

# Legal frameworks for the prevention of money laundering and the role of the Office for Money Laundering Prevention in the Republic of Croatia

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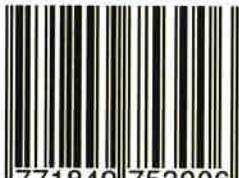
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## LEGAL FRAMEWORKS FOR THE PREVENTION OF MONEY LAUNDERING AND THE ROLE OF THE OFFICE FOR MONEY LAUNDERING PREVENTION IN THE REPUBLIC OF CROATIA

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### ABSTRACT

*The paper presents the systems of prevention of money laundering in Croatia through a repressive and preventive mechanism. Basic concepts are defined, international and national regulatory frameworks are analyzed, and in particular, the role of the Office for Money Laundering Prevention in the prevention process as a special financial intelligence unit responsible for receiving and analyzing notifications of suspicious transactions related to money laundering and related predicate offenses. As money laundering methods become more sophisticated, it is necessary, through the monitoring of European solutions and recommendations, to constantly strive to modernize the system and harmonize regulations with international standards. The Republic of Croatia has accepted legal solutions aimed at the effective detection and prevention of money laundering. The system of money laundering prevention in the Republic of Croatia is not within only one institution's competence, but it is dispersed to the mutual interaction and cooperation of legally defined participants in this process.*

**Keywords:** *money laundering, repressive approach, preventive approach, Office for the Prevention of Money Laundering*

### 1. INTRODUCTION

The "money laundering" concept roots from the 1970s.<sup>1</sup> The literature mentioned that the "laundering" term was promoted by London's "The Guardian" concerning Nixon's famous Watergate affair in the US in 1973.<sup>2</sup> In the early 1980s, the term was also found in Council of Europe documents.<sup>3</sup> Terminologically, the "money laundering" concept has come to life not only in America but beyond, especially among academics.<sup>4</sup> Money laundering is most commonly linked to drug trafficking, stolen cars, human trafficking, prostitution, and other organized crime forms.<sup>5</sup> In court practice, the money laundering concept was first used in the United States in 1982, in a court decision to confiscate "laundered" money that was found to originate from drug trafficking.<sup>6</sup> In 1991, Crime, Law, and Social Change published their most extended article ever, with a detailed review of the Anti-Money Laundering (AML) movement's shaping.<sup>7</sup>

<sup>1</sup> See Kатушић-Jergović, S. (2007). *Pranje novca (Pojam, karakteristike, pravna regulativa i praktični problemi)*. Hrvatski ljetopis za kazneno pravo i praksu. Zagreb, Vol. 14., No. 2, p. 620.

<sup>2</sup> Cindori, S. (2007). *Sustav sprječavanja pranja novca*. Financijska teorija i praksa, Vol. 31, No. 1, p. 58.

<sup>3</sup> Giunio, M. (1998). *Mjere za sprječavanje pranja novca*. Slobodno poduzetništvo, Vol. 8, 1998., p. 40.

<sup>4</sup> Usp. Kатушић-Jergović, S., op. cit. (note 1), p. 620.

<sup>5</sup> Iljkić, D. (2015). *Pranje novca u domaćem i stranom zakonodavstvu*. Financiranje i pravo, Vol. 3, No. 1, p. 37-38.

<sup>6</sup> Stessens, G. (2003). *Money Laundering: A New International Law Enforcement Model*. Cambridge University Press. United Kingdom, p. 83.

<sup>7</sup> Levi, M. (2020). *Evaluating the Control of Money Laundering and Its Underlying Offences: the Search for Meaningful Data*. Asian Journal of Criminology, Vol. 15, No. 2, p. 302.

