
Combating Money Laundering in Poland in 2010-2016: Criminal Law and Forensic Analysis

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Abstract:

Purpose: The aim of the study is to determine the state of the crime of money laundering in Poland, its determinants, and the mechanisms of functioning, in terms of statistics and the forms and methods of committing these offences in order to develop optimal criminal law measures and relevant procedural and investigative actions.

Design/Methodology/Approach: The research is based on statistical data and an analysis of comprehensive data containing information on criminal activities of money laundering perpetrators contained in state security reports and related literature.

Findings: Statistics on the money laundering crime show that there has been a cyclical increase in money laundering over recent years, with the increased number of preparatory proceedings and investigative operations, although the growth rate of crimes is stable. The data obtained indicate the high effectiveness of cooperation between financial institutions and police formations and special services, both at the level of control and detection activities (judicial and extrajudicial), which allows for the criminal prosecution of perpetrators and the recovery and security of assets against possible penalties and claims.

Practical implications: It has been found that Polish financial control institutions and law enforcement authorities dealing with the fight against the money laundering crime play an important role in effectively countering and combating this complex transnational crime. These arrangements contribute to the identification of forms and methods of money laundering that affects the legal and organisational aspects of countering and combating this category of crime.

Originality/value: Research results identify the crime of money laundering, which is complex in its multi-format organisational structure, characterised by numerous and diverse forms of conduct, and develop more effective methods of countering and combating money laundering by financial control bodies and police formations and special services.

Keywords: Money laundering, economic crime, economic security, combating money laundering, police, detection process.

JEL code: Security issues.

Type of study: Research article.

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1. Introduction

The economic crime is characterised by numerous and diverse forms of conduct of perpetrators. In this structure, money laundering poses a significant threat, in particular because of the multiplicity of forms of conduct of perpetrators and their considerable camouflage. Effective combating therefore requires law enforcement authorities to select optimal criminal law measures, and their application depends on the fullest possible understanding of the regularity governing this phenomenon, its determinants, and its functioning mechanisms.

The aim of the study is to determine the state of the crime of money laundering in Poland, its determinants, and the mechanisms of functioning, in terms of statistics and the forms and methods of committing these offences to develop optimal criminal law measures and relevant procedural and investigative actions.

2. Money Laundering Crime in the Legal and Forensic Perspective

In Polish law, Article 299 § 1, 2, 5, and 6 of the Penal Code of 6 June 1997 (Journal of Laws 2020, item 1444, as amended) and Articles 35-37 and 37a of the Countering Money Laundering and Financing of Terrorism Act of 16.11.2000 (hereinafter: AML/CFT Act) (Journal of Laws 2016, item 299). Criminal assets are subject to laundering, but the case law (Appeal Court Judgment, 2012) indicates that the following can also be laundered:

- “*other assets*” (Article 2(3) of the AML/CFT Act), understood as means of payment, financial instruments within the meaning of Article 2 (1) of the Trading in Financial Instruments Act of 29 July 2005 (Journal of Laws No 183, item 1538, as amended), as well as other securities or foreign exchange values, property rights, movable and immovable property;
- “*moving property*” referred to in Article 44 et seq. of the Civil Code of 23 April 1964 (Journal of Laws 2017, item 459; Michalska-Warias 2006), which results from the wording of Article 299 of the Penal Code [“*Who.. means of payment, (...) or other movable or immovable property (...)*”].

These crimes fall within the structure of the economic crime and include criminal offences listed in the Annex to the Recommendations of the Council of Europe of 25.06.1981 No. R 81/12 (Council of Europe 1981) (Table 1).

From an investigative and forensic point of view, money laundering offences are characterised by a heterogeneous weight, are usually complex and committed in a planned and strategically designed manner. The process requires the existence of an appropriate organisational structure and human and material resources to conduct it. This entails the allocation of tasks between certain people, due to the stage and form of legalisation. Criminals try to conduct financial operations under seemingly reliable legal titles often combining legal and illegal revenues (a blending method).

