Exploring Criminal Liability for Banks Financing Illegal Operations

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Abstract

This paper presents an analysis of the criminal liability of banks in the context of the financing of illegal operations, with a particular focus on the crime of money laundering. The initial section of the paper considers the international community's perspective on money laundering and the role of banks. It examines the various definitions and legislative approaches adopted in countries including Romania, the United Kingdom, Argentina and Thailand. The second section considers the measures adopted by the European Union (EU) to prevent money laundering, with particular attention to the regulations and rulings of the European Court of Justice that promote financial transparency and accountability of financial institutions. The final section presents an analysis of the implementation of international legislation and EU regulations in Romania, with a particular focus on the criminal liability of banks and their obligations to comply with anti-money laundering policies. The paper posits that the criminal liability of banks is a crucial element in maintaining economic integrity and preventing financial crime.

Keywords: *money laundering, criminal liability, financial institutions, international regulations, banks, european union, financial compliance.*

1. Introduction

The subject of this research is the criminal liability of banks in the financing of illicit activities, with a specific emphasis on money laundering. In light of the pivotal role that banks play in global financial transactions, the susceptibility of banks to criminal activities has emerged as a matter of paramount importance for economic stability and national security. This study examines international and national regulatory frameworks pertaining to this subject matter, with a particular focus on the legal approaches adopted by the European Union and Romania. The research is structured as follows: the first section analyses the international perspective on money laundering; the second section deals with the involvement and regulations applied by the European Union; while the last section presents the transposition of international treaties into Romanian law and the analysis of criminal

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liability for banking institutions in Romania. In the lege ferenda and the conclusion sections, the paper presents its recommendations for future legislative action, followed by a summary of its key findings and a discussion of its limitations. The issue underscores the necessity for an efficacious legislative apparatus to preclude illicit activities and safeguard the financial infrastructure.

Section I. The International Community's Perspective on the Crime of Money Laundering and Bank Involvement

In order to understand the money laundering phenomenon at the international level, we present various definitions of the money laundering offence. A comprehensive analysis of international legislation on money laundering is essential, as this criminal phenomenon has a transnational dimension and frequently involves intricate financial transactions across jurisdictions. An understanding of the diverse definitions and legislative approaches provides a holistic view of the prevention and control measures employed globally. By comparing and evaluating the international legal framework, the strengths and gaps can be identified, contributing to more effective regulation adapted to the rapid evolution of this type of crime.

In this manner, the Romanian legislator establishes a definition of money laundering. in Art. 49 of Law 129/2019 : "(1)It constitutes the offence of money laundering and is punishable by imprisonment from 3 to 10 years: (a)exchanging or transferring property, knowing that it originates from the commission of offences, for the purpose of concealing or disguising the illicit origin of such property or for the purpose of assisting the person who committed the offence from which the property originates to evade prosecution, trial or execution of punishment; (b)concealment or disguise the true nature, provenance, location, disposition, movement, ownership or rights in property, knowing that such property has been derived from crime; (c)acquisition, possession or use of property by a person other than the active subject of the offence from which the property originates, knowing that such property has been derived from crime. "[4] By "property", it is understood according to Article 2 of Law 129/2019: "For the purposes of this law, the following terms and expressions shall have the following meanings: [...] c) property means assets of any kind, bodily or immaterial, movable or immovable, tangible or intangible, and legal documents or instruments in any form, including electronic or digital, evidencing title to or a right or interest in them;" (Law no. 129, 2019). At the same time, the legislator does not exclude the commission of the offence by the legal person, so that in Article 49 of Law 129/2019: "(3) If the offence was committed by a legal person, in addition to the fine, the court shall apply, as appropriate, one or more of the additional penalties provided in Article 136 para. (3) letters a)-c) of Law no. 286/2009, as subsequently amended and supplemented."[5]

[4] Legea nr. 129/2019, a intrat în vigoare la data de 18 iulie 2019.
[5] Legea nr. 129/2019, a intrat în vigoare la data de 18 iulie 2019.

The English legislator has defined money laundering in paragraph 340 as follows : "(11)Money laundering is an act which : (a)constitutes an offence under section 327, 328 or 329; (b) constitutes an attempt, conspiracy or incitement to commit an offence specified in paragraph (a); (c)constitutes aiding, abetting, counselling or procuring the commission of an offence specified in paragraph (a); or (d) would constitute an offence specified in paragraph (a), (b) or (c) if done in the United Kingdom." (Proceeds of crime act, 2002) Paragraphs 327, 328, and 329 clearly and succinctly present the facts that constitute the offence of money laundering. They do so in a manner that is consistent with the approach taken by the Romanian legislator: "Section 327: (1)A person commits an offence if he (a)conceals criminal property; (b)disguises criminal property; (c)converts criminal property; (d)transfers criminal property; (e)removes criminal property from England and Wales or from Scotland or from Northern Ireland. Section 328: (1) A person commits an offence if he enters into or becomes concerned in an arrangement which he knows or suspects facilitates (by whatever means) the acquisition, retention, use or control of criminal property by or on behalf of another person. Section 329: (1)A person commits an offence if he (a)acquires criminal property; (b)uses criminal property; (c)has possession of criminal property."[6]

