

# STANDARDS AND LEGAL RECOMMENDATIONS ON COMBATING MONEY LAUNDERING IN THE WORLD

*Prof. Jacek Stasiak<sup>1</sup>*

## 1. Introduction

Money laundering is a crime that involves concealing the illegal source of money and marketing it to make it appear legitimate. Money laundering originated in the United States in the 1920s, but its systemic and international eradication dates only to the late 1980s, when the United Nations adopted the Vienna Convention, the Basel Committee on Banking Supervision was created, and then the G7 countries established the FATF<sup>2</sup>.

The concept of money laundering is also inextricably linked to terrorist financing. Terrorist organizations derive most of their income from crimes such as drug trafficking, arms trafficking, human trafficking, extortion, theft, etc. As such, they need to legitimize these funds through money laundering in order to function<sup>3</sup>.

Money laundering and terrorist financing have very negative economic and social consequences. The destructive impact can be particularly noticeable in GDP, changes in supply and demand, exchange rates, state budget revenues, and thus the redistribution of public funds, or competition. In addition, it affects the development of corruption and destabilization of the state, leading to the diminution of democracy as a political system<sup>4</sup>.

Anti-money laundering is of particular interest to the author due to his professional work. The author is a Customer Verification Analyst in one of the international banks, and therefore works in the first line of defense against money laundering, which is the first of the three stages of AML.

<sup>1</sup> „Herbrand“ Centrum Medyczne NZOZ w Aleksandrowie Łódzkim e-mail: jacek\_stasiak@interia.pl

<sup>2</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg\\_no=VI=19-&chapter=6&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=VI=19-&chapter=6&clang=_en) [data dostępu: 29.05.2022].

<sup>3</sup> [https://treaties.un.org/doc/Treaties/1990/11/19901111%2008-29%20AM/Ch\\_VI\\_19p.pdf](https://treaties.un.org/doc/Treaties/1990/11/19901111%2008-29%20AM/Ch_VI_19p.pdf) [data dostępu: 29.05.2022].

<sup>4</sup> <https://www.unodc.org/unodc/en/organized-crime/intro/UNTOC.html> [data dostępu 29.05.2020].

## 2. Legal standards in the criminalization of money laundering

The first international organization to address money laundering on a global scale is the United Nations. It happened at the beginning of the fight against the drug industry, because the profits from the sale of drugs are precisely dirty money. On December 20, 1988, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances was signed in Vienna. The Convention, although primarily focused on drug trafficking and possession and does not explicitly mention money laundering in its content, provides for the confiscation of funds derived from the sale of narcotics. This marked a milestone in the fight against money laundering, as it provided a legal instrument that could actually be used effectively. The document also addresses the issue of international cooperation. The indirect involvement of the banks is also an important element, as Article 5.3 calls for the banks not to hide behind bank secrecy in drug-related matters, which placed some responsibility on them.

Another document, which provides a legal basis for the criminalization of money laundering is the United Nations Convention against Transnational Organized Crime, promulgated on November 15, 2000 in Palermo, in which Poland played an important role as an initiator and leader of its development.

Countries that ratify the document are obliged to take measures to fight organized crime, such as recognition of certain acts as crimes, setting the conditions for extradition, mutual legal assistance and cooperation between law enforcement bodies or training of officials. Thus, the subject matter of this Convention expands on that of the Vienna Convention, as a broader range of money laundering offences has been outlined, going beyond drugs. Additionally, under this Convention, legal entities involved in crimes involving organized criminal groups can be held criminally, civilly and administratively liable. It was one of the first documents that drew attention to the global nature of the problem of money laundering in organized crime<sup>5</sup>.