Perpetrators have economic and legal knowledge. They also use the services of people with such qualifications, who, often unconsciously, are used in this illicit practice by advising on how to efficiently allocate money or reduce the tax burden. This fact is highlighted by Mr Brandon (2000) in the reports of the Financial Action Task Force (FATF). These reasons and related corruption (Petrasheva *et al.*, 2017) make the fight against money laundering crime a complex process.

Table 1. *Types of money laundering offences.*

Category of offences	Individual provisions on money laundering
Penal Code Act of 6 June 1997	Article 299 §1 of the Penal Code (acceptance of means of payment, financial instruments, securities, foreign currency, property rights or other movable or immovable property derived from benefits relating to of the commission of a prohibited act and their possession, use, transfer or export abroad, concealment, transfer or conversion, assistance to transfer or possession or other acts which may prevent or considerably hinder the assertion of criminal origin or place of depositing or detection or seizure or adjudication of the forfeiture)
	Art. 299 §2 of the Penal Code (acceptance, by employees or acting on behalf of or in favour of a bank, or a financial or credit institution or any other subject with which under the provisions of law rests a duty of recording transactions and by persons executing transactions, contrary to the regulations, means of payment, financial instruments, securities, foreign currency, transfer or conversion, or acceptance hereof in other circumstances arousing justified suspicion that such items are an object of the act specified in §1, or the provision of other services that are to conceal criminal origin of the same or a service protecting such items from seizure)
	Art. 299 §5 of the Penal Code (commission of the act specified in §1 or §2 in cooperation with other persons)
	Art. 299 §6 of the Penal Code (commission of the act specified in §1 or 2 in order to gain considerable material benefit)
	Art. 299 §6a of the Penal Code (preparation for the act specified in §1 or §2)
Countering Money Laundering and Financing of Terrorism Act of 16.11.2000	Art. 35 of the Act (failure to register a transaction, to provide the General Inspector with documents related to that transaction or to keep the record of these transactions or documents related to that transaction for the required period)
	Art. 36 of the Act (failure to inform the General Inspector of Financial Information (GIFI) about a transaction suspected of being the subject of a criminal offence, providing incorrect data to the GIFI)
	Art. 37 of the Act (incurring significant damage by committing an offence referred to in Art. 35 (1) or (2) or Article 36)
	Art. 37a (preventing or impeding audit activities)

Source: *Own study.*

An additional difficulty is depositing acquired funds and establishing companies for this purpose in tax havens (put on the so-called *blacklists*), i.e., countries that do not follow the FATF Recommendations and do not cooperate in the fight against this illicit practice (Newman, 1999; Adamoli, 2002). The primary difficulty in

combating this illicit practice is the need to prove the underlying offence from which the financial asset is introduced into the financial system – it is a complex process involving different money laundering models (including the Bernasconi model (Bernasconi, 1987; Bernasconi, 1988), the Zünd model (Zünd, 1990), the cycle model (Ackermann, 1998; Hoyer and Klos, 1998), including the popular three-phase money laundering model: 1) introduction of the financial asset to the legal financial market, 2) multiple transfers and transactions, and 3) deposits on the legal market (Vogt, 1993; Schuster, 1994).

In Poland, the fight against money laundering is dealt with by specialised financial services such as the General Inspector of Financial Information (GIFI), the Polish Financial Supervision Authority (PFSA), the Tax Chambers (IS)² and the Tax Control Offices (UKS), and the police and the police and special services, such as the Internal Security Agency (ISA), the Central Anti-Corruption Bureau (CBA), the Border Guard (SG), the Customs Service (SC), the Military Counterintelligence Service (MCS). The police and other institutions often cooperate with the Office of European Affairs, The European Anti-Fraud Office (OLAF) or the FATF, using acts of legal procedure, acts of legal and criminal procedure and extrajudicial acts (investigative operations) (Gašiorowski, 2014).