Having observed the procedures of Romanian and British legislators, we now direct our attention to two countries that, until recently, faced significant challenges in combating money laundering: Argentina and Thailand which have enacted laws to stop the crime of money laundering. In the years 1990-2000, Argentina witnessed several money laundering offences, according to an article by The New York Times[7]. Law No. 25.246 criminalised this crime, which was implicit in other laws but had no definition of its own.

Thus, the aforementioned law states: ”Article 277: (1) A person shall be sentenced to imprisonment for six (6) months to three (3) years, following the commission of a crime by another person in which he or she has not participated, if he or she: (a) Helps any person avoid the authority´s investigations or evade proceedings instituted by it; (b) Conceals, alters or destroys the traces, evidence or instrumentalities of the crime, or helps the perpetrator or accessory to conceal, alter or destroy them; (c) Acquires, receives or hides money, goods or property deriving from a criminal offence; (d) Fails to report the commission of a crime or to identify the perpetrator or accessory of a known crime, where he or she is under an obligation to further the criminal prosecution of a crime of that nature; (e) Secures or helps the perpetrator or accessory to secure the product or proceeds of the criminal offence. [...] Article 278: (1). (a) Any person who exchanges, transfers, administers, sells, encumbers or applies in any other way money or any other kind of goods deriving from a criminal offence to which that person has not been a party, with the possible consequence that the original or replacement property may come to appear of lawful

[6] Proceeds of crime act, 2002, United Kingdom.

[7] Calvin Sims, *I.B.M. Contends with a scandal in Argentina*, 1996, www.nytimes.com/1996/03/09/business/ibm-contends-with-a-scandal-in-argentina.html

origin, provided that its value exceeds the sum of fifty thousand pesos ($50,000), whether it be in a single act or by the repetition of related acts shall be sentenced to imprisonment for two to ten years and a fine of two to ten times the value involved in the transaction; (b) The minimum penalty shall be five years' imprisonment in cases where the perpetrator commits the act habitually or as a member of an association or gang formed for the repeated commission of acts of this nature; (c) If the value of the property does not exceed the amount indicated in subparagraph (a), the perpetrator shall be punished, as appropriate, under the provisions of article 277; (2) Any person who, out of recklessness or gross negligence, commits any of the acts described in paragraph 1 (a) shall be liable to a fine amounting to twenty (20) per cent to hundred and fifty (150) per cent of the value of the property involved in the offence; (3). Any person receiving money or other property deriving from a criminal offence, for the purpose of using it in a transaction that may give it the appearance of having a lawful origin, shall be punishable in accordance with the provisions of article 277; (4) The objects involved in the offence mentioned in paragraphs 1, 2 or 3 of this article may be liable to confiscation."[8]

It is our opinion that the Argentinean Money Laundering Law, as evidenced by Articles 277 and 278, exemplifies a meticulous and exhaustive legislative apparatus designed to eradicate this financial crime, bearing resemblance to the legislation observed in numerous European countries. The legislation not only addresses the direct act of money laundering, but also extends to indirect forms of support provided to criminals, including the concealment of evidence and assistance in managing illicit funds. By indirectly criminalising those who facilitate money laundering, Argentina aligns its legislation with international standards. However, Argentine law differs in that it sets a high threshold value of funds (50,000 pesos) for the application of severe penalties. While European legislation, such as that in Germany or France, places greater emphasis on any act of money laundering, regardless of the amount, the Argentine threshold may be perceived as a potential loophole for minor offences. Conversely, penalties for recidivism and group activity represent a progressive approach, targeting organisations involved in money laundering activities.

The Thailand's law on money laundering is the "Anti-Money Laundering Act, B.E. 2542", published in 1999 and defines this offence in Section 5 as : "(1) transfers, receives the transfer, or changes the form of an asset involved in the commission of an offence, for the purpose of concealing or disguising the origin or source of that asset, or for the purpose of assisting another person either before, during, or after the commission of an offence to enable the offender to avoid the penalty or receive a lesser penalty for the predicate offence; or (2) acts by any manner which is designed to conceal or disguise the true nature, location, sale, transfer, or

[8] Law no. 25.246, Argentina, promulgated on 5 May 2000, https://www.argentina.gob.ar/sites/default/files/ssn_law_25246.pdf.

rights of ownership, of an asset involved in the commission of an offence shall be deemed to have committed a money laundering offence."[9]

In our opinion, this legislation is comparable to international standards, such as those advocated by the European Union, and places particular emphasis on financial crime and the transparency of transactions. It is noteworthy that the Thai legislation is not limited to the direct beneficiaries of illicit funds; it also encompasses those who facilitate the process, thereby extending criminal liability. By criminalising the concealment and transfer of assets before or after the commission of a crime, Thailand demonstrates a clear intention to combat not only the predicate offence itself, but also the financial support mechanisms that facilitate it.