## 2. THE CONCEPT AND CHARACTERISTICS OF MONEY LAUNDERING

There is no generally accepted definition of money laundering in state legislation or science. The reason for this lies in the various starting points in defining the concept of money laundering, which can be legal, economic, or sociological.<sup>8</sup> Given that the money laundering process often has an international character preceded by various crimes, several definitions of money laundering appear in the literature. According to *Heršak*, money laundering is any technique to convert unfairly and illegally earned income to seem like fair and legal earnings.<sup>9</sup> *Claessens* states that the term money laundering refers to changing the form of illegally acquired money so that it appears legal; that is, it is the concealment of an illegal source of income or its use.<sup>10</sup> *Palijaš* understands money laundering as converting "dirty" money or other property proceeds from criminal or other illegal activities into "pure" money, which can then be used as legal in banking, trade, purchase, investment, and other economic activities.<sup>11</sup> *Novoselec* believes that money laundering can be briefly defined as the conversion of illegally earned profits into seemingly legal ones.<sup>12</sup> According to *Giuni*, money laundering includes activities aimed at concealing the proceeds of crime, including depositing and otherwise activities to create the illusion of its legal origin.<sup>13</sup> Similarly, *DeGabrielle* states that more broadly defined, money laundering is a financial transaction created to promote certain illegal activities or conceal profits from illegal activities.<sup>14</sup> According to *Lilley*, money laundering is traditionally considered to be the cleansing of dirty money resulting from illegal activities that, in the collective consciousness, are probably related to drug sales.<sup>15</sup> Despite numerous definitions of money laundering, all they have in common that money laundering is considered a multi-layered process, composed of one or more criminal activities, to conceal or obscure traces of the origin of illegally acquired money or profits. In doing so, the financial sector is being exploited, but increasingly also the non-financial sector and professions. Money laundering covers not only the actual nature of the money or its origin, but it hides the predicate crime committed from which it originated. This means that money laundering does not exist without previous criminal activity, which indicates an unbreakable link between organized crime and money laundering. In other words, the crime of money laundering is a secondary criminal activity that occurs only after the predicate (primary) crime has been committed by which particular proceeds have been acquired. Consequently, the conclusion is that the money laundering process itself necessarily involves several interrelated elements. The first element refers to the commission of a particular predicate criminal activity, which precedes the act of money laundering. Another necessary element is the material gain derived from the commission of a predicate offense. Finally, the third element is various activities (through the stages of placement, layering, and integration) seeking to conceal the real (illegal) source of proceeds and seemingly present as legal, to avoid criminal liability and/or confiscation of illegal proceeds gain.<sup>16</sup> It follows from the above that the money laundering crime is not primarily aimed at obtaining a material benefit but at inserting illegally obtained money into legal and legal flows.

<sup>8</sup> Irwin, A.S.M., Choo, K.K.R., Liu, L. (2011). *An analysis of money laundering and terrorism financing typologies*. Journal of Money Laundering Control, Vol. 15, No. 1, p. 87.

<sup>9</sup> Heršak, G. B. (1993). *Pranje novca i policija*. Policija i sigurnost, vol. 2, No. 3-4, p. 221.

<sup>10</sup> Claessens R. (2000). *Money Laundering*. Belgium, p. 22.

<sup>11</sup> Palijaš, D. (2007). *Međunarodna suradnja i pravna pomoć u predmetima pranja novca, uloga i zadaci državnog odvjetnika*. Hrvatski ljetopis za kazneno pravo i praksu. Zagreb, Vol. 14, No. 2, p. 808.

<sup>12</sup> Novoselec, P. (2009). *Uvod u gospodarsko kazneno pravo*. Zagreb. Pravni fakultet u Zagrebu, p. 186.

<sup>13</sup> Giunio, M., *Prevenција i sankcija pranja novca*, Pravo u gospodarstvu, Vol. 37, No. 3, 1998., p. 368.

<sup>14</sup> DeGabrielle, C. (2001). *Međunarodni naponi Sjedinjenih Američkih Država u borbi protiv pranja novca*. Hrvatski ljetopis za kazneno pravo i praksu. Vol. 8, No. 2, p. 192.

<sup>15</sup> Lilley, P. (2000). *Dirty Dealing: The Untold Truth About Global Money Laundering*. London: Kogan Page, p. 1.

<sup>16</sup> Đokić, S. (2017). *Kriminalističko istraživanje kaznenog djela pranja novca*. Rijeka, Master's thesis. p. 4.

In other words, to achieve the highest possible usability of "dirty" money.<sup>17</sup> Money that fails to be "laundered" and put into legal cash flows is worth much less.<sup>18</sup>

## 2.1. Criminalization of money laundering

While for the mere occurrence of money laundering, it is impossible to determine with certainty when it first appeared historically, the criminalization of money laundering is a recent term. Initially, attention was focused on the predicate criminal activity by which the proceeds were obtained, with confiscation of the proceeds being considered sufficient punishment for the perpetrator of the predicate crime. The criminalization of money laundering followed (only) after states became aware of the harmfulness of the phenomenon of money laundering and its prevalence.<sup>19</sup> The United States was the first country to make money laundering a federal crime under the 1986 Money Laundering Control Act.<sup>20</sup> The 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the so-called Vienna Convention) also prescribed the criminalization of money laundering crime, albeit only in the context of predicate offenses related to drug abuse. The aim of criminalizing money laundering was to use the flow of illegal, "dirty" money to identify a predicate crime<sup>21</sup> since it provides illegal material gain, and money laundering is (only) a method of transferring it to legal flows of financial capital.<sup>22</sup> As a form of criminal activity of more recent date, money laundering was initially linked to the illicit drug trade on an international platform, only to become a broader transnational phenomenon shortly after that. Therefore, in the context of combating money laundering, international cooperation occupies a prominent place. Money is usually laundered through the banking sector due to its convenience for various forms of money laundering abuse. In particular, banking includes a wide range of activities such as deposit, credit, foreign exchange transactions, issuance, storage, purchase and sale of securities, domestic payment transactions, foreign payment transactions, and many others. Given the wide range of banking activities, the perception that the first defensive step of the financial system against money laundering is a well-developed and regulated area of banking is wholly justified.<sup>23</sup> Given its frequency, money laundering has been described as a crime of the 90s and even as a crime of the 21st century.<sup>24</sup>

## 3. INTERNATIONAL LEGAL FRAMEWORK FOR THE PREVENTION OF MONEY LAUNDERING

### 3.1. Organizations at the international level

As a reaction to the international problem of money laundering in 1989, the Financial Action Task Force (FATF) was established. The FATF is an international body that aims to set standards and promote effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, and other related threats to the international financial system's integrity. The group has issued forty recommendations regarding money laundering and nine specific recommendations regarding terrorist financing. In order to harmonize standards and achieve its goals, the FATF has developed a methodology for the

<sup>17</sup> Pedić, T. (2010). *Nefinancijski sektor i samostalne profesije u kontekstu sprječavanja pranja novca*. Zbornik Pravnog fakulteta Rijeka, Vol. 31, No. 1, p. 619.