3. Materials and Methods

Research based on statistical data and an analysis of comprehensive data containing information on criminal activities of money laundering perpetrators contained in state security reports and specialist literature. *The statistical analysis of the money laundering crime analysed the data in Reports on state security in Poland for the years 2010-2016 published by the Ministry of the Interior and Administration (MSWiA) in 2011-2017 (such data is not published for later years). Data analysed was on:*

- the state of the crime of money laundering established by law enforcement authorities in statistical terms;
- the criminal aspects of committing money laundering offences.

4. Activities of the General Inspector of Financial Information

The General Inspector of Financial Information operates based on Article 3 (1) (2) of the Act of 16.11.2000 the AML/CFT Act and his tasks (Art. 4 (1)) include obtaining, collecting, processing and analysing information in accordance with the procedure laid down in the Act and taking action to counter money laundering and terrorist financing. Between 2010 and 2016, the GIFI received 21 575 descriptive notifications of suspicious activities and transactions, SARs (Suspicious Activity Reports). There were also 214 694 pieces of information on individual suspicious

²*Translator's note: IS, UKS, CBA, SG, and SC are Polish abbreviations.*

transactions, based on 13,303 analytical proceedings were initiated and 1 276 notifications of money laundering crime and a potential loss amount of PLN 77 738 mil were submitted to the Public Prosecutor's Office, and 1 884 transactions were blocked and prevented for the total amount of PLN 10 663 mil (Table 2).

The General Inspector of Financial Information transferred 10 864 suspicious transaction information to the following institutions: to Tax Control Offices 6 765 (62.27 %); to the Police 2 112 (19.44 %); to the Internal Security Agency, including the Terrorist Combating Centre 1 564 (14.40 %); to Tax Chambers 194 (1.79 %); to Central Anti-Corruption Bureau 101 (0.93 %); to the Border Guard 92 (0.85 %); to the Polish Financial Supervision Authority 30 (0.28 %); to the Customs Service 3 (0.03 %) and to the Military Counterintelligence Service 3 (0.03 %) (MSWiA Reports 2012-2016).

Table 2. Information on individual transactions suspected of money laundering.

Year	Descriptive information on suspicious activities	Information on individual suspicious transactions	Analytical procedures initiated	Notifications of the offence to the Public Prosecutor's Office (PLN mil)	Total number of accounts blocked and transaction prevented (PLN mil)
2010	1997	15357	1257	120 (1300)	112 (59.7)
2011	2527	24383	1505	130 (3952)	314 (96.1)
2012	2427	31376	1523	111 (4636)	141 (66.5)
2013	3265	26925	1882	159 (15 250)	345 (295.3)
2014	3637	24868	2401	170 (18 200)	287 (185.4)
2015	3521	70345	2229	184 (15 800)	339 (161.8)
2016	4201	36782	2506	402 (18 600)	347 (202.5)
Total	21575	214694	13303	1276 (77738)	1884 (10663)

Source: Study based on Reports on state security in Poland, years 2010-16, MSWiA 2011-17.

In addition to the General Inspector of Financial Information, the Polish Financial Supervision Authority, acting on the basis of Art. 21(3) (2) of the AML/CFT Act plays an important role in the control system in money laundering cases. It conducts audits in institutions obliged to fulfil their obligations in the field of counteracting this activity (banking, insurance, and capital sectors), which result in, inter alia, warnings. As regards the analytical and control activities, it sends the notifications of criminal transactions to the GIF, and, in addition, sends letters, concerning the issue of illegal trading of accounts that may be related to this illicit practice to the banking sector, cooperative credit unions and credit institutions.

5. Law Enforcement Activity

The basic form of clarifying the circumstances related to the suspicion of money laundering and collecting evidence to that effect is preparatory proceedings. They are initiated by law enforcement authorities (Public Prosecutor's Office, Police, the

Internal Security Agency, etc.) based on various sources of information, such as the results of administrative, anti-fraud and customs/tax inspections, as well as from subsidy clearing institutions (without on-site inspections and after an on-site inspection conducted on its own initiative), the General Inspector of Financial Information, the Tax Chambers and the Tax Control Offices as well as EU bodies and individuals. An important part of the sources was information from individual police units, the Internal Security Agency, etc. obtained as part of judicial and extrajudicial activities (investigative operations) during the joint activities of police units, often in the structure of operational and investigation groups, which use a wide range of rights characterised by confidentiality.

