

# Money laundry

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*Whitening of the goods obtained through the performing crimes is a practice very unhealthy for any state, but it can be devastating for the country which is in transition to the functionally economy of market, as Romania. Confronted with this situation, world states are trying to unite their efforts through multilateral cooperation in this domain. In Romania the first regulation of the deed of money laundry was in the year 1999, through the legitimization of the law number 21/1999, prescriptive act abrogated through the law number 656/2002, actually in operation.*

## 1. Preliminary consideration

The free circulation of persons and the existence of a rapid means of communication at distance have a substantial price – the growth of interstate criminality and the offence phenomenon in generally. One of the cruelest forms of contemporary crime in our country, and not only, is the money laundry offence. In Romania, offence of the money laundry has a history almost inexistent, because the firs regulation of the deed of money laundry was in the year 1999, through the legitimization of the law number 21/1999, prescriptive act abrogates through the law number 656/2002, actually in operation. The new penal code, which is entering in operation from 1 September 2006, has similar incrementing norms with those in the law number 656/2002, with the exception of associating deed the offence committing of money laundry<sup>1</sup>. Although the deed incrimination of money laundry is not from a long time, in all world states, as an antisocial deed, it was identified more centuries ago.

Whitening of the goods obtained through the performing crimes is a practice very unhealthy for any state, but it can be devastating for the country which is in transition to the functionally economy of market, as Romania. Confronted with this situation, world states are trying to unite their efforts through multilateral cooperation in this domain. A first step was made through the adoption in the year 1998, a United Nation Convention against the illicit transfer of drugs and psychotropic substances (Vienna). At European level, the concept of money laundry was established under line 91/308/EEC on the year 1991 at Europe Council. In the same year ware adopted other lines concerning money laundry; which apply on the year 1993. An important role on European level has the Convention of Europe Council concerning washing, tracing down, sequestration and confiscation the infections products (Strasbourg, 1990, which is entering in operation from 1 September 1990)<sup>2</sup>.

The money and the others goods which are forming the offence object of money laundry come from committing the most various offences. The offences on perpetuation on which results the dirtiest money are: the drug traffic; breach regimes of weapons and ammunitions in aggravate form; breach regimes of explosives materials; the falsification of

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<sup>1</sup> In the doctrine exists controverts about the nature of the associating deed for the perpetration crime of money laundry. Seeing in this purpose *Ketty Guiu*, Money laundry, in the Law number 3/2006, page 176.

<sup>2</sup> For the presentation of the main internationals normative acts, see in this propouse *Ketty Guiu*, op. cit.,page 175.

currency or other values; prostitution; contraband; blackmail; shorting of freedom in illegally way; fraud in the banking, financial and assurance system; fraudulent cress; stealing and concreting of cars; non-observance regimes of protecting a goods; the traffic of animals protected in their countries; the trade with tissues and human organ; hacking; the crimes commit with credit cards; the crimes committed by person who are part of delinquent associations; non-observance disposals concerning the import of residues; non-observance the disposals concerning the gambles; other offences of organize crime.

The deeds of money laundry are committed through changing or transferring of goods perpetration of crimes, with the aim to hide the illegal origin of these goods, or with the aim to help persons who has committed offences which the goods are coming on perpetration of crimes.

Dirty money laundry can also made by hiding the true nature of their origin, of their place, disposition, circulation or the propriety of goods or rights over them, obtained from the perpetration of crimes. At present, the expression “money laundry” has a wider meaning than the initial one in its sphere entering any kind of activity regarding the obtaining, possession or use of goods, knowing that this came from the perpetration of crime.

In many of the cases, the offence of money whitening of dirty money is realized through the cooperation of many people on plurality form realized by the delinquents (organized crime or organized criminal group). Organized crime implicated in the deed of goods laundry obtained from committing of offences is structured mostly on mafia’s rules and, besides the persons who constitute the plurality made by the delinquents, its benefits from material resources and very important relations. The organized crime has, in many cases, international ramifications, regional or even global and it often depends on the help of the involved person to struggle with the phenomenon of organized delinquent’s plurality.

In Romania, the phenomenon of money laundry is not having yet the dimensions of others parts of the globe, like South America or Russian, but neither the authorities have the necessary experience to fight against it.