<sup>18</sup> Gilmore W. (2004). *Dirty Money, The Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*. Council of Europe Publishing, Strasbourg, France, p. 20-4

<sup>19</sup> Đokić, S., op. cit. (note 16), p. 1.

<sup>20</sup> Money Laundering Control Act, Public Law 99-570, Oct. 27, 1986. United States of America, Retrieved 8.3.2021. from <https://www.gpo.gov/fdsys/pkg/STATUTE-100/pdf/STATUTE-100-Pg3207.pdf>

<sup>21</sup> Cox, D. (2014). *Handbook of Anti Money Laundering*, Wiley. Ujnitied Kingdom, p. 5.

<sup>22</sup> Bošković, M. (2007). *Pranje novca kao kriminološki i krivično pravni problem*. Zbornik radova Pravnog fakulteta u Novom Sadu, Vol. 41, No. 3, p. 179-180.

<sup>23</sup> Bjelajac, Ž. (2011). *Contemporary Tendencies in Money Laundering Methods: Review of the Methods and Measures for its Suppression, Research Institute for European and American Studies*. RIEAS, p. 9.

<sup>24</sup> Ibidem.

mutual evaluation process. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) was established in 1997. It represents the Committee of Experts on the Evaluation of Anti-Money laundering measures, which assess whether its members comply with the standards contained in the FATF recommendations and other specific recommendations from the conventions. MONEYVAL's main task is to encourage countries to establish an effective system for combating money laundering and terrorist financing in line with relevant international standards and assess their implementation effectiveness and make recommendations to national authorities on necessary improvements to their systems.<sup>25</sup>

GRECO is a Council of Europe commission focused on monitoring compliance with convention commitments made by member states.

### **3.2. International standards and their implementation**

#### *3.2.1. International Conventions*

The global nature of the money laundering phenomenon makes the geographical boundaries irrelevant, with a tendency to direct its activities to jurisdictions with weak or ineffective anti-money laundering measures. The international community has recognized the danger of this type of crime and has enacted many conventions and acts to create an effective climate in the fight against organized crime and money laundering as a necessary by-product. The Republic of Croatia is a signatory to numerous international acts, the content of which it has implemented through legal provisions:

- 1) The UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the so-called Vienna Convention on Drugs, 1988) is the first document to penalize money laundering, although the penalty applies only to a limited number of offenses as the Convention applies only to drug trafficking.<sup>26</sup>
- 2) Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the so-called Strasbourg Convention, ETS - No. 141) prescribes the obligation to confiscate profits from all illegal activities and international cooperation in the seizure and distribution of confiscated funds.
- 3) Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the so-called Warsaw ConventionTS, ETS - No. 198)
- 4) 40 + 9 Financial Action Group (FATF) Recommendation - G7 most Developed Countries (1990) as bodies to promote measures against money laundering of developed countries of the world.
- 5) Criminal Law Convention on Corruption of 1999 (ETS - No. 173)

#### *3.2.2. Directive*

The essential Directive adopted by the European Union regarding the prevention of money laundering and terrorist financing are:

- 1) Council Directive 91/308 / EEC (the so-called First Directive) of 10 June 1991 defined money laundering in the context of drug-related offenses and imposed obligations only on the financial sector.
- 2) Directive 2001/97 / EC of the European Parliament and of the Council (the so-called Second Directive) extended the scope of Directive 91/308 / EEC to the range of criminal offenses and the range of activities to which it relates.

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<sup>25</sup> Retrieved 8.3.2021. from <https://www.fatf-gafi.org/pages/moneyval.html>

<sup>26</sup> Condemi, M., De Pasquale, F. (2005). *International profiles of the activity to prevent and combat money laundering*. Italy, p. 42.



- 3) Directive 2005/60 / EC of the European Parliament and of the Council (the so-called Third Directive) and Commission Directive 2006/70 / EC laying down implementing measures for Directive 2005/60 / EC,
- 4) Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing (the so-called Fourth Directive).

### 3.2.3. Regulations

The essential regulations regarding the prevention of money laundering and terrorist financing are:

- 1) Regulation no. Regulation (EC) No 1889/2005 of the European Parliament and of the Council on controls cash entering or leaving the Community<sup>27</sup> supplements the First Directive.
- 2) Regulation 1781/2006 of the European Parliament and of the Council on information on the payer accompanying transfers of funds<sup>28</sup> was adopted to apply VII. FATF Special Recommendations. It stipulates the obligation that each electronic money transfer contains information about the principal to prevent, investigate and detect money laundering and terrorist financing.