The legal basis in the case of the Police is the provisions of Article 19 et seq. of the Police Act of 6 April 1990 (Journal of Laws, 2020, item 360) and secondary legislation, e.g. the Order of the Commander-in-Chief of the Police No. pf-634 of 30.06.2006 on the methods and forms of performing investigative operations by the Police (unpublished), and the Internal Security Agency - the Act of 24 May 2002 on the Internal Security Agency and the Intelligence Agency (Journal of Laws of 2020, item 27 as amended). These operations are conducted by means of operational forms and methods of varying degrees of complexity, using personal sources of information (spy networks), conducting reconnaissance aimed at infiltrating the criminal environment (Gąsiorowski, 2015b; Gąsiorowski, 2020). The results of the actions of the Police, the Internal Security Agency, the Public Prosecutor's Office, and the Ministry of Justice are presented below. The result data of police crime statistics cannot be compared with those of prosecution or judicial statistics due to different registration rules.

5.1 The Activity of the Police in the Fight Against Money Laundering

While carrying out statutory tasks (Art. 1 para. 2(3) of the Police Act), the police use the powers to undertake judicial and extrajudicial activities to combat crime, as defined by the Code of Criminal Procedure of 6 June 1997 (Journal of Laws No 89, item 555 as amended) and *Police Law*. The Police structure also includes the Central Investigation Bureau of the Police (CBŚP) (Gąsiorowski, 2014). The number of criminal proceedings for money laundering offences instituted by the police between 2010 and 2016 amounted to 1 267. 1 140 proceedings (89.98 %) were instituted based on evidence and investigative operations helped to institute 127 (10.02 %) proceedings.

In the vast majority of cases, these proceedings concerned offences under Article 299 §1-6 of the Penal Code. The number of proceedings conducted by the police is not large, although these are often long-lasting and multi- multi-layered proceedings. Some are instituted on the basis of information from their own sources, and some are based on GIFI notifications (2 112 notifications).

The police discovered 2,338 money laundering offences, while 2 223 (95.08%) were detected. The offences discovered represent 0.03 % (with a difference of 6 990 396) of the total offences and economic offences - 0.21 % with a difference of 1 085 379 offences. 2 153 (92.09%) offences discovered and penalised in Article 299 § 1-6 of the Penal Code, whereas 185 (7.91%) offences under the AML/CFT Act. In the group of offences detected out of 2 223 offences of money laundering, 2 038 (91.68%) offences were under Article 299§ 1-6 of the Penal Code and 185 (8.32%) offences under the AML/CFT Act. The Treasury suffered quantifiable losses (Table 3) estimated at PLN 3 828 183 601.

Table 3. Losses recorded by the police as a result of money laundering offences.

Year	Amount of losses in PLN	Property secured in PLN
2010	1 763 370 327	24 267 454
2011	515 654 810	41 797 111
2012	852 884 243	12 212 141
2013	114 874 312	3 452 302
2014	85 142 119	5 072 085
2015	337276202	22 590 754
2016	158981588	22461036
Total	3 828 183 601	131 852 883

Source: Study based on Reports on state security in Poland, years 2010-16, MSWiA 2011-17.

The above actions of the Police allowed them to recover and secure assets in the amount of PLN 131 852 883 against possible penalties and claims.

5.2 The Activity of the Internal Security Agency in the Fight Against Money Laundering

The Internal Security Agency instituted 217 criminal proceedings between 2010 and 2016. 191 (88.02 %) proceedings were instituted based on evidence (based on 1 564 pieces of information from the GIFi) and investigative operations allowed for the institution of 26 (11.98 %) of all proceedings (Table 4).

Table 4. Preparatory proceedings in money laundering cases (Art. 299 of the Penal Code) instituted by the Internal Security Agency and based on investigative operations.