## 2. The analyze of the money laundry operation

### 2.1. Legal content

The facts of money laundry are incriminated in present by the law nr.656/2002<sup>3</sup> and in the new penal code, which is about to enter in operation on 1<sup>st</sup> September. As per article 23 on the law number 656/2002, is offence of money laundry:

- a) changing or the transfer of the goods, knowing the source on which are on the committing of an offence, in purpose hiding or dissimulation the illicit origin of these goods or in purpose of helping the person who committed the offence from the goods comes elude from the pursuits, trial or the punishment execution;
- b) hiding or dissimulating the true nature of provenance, of where is situating, of disposition, of circulation or of propriety of goods or the rights on them, knowing the goods are coming on perpetration of crimes;
- c) acquirement, possession or use of goods, knowing that these are coming on perpetration of crimes.

In the article 24 on the law number 656/2002 the same kind of deed is incriminating of non-observance of article 18 on the law by to staff of National Office of Warn and Control of Money Laundry, The obligation is maintained even after the job stopped, for 5 years. Also, those mentioned at art. 8 of the law and are employees of them have the obligation of not transmitting money, besides the conditions mentioned by the law, the information held in

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<sup>3</sup> Published in the Official Monitor number 904 on 12 December 2002.

connection to money laundry and not to warn the clients regarding the seization at National Office of Warn and Control of Money Laundry.

In the specific literature, the offence of money laundry was defined as being :”the intentioned transformation or transfer of goods of any kind, material or non material, mobile or immobile, tangible or intangible, of amounts of money or values, no matter what their evidence form is, knowing that these are the result of the commitment or participation to the falsification of currency or other values; prostitution; contraband; blackmail; shorting of freedom in illegally way; fraud in the banking, financial and assurance system; fraudulent cress; stealing and concreting of cars; non-observance regimes of protecting a goods; the traffic of animals protected in their countries; the trade with tissues and human organ; hacking; the crimes commit with credit cards with the purpose to hide their illegal origin.”<sup>4</sup>

Trying to give a definition lo money laundry, we should say that it is an offence which has the purpose to change or transfer goods, to hide their misdemeanor origin to elude from the person who committed the offence, from which the goods come, from the penal law application, as well as the dissimulation of misdemeanor nature, origin, place, disposition, circulation or the property over the goods or the rights over them and the acquirement, possession and use knowing that they come from committed offences.<sup>5</sup>

Money laundry is normally a complex activity that contains three phases: placement of the money (or goods), whitening the money and creating an illicit origin<sup>6</sup>. In the phase of placement the goods acquired by committing offences are placed in the judicial circuit. In the whitening phase are performed operations to hide their true origin. In the last phase is realized the integration, that is the making of a legal origin semblance.

As it was said in the doctrine, money laundry is not a new offence, but only a new form of the concealing offence.<sup>7</sup>

## 2.2 The offence's object

**The specific judicial object** of money laundry offence is complex, because it contains two categories of social relation, which is social relation regarding the justice commitment and patrimony ones regarding the illicit judicial circulation of the goods. The whitening of money offence affects not only the legal judicial circuit of the goods but also the commitment of the justice because it makes slower the activity of reestablishing the order broken by the perpetration of the offence. It can be said that, the money laundry deeds hurt and endangers the social relations related to the fight against organized crime.

**The material object** of money laundry is constituted by the goods on which the material element of the offence is carried out. According to art.2 from Law nr.656/2002 by the objects which constitute the money laundry deed offence can be understood corporal and no corporal, mobile or immobile goods as well as judicial acts or documents that prove a right

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<sup>4</sup> C.Voicu Dirty money and organized crime, Artprint Publishing, Bucharest, 1995.

<sup>5</sup> In the new Penal Code, the incrimination's content is similar to that of the present incrimination, According to art. 268: “(1) Is punishable with strict jail from 3 to 12 years:

a)goods change or transfer knowing that they come from offences, with the purpose of hiding or dissimulation of the illicit nature of these goods or with the purpose of helping the person who committed the offence from which the goods come to hide from penal pursuit, trial or sentence's execution;

b)the occultation or dissimulation of the true nature, origin, situation, disposition, circulation or property or rights over the goods knowing that they come from the commitment of such offences;

c)acquirement, possession or use of goods knowing that the goods come from perpetration of offences.

(2) in the sense of align (1), by goods it is understood corporal and no corporal, mobile or immobile goods as well as judicial acts or documents that prove a right or title regarding these.”

<sup>6</sup> Fl.Sandu, “Contraband and money whitening”, Trei Publishing, 1999 p 219

<sup>7</sup> Ketty Guiu, op.cit, p.179

or title regarding these. The goods are economic values useful to the satisfaction of a material or moral need, likely to take the form of the patrimony right.<sup>8</sup> The goods that can make the object of money laundry always have their origin in the perpetration of crimes. It has no relevance the nature of the offence from which resulted the questioned goods. Practically, in most of the cases, the whited dirty values by the offence come from crimes which bring serious material prejudices. The goods resulted from these offences can not be valorificated “at sight”, because their illicit origin would be easy discovered.