Another attempt to combat money laundering on a global scale was the creation of the Basel Committee on Banking Supervision at the Bank for International Settlements in 1974. Initially, the Committee was formed by the G10 countries, but now it consists of the following members and observers. The members are 45 institutions – central banks and banking supervisory bodies from 28 jurisdictions: Saudi Arabia, Argentina, Australia, Belgium, Brazil, China, France, Germany, Hong Kong, India, Indonesia, Italy, Japan, Korea, Luxembourg, Mexico, Russia, South Africa, Singapore, Spain, Switzerland, Sweden, Turkey, the European Union, and the United Kingdom. Chile, Malaysia and the United Arab Emirates are observers.

The purpose of the Committee is to create and disseminate principles of banking supervision and to facilitate international cooperation in this area. It is worth mentioning, however, that the Committee is not mandated to perform a supervisory function and thus its guidelines are not binding but recommended. It is expected that the standards, recommendations and good practices set by the Committee, will then be implemented in the legislation of individual countries, adapting them to the specificity of the system. The first document issued by the Committee, directly dealing with

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<sup>5</sup> [https://www.knf.gov.pl/o\\_nas/wspolpraca\\_miedzynarodowa/organizacje/BCBS](https://www.knf.gov.pl/o_nas/wspolpraca_miedzynarodowa/organizacje/BCBS) [data dostępu 29.05.2022].

the subject of AML guidelines of December 12, 1988. „Prevention of criminal use of the banking system for the purpose of money-laundering“<sup>6</sup>. It urges bank executives to be more cautious and vigilant against financial crime and to develop effective anti-money laundering procedures. The most important recommendations contained in the declaration include: the obligation to identify customers and keep proper records, cooperation with authorities upholding the law, training of employees in recognizing cases of money laundering, and compliance with the principles of proper recording of transactions.

### 3. Legal Recommendations Against Money Laundering

The most important and influential international organization in the fight against money laundering is the Financial Action Task Force (FATF)<sup>7</sup>. It was established in 1989 at the G7 summit in Paris in response to growing concern about money laundering. The first members were the G7 countries (France, Japan, Canada, Germany, United States, United Kingdom, Italy), the European Commission and 8 other countries: Australia, Austria, Belgium, Spain, Netherlands, Luxembourg, Sweden and Switzerland. The number of members has now increased from the original 16 to 39<sup>8</sup>. Poland is not a member, however it cooperates with the FATF by implementing the standards. FATF is the only organization established solely for the purpose of combating money laundering. In July 1990 FATF presented 40 recommendations, to which it was committed at its establishment. These recommendations were aimed at improving legal systems, strengthening the role of the financial system, and increasing international cooperation. In its report, it also presented a detailed process of money laundering, as well as the combat mechanisms in place at the time<sup>9</sup>. In creating the Recommendations, it took into account the provisions of the Vienna Convention of 1988 and the recommendations of the Basel Committee on Banking Supervision, and required States to adopt the Convention, since they were not parties to it, so it did not enter into force immediately after its enactment. The Recommendations were first revised in 1996 to accommodate changing money laundering trends and techniques and to focus more attention on money derived from drug trafficking. In late 2001. The FATF expanded its remit by initially adopting eight (and then one additional) Special Recommendations on terrorist financing . In 2003. In 2003, the Recommendations were amended for the second time to become universally accepted, international standards against money laundering and terrorist financing being adopted by a total of 180 countries around the world. The current version of the Recommendations was promulgated in 2012 and is subject to constant, greater or lesser, updates. The most recent update took place in 2022. The FATF Recommendations focus on regulations covering various areas of law.

<sup>6</sup> „Preventing the criminal use of the banking system for money laundering purposes“.

<sup>7</sup> Financial Action Task Force.

<sup>8</sup> <https://www.fatf-gafi.org/publications/fatfgeneral/documents/firstfatfreportontheextentandnatureofthemoneylaunderingprocessandfatfrecommendationstocombatmoneylaundering.html> [ data dostępu 04.06.2022].

<sup>9</sup> Ibid.