Year	Criminal proceedings instituted			Number of charges
	Total	based on evidence	based on investigative operations	
2010	16	14	2	80
2011	34	29	5	55
2012	27	25	2	72
2013	54	42	12	173
2014	33	33	N/D	133
2015	26	26	N/D	158

2016	27	22	5	164
Total	217	191	26	835

Source: Own study based on Reports on state security in Poland for the years 2010-2016, MSWiA 2011-2017.

In the course of criminal proceedings, the Internal Security Agency collected evidence enabling 835 charges to be made against the perpetrators of money laundering offences.

5.3 The Activity of the Public Prosecutor's Office Against Money Laundering

Acting in accordance with the provisions of the Public Prosecutor's Office Act of 28 January 2016 (Journal of Laws 2016, item 66), the Public Prosecutor's Office conducted a total of 4 978 criminal cases on the basis of preparatory proceedings of various law enforcement authorities (Table 5).

Table 5. Proceedings conducted by the Public Prosecutor's Office in money laundering.

Year	Number of	Number of criminal	Ad	Number of
2010	866	223	67	1726
2011	946	192	75	1968
2012	830	202	73	1729
2013	617	212	76	1101
2014	773	351	116	2677
2015	946	311	114	2569
2016	N/D	278	77	206
Total	4978	1769	598	11976

Source: Own study based on Reports on state security in Poland for the years 2010-2016, MSWiA 2011-2017.

The value of the assets secured by the Public Prosecutor's Office amounted to PLN 703 300 576 and forfeited assets, the proceeds of crime or their equivalent amounted to PLN 172 139 944. Detailed data is presented in Table 6.

Table 6. Assets recorded by the Public Prosecutor's Office in money laundering.

Year	Assets secured in PLN	Assets forfeited in PLN
2010	215 590 000	1 935 279,07
2011	71 400 000	N/D
2012	225 300 000	44 299 582,92
2013	326 450 000	4 329 046,35
2014	346 328 578,34	7 354 158,00
2015	296 183 748, 11	41 973 798,67
2016	222048249,7	72248078,8
Total	703300576	172139944

Source: Study based on Reports on state security in Poland, years 2010-16, MSWiA 2011-17.

5.4 Methods of Committing Money Laundering Offences

The analysis of the evidence shows that money laundering perpetrators committed this offence in a variety of ways available, depending on their knowledge, skills, and organisational and technical possibilities. These were intentional acts or omissions involving misrepresentation for personal gain and gains for related persons or third parties. The perpetrators often interacted with people whose involvement for formal reasons was necessary to commit the offence. They are financial institution employees whose traditional motivation (personal gain, etc.) should be broadened, in line with the D.E. Cressey's theory of the fraud triangle (Arens *et al.*, 2009), to include factors such as a motive (pressure), opportunity and justification (rationalisation), and who have the ability to circumvent the internal control system, making this fraud difficult to identify and which can relate to both the operational and financial activities of the individual. The most vulnerable areas of activity are where employees are in contact with the external environment and cash (Gąsiorowski, 2016).

The findings show that no new, unknown methods of money laundering have been identified that would be used by perpetrators in the successive phases of money laundering. The money laundering methods identified included transfer of cash abroad via bank accounts, currency exchange transactions, electronic transfers, fictitious loans and donations, a fictitious account method, so-called "dashboard" and "target account", transactions made with the help of so-called "straw men" and "shell companies", blending income and shredding cash transactions. Entities operating in tax havens or jurisdictions with strict banking secrecy have also been used.

The most vulnerable sector was the banking system, through which offences covered by Article 299 of the Penal Code (Table 1) were committed related to offered investment and value transfer products and services when exchanging cash flows between parties/contractors of money laundering (Gąsiorowski and Podsiadlik, 2015a; Gąsiorowski, 2019a). The criminal interest of launderers also focused on cryptocurrencies (distributed accounting systems/clearing systems, which are based on cryptography), especially bitcoin (BTC), which was bought and sold on online stock markets ("exchange bureaus"), as well as in bitomats where virtual money can be sold or bought, using real currencies. Companies which provide so-called "fast loans" were also used to introduce "bad money" into legal financial transactions.

