PROBLEMS OF COMBATING MONEY LAUNDERING IN THE STATE BORDER GUARD

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Abstract. *Money laundering is one of the offences included in a list of ten crimes (known as "Eurocrimes") on which the European Union will focus most of its attention. In this article, the author reviews the definitions of the term "money laundering", describes the competence of law enforcement institutions combating money laundering, including the one of the State Border Guard in cases when money laundering has been detected, analyses relevant statistical data and defines the problems of combating money laundering in the State Border Guard. The aim of the study is to analyse the concept of money laundering, to identify law enforcement institutions that combat money laundering, to look at possible problems faced by the State Border Guard in combating money laundering. The object of the study is money laundering, the subject of the study - problems of combating money laundering in the State Border Guard. The methods used in the study are: comparative method, semantic method, legal analysis method.*
Keywords: *law enforcement institution*, *money laundering*, *prevention*, *property*, *State Border Guard*, *to combat*.

Introduction

The fight against money laundering in the Republic of Latvia was launched on 18 December 1997, when the Law on the Prevention of Money Laundering was adopted. With the entry into force of the Law, the Anti-Money Laundering Service (the Control Service) was set up. On 17 July 2008 a new law, the "Law on Prevention of Money Laundering and Terrorist Financing", replacing the previous law, was adopted. Due to the amendments to the Law on the Prevention of Money Laundering and Terrorist Financing, adopted on 13 June 2019, the Control Service was assigned a new name - the Financial Intelligence Service (hereinafter referred to as the "FIS").

The criminalization of money laundering in Latvia took place in order to fulfil Latvia's international obligation to determine responsibility for such offenses (Latvijas Republikas Senāta Krimināllietu departamenta lēmums, 12.03.2024., Lēmums lieta Nr. 15830111509, SKK-50/2024).

Currently criminal liability for money laundering is defined in Section 195 of the Criminal Law.

The selected topic is very topical, especially for the representatives of certain professions, who fight against money laundering during their daily professional duties. The topicality of the topic is also confirmed by the fact that the criminal offense - money laundering is included in the list of ten

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criminal offenses (so-called "eurocrimes"), to the fighting against which the European Union pays the greatest attention (Komisijas paziņojums Eiropas Parlamentam, Padomei, Eiropas ekonomikas un sociālo lietu komitejai un Reģionu komitejai. *Ceļā uz ES krimināl politiku: ES politikas efektīvas īstenošanas nodrošināšana ar krimināltiesību palīdzību*).

Definition of money laundering

In order for law enforcement authorities to be able to combat money laundering qualitatively, it is necessary to clarify the meaning of the definition of the entire term. Section 195 of the Criminal Law states: "For a person who commits laundering of criminally acquired financial resources or other property, the applicable punishment is the deprivation of liberty for a period of up to four years or temporary deprivation of liberty, or probationary supervision, or community service, or fine, with or without confiscation of property" (Krimināllikums, 1998.).

In order to apply the above-mentioned Section correctly, it is significantly to clarify the meaning of the words: "funds", "financial resources", "property", "property" "legalisation".

Section 1 of the Law on Prevention of Money Laundering and Financing of Terrorism and Proliferation states that "funds" means financial resources or other tangible or intangible, movable or immovable property. It goes on to explain the meaning of the word "financial resources" as financial instruments or means of payment (in the form of cash or non-cash resources) held by a person, documents (in hard copy or electronic form) in the ownership or possession of a person that give the right to gain benefit from them, as well as precious metals in the ownership or possession of a person (Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma un proliferācijas finansēšanas novēršanas likums, 2008.).

The examples of practice examined show that, of these financial instruments, the most frequently used as an object of laundering is non-cash money, defined in Section 1(5) of the Financial Collateral Law of 24 April 2005 as money (except banknotes and coins) credited to an account in any currency (also all types of deposits) (Liholaja, 2022).

Jānis Kārkliņš and Jānis Rozenbergs express the opinion that in legal science the term "non- cash " is understood as financial resources in a bank account, and the presence of non-cash money in a bank account corresponds to the term "deposit", which is explained in Section 1(6) of the Law on Credit Institutions of 5 October 1995 as the keeping of funds in a credit institution account for a fixed or indefinite period (Liholaja, 2022).

The term "proceeds of crime" means the term "property obtained by crime" as used in the Criminal Law (Noziedzīgi iegūtu līdzekļu legalizācijas

un terorisma un proliferācijas finansēšanas novēršanas likums, 2008). Moreover, criminally obtained funds may be property of any kind, whether corporeal or incorporeal, movable or immovable (Latvijas Republikas Senāta Krimināllietu departamenta 27.03.2020. lēmums lieta Nr. 15830008614, SKK-58/2020).

