) An act which constitutes an offence within the scope of and as defined in one of the treaties listed in the annex; or*

*(b) Any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel*

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<sup>26</sup> Article 2 of International Convention for The Suppression of The Financing Of Terrorism, United Nations, New York, 1999.

*a government or an international organization to do or to abstain from doing any act.”*

According to the international standards, FIU is also responsible for fighting the finance of terrorism. The duties of FIU in combating this phenomenon are quite similar to the one concerning money laundering. In addition, FIU is supposed to inform the relevant institutions about people, entities, and organizations that are responsible for terrorist activities or for the funding of such activities. That information is based on the existing so-called “black lists” prepared by international organizations (like the United Nations or the European Union) or countries (e.g. the United States of America). FIU investigate whether the names of people or entities are present in the registers run by the relevant institutions.

**Useful links:**

Ministry of Finance, General Inspector for Financial Information, Legislation

[www.mf.gov.pl/index.php?const=7&dzial=1306&wysw=85&sub=sub1](http://www.mf.gov.pl/index.php?const=7&dzial=1306&wysw=85&sub=sub1)

Ministry of Finance, General Inspector for Financial Information, System

[www.mf.gov.pl/index.php?const=7&dzial=1305&wysw=84&sub=sub1](http://www.mf.gov.pl/index.php?const=7&dzial=1305&wysw=84&sub=sub1)

3rd Round Detailed Assessment Report on Poland

[www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2006\)24ERep-POL3.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2006)24ERep-POL3.pdf)

Egmont Group

[www.egmontgroup.org/](http://www.egmontgroup.org/)

United Nations, The list of individuals belonging to or associated with the Taliban

[www.un.org/sc/committees/1267/consoltablelist.shtml](http://www.un.org/sc/committees/1267/consoltablelist.shtml)

European Union, Justice and Home Affairs, Terrorism

[http://ec.europa.eu/justice\\_home/doc\\_centre/criminal/terrorism/doc\\_criminal\\_terrorism\\_en.htm](http://ec.europa.eu/justice_home/doc_centre/criminal/terrorism/doc_criminal_terrorism_en.htm)

United States Department of Defense, Foreign Terrorist Organizations (FTOs)

[www.state.gov/s/ct/rls/fs/37191.htm](http://www.state.gov/s/ct/rls/fs/37191.htm)

## 6. Institutional ramification of fighting money laundering in Poland

### *INTRODUCTION:*

Besides GIFI there are several other government agencies which deal with the crimes of money laundering. In some cases we can observe overlapping or competitive responsibilities as far as the criminal proceedings are concerned. Organizations which are occupied with the phenomenon can also be found at the international level.

### **6.1. The role of law enforcement and other government agencies**

The police are the primary law enforcement agency which can investigate money laundering cases. There is a special unit called **Central Bureau of Investigation** (Centralne Biuro Śledcze - CBS). It deals with organized crime issues in Poland including economic crimes. This unit is also responsible for international police force cooperation. If criminal activity poses a threat to national economy or security, the **Internal Security Agency** (Agencja Bezpieczeństwa Wewnętrznego - ABW) starts an investigation.

All of the agencies can apply special investigation techniques and instruments like undercover agents, sting operations, electronic surveillance, criminal analyses etc. etc.

There are other government agencies whose assistance is important while investigations are conducted into money laundering schemes. They are tax offices, the customs service, border guard, etc. etc. They supply law enforcement agencies with potentially useful additional information.



## 6.2. The tasks of public prosecution offices

The public prosecutors conduct all sorts of inquiries or supervise those undertaken by law enforcement agencies such as the police. However, the complexity of cases involving organized crime has led to the development of separate branches in the regional public prosecution offices dealing only with those types of crimes. As a result, these special branches cooperate or supervise investigations carried out by CBS or ABW.

A public prosecutor prepares an indictment and takes it to the criminal court.

Public prosecution offices and courts are also responsible for international cooperation inter alia within the framework of Eurojust or the European Judicial Network.

It has to be stressed that there are no special courts or specialized judges to conduct criminal cases involving organized crime or money laundering.