As organised crime groups sought to integrate illicit proceeds into the legal economic mainstream. The term "money laundering" is historically associated with the practice of the American mafia in the 1920s and 1930s. During this period, the proceeds of illegal activities, such as smuggling and gambling, were integrated into legitimate businesses, including clothes laundering, in order to disguise the source of the funds. As the global economy expanded, the methods used for money laundering became increasingly sophisticated, involving the use of international networks and multiple financial transactions. In the 1980s and 1990s, the growth of global trade and the digitization of transactions served to accentuate this phenomenon. As a result, international organisations such as the Financial Action Task Force on Money Laundering (FATF) emerged and set global standards to prevent and combat money laundering. With each technological evolution and economic growth, regulations have been adapted and countries have implemented stricter laws to prevent illicit funds from circulating.

In the field of money laundering, Madinger presents a historical analysis of money laundering, demonstrating its close association with the growth of organised crime and the necessity to disguise the origins of illicit funds. The historical examples illustrate the origins of money laundering, including the practice of piracy, where the profits from looting had to be integrated into the legal economy. Over time, criminal groups, particularly during the Prohibition era in the United States, became increasingly sophisticated in the process of "laundering" the proceeds of illegal activities, utilising legitimate businesses as a cover. In the 1970s, the problem began to be recognized as a significant threat to the financial system, leading to the enactment of the Bank Secrecy Act of 1970. This legislation required financial institutions to report large financial transactions in order to limit money laundering. The Anti-Money Laundering Act of 1986 broadened the scope of these measures, reinforcing the legal framework and drawing global attention to this illicit activity. This legislation laid the foundation for the modern anti-money laundering framework.[10]

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[9] Anti-money Laundering ACT, B.E. 2542, promulgated on 10 April 2000.

[10] Madinger, John. *Money Laundering: A Guide for Criminal Investigators*. CRC Press, 2012, pp. 1-15.

Remus Jurj and Dan Drosu Şaguna (2022, pp. 1-3) say that" Efforts by global anti-money laundering authorities are believed to be just 0.1% away from total failure, especially in the new era of crypto-assets. According to the International Monetary Fund, money laundering in the 1990s amounted to between 590 million US dollars and 1.5 billion US dollars worldwide each year. In 1997, the International Narcotics Control Strategy Report found that the amount laundered worldwide was between 300-500 million US dollars. In 2005, the US authorities (DEA) identified criminals who had laundered more than a billion dollars. [...] One of the most damaging effects of money laundering is the enormous damage it can cause to the system of free competition. Those producers, operating in the free market, which is always subject to the demands of supply and demand, are forced to coexist with other agents who can afford the luxury of operating in the market without restrictions of economic rationality, which seriously affects the autonomy, activities and interests of honest companies. "[11]

We agree with the above and believe that the crime of money laundering is dangerous for the democratic and capitalist society in which we find ourselves today. European society and the international community must take note of the social danger posed by economic crime.

Banks play a pivotal role in the prevention and combating of money laundering. However, they are also susceptible to exploitation by criminal elements attempting to disguise the provenance of illicit funds. Some financial institutions have been implicated in money laundering scandals, frequently as a consequence of deficiencies in internal control mechanisms or the involvement of corrupt personnel. For example, the Court of Appeal of Oradea, Romania, Criminal Section, with No. 281/A of 23 May 2019.[12] In order to mitigate the aforementioned risks, financial institutions are required to adhere to Know Your Customer (KYC) regulations and conduct comprehensive transactional assessments. The monitoring of suspicious activities and subsequent reporting to the relevant authorities are fundamental aspects of the fight against money laundering. Moreover, banks collaborate with law enforcement agencies and regulatory authorities to guarantee transparency and integrity within the financial market. Failure to comply with the relevant regulations can result in severe penalties, including substantial financial penalties and the revocation of a business licence.

In order to address the ever-evolving challenges posed by money laundering, financial institutions are consistently allocating resources towards the development and implementation of sophisticated software solutions. Such systems automate the process of monitoring and analysing transactions in real time, thereby facilitating the expeditious identification of unusual or suspicious activity. Anti-money laundering (AML) software employs machine learning algorithms and artificial intelligence to identify patterns that may indicate money laundering activities. These patterns may

[11] Jurj, Remus, and Dan Drosu Şaguna. *Spălarea Banilor Teorie Și Practică Judiciară*, editura C.H. Beck, Bucharest, 2022, pp. 1-3.