International regulations governing the prevention of money laundering and terrorist financing include legal, financial, and supervisory aspects. International conventions, directives, and recommendations prescribe the confiscation of profits from all illegal activities, implement measures and actions for quality identification and information of the financial intelligence unit, exchange information with other countries, and international legal assistance.<sup>29</sup> According to estimates by the international community (Europol), the value of money laundered annually reaches between 715 billion and 1.87 trillion euros each year, accounting for 2 to 5% of global domestic product growth.<sup>30</sup>

## 4. NATIONAL LEGAL FRAMEWORK FOR THE PREVENTION OF MONEY LAUNDERING

One of the essential features of implementing anti-money laundering measures is the establishment and upgrade of the control system to determine whether financial and other institutions carry out supervision and internal control in anti-money laundering.<sup>31</sup> Methods and measures to prevent money laundering include several activities in the field of prevention carried out by the competent authorities to combat money laundering. Regulatory frameworks for combating money laundering incorporate reports of suspicious or unusual transactions that form the basis for identifying money laundering activities in different economic areas. The measure in question is crucial as the failure to report suspicious or unusual transactions by statutory authorities results in the inability or significant difficulty of identifying money laundering cases. Therefore, the above reports of suspicious or unusual transactions are the primary mechanism in cases where there is a suspicion of money laundering because it allows the temporary suspension of transactions. As a preventive measure in the fight against money laundering, states regulate the duty to identify final accounts users and owners, considering it a vital element of the anti-money laundering system. Control over the money entry or exit from

<sup>27</sup> EUR-Lex, available at

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:309:0009:0012:EN:PDF>

<sup>28</sup> EUR-Lex, available at <http://eur-lex.europa.eu/legal-content/HR/TXT/PDF/?uri=CELEX:32006R1781&from=HR>

<sup>29</sup> Cindori, S., op. cit. (note 2), p. 60-61.

<sup>30</sup> Retrieved 9.3.2021 from <https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/economic-crime/money-laundering>

<sup>31</sup> Bjelajac, Ž., op. cit (note 23), p. 17.

the country or use of other financial instruments is also an effective anti-money laundering mechanism. A practical and continuous control system is ensured by monitoring cash flow, analyzing the direction and trends of such flow and its illegal nature, and developing specific measures and actions to detect and shed light on certain criminal acts.<sup>32</sup> For the effective implementation and upgrading of measures and methods against money laundering, a key aspect is an education of staff and the specialization of legislation in the field of money laundering. Educational programs include training of police officers and other competent institutions dealing with these issues. Šikman and Jovanović noted that education is necessary for all social stakeholders to be involved in combating money laundering, starting from bank employees, representatives of legal entities to taxpayers, i.e., citizens.<sup>33</sup> The prevention and combating of money laundering can be observed from two aspects: a repressive and preventive approach. The repressive approach implies the incrimination of money laundering, while the preventive one is reflected through the normative framework for action, i.e., national legislation.

#### **4.1. Repressive approach to money laundering prevention- money laundering incrimination**

The crime of money laundering was first introduced into Croatian legislation by the Act on Amendments to the Basic Criminal Code of the Republic of Croatia,<sup>34</sup> in Art. 151.a., entitled "Concealment of Illegally Obtained Money," as a consequence of the obligations under international agreements to which the Republic of Croatia is a signatory (Vienna and Strasbourg Conventions). With the entry into force of the Criminal Code on 1 January 1998 (from now on: CC/97)<sup>35</sup> through the provision of Art. 279. a new legal description of the crime under the same name was prescribe. The legislator placed the crime of concealment of illegally obtained money in Chapter XXI, among crimes against the security of payment transactions and business, together with the crimes of Counterfeiting Money (Art. 274), Counterfeiting Securities (Art. 275), Counterfeiting Value Signs (Art. 276), Manufacture, Acquisition, Possession, Sale or Giving for the use of Counterfeiting Means (Art. 277) and Counterfeiting Signs for the Marking of Goods and Falsifying Measures and Weights (Art. 278). At first glance, it is clear that the protective object of the crime of concealing illegally obtained money is not the security of payment transactions but the security of a business. However, the act of committing the crime is incorporated in the payment transactions segment.<sup>36</sup> The 2008 Law on Amendments to the Criminal Code<sup>37</sup> changed the crime name into Money Laundering. The new Criminal Code of 2011 (from now on: CC/11),<sup>38</sup> which entered into force on 1. January in 2013, has incorporated the crime of money laundering in Art. 265 CC/11, within the provisions of Chapter XXIV, Crimes against the economy.