Currently, the Recommendations are divided into specific areas, as follows:

1. AML/CFT policy and coordination (Recommendations 1 – 2),
2. money laundering and confiscation (Recommendations 3 – 4)
3. terrorist financing and proliferation financing (Recommendations 5 – 8),
4. 4 Preventive measures (Recommendations 9 – 23),
5. transparency and beneficial ownership of legal persons and arrangements – transparency and beneficial ownership (Recommendations 24 – 25),
6. powers and duties of competent authorities and other institutional actions (Recommendations 26 – 35),
7. international cooperation (Recommendations 36 – 40)<sup>10</sup>.

The recommendations in 1) deal with risk assessment and the application of risk-based approaches and the coordination of national regulations and policies.

It is important at this point to divide the approaches that have formed in AML practice – the rule-based approach and the risk-based approach. The rules-based approach involves monitoring customers and their transactions for matches to a whole range of situations that may be associated with money laundering, i.e., e.g., over-threshold or mismatched transactions with customer activity, etc. While transaction screening is important and necessary, it is not very effective on its own because the vast catalog of potential situations makes it difficult to navigate, plus banks and regulators become very predictable to criminals, which pushes them to invent more methods. The risk-based approach is more flexible, there are metrics to assess a client *ex ante* to identify a potential money laundering attempt before it happens, taking into account geography, organization, ownership structure, reputation, etc.

Going back to point 1), it recommends that higher risks be identified and the internal AML legal regime be appropriately tailored to them. Point A also recommends simplified measures for lower risk profiles. In addition it commits to a regular review of the country in force and the establishment of a competent authority to perform a control function in this regard<sup>11</sup>.

Point 2) refers to the Vienna and Palermo Conventions and indicates that the offence of money laundering should be linked to all serious crimes in order to draw attention to the fact that money laundering is the result of money being obtained illegally. In addition to this, countries should confiscate or freeze the assets from the criminal acts<sup>12</sup>.

Point 3) recommends the criminalisation not only of terrorism in itself, but also of terrorist financing (since, as indicated above, terrorist organisations launder money on a massive scale), as well as the individuals who carry out terrorist attacks. It also recommends the implementation of sanctions against terrorists, consistent with the requirements of the UN Security Council, and explicitly mentions non-profit organisations as being vulnerable to money laundering by terrorists and recommends reviewing and updating the law relating to this legal form in order to prevent money laundering and terrorist financing.

<sup>10</sup> <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> [data dostępu 04.06.2022].

<sup>11</sup> <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> [data dostępu 04.06.2022].

<sup>12</sup> *Ibid.*

Point 4) refers to preventive measures. FATF indicates that bank secrecy should not hinder the implementation of these Recommendations. Moreover, it obliges financial institutions to customer due diligence (CDD), i.e. to:

- 1) identify and verify customer data from reliable and independent sources,
- 2) identify the beneficial owner,
- 3) obtain information on the purpose and nature of the business relationship,
- 4) constantly conducted analysis of the customer in order to verify assumptions and risk assessment on the basis of executed transactions and possible adjustments,
- 5) whenever a financial institution,
- 6) establishes a relationship with the customer
- 7) the customer conducts occasional transactions or transactions that exceed thresholds,
- 8) there is a probability of money laundering or financing of terrorism,
- 9) has doubts about the accuracy of the customer's assessment.

Thus, financial institutions are de facto prohibited from maintaining anonymous or fictitious accounts. In addition, financial institutions should have a legal obligation to keep the above information about customers and information about their financial activities at the institution in order to be able to cooperate efficiently with law enforcement agencies or authorities competent to investigate money laundering offences. Item (4) also provides a concise definition of politically exposed person (PEP) and the obligation to apply more specific measures of risk, correspondent banking, money or value transfer and remittance services, and new technologies. In addition, in point 4), the FATF allows financial institutions to partially use third-party service providers to obtain customer data, imposes mandatory internal controls also on subsidiaries and branches, imposes enhanced due diligence on high-risk countries, imposes monitoring and reporting of suspicious transactions, prohibits tipping-off. – e.g. to a customer that they are being investigated protecting them from possible consequences, and lists a list of professions and businesses that are not financial institutions that should be required to conduct CDD in certain cases, these are:

- 1) casinos,
- 2) real estate agents,
- 3) dealers in precious stones and metals,
- 4) lawyers,
- 5) trusts<sup>13</sup>.