The definition of "property" is also found in Article 3 of Directive 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, and includes assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments in any form including electronic or digital, evidencing title to or an interest in such assets (Eiropas Parlamenta un Padomes direktīva 2015/849 par to, lai nepieļautu finanšu sistēmas izmantošanu nelikumīgi iegūtu līdzekļu legalizēšanai vai teroristu finansēšanai).

Criminally acquired property is any economic benefit which has come into the ownership or possession of a person as a direct or indirect result of committing a criminal offence. (Krimināllikums, 1998).

Legalisation - authorisation of the activity of an organisation, recognition of its legality, giving legal force to a legal act, activity (Jakubaņecs, 2001).

The FIS defines money laundering as activities carried out with criminally acquired property with the aim of creating a false impression on the part of third parties as to the origin of the property. The financial system is used to create the impression of the legitimate origin of funds through seemingly mundane transactions (Noziedzīgi iegūtu līdzekļu legalizācijas novēršana).

In legal literature, legalisation of criminally acquired means is often referred to as "money laundering". Money laundering is "essentially the mixing of innocent money with guilty money to hide the latter" (Juriss, 2012).

In its guidance material for schools, the FIS defines money laundering as the process by which criminally obtained funds, or "dirty money", are made to appear legal or "clean". Any crime that generates money is money laundering (Zini naudas li[ī]kumus).

According to Section 5 of the Law on Money Laundering and Prevention of Terrorism and Proliferation Financing the following actions are considered as money laundering: the conversion of proceeds of crime into other valuables, change of their location or ownership while being aware that these funds are the proceeds of crime, and if such actions have been carried out for the purpose of concealing or disguising the illegal origin of funds or assisting another person who is involved in committing a criminal offence in the evasion of legal liability; the concealment or disguise of the true nature,

origin, location, disposition, movement, ownership of the proceeds of crime, while being aware that these funds are the proceeds of crime; and the acquisition, possession, use or disposal of the proceeds of crime of another person while being aware that these funds are the proceeds of crime (Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma un proliferācijas finansēšanas novēršanas likums, 2008.).

According to FIS explanation money laundering can be divided into three basic stages: *placement* (when the proceeds of crime (e.g., cash or its equivalent) are injected into the legitimate financial system); *layering*, or structuring (where the proceeds of crime are moved and structured away from their original source by simulating various transactions, with the aim of creating the appearance of legitimate transactions) and *integration* (where the proceeds of crime are integrated into a legitimate financial system and further used, as if legitimate, for various purposes (e.g., cash withdrawals, property acquisitions, various purchases)) (Noziedzīgi iegūtu līdzekļu legalizācijas novēršana).

In the course of the research the author concluded that the definitions that explain the concept of money laundering vary. At the national level, the definition is also explained in a number of normative acts, which, in the author's opinion, creates a serious problem - the diversity of interpretation of the concept of money laundering.

In addition, in some countries it is understood that money laundering covers only those activities involving proceeds of crime committed with the intention of concealing or disguising the origin of funds or other assets. That is to say, the perpetrator may, as a result of these activities, point to the supposedly legitimate origin of the funds. In other countries, by contrast, laundering is understood as almost any dealing with proceeds of crime, including storage and consumption (Zvejniece, 2008).

Combating money laundering in Latvia

According to Section 50(2) of the Law on Prevention of Money Laundering and Terrorism and Proliferation Financing (hereinafter referred to as the 'AML/CFT Law'), the FIS is the leading authority whose objective is to prevent the use of the financial system of the Republic of Latvia for money laundering and financing of terrorism and proliferation (Noziedzīgi iegūtu līdzekļu legalizācijas un terorisma un proliferācijas finansēšanas novēršanas likums, 2008).

The AML system is based on the subjects of the AML/CFT Law, the FIS and law enforcement authorities. The "architecture" of this system has two parts - prevention and combating. The most important part of prevention is the careful control of clients by the subjects of the AML/CFT Law, as defined

in Section 3 of the Law. The subjects of the Law are supervised and controlled by the statutory supervisory and control authorities, which can also spot possible money laundering and report it to the FIU, as well as impose penalties. The anti-money laundering bloc includes law enforcement agencies, prosecutors and courts. Law enforcement authorities are the subjects of operational activities and investigative authorities (Helmane, 2023).

Investigating authorities may initiate criminal proceedings under Article 195 of the Criminal Law after receiving information from the FID and may also conduct parallel investigations into predicate offences. In addition, under Section 59 of the Criminal Procedure Law, investigating authorities may initiate criminal proceedings in respect of criminal property.