## 6.3. International and supranational organizations

The **Financial Action Task Force on Money Laundering (FATF)** is a Paris based international organization aimed at directly combating money laundering and the financing of terrorism. It has created two sets of standards regarding the prevention and combat of both phenomena. They are called 40 Recommendations and 9 Special Recommendations respectively. Although those standards are not binding in the same way as international treaties, many countries comply with them. There are some other initiatives such as: mutual evaluations reports, annual typologies reports, and the list of Non-Cooperative Countries and Territories.

**MONEYVAL** (former name: Select Committee of Experts on the Evaluation of Anti-Money Laundering Measures) is an agency of the Council of Europe. Its main role is to conduct periodically on-the-spot investigations in each member country as far as compliance with international standards and treaties are concerned. The evaluation report

is a result of such an investigation. They suggest changes in national legal system in order to achieve a higher level of compliance.

The **Egmont Group** is an international organization of Financial Intelligence Units from different countries which meet certain requirements. During meetings FIU's exchange experience on how to prevent and fight money laundering phenomenon. This organization provides also training for FIU's employees and makes exchange of financial and criminal information easier.

The **Wolfsberg Group** is an international association of the biggest global banks which offer private banking services for its wealthiest clients. This organization has prepared and is still developing standards regarding the prevention of abuse of those services as an instrument for money laundering schemes. They put special stress on the money derived from public officials' corruption.

There is also a group of international organizations which deals with money laundering. However, it is not their primary goal. This group includes inter alia OLAF, Europol or Interpol.

#### **Useful links:**

Internal Security Agency (Agencja Bezpieczeństwa Wewnętrznego)

[http://www.abw.gov.pl/eng/index?option=com\\_content&task=view&id=29&Itemid=336.html](http://www.abw.gov.pl/eng/index?option=com_content&task=view&id=29&Itemid=336.html)

FATF <http://www.fatf-gafi.org>

MONEYVAL

<http://www.coe.int/t/dghl/monitoring/moneyval/>

Egmont Group

<http://www.egmontgroup.org/>

Wolfsberg Principles

<http://www.wolfsberg-principles.com/>

OLAF [http://ec.europa.eu/anti\\_fraud/index\\_en.html](http://ec.europa.eu/anti_fraud/index_en.html)

EUROPOL <http://www.europol.europa.eu/index.asp?page=facts>

Interpol

<http://www.interpol.int/Public/FinancialCrime/MoneyLaundering/default.asp>

## 7. Criminal law instruments

### *BASIC DEFINITIONS:*

**Confiscation** - means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property<sup>27</sup>.

**Forfeiture** - means a measure ordered by civil or criminal court following proceedings in relation to a criminal offence or criminal offences resulting in deprivation of not all, but certain items belonging to a sentenced person. The illegal source of those items must be proved in the court of law.

### *INTRODUCTION:*

Criminal law has a special role in fighting money laundering. There are several instruments which can be used in order to increase its effectiveness. However, it has to be remembered that criminal law has a subsidiary role in the whole regime. Criminal law has an active role once a crime has been committed, during investigation, and after a trial.

### **Polish Criminal Code of 1997**

#### ***Article 44***

*§ 1. The court shall impose the forfeiture of items directly derived from an offence.*

*§ 2. The court may decide on the forfeiture of the items which served or were assigned for committing the offence.*

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<sup>27</sup> Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime and on the financing of terrorism, Warsaw, 2005.

§ 3. *The forfeiture described in § 2 shall not be applied if its imposition would not be commensurate with the severity of the offence committed the court may impose a supplementary payment to the State Treasury.*

§ 4. *In the event that the perpetrator has intentionally prevented the possibility of imposing the forfeiture of items specified in §§ 1 or 2, the court may impose the obligation to pay a pecuniary equivalent of their value.*

§ 5. *It is not allowed to impose forfeiture in cases described in §§ 1 or 2 if it can be returned to the injured person or to another entity.*

§ 6. *In the event that the conviction has pertained to an offence of violating a prohibition of production, possession or dealing in or transporting specific items, the court may decide on the forfeiture thereof.*

§ 7. *If the items referred to in §§ 2 or 6 are not the property of the perpetrator, the forfeiture may be decided by the court only in the cases provided for in law; in the case of co-ownership, the decision shall cover only the forfeiture of the share owned by the perpetrator, or the obligation to pay a pecuniary equivalent of its value.*