[12] Coman, Vasile. *Spălarea Banilor Practică Judiciară Comentată*, Editura Universul Juridic, Bucharest, 2022, pp. 320-340.

include structured transactions, frequent transfers between accounts, or large volumes of cash. Such programmes analyse customers' transaction histories and assign risk scores based on their financial behaviour, thereby facilitating rapid intervention. Moreover, a considerable number of financial institutions are utilising integrated customer due diligence (CDD) and enhanced due diligence (EDD) systems, which facilitate the enhancement of customer knowledge through the performance of supplementary checks on high-risk customers. This enhances the efficacy of banks in detecting and preventing financial crime in a more effective and secure manner.

In conclusion, the international community's perspective on the crime of money laundering underscores the significant social dangers that this practice poses in today's societies. Money laundering not only undermines global economic stability, but also affects the integrity of financial markets and free competition. By facilitating the infiltration of illicit funds into the legitimate economy, it jeopardises both national security and the proper functioning of democratic and capitalist economies. Banks play a central role in preventing and combating this crime, but they are also vulnerable to exploitation by criminal groups. In this context, international regulations such as Know Your Customer (KYC) and suspicious transaction monitoring are essential to ensure transparency and integrity in the financial marketplace. At the same time, advanced software developed by banks, such as real-time transaction monitoring and the use of machine learning algorithms, is a powerful tool for quickly identifying suspicious activity, helping to effectively combat money laundering and protect the integrity of the global economy.

Section II. European Union perspective on the involvement of banks in money laundering crimes

The European Union (EU) is a sui generis international organisation that has been an important global player in the legislative and economic fields since its creation. It is a unique entity that has multiple aims, one of which being the development of Europe based on economic growth.

Since its creation, it has come to be one of the world’s main pillars in legislative and financial policies. Because of its intricate and one-of-a-kind judicial and economic systems, as well as its influence, the Union has been battling financial crime relentlessly by passing legislation and regulations in the field. As money-laundering has been increasingly done through the banking system in recent years, the EU has been supervising this sector carefully.

The aim of this section is to highlight how the EU approaches money-laundering in the banking system, and what steps have been taken towards dealing with this increasingly complicated matter.

Article 5 of the Treaty on European Union establishes the Union’s competences to act in a few areas of interest. Some of these competences are

exclusive to the EU, while others are shared with Member States, the latter splitting the decisional power between the Union and its members.[13]

The EU shares competences with its members in multiple areas. For the purpose of this research, not all of them will be listed, but it is important to note that financial crimes affect every sector covered by these shared competences.[14]

The Union has been legislating matters related to financial crimes for more than thirty years. Directive 91/308/EEC introduced the EU's first anti-money laundering (AML)framework, focused on combating drug trafficking-related money laundering. It obliged financial institutions to identify and report suspicious transactions, marking the EU's first attempt to standardise AML across member states. The directive has been updated four times, most recently in 2018, with the Commission as a key player[15]. Multiple European institutions, including the European Banking Authority (EBA), the European Central Bank (ECB), and Europol support supervise and help Member States in implementing union-level policies.

The European Court of Justice (ECJ) and the General Court of the European Union have issued several landmark rulings on anti-money laundering (AML), establishing key principles that have shaped EU policies and regulatory standards.

Banco Exterior de España SA v Ayuntamiento de Valencia (Case C-387/92, 1994): In this case, the European Court of Justice considered the regulation of money laundering in the context of taxation and transparency. While not a direct AML case, it indirectly influenced how transparency and financial reporting were handled by reinforcing that EU member states could implement strict regulations to prevent financial misconduct. The ruling highlighted the importance of member states maintaining high levels of financial integrity and transparency, setting an early standard for subsequent AML regulations.[16]

Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SA (Case C-306/05, 2006): This case, though centred on intellectual property, had important implications for AML practices in Europe by addressing the concept of financial accountability and compliance. It established that European institutions could impose stringent obligations on companies operating within the EU to ensure compliance with overarching EU policies. This decision indirectly

[13] Treaty on European Union, Article 5.

[14] Treaty on the Functioning of the European Union, Article 3.

[15] European Court of Auditors. *The EU's Anti-Money Laundering Policy in the Banking Sector*, 2020, https://www.eca.europa.eu/lists/ecadocuments/ap20_05/ap_anti-money-laundering_en.pdf.