According to Section 386 of the Criminal Procedure Law, the investigative authorities in the Republic of Latvia are the State Police, the State Security Service (hereinafter –SSS), the Internal Security Board of the State Revenue Service (hereinafter – SRS ISB), the Military Police (hereinafter – MP), the Prison Administration, the Corruption Prevention and Combating Bureau, the Tax and Customs Police of the State Revenue Service (hereinafter – SRS TCP) , the State Border Guard, the captains of sea-going vessels, the commander of a unit of the Latvian National Armed Forces located in the territory of a foreign country, and the Internal Security Bureau (hereinafter – ISB) (Kriminālprocesa likums, 2005).

According to Section 36 and Section 38(3) of the Criminal Procedure Law, in certain cases the prosecutor also decides on the initiation of criminal proceedings and may conduct the investigation himself (Kriminālprocesa likums, 2005).

Several investigative authorities in Latvia have identified the fight against money laundering as one of their priority tasks for the coming period. For example, the State Police (hereinafter - SP) in its 2023 Annual Report indicated as a strategic priority *to increase its capacity in the area of anti-money laundering and investigations* (Valsts policijas 2023. gada publiskais pārskats).

The Corruption Prevention and Combating Bureau (hereinafter referred to as the "KNAB") set as one of its priorities *the improvement of the practice of declaring the proceeds of alleged corruption of public officials as proceeds of crime and their confiscation for the benefit of the State* (KNAB gada pārskats 2023).

In its development strategy for 2023-2026, the State Revenue Service (hereinafter referred to as the SRS) set as one of its activities and objectives *to further develop risk-based prevention of money laundering, terrorism and proliferation financing in the SRS sphere of influence* (Valsts ieņēmumu dienesta attīstības stratēģija 2023.–2026. gadam).

Anti-money laundering challenges in the State Border Guard

Based on Section 386 of the Criminal Procedure Law, the State Border Guard Service (hereinafter - the SBGS) is an investigative authority. Like most other investigative authorities in Latvia, the SBGS has set as one of its activities and objectives in 2024 *the task of combating and preventing criminal offences to ensure the recovery of criminal assets and the fight against money laundering* (Valsts robežsardzes gada publiskais pārskats, 2023).

A review of the performance of the SBGS from 2017 to 2022 shows the number of criminal proceedings initiated for the particular year (see Fig. 1).

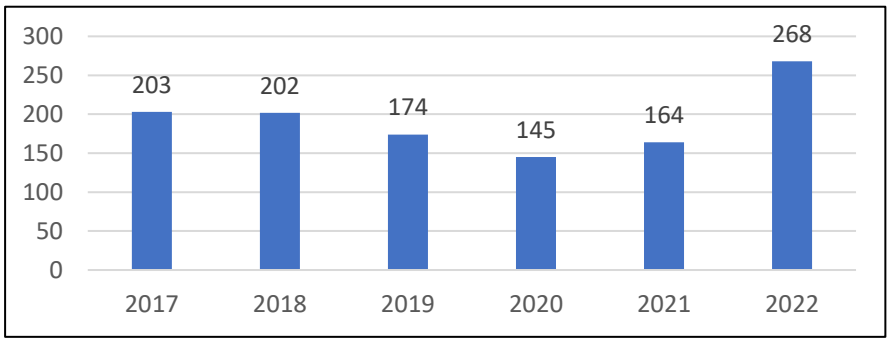

Fig. 1 Number of criminal proceedings initiated by the SBGS in 2017-2022 (compiled by the author)

Money laundering investigations are carried out in accordance with the competence for investigating predicate offences. The SP carries out the investigation of money laundering if no predicate offence has been established.

Article 2 of the United Nations Convention against Transnational Organised Crime explains that "predicate offence" means any offence which results in the proceeds of crime (Konvencija pret transnacionālo organizēto noziedzību, 15.11.2000.)

The author analysed the number of criminal proceedings initiated by the investigating authorities under Section 195 of the Criminal Law in the period 2017-2022. Statistics on these criminal proceedings initiated are included in the National AML/CFT Risk Assessment Report 2020-2022 (see Table 1).

Table 1

Money laundering criminal proceedings initiated under Section 195 of the Criminal Law and referred for prosecution in 2017-2022 (source: Nacionālais NILLTPF risku novērtēšanas ziņojums par 2020.–2022. gadu)

Institution	Criminal proceedings initiated in 2017–2019	Criminal proceedings initiated in 2020–2022	Criminal proceedings referred for prosecution in 2017–2019	Criminal proceedings referred for prosecution in 2020–2022
SP	384	895	96	256
SRS TCP	101	113	21	45
KNAB	6	29	0	3
PPO*	44	20	0	1
SRS ISB	1	6	0	2
ISB	2	4	1	4
SSS	1	3	0	2
SBGS	0	3	0	0
MP	2	2	1	2

* Public Prosecutor's Office

According to the data in the table above, 3 criminal proceedings under Section 195 of the Criminal Law have been initiated by the SBGS in the period 2017-2022.