§ 8. *Property which is the subject of forfeiture shall be transferred to the ownership of the State Treasury at the time the sentence becomes final and valid.*

#### **Article 45**

§ 1. *In case the perpetrator, even indirectly, acquired a property-related benefit from the crime, and the benefit is not subject to forfeiture of implements set in Article 44 § 1 or 6, the court decrees the forfeiture of such benefits or its equivalent. The forfeiture shall not be decreed in part or in whole if the benefit or its equivalent should be returned to the wronged person or other entity.*

§ 2. *In case the perpetrator has been convicted for the crime as a result of which he acquired, even indirectly a property-related benefit of considerable value, it is assumed that the property he has taken into possession or in relation to which he acquired any title of ownership*

*during the time of crime or after the crime was committed shall constitute a benefit acquired by committing the crime till the moment a judgment - even an invalid one - has been pronounced, unless the perpetrator or other interested party shows evidence of the contrary.*

*§ 3. In case the circumstances are very likely to indicate the perpetrator referred in § 2 has actually ceded, under any legal title, the property constituting the benefit acquired by committing the crime to a natural person, legal person or any entity without legal personality, it is assumed that the implements remaining an intrinsic possession of such person or entity as well as their property rights belong to the perpetrator, unless the interested person or entity shows the evidence of their lawful acquisition. (...)*

## **7.1. General issues**

In the case of confiscation or forfeiture there is always an issue of introducing special regulation which can improve the effectiveness of criminal law. One of the solutions is an institution called “reversed burden of proof”. The Prosecutor’s Office usually has to prove that a particular defendant’s possessions derive from crime or have been obtained using criminal proceeds. However, when this institution is introduced into criminal law, the burden of proof shifts from the public prosecutor to the defendant. S/he has to prove that he or she has obtained their possessions using money deriving from legitimate sources; otherwise those items will be confiscated or forfeited.

If it is possible, government agencies should also use the available instruments of civil or administrative law since the criminal law regulations are the “weapon of last resort”. After the conviction, a prosecutor may go to a civil court in order to forfeit the proceeds of crime.

Some countries have a special fund in their national budget. The government assembles all monies accruing from the selling of confiscated or forfeited goods (in a bank account). It can be used for different purposes, e.g. law enforcement, education, health care system, etc.

## 7.2. Forfeiture of assets and its execution

According to Polish Criminal Law it is possible to forfeit:

- items directly derived from an offence,
- items which served or were assigned for committing the offence,
- a pecuniary equivalent of items' value,
- items which production, possession or dealing in or transporting is prohibited,
- proceeds of crime.

In case of proceeds of crime, it is possible to apply the “reverse burden of proof” institution, but only for the most serious crimes which yield a significant amount of money for the perpetrator (Article 45, Polish Criminal Code).

A legal entity can also be subject to special investigation which may lead to its conviction for the involvement of its employees in the money laundering schemes.

## 7.3. Other instruments

There are also some other penalties and penal measures which can be useful to fight money laundering. They include:

- 1) **Deprivation of public rights** - this is more a symbolic rather than efficient measure. The sentenced person cannot become a Member of Parliament, vote in parliamentary or presidential elections, etc.
- 2) **Court order preventing the occupation of specific posts, the practice of specific professions or engagement in specific economic activities** - this is a very effective measure especially against professionals who have aided launderers in committing crimes.

- 3) **Supplementary payment to the injured party or for a public purpose** - this is an additional inconvenience for convicted person.
- 4) **Making the sentence publicly known** - this could also act as a deterrent.
- 5) **Fine** - in cases when the fine is extremely high it could be an additional financial penalty for the convicted person.
- 6) **Deprivation of liberty** (a custodial sentence) - this is the most serious penalty available for launderers, but is the least effective when it is impossible to deprive the convicted person of their property. After serving a few years in prison they could still enjoy their wealth.