[16] Banco Exterior de España SA v Ayuntamiento de Valencia, C-387/92, 1994, European Court of Justice, published in EUR-Lex, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61992CJ0387.

bolstered the EU's ability to create and enforce AML regulations, demonstrating the scope of EU law in shaping corporate responsibility and financial practices.[17]

Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities (Joined Cases C-402/05 P and C-415/05 P, 2008): This landmark ruling involved the EU's powers to freeze the assets of individuals and entities associated with terrorism. The European Court of Justice annulled the asset-freezing measures imposed on Kadi and Al Barakaat due to insufficient procedural safeguards, emphasising that fundamental rights, including the right to a fair trial, must be respected in AML and counter-terrorism measures. This case significantly influenced the EU's approach to balancing financial security with individual rights, setting a precedent for more comprehensive procedural protections in AML enforcement.[18]

Jyske Bank Gibraltar Ltd v Administración del Estado (Case C-212/11, 2013): In this case, the ECJ upheld the application of AML regulations to subsidiaries of EU banks located in non-EU territories, such as Gibraltar. This ruling expanded the territorial scope of AML regulations, affirming that EU-based financial institutions, including those operating in jurisdictions with looser regulations, were required to adhere to EU AML standards. This case underscored the EU's commitment to ensuring that AML rules apply broadly to prevent loopholes through offshoring financial activities.[19]

Banco Santander SA v European Parliament and Council of the European Union (Case T-399/11, 2018): Banco Santander challenged the European Union's AML regulations, arguing that compliance requirements were excessively burdensome. The General Court rejected the bank's challenge, upholding the legitimacy of stringent AML regulations as necessary for the EU's broader strategy to combat financial crime. This case reinforced the EU's position that protecting financial integrity through robust AML measures justified the operational burdens placed on financial institutions.[20]

These cases collectively illustrate the EU's evolving stance on money laundering and financial integrity. Starting with principles of transparency and compliance, the EU's approach has become progressively rigorous, emphasising the

[17] Sociedad General de Autores y Editores de España (SGAE) v Rafael Hoteles SA, C-306/05, 2006, European Court of Justice, published in EUR-Lex, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62005CJ0306.

[18] Kadi and Al Barakaat International Foundation v Council of the European Union and Commission of the European Communities, C-402/05 P și C-415/05 P, 2008, European Court of Justice, published in EUR-Lex, https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX%3A62005CJ0402.

[19] Jyske Bank Gibraltar Ltd v Administración del Estado, C-212/11, 2014, European Court of Justice, published in EUR-Lex, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011CA0212&qid=1731349528083.

[20] Banco Santander SA v European Parliament and Council of the European Union, T-399/11, 2018, European Court of Justice, published in EUR-Lex, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62011TJ0399%2801%29&qid=1731349589272.

importance of safeguarding financial systems from exploitation. From expanding the geographical reach of AML laws to balancing security and individual rights, these rulings underscore the EU's determination to maintain high standards of financial oversight and accountability, reinforcing a cohesive regulatory framework that helps prevent money laundering across the European Union. This legal framework remains essential as the EU navigates the challenges of financial crimes in a complex and interconnected global economy[21].

Besides extensive jurisprudence, the European Union periodically incorporates new legislation into their framework. This aims to ensure the Union's legal system upholds the doctrine of living law, which is a principle that enshrines the need for changing rules in alignment with societal change[22].

For example, terrorists and criminals have proven that, especially with access to advanced technologies, they can rapidly transfer funds across various banks, often internationally. However, the lack of timely access to financial information frequently causes investigations to reach a dead end. Therefore, it is essential to strengthen cooperation among authorities tasked with countering terrorism and serious crime, especially when financial data is crucial to an investigation.

The 'Directive on laying down rules facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences' addresses this need. It enhances the use of financial information by granting law enforcement direct access to bank account registries to identify account holders. It also permits access to financial data held by national Financial Intelligence Units (FIUs), including transaction records, and improves information sharing between FIUs as well as their access to law enforcement data needed to fulfil their duties. These measures aim to expedite criminal investigations and enable authorities to combat cross-border crime more effectively.

Another new addition to the Union's framework came in 2021. The EU Commission has published a new anti-money laundering and countering the financing of terrorism reform package. It was recently adopted by the European Parliament with the aim of strengthening the Union's response to these financial crimes. This legislative package has four main elements:

- The Regulation establishing a new EU-level Anti-Money Laundering Authority (AMLA).
- The Regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (AMLR).

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[21] *Report from the Commission to the European Parliament and the Council on the Assessment of the Risk of Money Laundering and Terrorist Financing Affecting the Internal Market and Relating to Cross-Border Activities*, European Commission, Bruxelles, 2024, https://ec.europa.eu/info/publications/2024-mltf-risk-assessment_en, accessed on 11 November 2024.

[22] O`Day, *James F. Ehrlich's Living Law Revisited Further Vindication for a Prophet without Honor*, Vol. XVIII, 1966, core.ac.uk/download/pdf/214099915.pdf.