##### *4.1.1. The object of the criminal offense of money laundering*

The old CC/97 in its provision of Art. 279. prescribed "money, objects, rights or property gain" as an object of the criminal offense of money laundering, i.e., property that was directly acquired by the criminal offense. The legislator has set the perpetrator's responsibility wider in CC/11 since now the subject of the criminal offense of money laundering is all property that directly or indirectly originated from the criminal offense.

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<sup>32</sup> Ibidem, p. 16.

<sup>33</sup> Šikman, M., Jovanović, V. (2010). The concept of money laundering as a manifested function of organized crime. Security. Police, Citizens. MIA Republic Srpska – Department of police education. Banja Luka, No. 1-2/10, p. 81-100.

<sup>34</sup> Law on Amendments to the Basic Criminal Code of the Republic of Croatia, OG 28/96.

<sup>35</sup> Criminal Code, OG 110/97.

<sup>36</sup> Sec. Katušić-Jergović, S., op. cit. (note 1), p. 629.

<sup>37</sup> Art. 19 of the Act on Amendments to the Criminal Code, Official Gazette, no. 152/2008

<sup>38</sup> OG 125/11, 144/12, 56/15, 61/15, 101/17, 118/18, 126/19 entered into force on 1 January 2013

#### *4.1.2. The perpetrator of the crime of money laundering*

The perpetrator can be anyone, even the perpetrator of a predicate crime.<sup>39</sup> This is important because the predicate crime and the crime of money laundering protect different protective facilities. E.g., the protective object of the predicate crime of drug trafficking is human health (because it falls under the head of crimes against human health), while the protective object of the money laundering crime is proceeds (because it falls under the head of crimes against the economy). Concerning the above, the case law raised the question of whether the perpetrator of the predicate crime realizes the essential features of the criminal activity of money laundering at the time of withdrawing money at an ATM which, as a benefit of the predicate crime, was paid into a bank account. In several verdicts, the Supreme Court of the Republic of Croatia stated that such actions of the perpetrator of the predicate crime do not achieve the essential characteristics of money laundering because depositing money in a bank is only the first of three phases of the money laundering process (the bank is used as a convenient place to store money before its further use).<sup>40</sup> The remaining two phases of the money laundering process (deposit phase and refining phase) are (still) missing.

#### **4.2. Preventive approach to the prevention of money laundering through the normative framework for action - national legislation**

The foundations of the Republic of Croatia's preventive system were initially prescribed by the Anti-Money Laundering Act<sup>41</sup> and the Ordinance on the manner and deadlines for notifying the Office for the Prevention of Money Laundering and the manner of keeping a list of collected data.<sup>42</sup> They included measures and actions that certain institutions of the financial and non-financial sector in the Republic of Croatia were obliged to implement to prevent money laundering. By adopting the above regulations, the Republic of Croatia harmonized the domestic legislative framework with all international standards in force at the time (Vienna Convention, Strasbourg Convention, First Directive, and 40 FATF Recommendations). The amendments to international legislation were accompanied in the Republic of Croatia by the amendments and harmonization of the domestic legislative framework with the new international standards. Those mentioned above resulted in adopting a new Anti-Money Laundering and Counter-Terrorism Financing Act (from now on: AML/CTF/17).<sup>43</sup> The adoption of AML/CTF/17 aimed to harmonize the current legislation with the European Union's legal regulations, specifically with the European Union's fourth directive. AML/CTF/17, following international standards, builds the anti-money laundering system as a coordination system of different stakeholders, each of which has a separate role, where the effectiveness of the system depends on their cooperation. AML/CTF/17 has a preventive character as it prescribes measures and actions in banking, monetary and other operations that are taken to detect and prevent money laundering (and terrorist financing). Participants in the Republic of Croatia's anti-money laundering system are obligors, supervisory bodies, law enforcement agencies, courts, and the Office for the Prevention of Money Laundering. The law prescribes those obliged to implement measures and their duty to act following the law. The main task of the supervisory body, as its name suggests, is to supervise the work of obligors related to the application of measures to prevent money laundering within their competence. In the Republic of Croatia, several supervisory bodies are responsible for conducting supervision in areas within their scopes, such as the Tax Administration, the Croatian National Bank, the Financial

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<sup>39</sup> Decision of the Supreme Court of the Republic of Croatia, I Kž-137/01 of 20 March 2001.

<sup>40</sup> Decisions of the Supreme Court of the Republic of Croatia, I Kž 751 / 07-6 of 19 February 2009, I-Kž-Uš 19 / 10-6 of 17 March 2010, I Kž 625 / 13-6 of 28 May 2015

<sup>41</sup> Anti-Money Laundering Act, OG, no. 69/1997, 106/1997, 67/2001, 117/2003, 142/2003.

<sup>42</sup> Ordinance on the manner and deadlines for notifying the Office for the Prevention of Money Laundering and the manner of keeping the list of collected data, OG, no. 114/97.

<sup>43</sup> Anti-Money Laundering and Counter-Terrorism Financing Act, OG 108/17, 39/19.

Inspectorate, the Croatian Financial Services Supervisory Agency, and the Customs Administration. In addition to the obligation to conduct supervision, all these supervisory authorities must also inform the Office for the Prevention of Money Laundering about the measures taken, which refer to money laundering.