**Useful links:**

Polish Penal Code as enacted in 1997<sup>28</sup>

[http://www.era.int/domains/corpus-juris/public\\_pdf/polish\\_penal\\_code1.pdf](http://www.era.int/domains/corpus-juris/public_pdf/polish_penal_code1.pdf)

[http://www.era.int/domains/corpus-juris/public\\_pdf/polish\\_ccp.pdf](http://www.era.int/domains/corpus-juris/public_pdf/polish_ccp.pdf)

[http://www.era.int/domains/corpus-juris/public\\_pdf/polish\\_penal\\_code3.pdf](http://www.era.int/domains/corpus-juris/public_pdf/polish_penal_code3.pdf)

FATF, Evaluation of Laws and Systems in FATF Members Dealing with Asset Confiscation and Provisional Measures

<http://www.fatf-gafi.org/dataoecd/32/48/34047135.pdf>

3<sup>rd</sup> Round Detailed Assessment Report on Poland

[http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL\(2006\)24ERep-POL3.pdf](http://www.coe.int/t/dghl/monitoring/moneyval/Evaluations/round3/MONEYVAL(2006)24ERep-POL3.pdf)

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28 Since 1997 there have been many changes.

## 8. The phenomenon of money laundering as a field of research in Poland

### *INTRODUCTION:*

There are two basic fields of research as far as money laundering is concerned: the phenomenon itself and the anti-money laundering regime which has been developed to combat it. Comparison with other countries is not unusual<sup>29</sup>. In regard to the scale and the results of research, the experience of Poland may be of particular interest.

### **8.1. Researches regarding the anti-money laundering regime**

Chronologically the first research into the phenomenon of money laundering was conducted by **W. Jasiński** between 1993 and 1996<sup>30</sup>. He analyzed 35 internal regulations of banks concerning the safeguards against abuse of those institutions by launderers. Jasiński made comparisons between six fields of interest: a procedure regarding the identification of clients, the management of records containing information about clients and their transactions, reporting to law enforcement agencies on suspicious transactions, the supervision of internal regulations execution, staff training and coordination of activities regarding fighting money laundering within the bank.

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29 See e.g. C. Besozzi, *Illegal markets and Organized Crime in Switzerland: A Critical Assessment*. In: C. Fijnaut and L. Paoli (eds.), *Organised Crime in Europe. Concepts, Patterns and Control Policies in the European Union and Beyond*, Dordrecht 2004, pp. 504-505 and A. Gómez-Céspedes and P. Stngeland, *Spain: The Flourishing Illegal Drug Haven in Europe*. In: C. Fijnaut and L. Paoli (eds.), *Organised Crime in Europe. Concepts, Patterns and Control Policies in the European Union and Beyond*, Dordrecht 2004, pp. 406-408.

30 W. Jasiński, *Money Laundering*, Warsaw 1998, p. 135.



After the enactment of the Protection of Commercial Turnover Act in October 1994, W. Jasiński also reviewed subsequent changes in those regulations. As a result of his research, he proposed a complete model of an internal regulation for a bank which was based on best-practice experience.

Another field of research is the level of awareness of money laundering. The research was conducted in 2001 by **J.W. Wójcik** among 697 people who worked in banks and other relevant institutions<sup>31</sup>. A year later he wished to repeat the survey. However, it was not possible since the managers of those institutions were unwilling to cooperate, due to the fact that the previous findings were very unfavourable. They revealed the lack of knowledge about the phenomenon among respondents (their employees).

The respondents filled in anonymous questionnaires. There were open and closed questions regarding the following issues: basic knowledge, legal problems, spotting suspicious transactions, internal procedures and regulations, the “Know Your Customer” principle, and advantages and disadvantages of the existing anti-money laundering regime in Poland. The results were disconcerting - to say the least<sup>32</sup> - as far as the effectiveness of the current anti-money laundering regime is concerned.

All of them have led J. W. Wójcik to the conclusion that there was an insufficient level of knowledge concerning money laundering regulations, techniques, and the methodology on how to spot suspicious transactions among respondents. Of greater significance, the entire system depends on them. As a consequence the system was not able to work properly. As a remedy to improve the system, he recommended more training and education for the relevant institutions’ staff<sup>33</sup>.

There was another research conducted in 2004 regarding the evaluation of the anti-money laundering regime in Poland. It was done by **E.M. Guzik-Makaruk** and **W. Filipkowski** in April and May of 2004. The surveys were distributed among enforcement officers of the

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31 J. W. Wójcik, *Przeciwdziałanie praniu pieniędzy*. Kraków 2004, p. 413.

