



*EU anti-money laundering laws
from experience
to proposal for action*

Individual Practical Problems of the Criminal Offence of Money Laundering in Slovenia

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Definition of money laundering

1) Under the Prevention of Money Laundering and Terrorist Financing Act (ZPPDFT):

- any conduct for the purpose of disguising the origin of money or other property obtained by an offence and includes:

1. conversion or any transfer of money or other property derived from criminal activity,

2. concealment or disguise of the true nature, origin, location, movement, disposition, ownership or rights with respect to money or other property derived from criminal activity

2) Under the Penal Code (KZ-1):

whoever accepts, exchanges, stores, freely uses, uses in an economic activity or in any other manner determined by the law conceals or attempts to conceal by money laundering the true origin of money or property that was, to his knowledge, acquired through the commission of a criminal offence

Development with regard to predicate offence

- Initially (1995) only drug trafficking, illicit trade in arms or “other illicit activity” were mentioned; limited to banking, financial and other commercial operation
- Setting up of the “all crime ” model (amendment as of 23 April 1999)

Article 252 of the Penal Code: Whoever accepts, exchanges, stores, freely uses, uses in an economic activity or in any other manner determined by the law conceals or attempts to conceal by money laundering the true origin of money or property that was, to his knowledge, acquired through the commission of a criminal offence

- Article 245 of the Penal Code-1: the same but “...in any other manner determined by the act ..., CONCEALS or ATTEMPTS TO CONCEAL by laundering THE ORIGIN of money or property”

The question whether the perpetrator of money laundering can be indictable if he is at the same time the perpetrator and a participant in the predicate offence

The viewpoint of the Prosecutor's Office:

- It is in the interest of the perpetrator of a predicate offence (trade in arms, drugs and criminal offences of corruption) to launder the obtained money and invest it in a legal activity

Contradicting viewpoints:

- A comparison with the criminal offence of concealment; the perpetrator cannot reuse the money that was stolen, embezzled or obtained through any other criminal offence to commit a criminal offence; put simply he cannot “steal the money again”

The issue of subjective elements of the criminal offence of money laundering (Actus reus - Mens rea)

The only MOTIVE is often remuneration and the generating of profit and the perpetrator does not think about concealing the source of the money. His actions have spontaneous consequences

Does the perpetrator's intent to conceal the source of the money have to be proven (dolus coloratus)?

The answer is negative: "NO"

The importance of moneyval's evaluation report (March 2010)

- The assessment “largely in compliance” (49%) prevails together with “compliant” with no negative assessment
- (Item 273, p. 66 of the Slovenian translation): high professional standards, including standards concerning confidentiality continue to be maintained, and staff continue to be of high integrity and appropriately skilled
- The requirement for a more successful prosecution of autonomous money laundering (when the case does not end with conviction); point out Article 498a of the Criminal Procedure Act
- Establishing a practice of the Supreme Court of the Republic of Slovenia regarding excessive requirements for proof of a predicate offence (relation to the issue of subjective elements mens rea - the perpetrator has to be aware that the money comes from criminal actions and the modality of an individual criminal offence is not supposed to be important

Individual practical examples

- Using a Trojan virus, transactions were made to current accounts of Ukrainian banks - 4 people have been finally convicted
- The Maribor District State Prosecutor's Office is dealing with a criminal organisation that stole 22.5 tons of aluminium semi-finished products in the value of EUR 230,000 from Talum in Kidričevo. The money was supposedly laundered through missing traders
- To a large extent, the problem of missing traders is also present in the so-called CAROUSEL FRAUDS
- Illicit sales of software for hacking computer systems with the Butterfly Bot virus or BFBOT
- Illicit fast money transfers through MoneyGram and Western Union to different recipients in Spain and the Netherlands

A review of personal characteristics of perpetrators:

- Businessmen aged around 50
- Young perpetrators, slightly over the age of 25 with extensive computer knowledge (cooperation of the Maribor Prosecutor's Office with the Prosecutor's Office in the USA)

The importance of typical cases of the recorded judicial practice

- Judgement of the Supreme Court of the Republic of Slovenia, reference no. I Ips 308/2009 from 16 September 2010
- The independent nature of the criminal offence of money laundering was stressed despite the proven (and convicted) predicate offence - business fraud
- Koper District Court K119/2006 - cash amounts from the criminal offence of abuse of powers under Article 244 of the Penal Code were illicitly transferred to the current account of two commercial companies so as to conceal the source of the money

Activities of state prosecutor's offices:

First instance:

- 42 open cases in courts, in the year 2011 38 (including judicial inquiry)
- in 2010, the Group of State Prosecutors for the Prosecution of Organised Crime (now an independent Prosecutor's Office) brought up charges against 12 person, 7 after the inquiry and 5 directly (criminal charges) not enough appeals - the role of higher state prosecutors has changed, they have become less appellate and more operative

Motions at first instance to secure claims (e.g. confiscation of cash in the amount of EUR 115,000)

The Supreme State Prosecutor's Office of the Republic of Slovenia has only an extraordinary legal remedy at its disposal,

i.e. the REQUEST FOR PROTECTION OF LEGALITY that however cannot be filed due to false or incomplete awareness of the actual situation

The problems of the open affairs of SCT, Laško Brewery, Patria, corruption offences, etc.

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FOR YOUR ATTENTION**