Although the analyzed offence is entitled “money laundry”, it can have as its object not only money, but any type of goods. For example, can be the object of these offence immobile good or mobile values transactioned at the stock exchange. Also, the object of money laundry offence can be, for example, cars or any other stolen, embezzled, blackmailed. The law mentions that the judicial acts or documents that prove a right or title regarding these can be a material object of the money laundry offence. We appreciate the legal elaboration to be faulty because it uses in a wrong way the term judicial act. As a matter of fact, the legislator meant to say the proven record of some rights related to the goods, using the unspecific meaning of the judicial act notion, which is probations instrument. The legal text could have been formulated for example:” Are goods in the present law knowledge the writings that prove a right related to goods in its own sense.”

If we draw a comparison between the material object of the concealing offence and the money laundry offence, we discover that it is alike, because the concealing can have as material object the corporal material goods as well as the corporal immobile goods.<sup>9</sup> Regarding the mention in the art. 2 letters b) from the law nr. 656/2002, from which is suggested that no corporal goods can form the material object of money laundry offence, we believe that it must be interpreted in the sense that no corporal goods can not be the material object of the money laundry offence, because the in corporal good can never be material.<sup>10</sup>

In most of the cases of goods that form the money laundry offence object there are things that can be subdued to the safety measure of special confiscation, mentioned by the special law. According to art. 25 from Law nr. 656/2002, the goods that form the object of money laundry offence are confiscated, and if they are not found, their equivalents in money or goods obtained are confiscated. To guarantee the fulfillment of goods confiscation insurer measures mentioned in the Penal Procedure Code can be taken.

### 2.3. The offence’s subjects and the premise situation

**The active subject** of the money laundry offence is not qualified; this quality could be shared by any physical person who fulfills the general conditions of the offence’s active subject. We must mention that the participant to the main infraction (from which the whited good comes) can not be the active subject of the offence of money laundry because he became the holder of the good by committing the main deed.<sup>11</sup> Also, the plurality of delinquents is possible in all the forms but normally takes the form of constitute plurality and, seldom, that of occasional plurality. Although, it is not excluded the fulfillment by one person only, the money laundry deeds are committed almost in all the cases under the form of delinquent plurality.

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<sup>8</sup> *Gh.Beleviu*, Romanian civil right, Introduction in the civil right, The subjects, Sansa Publishing, Bucharest, 1995, p90

<sup>9</sup> For the demonstration that not only the corporal goods can become the object of money laundry offences and concealing, see *Ketty Guiu*, op.cit, p 181-185.

<sup>10</sup> See also *Ketty Guiu*, op.cit, p. 185

<sup>11</sup> See also *Ketty Gruuu*, op.cit, p 185.

In the area of money laundry offence, as in the area of other offences mentioned by the law nr. 39/2003 regarding the struggle against organized crime, the plurality constituted by delinquents is considered **organized crime**, making part of the **serious offence category**.<sup>12</sup> The expression by which the Law nr. 39/2003 designates the delinquent constituted plurality is “an organized crime group”. The organized crime group is the structured group, formed by three or more person, which exists for a certain period of time and acts coordinately with the purpose of committing one or more serious offences, to obtain directly or indirectly a financial benefit or any other material benefit. It does not constitute an organized crime group the group formed occasionally to the immediate commitment of one or various offences and which does not have continuity or a determined structure or preestablished roles for the members inside the group.

If are designated the conditions for the organized criminal group and those for money laundry offence the rules regarding the offence’s plurality can be applied. The members of the delinquent plurality can have the same quality to the fulfillment of the offence, or can have different qualities. For example, besides the authors participate also the instigators or accomplices. According to art. 7 from Law nr.39/2003, the initiation and assembly of a criminal group organized or the adhesion or committal under any form of such a group is punished by jail from 5 to 20 years and the interdiction of some rights.

The punishment for the above deeds can not be bigger than the sanctions mentioned by the law for the most serious offence which enters in the organized crime group’s scope. If the deeds were followed by serious offences, are applied the rules from the trial of crimes.

According to art.8 from the same law, the initiation or constitution or adhesion or the committal under any form of this group, to commit offences, which is not, according to the present law, an organized criminal group, is punished depending on the case, according to art.167 (plot), or 323 (partnership for perpetration of crimes) from the Penal Code. In the end, according to art 9 is not to be punished the person who by committing the deed of money laundry in the form of the constituted plurality, denounces to the authorities the organized criminal group before its discovery and the starting point of committing serious offences which enter under the scope of this group and the person who during the penal pursuit or trial, denounces and facilitates the identification and penal responsibility of one or more members of the organized crime group benefits of a diminution to half of the limits mentioned by the law.