32 J. W. Wójcik, *Przeciwdziałanie praniu pieniędzy*. Kraków 2004, pp. 463-7.

33 J. W. Wójcik, *Przeciwdziałanie praniu pieniędzy*. Kraków 2004, pp. 467-8.

companies operating within the Polish capital market subject to the anti-money laundering regulations (such as investment banks, brokerage houses, National Securities Deposit, and investments funds). They covered such fields of interest as: general knowledge, legal regulations, training. That group was questioned for the first time. Only 11 out of 54 institutions returned the surveys which led to the general conclusion that they were not interested in cooperating with the research. However some of the opinions assembled were so interesting they are worthy examples<sup>34</sup>.

Almost all of the respondents believed the Anti-Money Laundering Act should be amended. They pointed out *inter alia* that there is no definition of a “suspicious transaction”, as well as “qualified investor” (client) whose transactions would be excluded from the registration or identification requirements. In the light of those opinions, it is not surprising that most of them were convinced that neither the obligations imposed by law nor the institution of the Financial Intelligence Unit would combat money laundering effectively in Poland. Conversely, they believed that the registration and identification of obligations might restrain the process of legalization of ill-gotten gains. The respondents felt that the GIFI had not done much to ease the fulfillment of all their obligations, especially in the case of spotting suspicious transactions. It was pointed that they would also appreciate some guidelines how they should carry out those duties. The guidelines should consider the peculiarities of the Polish capital market: in their opinion it would greatly improve the efficiency of their work.

## 8.2. Research regarding the phenomenology of money laundering

The first systematic research on money laundering methods was done by **K. Buczkowski** and **M. Wojtaszek** in 2001. They analyzed all criminal investigations concerning that phenomenon between January

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34 E. M. Guzik-Makaruk and W. Filipkowski, System przeciwdziałania i zwalczania proceduru prania pieniędzy - ze szczególnym uwzględnieniem roli instytucji obowiązanych. In: E. Pływaczewski (ed.), *Przestępczość zorganizowana, Świadek koronny, Terroryzm w ujęciu praktycznym*, Kraków 2005, pp. 244-253.

1st, 1995 and December 31st, 1997 in Poland<sup>35</sup>. There were several fields of interest. They wanted to evaluate whether Article 5 of the Protection of Economic Turnover Act of 1994 was suitable to combat money laundering, as well as evaluate the quality of cooperation between banks (and other institutions) and law enforcement. In the defined period of time there were 54 cases: 17 of them were dismissed, in 20 the public prosecutors refused to start investigations, and another 14 were still underway. Only in three cases had the public prosecutors prepared indictments and sent those cases to courts. In two of them the sentences were passed.

The research done by the **Police Academy in Szczytno** focused on the common characteristics of money laundering methods which formed part of the criminal investigations and their connection with tax crime<sup>36</sup>. Most of the cases were in the preliminary stage; they did not reach courts at that time. They analyzed 34 cases which included 18 investigations about VAT fraud and 16 about money laundering. Around 200 cases were chosen, however, the researchers had limited access to the documents since they were at the early stage of criminal proceedings.

It has to be mentioned that **GIFI** presents an annual report of its activity. This is not actual research, rather a means of stating what has been achieved to date in regard to the issues of money laundering and the financing of terrorism in Poland. A chapter is always dedicated to describing trends and methods observed. All information is based on the analytical investigations (cases) conducted by GIFI.

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35 K. Buczkowski and M. Wojtaszek, *Pranie pieniędzy*. Warszawa 2000, p. 206.

36 D. Potakowski, *Korelacje między przestępczością skarbową a praniem pieniędzy i ich wpływ na jakość zwalczania zorganizowanych grup przestępczych w Polsce - raport z badań*. In: Lelental, S. and Potakowski, D. (eds.), *Pozbawianie sprawców korzyści uzyskanych w wyniku przestępstwa*, Szczytno 2004, pp. 134-143.