#### *4.2.1. Office of Prevention of Money Laundering*

The starting point and basis of international documents that determine the position and role for the Office for the Prevention of Money Laundering (from now on: Office) is the 26th recommendation of the FATF. According to the above recommendation, the Office is an autonomous and operationally independent central body for receiving, analyzing, and forwarding notifications of suspicious transactions. The Office is part of the prevention system, i.e., a prevention body that acts as an intermediary between the financial and non-financial sectors, subject to the law, on the one hand, and law enforcement, police, and the State Attorney's Office, on the other.<sup>44</sup> The Office itself does not have the authority to prosecute perpetrators of money laundering, but it provides all the necessary support to state bodies responsible for criminal prosecution (DORH, police).<sup>45</sup> The Office receives notifications from obligors, whose obligation to submit derives from the law (AML/CTF/17), and from the competent state bodies, who obtained the data during their work, resulting from inter-institutional cooperation. Therefore, it is clear that obligors in the anti-money laundering system have a preventive role in protecting the country's financial and economic system as a whole. Suspicious transactions, *per se*, are not (necessarily) illegal behavior but indicate unusual financial activities. If, after analytical processing of received transactions, the Office determines that there is a suspicion of money laundering, it will submit a notification of suspicious transactions to the competent state bodies, especially the State Attorney's Office, the Ministry of the Interior, inspection bodies and foreign money laundering offices. Thus, the initial information on suspicion of money laundering usually comes from the Office and police officers' operational work.<sup>46</sup> The Office's work results should then be compared with the results of the work of other bodies in the system, primarily the police and the State Attorney's Office. Police data are crucial for directing the Office's work, while on the other hand, the Office's analytical work supports police investigations into money laundering. Only a commitment to this interactive and Law-based cooperation can result in valuable indicators. Therefore, the Office is only one link in the anti-money laundering chain as a financial intelligence unit. The Office can make a total contribution to preventing the use of the Croatian financial system for money laundering only in interactive cooperation with other national competent authorities and foreign financial intelligence units.

##### *4.2.1.1. Key performance indicators of the Office*

The tables below show the activities of the Office over the nine years from 2011 to 2019. During this period, the number of total open cases with suspicion of money laundering and terrorist financing was observed. Also, observation encompasses the number of total cases forwarded to the competent authorities and foreign Offices for further processing. Finally, observation includes the number of analyzed and analytically processed transactions as well.

*Table following on the next page*

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<sup>44</sup> Bolta, D. (2007). *Uloga Ureda za sprječavanje pranja novca u sustavu sprječavanja pranja novca*. Hrvatski ljetopis za kazneno pravo i praksu. Zagreb, Vol. 14, No.2, p. 802.

<sup>45</sup> Piplica, D. (2020). *Krivudavi gospodarski tijekovi (gospodarski kriminalitet)*. „Redak“ doo Split, p. 238.

<sup>46</sup> Đokić, S., op. cit. (note 16), str. 58.

| Key performance indicators of the Office |  |  |   |  |  |  |  |
|--|--|--|---|--|--|--|--|
| Year                                     | Number of open cases suspected of money laundering and terrorist financing | Number of cases forwarded to competent authorities and foreign Offices for further processing and processing | Type of information in forwarded cases              |  |  |  | Number of analyzed and analytically processed transactions |
|  |  |  | Number of cases under suspicion of money laundering | Number of cases suspected of terrorist financing | Number of additions in cases of money laundering and terrorist financing | Total number of reports in analytical processing |  |
| 2011.                                    | 342  | 121  | 117   | 4  | 70   | 191  | 4513   |
| 2012.                                    | 340  | 132  | 131   | 1  | 78   | 210  | 3172   |
| 2013.                                    | 411  | 159  | 156   | 3  | 85   | 244  | 3125   |
| 2014.                                    | 444  | 233  | 227   | 6  | 120  | 353  | 5832   |
| 2015.                                    | 464  | 283  | 273   | 10   | 106  | 389  | 8139   |
| 2016.                                    | 472  | 329  | 317   | 12   | 75   | 404  | 9082   |
| 2017.                                    | 479  | 241  | 230   | 11   | 87   | 328  | 5203   |
| 2018.                                    | 486  | 281  | 275   | 6  | 50   | 331  | 5559   |
| 2019.                                    | 479  | 250  | 243   | 7  | 53   | 303  | 3078   |

*Table 1: Key performance indicators of the Office for the period 2011-2020  
 (Source: Office for the Prevention of Money Laundering, Financial Intelligence Unit,  
 Summary of the annual report on the work of the Office for 2011, 2012, 2013, 2014, 2015,  
 2016, 2017, 2018 and 2019)*

In the observed period, there was an upward trend in the number of open cases with suspicion of money laundering and terrorist financing and a relatively steady upward trend in the number of cases forwarded to the competent authorities for further action and processing. The number of analyzed and analytically processed transactions is a variable component that shows a tendency of downward and upward paths at irregular intervals. The most significant number of analyzed and analytically processed transactions was recorded in 2016, which is causally related to the fact that in 2016. was received the largest number of notifications of suspicious transactions in the observed period. Attention is drawn to the fact that in the last observed period, 2019, the number of analyzed and analytically processed transactions was recorded almost three times less than in 2016. That is, the year 2019 records the lowest number of all analyzed and analytically processed transactions in the observed period. This is noteworthy because, in 2019, the most significant number of notifications of suspicious transactions was recorded concerning all observed periods (Table 2).