The recommendations listed in 5) address transparency and disclosure of beneficial ownership structures. States should ensure that there are adequate, accurate and up-to-date records about beneficial owners and persons controlling legal entities that can be obtained or accessed in a timely manner by competent authority<sup>14</sup>.

Paragraph 5) concerns recommendations relating to investigative procedures. States should ensure that financial institutions are adequately supervised and regulated and that they effectively implement the FATF recommendations discussed. Countries

<sup>13</sup> Trusts are legal forms of property transfer, very popular in Anglo-Saxon legal systems, not present in Poland – in their residual form they can be compared to a trust.

<sup>14</sup> Ibid.

should authorize designated law enforcement authorities to investigate money laundering and terrorist financing under their internal AML/CFT laws. This paragraph also includes the definition, duties and responsibilities of supervisory authorities, such as conducting inspections, imposing disciplinary and financial sanctions, including the power to revoke, limit or suspend a financial institution's license. Competent authorities should be able to use appropriate investigative techniques such as undercover operations, interception of communications, access to computer systems and controlled delivery. In addition, states should have effective mechanisms to identify natural and legal persons holding or controlling accounts. Moreover, there should be a wide range of effective, proportionate and dissuasive sanctions, whether criminal, civil or administrative, which should apply not only to financial institutions but also to senior management. Additionally, in this paragraph, the FATF recommends that comprehensive statistics be kept on issues related to the efficiency and effectiveness of AML/CFT systems<sup>15</sup>.

The final point G of the FATF Recommendation concerns international cooperation. With respect to this point, countries should fully implement the Vienna Convention, the Palermo Convention, the United Nations Convention against Corruption, and the Convention on the Financing of Terrorism. FATF also recommends implementation of other international conventions such as the Council of Europe Convention on Cybercrime, U.S. Convention Etiquette, and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Criminal Assets and on the Financing of Medicine. In relation to point 7), countries should jointly combat money laundering crimes by applying extensive investigation and prosecution cooperation, relying on mutual exchange of information, both upon request and independently, based on clear and effective criteria<sup>16</sup>.

#### 4. Conclusion

Public awareness of money laundering phenomenon, its negative effects and methods is insufficient. For this reason, it is necessary to activate citizens to fight this phenomenon through education and awareness of the negative impact of crime on the functioning of the state, as well as by encouraging cooperation with law enforcement agencies, other responsible authorities and financial institutions themselves.

We currently live in an era of extremely rapid development of technology, innovation, artificial intelligence and machine learning. This also applies to anti-money laundering and terrorist financing. The development of new technologies and their increasing use has strengthened financial institutions' efforts to comply with financial crime laws.

There is no doubt that money laundering laws and regulations are being developed in the right direction, but given the implications of criminal activity for both the global financial system and societal concerns, preventing illicit money flows should be given a much higher priority than it currently is.

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<sup>15</sup> <https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf> [data dostępu 04.06.2022].

<sup>16</sup> Ibid.

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## STANDARDS AND LEGAL RECOMMENDATIONS ON COMBATING MONEY LAUNDERING IN THE WORLD

*Jacek Stasiak*

**Abstract:** Money laundering is inextricably linked with the activities of international organized crime groups. In view of this fact, the fight against this crime is not only difficult in a particular country, but also ineffective, because nowadays the national borders do not constitute an obstacle for criminals, because the development of modern technology, free movement of people and capital makes it possible to make financial transactions around the world without moving from one place.

**Keywords:** money laundering, sanctions, law, criminal liability.