In the case in which the delinquent plurality does not fulfill the existence conditions of an organized crime group, will be applied the rules for the occasional delinquent plurality, the individualization of the responsibility being made according to the cause’s date and circumstances, real and personal.

In case of the offence conveyed to money laundry, mention to art 24 from the Law nr. 656/2002, the active subject of the offence is under circumstance, which is he must make part of the person who has the obligations mentioned in Law’s art. 18. It refers to National Office of Warn and Control of Money Laundry and those mentioned in art.8 from Law nr.656/2002. In the category of those mentioned by the law are:

- the personnel from banks, foreign banks subsidiaries and credit institutions;
- the personnel from financial institutions, like: investment funds, investment societies, management of investment societies, deposit societies, custody societies, mobile value societies, pension funds and other such funds, which accomplish the following operations: accreditation, including among other things consumption credit, real estate credit, mortgage credit, commercial financial finance, including financial leasing, payment operations, the

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<sup>12</sup> According to art. 1 letter b) from Law nr. 39/2003, the serious offence is:” the offence that makes part of one of the following categories (...)”  
14. *money laundry* (n.n.) ;(...)”

emission and management of some means of payment, credit cards, traveling cheques and any other such like wise, the giving or assumption of guarantees and sub writing of commitments, individual transactions, or in the client's account by monetary market means, cheques, payment ordain, deposit certificates, and so on, exchange, financial products, financial instruments related to the exchange or to rate of interest, mobile values, the participation to the emission of stocks and offers related to these ones, consultancy given to the enterprises in problems related to the asset's structure, industry strategy, consultancy and services related to the suppliers and enterprises acquisition, mediation on the inter banker markets, management of consultancy in this domain, custody and management of real estate values.

- the personnel of the insurance companies;

- the personnel of the economic agents which carry out gambling activities, mortgage, sell-buy of art objects, metal and valuable stones, dealers, tourism, similar activities that imply putting in circulation of values;

- the physical person and the employees of the judicial person who give specific assistance, judicial, accounting, financial-banking respecting the judicial norms regarding the professional secret;

- persons with duties in the privatization process;

- the personnel from the mail and of the judicial persons who accomplish services related to money transmission in lei or currency;

- real estate agencies personnel;

- the state's treasury personnel;

- the exchange houses' personnel;

- any other judicial person or employee of a judicial person, for acts and deeds made outside the financial-bank system.

According to art.18 from Law nr. 656/2002, the personnel from The National Office of Warn and Control of Money Laundry have the obligation not to transmit the information received during the activity under the condition of the law. The obligation is maintained even after the cease of the function, during a period of 5 years. The person mentioned at art.8 and their employees have the obligation not to transmit, besides the conditions stipulated by the law, the information detained related to money laundry and not to warn the clients regarding the sesization to the National Office of Warn and Control of Money Laundry. It is forbidden to use in a personal scope by the Office's employees and by the person mentioned at art.8 of the received information, during their activity and after its cease.

**The main passive subject** of the money laundry offence is the state. The offence can have a secondary passive subject, in the case in which is injured or endangered a social value which belongs to a private physical or judicial person. If it can be said about the main passive subject that it is the same, the secondary passive subject varies according to the main offence type.

In the end, we mention further more that the money laundry offence presumes the existence of the perpetration of the offence, which is the offence from which results the good, the offence that constitutes **the premise situation for the offence**.

## 2.4. The objective side

**The material element** of the money laundry offence can be realized in three alternative variants, that is:

- a) The change or the goods transfer, knowing the fact that they come from the perpetration of offences, with the purpose of hiding or dissimulation of the goods illicit origin or with the purpose to help the person, who committed the offence from where the goods come , to elude the penal pursuit, trial or the punishment's execution;

b) The hiding or dissimulation of the true nature of the origin, situation, disposition, circulation or property over the goods or the rights over them, knowing that the goods come from the perpetration of offences;

c) The acquirement, the possession or the use of goods, knowing that they come from the perpetration of crimes.

a) The first variant of money laundry can be achieved in two normative alternative ways, either by a change of goods action, or by a transfer of goods action. By **action of change** is understood any activity through which is accomplished the replacement of a good originated from the perpetration of a crime by another good of licit origin. Transfer action implies a transfer operation of the rights over a good that originates in the perpetration of an offence to another person. For example, the selling or donation of stolen art objects.