*Table following on the next page*

| Year  | Data on the source of the initial objects |                    |                 |          | Office Statistics     |                 | Judicial statistics |             |           |
|-------|---|--------------------|-----------------|----------|-----------------------|-----------------|---------------------|-------------|-----------|
|       | Notification of suspicious transactions   |                    |                 |          | Analytical processing | Forwarded cases | Investigations      | Indictments | Judgments |
|       | Obligors                                  | State bodies, etc. | Foreign offices | In total |                       |                 |                     |             |           |
| 2012. | 392 (70%)                                 | 113                | 58              | 563      | 334                   | 131 (39%)       | 0                   | 10          | 9         |
| 2013. | 575 (76%)                                 | 108                | 78              | 761      | 408                   | 156 (38%)       | 0                   | 1           | 5         |
| 2014. | 695 (80%)                                 | 114                | 55              | 864      | 437                   | 227 (52%)       | 14                  | 14          | 4         |
| 2015. | 763 (80%)                                 | 81                 | 115             | 959      | 452                   | 273 (60%)       | 10                  | 23          | 3         |
| 2016. | 862 (85%)                                 | 71                 | 84              | 1017     | 462                   | 317 (69%)       | 49                  | 35          | 11        |
| 2017. | 729 (79%)                                 | 76                 | 121             | 926      | 464                   | 230 (50%)       | 11                  | 18          | 9         |
| 2018. | 741 (79%)                                 | 82                 | 116             | 939      | 478                   | 275 (58%)       | 10                  | 17          | 6         |
| 2019. | 909 (82%)                                 | 80                 | 124             | 1113     | 469                   | 243 (52%)       | 21                  | 17          | 5         |

*Table 2: Statistics of the Office and the Judiciary for the period 2012-2020  
 (Source: Office for the Prevention of Money Laundering, Financial Intelligence Unit,  
 Summary of the annual report on the work of the Office for 2011, 2012, 2013, 2014, 2015,  
 2016, 2017, 2018 and 2019)*

It is clear from the table above that notification of suspicious transactions in most cases, over 70%, come from obligors. The Office's statistics indicate that since 2015, over 50% of analytically processed cases have been forwarded to the competent authorities for further action. The period before 2015 is characterized by a slightly lower percentage of cases forwarded, below 40%. When looking at judicial statistics, it is clear that only a small number of cases result in an investigation, indictments, and, finally, a conviction. As expected, the year with the highest number of analytically processed transactions, 2016, also recorded the highest number of investigations conducted (49) and indictments filed (35), but convictions were handed down in only a third of cases (11). Table 3 and Table 4 show the relation between the total number of reported, accused, and convicted perpetrators of the money laundering crime. The distinction between the two tables lies in the legal regulation of the money laundering crime. Table 3 refers to the criminalization of the crime of concealment of illegally obtained money (Art. 279), according to the old CPC / 97. Table 4 contains the criminalization of the crime of money laundering (Art. 265) under the new CPC/11, the application of which began on the first day of 2013.

*Table following on the next page*



| Year  | Reported  |    |    |    |   | Accused  |    |    |   | Condemned   |    |    |   |
|-------|---|----|----|----|---|--|----|----|---|---|----|----|---|
|       | Concealment of illegally obtained money Art. 279. CC/97 paragraph |    |    |    | Total criminal offenses against the security of payment transactions and business | Concealment of illegally obtained money, Art. 279. CC/97 paragraph |    |    | Total criminal offenses against the security of payment transactions and business | Concealment of illegally obtained money Art. 279. CC/97 paragraph |    |    | Total criminal offenses against the security of payment transactions and business |
|       | 1.  | 2. | 3. | 4. |   | 1.   | 2. | 3. |   | 1.  | 2. | 3. |   |
|       |   |    |    |    |   |  |    |    |   |   |    |    |   |
| 2010. | 7   | 1  | /  | 1  | 3502  | /  | 1  | /  | 1497  | /   | /  | /  | 1002  |
| 2011. | 7   | 1  | 4  | /  | 3324  | 5  | 1  | /  | 1348  | /   | /  | /  | 842   |
| 2012. | 9   | /  | 7  | /  | 2428  | 1  | /  | /  | 1335  | 1   | /  | /  | 877   |

Table 3: Correlation of reported, accused and convicted adult perpetrators for the criminal offense of money laundering from 2010-2012

(Source: Statistical Reports of the Central Bureau of Statistics of the Republic of Croatia: Adult perpetrators of criminal offenses, reports, charges and convictions in 2010-2012)