Financial operations in fuel and scrap cases, in which perpetrators conducted numerous financial operations using "fly-by-night companies", fictitious bank accounts or "strawmen" should also be distinguished. Individual launderers also conducted operations to obtain financial gains for the services provided to organised crime groups, such as courier services (cash couriers, cash mules) or the use of prepaid cards. The rapidly growing sphere of money laundering was the insurance sector, where money launderers used products and services, such as the "two-in-

one” products, i.e., the combination of an insurance product with an investment product.

Organised crime groups have also focused on raising funds from the extortion of EU subsidies due to the maximum possible amount of money raised through this funding. It was found that a large part of the funds received by individual beneficiaries were paid in cash, either directly from the beneficiary’s account or indirectly from the accounts of other entities, including to foreign companies (Gašiorowski, 2020). VAT fraud was also of particular interest, especially in the scrap market, fuel or excise fraud market, as well as tax offences under the Tax Penal Code of 10 September 1999 (Journal of Laws 2018, item 1958), including, in particular, exposure to a loss or undue refund of VAT and excise duty, by stating falsely in tax returns accompanied by unreliable issuance of invoices or false certification of an untrue statement in other documents (Articles 54, 55 §1, 56, 62 §2, 63 §1, 65 §1, and 76 of the Tax Penal Code, Article 271 §1 and 3 of the Penal Code).

Transactions in the construction industry and the creation of fake companies were also an effective method of money laundering. Their sole task was to register and open an account with one or more banks. These companies reach a high turnover with very low income immediately after being established. Funds paid into their account are immediately paid out and companies are characterised operation for a short time (MSWiA Report 2014).

Offences against property are also important, albeit to a lesser extent, with particular reference to fraud (Article 286 §1 of the Penal Code) and misappropriation of property (Article 284 §1 and 2 of the Penal Code), as well as offences against business trading (Article 296 of the Penal Code, Article 585 of the Commercial Companies Code), as well as criminal offences, where funds derived from offences listed in the Anti-Drug Abuse Act were subject to laundering, in particular Article 42 (3) and 56 (3) of the Act of 29 July 2005 on countering drug addiction (Journal of Laws No 179, 1485).

6. Conclusion

Over recent years, Poland has seen a cyclical increase in the number of money laundering offences committed (with an unknown dark figure), while at the same time there has been an increase in preparatory proceedings, including investigative operations, which significantly support law enforcement activities. The data obtained demonstrates the high effectiveness of cooperation between financial institutions, such as the GIFi or PFSA, with police formations and special services, as well as the prosecutor’s office, both at the level of control and detection activities, which makes it possible to effectively prosecute the perpetrators of these crimes and to recover and secure property against possible penalties and claims. The findings of financial control and law enforcement authorities make a significant contribution to

the identification of forms and methods of criminal money laundering and, as a result, to combat it.

The detection activities of Polish law enforcement authorities aimed at combating the crime money laundering have become increasingly effective over the last years. This is the result of the permanent investigation of this phenomenon and of the detection measures taken, which results in the adaptation of the current commercial and criminal legislation to the changing political, social, and economic conditions. An important element in identifying risks in money laundering is the international cooperation undertaken within the framework of the AWF SOC FP Suspicious Transactions (FP SUS-TRANS) analysis file. In this channel information is exchanged and contributions are made to international money laundering cases, which feeds EUROPOL's analytical bases and makes it possible to combine cases in other countries, in particular the EU. The European Commission's methodology for trans-national risk estimation for each identified money laundering activity is also relevant.

To sum up, research results allowed for the identification of the crime of money laundering, complex in its multi-format organisational structure, characterised by various forms of conduct. The statistical determination of its level and the forms and *modus operandi* allow for the development of optimal criminal law measures and relevant procedural and investigative actions to enable the Polish law enforcement authorities to combat this offence more effectively.

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