- The sixth AML Directive on the mechanisms to be put in place by the Member States for the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, repealing Directive (EU) 2015/849 (AMLD6).
- The revision of the Regulation 2015/847/EU on information accompanying transfers of funds (TFR).

These new laws have the goal of enhancing due diligence measures and checks on customer identity, obliging entities such as banks, assets managers and estate agents to report suspicious activities to the competent authorities.

The EU Anti-Money Laundering Authority (AMLA), to be based in Frankfurt, will centralise AML/CFT oversight, assuming the European Central Bank's responsibilities and establishing an integrated EU-wide supervisory system. AMLA will directly supervise certain high-risk institutions, including crypto-asset service providers operating in six or more member states or posing imminent risks, while also coordinating with national supervisors for other financial and non-financial entities. Additionally, AMLA will enhance cooperation among national Financial Intelligence Units (FIUs) to strengthen cross-border detection of illicit financial flows and ensure compliance with targeted financial sanctions.

The AML Regulation (AMLR) will serve as the EU's "single rulebook," expanding the list of obliged entities to the entire crypto sector, which must conduct customer due diligence for transactions over EUR 1,000, and banning anonymous crypto-asset wallets. The AMLR also includes new entities, such as luxury goods traders and football clubs, under due diligence rules. An EU-wide EUR 10,000 cash payment limit is set, with member states allowed to impose lower thresholds. Additionally, the AMLR mandates stringent requirements for beneficial ownership transparency and heightened vigilance for ultra-wealthy individuals, as well as for dealings with high-risk third countries.

The Sixth Anti-Money Laundering Directive (AMLD6) strengthens beneficial ownership registers, granting immediate, unrestricted access to legitimate interest parties (e.g., journalists, civil society) and competent authorities. National registers will retain data for at least five years and will be interconnected at the EU level. FIUs will gain expanded authority to analyse, detect, and suspend suspicious transactions related to money laundering and terrorist financing. The Transfer of Funds Regulation (TFR) extends existing regulations on financial transfers to crypto-asset transactions, enabling traceability of crypto-asset flows through regulated providers.

Pending formal adoption by the Council and publication in the Official Journal, AMLA will take effect seven days post-publication, applying from 1 July 2025. AMLR will enter into force 20 days post-publication, with most provisions applicable 36 months thereafter. AMLD6 will take effect 20 days after publication, with a two-year transposition period for member states. TFR will apply from 30 December 2024.

The European Union has been at the forefront of a determined fight against money laundering and financial crime. With ever-evolving legislation, impactful

rulings, and a firm commitment to addressing the root of the issue, the EU constantly adapts and refines its laws to meet modern standards and effectively tackle these challenges. By focusing on and closely monitoring the banking sector, the European Union sets a powerful example of how addressing financial institutions directly can curb money laundering at its source. Banks play a central role in the movement of funds, making them key points for detecting suspicious activities and preventing illicit money flows. This approach emphasises the importance of holding financial institutions accountable, as they are uniquely positioned to identify and disrupt money-laundering networks.

Section III. The implementation of International Treaties and EU Legislation on Anti-Money Laundering in Romania

In the modern world, money laundering is one of the key problems that confer a high degree of risk on economic systems and social welfare. The consequences of money laundering reach further than just the financial domain into aspects concerning social stability, security, and finally, public confidence in institutions.

The aim of this section is to describe the social risks of money laundering and to show how those risks percolate through the various facets of modern society. Money laundering, by its very nature, has been associated with extremely serious organised crime enterprises, including narcotics, human trafficking, and terrorism, with direct implications for social structures that further entrench inequality and corruption. For this reason, strict anti-money-laundering measures are being implemented at both the national and international levels in an effort not only to sustain economic integrity but also to ensure public welfare. The social implications of money laundering, showing that money laundering prevention is vital for the equitability, transparency, and stability of society, are discussed in this section. In analysing the broader impact of this important threat, we will underline the need to have more effective frameworks.

Legal Framework for Combating Money Laundering in Romania

Essentially, the gatekeepers or banks and other obliged entities are expected to implement mechanisms that will discourage money laundering and financing of terrorism. The revision of the European Union laws has been constantly carried out in order to cut new risks related to money laundering. The Romanian legislator has adopted a comprehensive legal framework to integrate international treaties and European Union legislation on AML, aiming to protect the integrity of the financial system and prevent economic abuses.