b) **The hiding or dissimulation action** of the true criminal nature of the good, of the situation, disposition, circulation or property of the good or of the rights over it consists in embedment its judicial situation or origin, usually, through complex juridical, economical or financial operations. For example, a foreign citizen, with the help of the customs-house officer, declares when entering in Romania an amount of money higher than the one he has, but at the return he takes out of the country an amount of money equal to the declared one; operations make payments without service; the super evaluated payment to some external invoices to take out money from the country and so on.

c) The third variant of the offence can take the shape of three alternative modalities, that is: the acquirement, possession and use of goods, knowing that they originate in the perpetration of crimes. **The acquirement action** of a good originated in the perpetration of crimes consists in the activity through which a person enters in the possession of a good of criminal origin. **The possession action of a good** of criminal nature consists in the control over a good that originates in the perpetration of a crime. **The use action over a good** that originates in the perpetration of a crime is any activity through which advantages are obtained as a consequence of its use.

**The offence's result** (the immediate result) of money laundry is different in the variants from the letters a) and c), by comparison with the criminal variant mentioned at letter b). So: in the first case and in the third one it consists in the modification of the judicial situation for the good that forms the offence's objective; in the second variant's case consists in the legitimacy of the good's origin. Being an offence against the patrimony, the money laundry can have an immediate consequence which consists in a material prejudice. From here results that money laundry offence, although does not exclude any material result, is from its nature point of view a dangerous offence.

**The cause connection** presupposes the existence of a determination relationship between the material element and the immediate result, but this one results *ex re*.

## 2.5. The subjective side

The moral element (subjective) of the money laundry offence in all the normative variants embraces the intention form. Analyzing the legal content of the offence we reach to the conclusion that the subjective element must embrace, usually, the direct intention form. In deed, both the variant referring to the change or transfer of goods, and the one referring to the elusion of their nature, must be committed with direct intention.

In the first variant, the deed must be committed with the purpose of hiding or **dissimulating the illicit origin** of these goods or with the purpose of helping the person who committed the offence, from which originated the goods, to elude from the penal pursuits, trial or the punishment execution, and in the second one is necessary the hiding or dissimulation of the true nature of the origin, situation, disposition, circulation or property

over the goods or the rights over them, knowing that the goods come from the perpetration of offences.

## **2.6 Attempt and consumption of the offence**

The money laundry offence can be committed in all the forms of the criminal activity: perpetration, preparation acts, attempts, consumed offence and depleted offence. The legislator does not incriminate the preparatory actions. The attemptive is incriminated and consists in the execution of the actions that represent modalities of accomplishing the offence, execution which is interrupted before the offence's consumption. In the case of money laundry, the attemptive is possible only in its imperfect modality, because usually the result produces instantaneously the accomplishment of the offence's material element.

The consumption of the offence takes place when was executed entirely the action which constitutes the material element of the deed. The money laundry offence, usually being likely to have an exhaustion moment like in the case of the variant mentioned at letter c), when the material element is made by possessing or using the good which originates in the offence perpetration. In this situation, the date for the offence perpetration will be considered to be the moment of the offence's exhaustion. When the money laundry offence is accomplished under the form of possessing and using a good of criminal origin it takes the form of a continuous offence.

## **2.7 Perpetration variants**

Besides the three type's variants, the money laundry offence was incriminated in a more severe variant. According to art. 23, last alignment from Law nr.656/2002:"The association or the initiation of a association, the adhesion or committal, under any form, of such an association, with the purpose of perpetrating the money laundry offence is punished by jail from 5 to 15 years." . By entering in operation of Law nr. 39/2003, the aggravate variant of money laundry offence, mentioned in Law nr. 656/2002 was practically expressly abrogated by the art.34 from the Law nr 39/2003, the equivalent incrimination being found in art. 7 from the same normative act.

By art.24 from Law 656/2002 is incriminated a conex deed to that of money laundry. It is about the non-observance deed of the professional obligation for confidence for those who work in the prevention and refutation of money laundry and other person who have information related to money laundry deeds.

## **2.8 Sanctions and trial related aspects**

The money laundry offence is punished by jail from 3 to 11 years, for the cases integrated in art.23 from the Law nr. 656/2002. The punishment is jail from 2 to 7 years, in the case of committing an offence mentioned at art. 24 from the same law. In the attemptive's case the punishment will have the limits reduced to half.

Because of its specific character, the activity of drawing to penal responsibility for committing money laundry offence undergoes procesual norms partially derogation from the penal procesual common law mentioned in the Law nr. 656/2002.



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