From the table above, it is clear that, in 2010 and 2011. no convictions have been passed for the crime of concealment of illegally obtained money under Art. 279 CC / 97, while in 2012, only one conviction was recorded.

| Year. | Reported                                    |    |                  |    |                                  | Accused                                     |    |    |    |    | Condemned                        |   |    |                 |    |                                  |
|-------|---|----|------------------|----|----------------------------------|---|----|----|----|----|----------------------------------|---|----|-----------------|----|----------------------------------|
|       | Money laundering, Art. 265. CC/11 paragraph |    |                  |    | Total crimes against the economy | Money laundering, Art. 265. CC/11 paragraph |    |    |    |    | Total crimes against the economy | Money laundering, Art. 265. CC/11 paragraph |    |                 |    | Total crimes against the economy |
|       | 1.  | 4. | 5. <sup>47</sup> | 6. |                                  | 1.  | 3. | 4. | 5. | 6. |                                  | 1.  | 4. | 5.              | 6. |                                  |
|       |   |    |                  |    |                                  |   |    |    |    |    |                                  |   |    |                 |    |                                  |
| 2013. | 2   | /  | /                | /  | 1522                             | /   | 2  | /  | /  | /  | 1185                             | /   | /  | /               | /  | 776                              |
| 2014. | 5   | /  | 5                | /  | 1454                             | 2   | /  | /  | /  | /  | 1128                             | /   | /  | /               | /  | 817                              |
| 2015. | 9 <sup>48</sup>                             | 1  | 3                | /  | 1842                             | 8   | /  | 1  | 2  | /  | 994                              | 5   | 1  | 2               | /  | 747                              |
| 2016. | 16 <sub>49</sub>                            | 18 | 3                | /  | 2089                             | 3   | /  | 1  | 4  | /  | 1009                             | 3   | 1  | 4               | /  | 746                              |
| 2017  | 6   | 14 | 6                | /  | 1875                             | 1   | 2  | /  | 5  | /  | 727                              | 1   | /  | 5               | /  | 609                              |
| 2018  | 2   | 2  | /                | /  | 1500                             | 1   | /  | /  | 6  | /  | 688                              | /   | /  | 3 <sub>50</sub> | /  | 559                              |
| 2019. | 7   | /  | 1                | /  | 1384                             | 1   | /  | 1  | /  | 2  | 669                              | 1   | 1  | /               | 2  | 589                              |

Table 4: Correlation of reported, accused and convicted adult perpetrators for the criminal offense of money laundering from 2013-2019

(Source: Statistical Reports of the Central Bureau of Statistics of the Republic of Croatia: Adult perpetrators of criminal offenses, reports, charges and convictions in 2013-2019)

The table above shows that no convictions were handed down for the crime of money laundering in 2013 and 2014.

<sup>47</sup> Money laundering was committed in a financial or other business or the perpetrator was engaged in money laundering or the material gain was of great value

<sup>48</sup> Art. 265, para 1 (8), para 2 (1).

<sup>49</sup> Art. 265, para 1 (11), para 2, (2), para 3 (4).

<sup>50</sup> In all three cases, a suspended sentence was imposed (6-12 months).

On the other hand, the years 2016 and 2019 record the largest number of convictions, since, in the observed periods, a conviction was passed to all persons charged with the criminal act of money laundering (in 2016 total of eight accused and eight convicted persons; in 2019 total of six accused and six convicted persons). It should be noted that the tables above are not a clear indicator of the actual state of the crime of money laundering, as the crime of money laundering is usually not prosecuted separately from the predicate crime. The perpetrator is often tried in a single procedure for all crimes, including (all) predicate crime and money laundering crime as a necessary consequence.

## 5. CONCLUSION

Money laundering is a derivative form of crime that is linked to the predicate crime, which created financial profit that has subsequently become the object of money laundering. The Republic of Croatia has a very well-developed legislative framework aligned with international standards and international documents. Legislative solutions in the field of anti-money laundering are complex and cover a diverse range of activities of different institutions. This refers not only to the repressive apparatus (police) but also to the involvement of other public bodies (the State Attorney's Office) to detect money laundering, prevent and sanction it. Given the complexity of the phenomenon of money laundering, its prevention must be complex as well, so it is not enough to prevent only from a criminal point of view, but it is necessary to do so through other ancillary legislation. Criminal groups use very sophisticated methods, aided by the knowledge of financial experts. Due to the above, both methods and measures to combat money laundering must keep pace with innovative ideas of new technological advances used by organized criminal groups. States pay special attention to the preventive approach in the fight against money laundering by establishing a supervisory system that will recognize attempts to infiltrate "suspicious" money into the financial sector at the deposit stage. An effective fight against money laundering requires effective and timely cooperation between prevention and law enforcement agencies. By timely informing the law enforcement authorities, further measures and actions will be taken to temporarily confiscate illegally acquired money until the end of the criminal proceedings if it is determined that there are grounds for suspicion that it represents material benefit proceeds of crime.

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