Law No. 21/1999 on Preventing and Punishing Money Laundering was a landmark piece of legislation for Romania, marking the country's first dedicated effort to address the issue of money laundering. Enacted in response to international requirements and Romania's commitments as a member of the Council of Europe,

this law played a crucial role in aligning the country's legal framework with global standards. It not only introduced a formal definition of money laundering but also established specific penalties and preventive measures to tackle the crime. With the introduction of reporting obligations for financial institutions, including banks, the law aimed to enhance transparency in financial transactions and prevent the integration of illicit funds into the legitimate economy. Romania's adoption of this legislation was a significant step in ensuring its financial system remained secure and in line with international best practices, including those set forth by the Financial Action Task Force (FATF) and the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

With the adoption of Law No. 656/2002, Romania took a significant step toward explicitly criminalising money laundering, aligning its national framework with international standards. In this regard, Romania transposed the European Union Directive on the prevention of money laundering and terrorist financing (Directive 2015/849, also known as the Fourth and later the Fifth Directive) through Law No. 129/2019[23], which came into effect on 18 july 2018. This law imposes clear obligations on financial institutions, including banks, to implement strict due diligence measures, monitor transactions, and report suspicious activities to the competent authorities. While Law No. 129/2019[24] sets a strong legal framework for preventing money laundering, the efficacy of enforcement remains a critical issue. Romania's authorities, particularly the National Office for the Prevention and Control of Money Laundering (ONPCSB), play a key role in ensuring compliance. However, enforcement effectiveness can sometimes be limited by the complexity of financial crimes and the difficulty in tracing illicit financial flows. Additionally, Romania has ratified relevant international treaties, such as the Council of Europe's Convention on money laundering, further strengthening its legal framework for preventing and combating this phenomenon.

The connection between these international regulations and national legislation is essential for effectively combating money laundering and ensuring the proper integration of legitimate financial flows while preventing financial institutions from engaging in illicit activities. By implementing these regulations, Romania aligns not only with European standards but also with international requirements, ensuring a stable and transparent financial environment.

Criminal Liability of Banks for Money Laundering

What makes the Romanian approach different to criminal liability for banks is in its orientation to corporate governance. While it may be true for other jurisdictions that individuals, even employees, may be held liable, Romanian law holds the bank itself as a corporation responsible for acts of its employees, particularly if through neglect or lack of supervision certain illegal activities, such

[23] Legea nr. 129/2019, a intrat în vigoare la data de 18 iulie 2019.
[24] Legea nr. 129/2019, a intrat în vigoare la data de 18 iulie 2019.

as money laundering, are able to be perpetrated. In the United States, for example, individuals within financial institutions can be held personally liable for failing to uphold anti-money laundering requirements. A notable case that highlights this is the prosecution of compliance officers under the Bank Secrecy Act[25].

For instance, in 2017, Thomas Haider, the former Chief Compliance Officer of MoneyGram, was held personally liable for failing to implement effective AML programs to prevent and detect fraud and money laundering. The Financial Crimes Enforcement Network and the U.S Department of Justice argued that Haider`s negligence in fulfilling his compliance duties led to widespread fraud, despite him being aware of the risks. Although the bank itself faced fines, Haider was personally pursued in civil court and ultimately fined and barred from working in compliance roles in the financial sector for a period of time.

The liability is not only derived from direct involvement in criminal activities but also flows from systemic deficiencies in the internal apparatus of the bank. Examples include failure to institute coherent risk management practices, poor internal auditing systems, or insufficient training on anti-money laundering by staff-are such conditions that may render an entity criminally liable even if no direct criminal behaviour has occurred.

The underlying approach is the challenging of the banks to establish a compliance culture whereby anti-money laundering is deeply intertwined within its operations. In addition, management and board members can be held liable on criminal charges for failure to enforce necessary preventive measures or to act accordingly in case it detects risks within the operation of the bank. This in practice means that it is the duty of the senior management to ensure that AML policies are not only written but implemented at all levels within an organisation, and an atmosphere of constant vigilance is maintained. Furthermore, criminal liability in Romania ensures that any involvement by financial institutions in money laundering, either due to a lack of due care or deliberately, is deterred. For example, lack of proper compliance systems, automated transaction monitoring tools or any strong verification mechanism of clients can be considered grounds for negligence. It considers that every bank should not only react to suspicious activities but also, with a proactive approach, generate environments able to prevent such flows.

The criminal liability in cases of failure of execution is also paid due attention to international sanctions. Banks processing transactions in breach of international conventions against money laundering or failing to freeze assets belonging to terrorist organisations or other persons under sanctions may be subjected to the most severe reprimands. This suggests that Romania is interested in further building up more domestic regulatory space incorporating international standards and in its contribution to the international fight against financial crime. In this respect, Romania imposed criminal liability on banks with the aim of making an attitude of mere regulatory compliance turn proactive and comprehensive anti-

[25] Manhattan U.S. Attorney Sues Thomas E. Haider, Former Chief Compliance Officer of Moneygram International, Inc., for Violating the Bank Secrecy Act

money laundering behaviour within the financial world. This fits within the broader goal of ensuring the integrity of the financial system and preventing Romania from becoming a gateway to illicit activities.