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Directive of The European Parliament and of The Council on the prevention of the use of the financial system for the purpose of money laundering, and terrorist financing of 2005

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## 10. Glossary

bribery (n.)	-	a crime in which money, a favour or something else of value is promised to, given to, or taken from an individual or corporation to influence somebody's opinions or decisions.
compliance (n.)	-	submission, obedience,
concealment (n.)	-	hiding, disguise, cover-up
counterfeit (v.)	-	to make a fraudulent replica, copy, forge (i.e. money or documents)
drug trafficking (n.)	-	a global black market consisting of the cultivation, manufacture, distribution and sale of illegal drugs.
embezzlement (n.)	-	as theft of money or property by a person in a position of trust or responsibility over those assets; embezzlement typically occurs in the employment and corporate settings.
fraud (n.)	-	swindle; deceit; cheating; forgery;
illicit (adj.)	-	forbidden, against the rules, unlawful
organized crime (n.)	-	mafia, extensive network of criminals who work together to accomplish illegal activities without getting caught
ramification (n.)	-	branch, arrangement of branches
revenue (n.)	-	income, return, gains;
smuggling (n.)	-	illegal transportation of goods or people across an international border
value (n.)	-	monetary or material worth;

Based on:

Merriam-Webster: [www.merriam-webster.com](http://www.merriam-webster.com)

Babylon: [www.dictionary.babylon.com](http://www.dictionary.babylon.com)

## 11. Quiz

### I. Match the phrases with the definitions given below. There are some extra words (5 pts)

*blending*    *money laundering*    *proceeds*    *forfeiture*  
*confiscation*    *financial instrument*    *financial market*    *property*

- A subject of turnover on the financial market. It includes e.g. stocks, securities, cash, derivatives (futures, swaps, options), loans, credits, mortgage, etc.
- A set of activities aimed at concealing the true origin of illegal incomes acquired in the course of criminal activity and making appear to be of legal origin in order to use them in the official financial system.
- A type of market within the free market economy where its participants sell or buy financial instruments and the prices are being set by the force of demand and supply according to the principle of free competition.
- The mixing of legal and illegal incomes on a company's account pretending that they all come from legitimate sources.
- A means a penalty or a measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences resulting in the final deprivation of property.



## II. Add three more items (12 pts)

1. The following activities may generate a substantial amount of illegal money:
  - a) smuggling
  - b) arms sales
  - c) bribery
  - d) ...
  - e) ...
  - f) ...
2. These are the global and international consequences of money laundering:
  - a) It makes an investment risk even greater.
  - b) It makes the national and global economy unstable and even more unpredictable.
  - c) The global economy is not developing as fast as it could.
  - d) ...
  - e) ...
  - f) ...
3. The institutions obliged to combat money laundering according to the Anti-Money Laundering Act of 2000
  - a) banks
  - b) institutions of electronic money
  - c) clearing agents
  - d) ...
  - e) ...
  - f) ...
4. Penalties and penal measures are useful to fight money laundering are:
  - a) The deprivation of public rights
  - b) An interdiction preventing the occupation of specific posts,

- c) A supplementary payment to the injured party or for a public purpose
- d) ...
- e) ...
- f) ...

**III. Complete the abbreviations and explain what institutions they are (3 pts)**

- 1. FAFT    Financial Action Task \_\_\_\_\_ on Money Laundering
- 2. GIFI    General \_\_\_\_\_ for Financial Information
- 3. FAU    Financial \_\_\_\_\_ Unit

**IV. Complete the extract with the words given below (5 pts)**

*detection      liberty      origin      securities      title*

*Whoever receives, transfers or transports abroad, assists in its transfer of \_\_\_\_\_ or possession of legal tenders, \_\_\_\_\_ or other foreign currency values, property rights or real or movable property obtained from the profits of an offence or takes other action which can prevent, or make significantly more difficult, determination of their criminal \_\_\_\_\_ or place of deposition, \_\_\_\_\_ or forfeiture, shall be subject to the penalty of deprivation of \_\_\_\_\_ for a term of between 6 months and 8 years.*

**V. Match the two columns to form methods of money laundering (5 pts)**

- |               |                       |
|---------------|-----------------------|
| 1. tax        | a) pricing            |
| 2. winning    | b) funds transfer     |
| 3. transfer   | c) haven              |
| 4. on-line    | d) financial services |
| 5. electronic | e) ticket             |

## VI. Choose the right preposition (5 pts)

1. ... shall be subject FROM/TO ...
2. deprivation FROM/OF liberty
3. derived FROM/TO any offence.
4. penalty TO/FOR a convicted person
5. in accordance TO/WITH subparagraph

Both glossary and quiz were prepared by Halina Sierocka