Before assessing the performance of the SBGS in combating money laundering, it is necessary to look at its competence to investigate predicate offences. According to Section 387 of the Criminal Procedure Law, the State Border Guard investigates criminal offences related to illegal crossing of the state border, illegal movement of a person across the state border or illegal stay in the state, as well as criminal offences committed by a border guard as a state official, which are not related to violence (Kriminālprocesa likums, 2005).

As can be seen from the Criminal Procedure Law, the SBGS has a relatively narrow investigative remit compared to, for example, the SP. As a result, the SP investigates and refers to the prosecutor for prosecution more than 93% of all criminal proceedings for predicate offences.

In addition, the SBGS is also competent for cash controls at border crossing points where there are no officials of the SRS Customs Administration, as well as at border crossing points where controls are carried out only by the SBGS officials and beyond. No cash or similar instruments were seized during the reporting period (Nacionālais NILLTPF risku novērtēšanas ziņojums par 2020.–2022. gadu).

What kinds of problems can investigating authorities face when investigating money laundering?

In his book "Combating Money Laundering", A. Lieljuksis highlights a number of factors that can have a negative impact on money laundering investigations:

1. *Insufficient knowledge of investigators on various financial issues.*
2. *Investigators' personal desire to detect the predicate offence as soon as possible and to submit the case to the prosecutor for prosecution*. The investigation of proceeds of crime is very slow, thus the investigation of a predicate offence is prolonged and the investigator has no interest in initiating a search for proceeds of crime at all.
3. *The complexity of the investigation related to suspicions of laundered proceeds of crime and the use of laundered funds of criminal origin, establishing expenses of individuals that are significantly different from income*.

Based on the analysis of the factors mentioned by A. Lieljuksis in the context of the SBGS, the author's personal professional experience and the opinion expressed by officials of the relevant departments, it can be concluded that the SBGS investigators are knowledgeable and continuously improve their skills by attending various courses related to combating money laundering. The SBGS investigators carry out parallel investigations in all cases where there are reasons and grounds for initiating them. Investigations involving suspected money laundering and proving the criminal origin of laundered funds by establishing that persons have incurred expenses which are substantially different from their income are also not problematic.

How then to explain the low number of money laundering proceedings initiated by the SBGS during the reporting period? The answer lies in the narrow scope of the investigative powers of the SBGS, as it is laid down in the Criminal Procedure Law, as well as in the range of persons against whom the SBGS initiates criminal proceedings. For example, a person is detained on suspicion of having transported persons across the state border, the liability for which is provided in Section 285 of the Criminal Law. When investigating the criminal proceedings in question, the SBGS investigators are almost always confronted with a situation where the person was detained at the very moment of the committing the offence, i.e., during the illegal movement of persons across the state border. This means that the criminal has not yet received the "reward" for the crime. The second example could be related to the fight against corruption. In most cases, when investigating criminal cases related to bribery, the SBGS investigators conduct parallel investigations on money laundering and find out that the bribe-taker does not make any

savings, i.e., he spends the money obtained through criminal means on entertainment or everyday expenses, such as buying food.

Conclusions and suggestions

In the result of the study the author has concluded that:

1. Money laundering is one of the ten offences (the so-called "euro-crimes") on the list of offences on which the European Union focuses most of its attention.
2. The criminalisation of money laundering in Latvia has taken place in order to comply with Latvia's international obligations to establish liability for such offences.
3. The definitions of money laundering vary from country to country around the world. At the national level, definitions are also explained in a number of normative acts, which, in the author's opinion, creates a serious problem - diversity of interpretation of the concept of money laundering.
4. All investigative authorities in the Republic of Latvia, including the SBGS, when investigating a predicate offence, also investigate money laundering in parallel.
5. The largest number of money laundering criminal proceedings are investigated and referred to the prosecutor for prosecution by the SP.
6. The SBGS officers authorised to investigate predicate offences are sufficiently trained to conduct parallel investigations on money laundering.
7. Although the SBGS officials have the authority to perform cash controls at border crossing points where there are no officials from the SRS Customs Administration, the cases of illegal transportation of cash have not been detected so far.

Based on the conclusions of the study, the author has put forward the following suggestions:

1. In order to exclude differences of interpretation of the concept of money laundering, it would be useful for the legislators to stick to the same interpretation of the definition in normative acts both at international and national level.
2. The SBGS should improve the control of cash movements at border crossing points where there are no officers of the SRS Customs Administration, for example to consider the possibility of involving service dogs in the control.
3. The SBGS investigators should further develop the professional skills in investigating money laundering and other financial crimes.

4. The author to further study the mechanism of combating money laundering in the SBGS, paying attention to cash control at border crossing points where there are no officers of the SRS Customs Administration.

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