Lastly, banks found to have facilitated money laundering,either through negligent oversight or deliberate complicity, may face not only fines but also reputational damage. This also incentivizes banks to self-report and cooperate with authorities, as transparency and proactive compliance may help mitigate the penalties or legal consequences they face. By incorporating this approach into the legal framework, Romania aims to cultivate an environment where financial institutions are encouraged to adopt a zero-tolerance stance toward money laundering, ensuring that they uphold the integrity of the financial system.

Lege ferenda

In order to enhance the efficacy of the anti-money laundering efforts in Romania, it is imperative to implement legislative measures that reduce the thresholds for reporting suspicious transactions, including cryptocurrencies within the purview of the legislation. Furthermore, it is essential to impose stringent penalties on repeat offenders, develop a centralised database, and conduct regular training of financial sector personnel. These proposals facilitate the requisite adaptation of the legal framework to international developments and the diversification of money laundering methods, thereby responding to the challenges posed by technological advancement and the increasing complexity of financial crime.

Lower threshold for reporting suspicious transactions

At present, Law 129/2019[26] mandates the disclosure of suspicious financial transactions exceeding the €10,000 threshold, which is relatively high in the context of fragmented transactions. In practice, those engaged in illicit activities can evade detection by dividing their funds into smaller amounts, thereby rendering the identification of suspicious flows more challenging. A reduction in the threshold to €5,000 would permit the authorities to monitor transactions that might otherwise evade detection at a higher threshold. Such legislative changes would therefore serve to discourage the practice of "structuring" or "smurfing", whereby criminals break up large sums into fragments below the reporting threshold in order to avoid attracting attention. A number of EU Member States, including France and Germany, have already adopted lower thresholds, thereby streamlining their efforts to prevent and combat money laundering. It would be advisable for Romania to adopt a similar approach in order to align its national legislation with the prevailing international standards.

[26] Legea nr. 129/2019, a intrat în vigoare la data de 18 iulie 2019.

Crack down on repeat offenders and organised groups

One potential avenue for enhancing the efficacy of Romania's anti-money laundering efforts is to adopt a more rigorous approach towards repeat offenders and organised criminal networks. Currently, Romanian legislation provides for penalties that can be applied individually, yet it lacks sufficient differentiation between one-off cases and repeated or organised cases. In order to enhance the efficacy of the anti-money laundering apparatus in Romania, it would be prudent to consider the example set by Argentinean legislation and the practices adopted by other European countries. In particular, the introduction of graduated punishments contingent on recidivism and the value of transactions could prove beneficial. Consequently, individuals or groups engaged in repeated money laundering activities would be subject to more severe penalties, including extended custodial sentences, comprehensive asset confiscation, and substantial financial penalties. Such an approach would serve to deter involvement in such activities while simultaneously conveying a clear message that the fight against money laundering is a national priority.

Mandatory regular training for financial sector staff

In order to enhance the capacity of financial institutions to identify anomalous conduct and take a proactive stance in combating money laundering, it is recommended that regular training programmes be implemented for personnel within the financial sector. The programmes should comprise simulations and case studies, with a particular focus on the techniques used to detect suspicious transactions and the procedures that should be followed in the event of suspected money laundering. It is crucial for financial sector personnel to be able to identify potential illicit activities. Ongoing training can facilitate the development of the skills required to recognise red flags in a timely manner. By fostering greater awareness and responsiveness, these regular courses would serve to reinforce Romania's efforts in combating financial crime.

The objective of these legislative proposals is to adapt the Romanian regulatory framework in order to address the current challenges associated with money laundering. By reducing the reporting thresholds, including those applicable to cryptocurrencies, introducing more severe penalties for repeat offenders, developing a centralised database and providing regular training for staff, Romania can enhance both the prevention and effective combating of this complex phenomenon. It is imperative that these measures are implemented in order to guarantee the integrity and transparency of the national financial system and to safeguard the economy from the risks associated with money laundering.

Conclusion

The paper underscores the critical role of criminal liability for financial institutions in combating money laundering and upholding global economic integrity. By examining international legislation from a range of countries, including Romania, the UK, Argentina and Thailand, the paper demonstrates the diversity of legal approaches, thereby supporting the argument for legislative adaptation at the national level. The European Union plays a pivotal role in this regard, as evidenced by the AML directives and the forthcoming Anti-Money Laundering Authority (AMLA), which will serve to reinforce financial supervision and cross-border collaboration. In Romania, national legislation is gradually being brought into alignment with international standards. However, effective enforcement remains a challenge, particularly with regard to staff training and monitoring of cryptocurrency transactions. The proposals set forth in the lege ferenda indicate a reduction in the reporting thresholds and an increase in penalties for repeat offenders. In conclusion, the paper underscores the necessity for banks to assume a proactive role in collaboration with the authorities to safeguard the economy and eradicate illicit financial activities.

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